

(2002) 07 GUJ CK 0102

In the Gujarat High Court

Case No : Special Civil Application No. 2280 of 2002

Shankarbhai Nathalal Prajapati

APPELLANT

Vs

Maize Products

RESPONDENT

Date of Decision : 08-07-2002

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Evidence Act, 1872 — Section 102

Industrial Disputes Act, 1947 — Section 10, 2

Citation : (2003) 96 FLR 829 : (2002) 3 GLR 425

Hon'ble Judges : Akshay H. Mehta, J

Bench : Single Bench

Advocate : Subramaniam Iyer, for the petitioner No. 1, for the Appellant;
Nanavati and Nanavati, for the Respondent

Final Decision : Allowed

Judgement

Akshay H. Mehta, J.—The petitioner was working as a Shift Chemist in the respondent-Company since 17th November, 1981. The said designation was subsequently changed as Starch Technician. The respondent served him with a notice dated 12th June, 1996 calling upon him to show cause that his service should not be terminated. According to the petitioner, before he could reply to the said notice the respondent-Company terminated his service by giving a telegraphic intimation. He, therefore, raised industrial dispute which ultimately came to be referred to the Labour Court by way of reference being Reference (L.C.A.) No. 1551 of 1996. In the statement of claim filed by the petitioner before the Labour Court, it was, averred by him that he was working with the respondent-Company for the last 15 years as Starch Technician and he was discharging his duties sincerely and faithfully. Despite that, he was given show-cause notice dated 12th June, 1996 and before he could give reply his service was terminated telegraphically. He further averred that since the termination was illegal and without following the due procedure prescribed in the law, the same was required to be set aside.

1.1. The said reference came to be resisted by the respondent-Company by filing written statement at Exh. 6. According to the respondent, the averments made in the statement of claim by the petitioner were not true. It also raised preliminary issue with regard to the maintainability of the reference on the ground that the petitioner was not falling within the purview of the provisions of Section 2(s) of Industrial Disputes Act. Hence, he was not reverted back. The Labour Court, therefore, had no jurisdiction to entertain this reference. It further contended that the petitioner was given show-cause notice on account of misconduct committed by him. It was further stated that on account of negligence of three workmen working under the petitioner in the Marco department of the respondent had remained closed till 4.15 in the morning, and thereafter, at 11.00 a.m. the next day it could not be restarted. Thus, according to the respondent because of the carelessness shown by the petitioner while supervising the work of his subordinates, there was no production during that period and the Company had suffered sizeable monetary loss. According to the respondent for that reason, show-cause notice dated 12th June, 1996 was served upon him calling for his explanation. However, on 12th June, 1997, the petitioner had submitted an application to the respondent seeking one week's time to render his explanation which was granted. It was further contended by the respondent that the petitioner was discharging duty as a responsible person and he was required to assign the work to the workmen working under him, to arrange the pattern of work and to scrutinize the quality of the product etc. It was further averred by the respondent that the manufacturing unit of the Company is a continuous process wherein starch and its incidental items are being manufactured and for that purpose to keep vigilance over the working staff, surprise checking is being done. During one of such checkings made on 11th June, 1996 the petitioner who was working in the third shift was found sleeping in his department. According to the respondent since the petitioner was a responsible officer, it was a very serious matter that he was sleeping in the department at the time of working hours and that amounted to committing breach of the service conditions. Because of this misconduct, he was relieved from the service with effect from 12th June, 1997. According to the respondent to safeguard the petitioner's interest to the fact that repetition is not harness and in future his career may not be adversely affected and he did not lose his legal and lawful rights, he was simply relieved from the service with immediate effect. On these averments, the respondent submitted that the reference be dismissed. During the course of the proceedings before the Labour Court, documentary evidence came to be produced from both the sides. Over and above, mat the petitioner also tendered its oral evidence. Since the respondent had raised preliminary objection with regard to the maintainability of the reference, the Labour Court first proceeded to decide the preliminary issue. For deciding that issue, the Labour Court seems to have extensively relied on the evidence of the petitioner. Considering mat evidence, the Labour Court came to the conclusion that the petitioner was employed in the employment of the respondent in a supervisory capacity and the functions he discharged in the

respondent-Company were all of supervisory nature. The Labour Court also took into consideration the salary drawn by the petitioner, which admittedly exceeded Rs. 1600/- per month and on that ground the Labour Court decided that issue in favour of the respondent. The Labour Court vide award dated 9th November, 2001 dismissed the reference holding that the petitioner was not covered u/s 2(s) of the Act. In view of the fact that on preliminary issue the Reference was dismissed, the Labour Court did not deal with the other issues involved in the proceedings.

2. Being aggrieved by the said award of the Labour Court dated 9th November, 2001, the petitioner has filed this petition under Articles 226 and 227 of the Constitution of India. Mr. Subramaniam Iyer the learned Counsel for the petitioner has submitted before me that the Labour Court has grievously erred in dismissing the reference of the petitioner at the threshold without entering into the merits of it. He has submitted that the finding given by the Labour Court that the petitioner is not covered under the definition of workman as given u/s 2(s) of the Act, it is erroneous and contrary to the evidence on record. According to him, considering the nature of the duties and functions performed by the petitioner, he could not be said to be working in the supervisory capacity. He has further contended that the work of the petitioner was purely of the technical nature. He was employed as a Chemist in the respondent-Company and looking to the nature of his work he would certainly be covered under the provisions of Section 2(s) of the Act irrespective of the amount of salary drawn by him. In support of his contention, Mr. Iyer has drawn my attention to the evidence of the petitioner which has been extensively reproduced by the Labour Court in the text of its judgment. Mr. Iyer's contention is that the finding of the Labour Court which is based on such evidence, is not only erroneous, but the Labour Court has misread the facts which has resulted into gross miscarriage of justice. He has also contended that since the preliminary issue with regard to maintainability of the reference was raised by the respondent, it was the duty of the respondent to produce adequate evidence to establish the nature of the duties performed by the petitioner. According to him, since the respondent had failed to produce any evidence to show that the petitioner was employed in the supervisory capacity and that he was discharging the work of supervision over all its subordinates, the Labour Court ought not to have dismissed the reference holding mat the petitioner had failed to establish what kind of functions he was required to do. In support of his contention, Mr. Iyer has placed reliance on several decisions which will be discussed as and when the said decisions are dealt with in this judgment. He has further contended that the petitioner was working as a Chemist, and therefore, even if, some incidental supervisory work was done by him, he could not have been put in the category as contained in Clause 4 of Section 2(s). He has further contended that the petitioner was neither discharging managerial functions nor was he carrying out any administrative duties, and therefore, he was clearly covered under the definition of "workman".

2.1. As against that, Mr. D. G. Shukla appearing for Nanavati & Nanavati for the

respondent has contended that the respondent was well within its right to terminate the service of the petitioner keeping in view the nature of misconduct committed by him. He has further contended that the termination of the petitioner's service is legal and no infirmity can be attached to it. He has also contended that considering the fact that the petitioner was employed in the respondent-Company as supervisor and that he was carrying out functions in the nature of supervision over his subordinates, he would not come under the definition of "workman" as given in Section 2(s) of the Act, and therefore, the respondent was justified in raising preliminary issue with regard to the maintainability of the reference. He has, in support of the findings arrived at by the Labour Court, contended that the conclusions drawn by the Labour Court with regard to the nature of duty performed by the petitioner is in consonance with the evidence adduced on record by both the parties. He has further contended that since the petitioner himself in his evidence has admitted that he was working as a supervisor and that he was doing the work of keeping supervision over the functions of his workmen, the Labour Court was not wrong to hold that the petitioner was employed as supervisor and he was not a workman under the Act. He has further contended that the Labour Court was totally justified in upholding the preliminary objection raised by the respondent with regard to the maintainability of the reference, inasmuch as, the law is well settled that as and when such preliminary issue with regard to the maintainability of the proceedings is raised, it is incumbent upon the said forum to give its decision on that issue first, and then if found necessary, to proceed with further trial. In support of his contention, Mr. Shukla has relied on several decisions which may be referred in due course.

3. To substantiate his first contention, Mr. Iyer has drawn my attention to the evidence of the petitioner which has been extensively reproduced by the Labour Court in its judgment. The respondent has also annexed copy of the deposition of the petitioner given before the Labour Court. If that is perused, in the examination-in-chief the petitioner has stated that he was working as a supervisor in the respondent-Company and his post was that of Junior Shift Chemist. His monthly salary was Rs. 5,300/- and his service was terminated with effect from 12th June, 1996. He has further stated that he was doing supervisory work. However, he has stated that he had no authority to issue any charge-sheet or memo against any workman nor did he have any authority to sanction leave of any employee. He has also stated that he did not have any authority to sign the cheque which was issued on behalf of the respondent-Company. After referring to certain documents, he has stated that at the time of removing him from service his legitimate dues were not paid to him despite the fact that he had gone to the respondent-Company to collect that. He has further stated that he has not been served with any notice prior to terminating his service nor any salary has been paid in lieu of the notice. He has also made it clear in the deposition that no departmental inquiry has been held against him. Lastly, he has stated in the examination-in-chief that at the time of recording of his

evidence before the Labour Court he was without any employment despite the fact that he had made efforts to find out employment for him and that he had been maintaining his family by borrowing money from others. He had shown his willingness to join the employment of the respondent, if the respondent was ready to take him back in service. In the cross-examination by the learned Advocate for the respondent before the Labour Court, he has stated that he was working in the starch department of the respondent in three shifts. However, he has denied that he was working as shift in charge. He has further stated that it was true that about 30 persons were working under him and that he was supervising their work. He has further stated that he was required to instruct the operator to manage the process parameters in the starch department. He has further stated that he was required to call Engineer and the helper whenever there was breakdown in the plant and machinery. Further, he has stated that in the starch department it was he who had to decide what density and temperature to be maintained of the process. He has also stated that out of 30 workers some were operators and some workmen were unskilled and whenever any of them proceeded on leave he would sign the counter of the leave permission. He has further stated that inspection book is being maintained in the starch department and he used to write down instructions in the said book whenever he was required to give instructions to others and after writing such instructions he used to append his signature below it. He has further stated that what process was required to be done to keep the dry raw material wet was to be decided by him. He has further stated that he in his supervisory capacity, was required to keep watch over the stepping, grinding and separation process of the Maize which was being received as raw material in the respondent-Company. He has also stated that he was writing down the instructions of the workmen with regard to what process they will require to make in the instruction book. He has also shown the instruction book maintained for the period from 2nd April, 1996 to 3rd May, 1996 and he identifies his handwriting and his signatures in the same.

3.1. Mr. Iyer therefore, submitted that looking to the nature of the work which has been described above he was doing purely technical work and in the process, he might have done some incidental supervision on the working of his subordinates. But from the same, it cannot be said that he was employed as a supervisor in the respondent-Company. He has further drawn my attention to the definition of the workman as given in Section 2(s) of the Act, which is as follows :-

"Workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be expressed or implied, and for the purposes of any proceedings under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge, or retrenchment had led to that dispute, but does not include any such person -

(i) who is subject to the Air Force Act, 1950 (XLV of 1950), or the Army Act, 1950 (XLVI of 1950), or the Navy Act, 1957 (LXII of 1957); or

(ii) who is employed in the police service or as an officer or other employee of a person; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him; functions mainly of a managerial nature."

3.2. If the aforesaid definition of the "workman" is analysed it would show that any person employed in any industry to do supervisory work for hire or reward, whether the terms of employment be expressed or implied would be termed as a workman. This definition further carves out certain exception and for the purpose of this petition, Clauses (iii) and (iv) of Section 2(s) are relevant. Clause (iii) takes out the person employed mainly in an managerial or administrative capacity, from the purview of the said definition, whereas Clause (iv) takes out the person, who being employed in a supervisory capacity, draws wages exceeding Rs. 1600/- per mensem from the purview of the definition. The contents of the deposition which have been quoted by me hereinabove show that though at one or two places the petitioner has stated that he was working as supervisor in the respondent-Company, from the nature of the work which he was required to do, it clearly appears that he did technical work and being expert in Science, he was employed by the respondent-Company as Junior Shift Chemist for that very purpose. It may also be kept in mind that the very designation of the petitioner i.e. Junior Shift Chemist which subsequently came to be termed as Starch Technician indicates what type of work he was required to render. Being expert in Science all technical work relating to his subject was to be discharged by him. Needless to say that for running a starch department the respondent-Company would not solely depend on the petitioner and for assisting him several subordinate employees would be there and while carrying out the process of manufacturing in the said department the petitioner would be required to supervise the work of his subordinates. Such supervision cannot be taken as the supervision as envisaged in Clause (iv) of Section 2(s). As and when a person is required to work with the assistance of his juniors or subordinates, it is but natural that he would be required to inspect or supervise the work done by them, and if necessary he would be required to give instruction to them to do the work in a particular way. It cannot be, therefore said that he is carrying out supervisory work. The very fact that the nature of work which he performed, as has been stated by him in the cross-examination of the respondent, pertained to the technical aspects of the starch department, shows that it was technical work and he was not acting as a supervisor of that department. Status of a Chemist in a manufacturing industrial concern is aptly described in a judgment of the Apex Court which is rendered in the case of *Burmah Shell Oil Storage and Distribution*

Company of India Ltd. Vs. The Burma Shell Management Staff Association and Others, in that judgment while dealing with the case of chemist the Apex Court has held that :

"On the question of the duties carried out by a Chemist, the Association examined three witnesses. One of them is M. D. Daniel who had once worked as a Chemist and is now Foreman (Chemicals). The other two are : A. N. Dalai and P. N. Marolia who are both working as Chemists. They have given their qualifications and the nature of work done by them. There are, no doubt, Assistants who assist the Chemists in the laboratory where their work is carried on; but all the Chemists do their own work which is of technical nature. The Chemists have to personally test the various products received, and also test the products as they are altered in the installations at various stages. All the tests are carried out by the Chemists personally and there are only a few Assistants who do mere routine work in order to assist the Chemist. The Chemists, no doubt, ensure (hat the workmen assisting them do their work properly; but that small amount of supervision is only incidental to their own technical work of testing and giving the results of tests to the Company. Even the Company's witness Harish Bhargava admitted that the Chemist do a large part of the work themselves, though he added that the Chemist do guide and direct the Analysts and Laboratory Attendant so as to ensure that the work in the laboratory is performed efficiently and properly. Even his evidence does not show that this guidance and direction to the Laboratory Attendant and Analysts is the principal or substantial work for which a Chemist is employed. In fact, that work is ancillary to the main work which is done by the Chemists themselves. The decision of the Tribunal, consequently, in respect of the Chemists, holding them to be employed on technical work and not in supervisory capacity, must be upheld. They have rightly been held to be workmen."

3.3. The nature of the work which has been referred to in the case cited above is very much similar to the nature of work rendered by the petitioner of the present case. The Supreme Court in that case has also held, which can be seen from the aforesaid paragraph, that the Chemist may be assisted by the Assistants and he may be required to do some supervision to ensure that the workmen assisting him do their work properly but that small amount of supervision is only incidental to his own technical work. In the circumstances, even if, the petitioner is required to supervise the work of his Assistants or subordinates, it is only incidental to the main functions which he is required to discharge in the starch department.

3.4. Mr. Shukla while making his submission also referred to this decision with a view to point out the distinguish features between that case and the case on hand. For that purpose, he drew my attention to the fact that in case before the Apex Court the concerned workman was working in the Laboratory, and therefore, he was required to carry out technical work with the aid of his assitants and the Supreme Court in that context held that he was a Chemist

doing technical work, therefore, he was a workman. He further submitted that in the present case the petitioner was working in the starch department and not in the laboratory, and therefore, he was not required to carry out any technical work. In my opinion, the fact that the petitioner was working in starch department of the respondent-Company, it hardly makes any difference inasmuch as looking to the work of that department, many technical processes are required to be carried out and for that, service of a technical person like the petitioner will be very necessary. The petitioner, as can be seen from his cross-examination, was doing the work of maintaining parameters, was looking after the process of keeping dry raw material wet, was maintaining the density and temperature of the process of the starch department and keeping the watch over the process of stepping, grinding and separation of the Maize done with the aid of his assistants. Only an expert in the subject can do this work which is purely of a technical nature. It therefore, can well be said that whatever the work of supervision that was being done by the petitioner was ancillary to his main functions, and therefore, the petitioner can only be said to have been employed for doing technical work and not for any supervisory function.

3.5. When the person is found to be discharging technical work he can certainly be covered under the sweep of the definition of the workman. In the decision cited by Mr. Iyer of the Apex Court rendered in the case of S.K. Verma Vs. Mahesh Chandra and Another, , it has been held that :-

"The words "any skilled or unskilled manual, supervisory, technical or clerical work" are not intended to limit or narrow the amplitude of the definition of "workman". On the other hand they indicate and emphasise the broad sweep of the definition which is designed to cover all manner of persons employed in an industry, irrespective of whether they are engaged in skilled work or unskilled work, manual work, supervisory work, technical work or clerical work. Quite obviously, the broad intention is to take in the entire "labour force" and exclude "the managerial force". That, of course is as it should be."

3.6. The Apex Court has, therefore, made it clear that the definition is designed to cover all manner of persons employed in an industry irrespective of whether they are engaged in skilled work or unskilled work, manual work, supervisory work, technical work or clerical work. It has also said that, this has been done with the obvious intention to take in the entire "labour force" and exclude "the managerial force". Admittedly, in the present case, the petitioner was neither employed in the capacity of manager nor he was rendering any managerial type of work. As stated above, the work done by him in the department was purely of a technical type. He, therefore, can be covered u/s 2(s) of the Act.

3.7. The second limb of this aspect is whether the fact that the petitioner drew salary exceeding Rs. 1600/- can take him out of sweep of the definition of the workman as envisaged in Section 2(s) of the Act. The Apex Court and different High Courts in the country have time and again said that one is not to be guided by the factum of salary drawn by a particular person but the main criteria to

determine whether that person is a workman, is to take into consideration the nature of work rendered by him in the industry.

3.8. In case of *Arkal Govind Raj Rao Vs. Ciba Geigy of India Ltd. Bombay*, , the Apex Court has reiterated the aforesaid criteria as laid down in the case of *Burmah Shell Oil Storage and Distributing Co. of India Ltd. v. Management Staff Association* (supra). In light thereof merely because the petitioner drew salary exceeding Rs. 1600/- it cannot be said that the petitioner was employed in the capacity of the supervisor drawing salary of more than Rs. 1600/- and he was covered under Clause (iv) of Section 2(s) and he was not a workman. The aspect of salary drawn by the concerned person exceeding Rs. 1600/- per month has been adequately dealt with by this Court in the case of *Gujarat Electricity Board v. Gujarat Electricity Employees Union* reported in 1994 (1) GCD 555. It has been held by this Court that :-

"In order to decide whether an employee is a workman as contemplated u/s 2(s) of the Industrial Dispute Act, the Court has to decide as whether the work performed by him is of a supervisory or managerial nature. The label by which the post of the employee is advertised is of no consequence. The duties performed by Mr. Trivedi and his limited powers lead to only one conclusion that Mr. Trivedi was not employed mainly in managerial or supervisory capacity, and if he does not fall either under Clause (3) or Clause (4) of Section 2(s), he has to be treated as a workman for all purposes, even though he might be drawing wages exceeding Rs. 1600/- per month."

On this count, the finding given by the Labour Court against the petitioner is erroneous.

3.9. So far the contention raised by Mr. Iyer to the effect that the Labour Court ought not to have decided the reference on the basis of preliminary issue only and it ought to have given its decision on the other issues also. For that purpose he has placed reliance on the judgment of the Division Bench of this Court in the case of *Vallabhai Kalyanbhai Sutariya Vs. Divisional Controller, Gujarat State Road Transport Corpn.*, . In that case, it has been held that when the special forums like one under the I. D. Act are created they should not dispose of the matters on preliminary issue and must give their decisions on all counts. Since, it is the view of the Division Bench of this Court, I am bound by it. However, merely because the Labour Court has considered the preliminary objection raised by the respondent with regard to the maintainability of the reference and it has decided the same without entering into the merits of the case. It cannot be said that serious illegality has been committed by the Labour Court. This contention has been opposed by Mr. Shukla on the ground that the Labour Court was fully justified in adopting the course -of deciding the objection with regard to the maintainability of the reference first and to dismiss the reference having found that the petitioner was not a workman under the definition of Section 2(s) of the Act. He has further, for that purpose relied on several decisions to which I will presently revert to. Before entering into further discussion on that issue, I may

deal with the submissions made by Mr. D. G. Shukla. The first submission is that sitting under Article 227 of the Constitution of India, this Court has limited jurisdiction and it cannot enter into the questions of fact. He has further submitted that since the issue with regard to the maintainability of the reference on the ground whether the petitioner is a workman is purely a question of fact, the same have been decided by the Labour Court on the strength of the evidence adduced before it, this Court would not enter into the same and re-appreciate the factual aspect thereof. It is true that while exercising my powers under Article 227 of the Constitution of India, I have limited jurisdiction, that does not mean that I cannot go into the evidence and find out whether the decision of the Labour Court is in consonance with the evidence placed before it and when I find that the finding of the Labour Court is de hors the fact or based on misreading of the facts so as to term it as perverse, I can certainly inquire and disturb the finding even it is purely based on question of fact, more particularly it is a mixed question of fact and law, I, am therefore, not inclined to accept the first submission of Mr. Shukla. Mr. Shukla, with a view to contend that the petitioner was employed as supervisor in the starch department of the respondent-Company and that he was doing the work of supervisory nature, has drawn my attention to the written submission filed by the respondent before the Labour Court as well as to the evidence of the petitioner. He has placed heavy reliance on the evidence of the petitioner wherein he has submitted that he was working as supervisor in the respondent-Company and the "work he was required to do was of supervisory nature. He has therefore, submitted that when the petitioner himself admits this fact, nothing more is required to be done by the respondent and the Labour Court is totally justified in dismissing the reference on the ground that the petitioner is not a workman and under the Industrial Disputes Act the present reference cannot be entertained. I have adequately dealt with this aspect while dealing with the submissions made by Mr. Iyer. Further, in my opinion, merely because the petitioner in his evidence at one place or the other has stated that he was a supervisor, it cannot be taken as his admission. When the evidence has to be read and taken into consideration, it has to be read as a whole and in the context of various aspects that have been stated by the deponent. From the entire evidence, one cannot pick and choose stray sentence from here or there and term it to be an admission made by the deponent. As discussed above, when the entire evidence of the petitioner is read, one can certainly come to the conclusion that he was required to discharge the duty purely of technical nature and whatever the supervisory work which he was required to do was ancillary to the main functions. If that be the position, the so-called admission of the petitioner becomes totally insignificant and it cannot be used for throwing out the reference at the threshold.

3.10. It may be noted here that reference Court has mainly taken into consideration the evidence of the petitioner and it has observed that since the petitioner himself has not stated what functions he was discharging he has not been able to establish that he is a workman. While holding so the Labour Court

has totally ignored the cross-examination of the petitioner. It can be said that what has not been stated in examination-in-chief has been taken out from the petitioner in the cross-examination. The respondent's cross-examination brought out the nature of work which the petitioner rendered in the respondent-Company and as already held by me the said work was not of supervisor nature, but was purely of a technical nature. Moreover, the Labour Court has totally shut its eyes to the fact that issue with regard to the maintainability of the reference was agitated by the respondent and it was the respondent's duty by placing adequate and reliable evidence before the Labour Court to establish that the petitioner was not a workman. For that purpose, the respondent was required to place before the Labour Court the nature of duties assigned to the petitioner while he worked as a Junior Shift Chemist in the starch department. Neither oral nor any documentary evidence has been produced. The respondent has neither placed on record the duty manual nor a copy of the advertisement that might have been issued inviting the applications to fill up the post of Junior Chemist. If that be so it can well be said that the respondent has totally failed to discharge its duty and the Labour Court has committed grave error in not deciding the issue in favour of the petitioner. Needless to say that it is the respondent's duty to produce cogent and reliable evidence to substantiate its say. It may be noted that the nature of objection that has been raised by the respondent goes to the very root of this proceedings, and therefore, it is for the respondent to establish the fact that the petitioner is not a workman within the meaning of Section 2(o) of the I.D. Act. The respondent has merely relied on some portion of the evidence stating that it is admission made by the petitioner himself, and therefore, the respondent is not required to produce any evidence in support of its preliminary contention. The respondent cannot rest content with the so-called admission made by the petitioner in his evidence. As discussed above, the so-called admissions has to be read in the context of the entire evidence that has to go on record by way of deposition of the petitioner. If that is done, it clearly shows that the respondent, being a person well versed in the subject of Science, was required to discharge technical duties with the assistance of several subordinates. It may also be noted that the staff working under him included many unskilled persons who would not be able to carry out certain technical functions and the same were required to be handled by the petitioner alone or at least he was required to assist those workers in carrying out these functions. Merely relying on some part of the evidence of the petitioner i.e., production of certain registers wherein the petitioner has written down the instructions for the subordinates staff, cannot mean to say that he was working in supervisory capacity. In the light of the aforesaid discussion, I have no doubt in my mind that the petitioner was required to do technical work in the starch department, and therefore, irrespective of the salary drawn by him, he comes under the definition of workman as envisaged in Section 2(s) of the Act. The petitioner did exercise some supervision over the subordinate staff, but it was simply incidental to his main functions and such supervision cannot take him out of purview of Section 2(s) of the said Act. Mr. Shukla has placed reliance on the decision of the

Bombay High Court rendered in the case of Bombay Dyeing and Manufacturing Company Limited v. R. A. Bidoo reported in 1990 (1) LLJ 98, which is a case under the provisions of Bombay Industrial Relations Act, 1947. Mr. Shukla has put emphasis on the passage of this judgment wherein the words "supervisor" has been discussed.

3.11. Mr. Shukla has submitted that it is very clear that the supervisor is required to function in the manner which has been described in this passage. According to him, the petitioner discharged the same functions, and therefore, he was falling in the cadre of supervisor. However, in this very judgment, it has also been observed as under :-

"The word "supervisor" means a person who oversees the work of others. It means "overseer". A person can be said to be a supervisor if there are persons working under him, over whose work he has to keep a watch. He is that person who examines and keeps a watch over the work of his subordinates and if they err in any way, corrects them. It is his duty to see that the work in an industrial unit is done in accordance with a manual if there is one or in accordance with the usual procedure. It is not his function to take bring about any innovation; it is not his function to take any managerial decisions, but it is his duty to see that the persons over whom he is supposed to supervise, do the work assigned to them according to the rules and regulations. The central concept of a supervisor is the fact that there are certain persons working under him. If a person is doing any work which does not require him to look after or inspect or examine the work of persons who are subordinate or working under him, that person can never be said to be a supervisor. In other words, the supervision is necessarily be reference to the persons working under a supervisor."

A person can be said to be employed in a technical capacity if he is, in the first place, a skilled person. He must have enough dexterity to discharge the work assigned to him with speed and accuracy. He must also have a skill, but that skill is not a general skill like that of a weaver who is in charge of several looms in a textile unit. Sueh a weaver is skilful enough to look after several looms at one time and if something goes wrong, he is able to attend to and amend the same. But he is not employing any particular knowledge or art in which he has been trained or in which he had some has been trained or in which had some education, formal or otherwise. In case of a person employed in a technical capacity, the application of a knowledge or a particular craft of work is the distinguishing feature. With the assistance of the knowledge he possesses, a person employed in a technical capacity is able to bring about a result which could not be brought about by a person, howsoever, skilled, who is to perform routine, respective work. A person employed in a technical capacity has to use his judgment and has to find out whether a particular work can be done in one manner or another and then he does that work in the manner in which he thinks it is better done. The work which results from the labours of such a person necessarily bears, atleast in some small measure, the imprint of his personality

and the knowledge of the person who does that work. It is not necessary that the work that such a person does must be inventive, but it must necessarily be a work, the contours of which are not pre-determined before that work is actually performed by the person employed in a technical capacity."

3.12. The nature of duties performed by the petitioner are considered vis-a-vis the observations that have been made by the Bombay High Court in the second paragraph it will show that the petitioner is completely covered under the requisite guidelines that have been formulated by that Court in respect of a "technical capacity". According to the Bombay High Court when the person employed in a "technical capacity", he cannot be termed as a supervisor. Thus, this authority on the contrary goes against what has been contended by Mr. Shukla. Reliance is also placed by Mr. Shukla in the decision rendered in the case of John Joseph Khokar v. B. S. Bhadange and Ors. reported in 1998 LLR 213. There is no dispute with regard to the ratio laid down in this decision. However, for the foregoing discussion this ratio cannot be applied to the present case and on the strength of this citation the petitioner cannot be brought within the purview of Section 2(s) of the Act.

4. Reverting back to the second contention raised by Mr. Iyer with regard to the Labour Court deciding the reference only on the preliminary issue and not giving its finding on the other issues, for the reasons stated above, I am of the opinion that the Labour Court was well within its bound to decide the preliminary issue first. Because that issue was the foundation of the entire reference. If that issue was decided in affirmative there was no question of proceeding any further with the reference to decide other issues. Mr. Shukla, in answer to the contention raised by Mr. Iyer has cited three judgments which are reported in (1) The Management of Express Newspapers Ltd. Vs. Workers and Staff Employed under it and Others, and it has been rendered in the case of Management of Express Newspaper Private Ltd. v. The Workers and Ors., (2) Ravinder Singh Vs. Janmeja Singh and Others, rendered by this Court in the case of Gujarat Kamdar Panchayat v. Maize Products and Anr. All these citations permit the appropriate forum to decide the preliminary issue first. In my opinion, therefore, the Labour Court has not committed any error while deciding the preliminary objection raised by the respondent with regard to the maintainability of the reference.

5. For the foregoing discussion, I find that the Labour Court has committed grave error in throwing out the reference at the threshold by holding that the petitioner is not a workman. The award of the Tribunal therefore, deserves to be quashed and set aside. This petition, is therefore, required to be allowed. It is clear from award of the Labour Court that the matter has been dealt with on the question of the preliminary issue only and rest of the issues are still to be decided. It is therefore, desirable that the matter be now remanded back to the Labour Court to consider and give its decision on the other issues. For that purpose, the matter is hereby remanded back to the Labour Court with a direction that whatever evidence that has already gone on record will remain as it is. The

parties are given liberty to adduce further fresh evidence, if they so desire. Upon completion of the recording of the evidence, the Labour Court may decide the rest of the issues on their merits and give its decision as early as possible preferably before 31st December, 2002.

With the aforesaid direction, the petition stands allowed. Rule is made absolute with no order as to costs.