**(2001) 12 BOM CK 0020**

**In the Bombay High Court**

**Case No :** Writ Petition No. 3263 of 1995

Sudhir B. Shende APPELLANT

Vs

Jai Hind Co-op. Bank Ltd. and Others RESPONDENT

**Date of Decision :** 14-12-2001

**Acts Referred:**

Bombay Industrial Relations Act, 1946 — Section 28, 3(13)

**Citation :** (2002) 2 ALLMR 88 : (2002) 4 BomCR 323

**Hon'ble Judges :** Nishita Mhatre, J

**Bench :** Single Bench

**Advocate :** Sanjay Singhvi, for the Appellant;

## Judgement

Nishita Mhatre, J.—This petition challenges the order of the Industrial Court dismissing the revision application filed by the petitioner on the ground that he is not an employee u/s 3(13) of the Bombay Industrial Relations Act (hereinafter referred to as "B.I.R. Act'').

2. The facts relevant for disposal of this petition are as follows:

The petitioner was appointed as Junior Officer on 10-5-1989 by respondent No. 1- bank. As a Junior Officer, the petitioner was required to perform work of a clerical and skilled nature such as passing of cheques, ledger posting, checking interest calculations, checking the clearance of cheques, to write the scroll, to write day-book, making postings in general ledger and checking the same, preparing trial balance sheets, to maintain liquidity registers, to check postage register, etc. The services of the petitioner were terminated on 13-12-1990. No grounds for termination of service were given to the petitioner. The petitioner, therefore, filed a complaint u/s 28 r/w Item 1(a), (b), (d), (f) and (g) of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as ''MRTU & PULP Act''). The petitioner contended that despite having completed 240 days in service, the bank had terminated his services without following the due procedure laid down in section 25-F of the Industrial Disputes Act. He also contended that no seniority list was displayed and, therefore, claimed reinstatement with continuity of service and full back wages.

3. This complaint was opposed by the respondent-bank on the footing that since the B.I.R. Act is applicable to the bank, before considering the complaint, the Court would have to determine whether the petitioner was indeed an employee as defined u/s 3(13) of the B.I.R. Act. It was also contended that the petitioner being a temporary employee, the question of retrenchment did not arise. The petitioner also filed an application for interim relief which was granted by the Labour Court and the respondent-bank was directed to give him work from 15-5-1992 or to pay 70% of the wages last drawn by him. This order was impugned by the bank by filing a revision application. The revision application was allowed and the complaint was finally heard.

4. By an order dated 4-8-1993, the Labour Court held that the petitioner is an employee as defined u/s 3(13) of the B.I.R. Act and that the respondents had committed an unfair labour practice under Item 1(a), (b), (d), (f) and (g) of the MRTU & PULP Act. The Labour Court further directed the respondent-bank to reinstate the petitioner w.e.f. 31-12-1990 with full back-wages. Being dissatisfied with this order, the bank-filed Revision Application No. 66 of 1993 before the Industrial Court u/s 44 of the MRTU & PULP Act. The Industrial Court reversed the order of the Labour Court and dismissed the complaint on the ground that the petitioner who was appointed as a Junior Officer could not be considered to be an employee u/s 3(13) of the B.I.R. Act. The Industrial Court came to this conclusion in view of the fact that the petitioner was required to make entry of the cheques and to verify the signature appended on it and he then had to stamp the cheque with the endorsement "pay cash" and sign the same for verification. The Industrial Court opined this was a direction given to his subordinates by the petitioner and it could not be said that it was a clerical and stereotype work. The Industrial Court was of the view that the petitioner was performing the work of administrative nature and, therefore, he could not be considered an employee under the B.I.R. Act. Further, since the petitioner was required to maintain the liquidity register, the Industrial Court took the view that the petitioner was not an employee.

5. Mr. Singhvi, learned Counsel for the petitioner, submits that despite the fact that the petitioner was appointed as a Junior Officer, his designation would not in any event of consequence to decide whether the petitioner is an employee. He submits that what is material is not the nomenclature but the actual duties performed by a person to determine as to whether he is an employee under the B.I.R. Act. He submits that the nature of duties performed by the petitioner was that of a clerk employed in the bank. According to the learned Counsel, they were routine duties which the petitioner was expected to do. He submits that the Industrial Court had erred while observing that the petitioner was required to check liquidity registers and was, therefore, doing work of an administrative

 

nature. He merely counter-checked what another clerk may have entered into the liquidity register. Stamping cheques with the endorsement "pay cash" is also, according to the learned Counsel, a routine clerical duty. The learned Counsel relies on the judgments of the Apex Court in the case of Lloyds Bank Ltd., New Delhi Vs. Panna Lal Gupta and Others, , Punjab National Bank Ltd. v. Their Workmen & another, 1961 (II) L.L.J. 162 , National Engineering Industries Ltd. Vs. Shri Kishan Bhageria and Others, , S.K. Maini Vs. M/s. Carona Sahu Company Limited and others, .

6. In Lloyd''s Bank case (supra), the Apex Court considered the case of employees who claimed to be supervisors and claimed special allowance on this basis. The connotation of word ''workman'' as defined u/s 2(s) of the Industrial Disputes Act was examined. The Supreme Court summarised the work performed by the workmen in the audit department as follows:

"(a) checking entries with vouchers in the specified books;

(b) checking balances of the three specified ledgers;

(c) checking entries in some specified subsidiary books with the vouchers;

(d) checking impersonal and cash balance weekly;

(e) checking contents of ordinary outgoing branch mail;

(f) doing the work of reconciliation of the branch accounts with the other branches and preparing monthly branch reconciliation statements;

(g) checking monthly reconciliation statements received from branches, etc.;

(h) checking the authority of the person passing the voucher in order to check whether the limit had been exceeded or the amount was within the limit; and

(i) examining whether the amount was within the security limit and if there are mistakes taking them to the clerk concerned and the assistant concerned for correction."

The Apex Court took the view that this work which was done by the clerks in the audit department substantially consisted of checking of books of accounts and the entries made therein. The Supreme Court opined thus:

"The work that is done by the clerks in the audit department substantially consists of checking up books of accounts and entries made in them. This checking up is primarily a process of accounting, and the use of the work "checking" cannot be permitted to introduce a consideration of supervisory nature. The work of checking the authority of the person passing the voucher or to enquire whether the limit of authority has been exceeded is also no doubt work of a checking type but the checking is purely mechanical, and it cannot be said to include any supervisory function."

The Supreme Court negated the contention of the employees and held that the nature of work which they were performing was not one which could classify them as supervisors. In the present case, the nature of work that the petitioner was expected to do was similar to the work enumerated in the judgment of the Apex Court. Checking of the liquidity register would in fact amount to purely a mechanical checking and cannot be said to include any supervisory, administrative or managerial function. The Industrial Court has obviously erred in concluding that merely because the petitioner was required to maintain and check the liquidity register, he could not be considered to be employed u/s 3(13) of the B.I.R. Act.

7. In Punjab National Bank''s case (supra) again, the Apex Court was considering as to whether the employee was entitled to special allowance payable to a supervisor under the All India Industrial Tribunal (Bank Disputes) Award. The duties performed by the employee were as follows:

"(1) making payment of cheques upto Rs. 1,000 after verifying the signatures of the drawers subject to confirmation by the department in-charge.

(2) Maintenance of specimen signatures cards.

(3) Maintenance of teller cards.

(4) Posting of all debit and credit vouchers in teller cards.

(5) Maintenance of cash account received from the head cashier.

(6) Checking and signing of the current account pass-books of ledgers Nos. 1 and 2.

(7) Taking down after 2 p.m. of opening and closing balance of operated accounts on adding machine from the teller cards and their comparison with the ledger keeper with the one taken down by the latter. Thereafter, writing by him of closing and opening balance on reconciliation sheets.

(8) Attending to the enquiries of the customers in relation to his work.

(9) Performing of other clerical duties including drafting of his departmental correspondence, etc., that may be entrusted to him."

8. The Apex Court held that the work performed by the employees did not in any manner have the colour of supervision and hence, they were not entitled to the allowance under the Award. The Apex Court held that although the work performed by the employee was responsible and onerous, it is immaterial in determining the issue as to whether the work is supervisory in character or not. The Apex Court did not accept the reasoning of the Industrial Court that the skill expected from the employee and the responsibility attached to his duty as a teller entitle him to the status of a supervisor. In the present case, the Industrial Court has observed that the fact that the petitioner was required to stamp the cheques after verifying the signature and the balance in the accounts with the remark "pay cash" amounted to responsible, onerous duties which were

 

administrative in nature. However, this duty performed by the petitioner is similar to the duties set out in the Punjab National Bank''s case (supra). The Industrial Court''s finding is, therefore, unacceptable and is required to be set aside.

9. Similarly, in the case of National Engineering (supra), it was held that an internal auditor in a company could not be considered to be doing the work of supervisory character as he was merely checking on behalf of the employer and had no independent right or authority to take any decision. In the present case also, once the petitioner found that the signature on the cheques tallied and there was cash in the account, he had no option but to mark on the cheque "pay cash" he could not in any way refuse to make payment. Therefore, it could not be said that the petitioner had any independent right or authority to take any decision. Stamping of the words "pay cash" was merely a routine duty which the petitioner was required to perform once other requisites on the cheque were in order. This did not require any administrative acumen from the petitioner.

10. In the case of S.K. Maini (supra), the Apex Court held that if the main work of an employee is of manual, clerical or of technical nature, the mere fact that some supervisory or other work is also done by the employee incidentally or only a small fraction of working time is devoted to some supervisory works, the employee would still be a workmen within the purview of the definition contained in section 2(s) of the Industrial Disputes Act.

11. The definition of employee contained in section 3(13) of the B.I.R. Act is similar to that of the definition of workman under the Industrial Disputes Act and therefore, the same principles would apply to determine whether the petitioner is an employee under the B.I.R. Act.

12. The findings of the Industrial Court are, therefore, contrary to the definition of the employee u/s 3(13) of the B.I.R. Act as well as the judgments of the Apex Court. In the light of this, the order of the Industrial Court is set aside and order of the Labour Court is confirmed.

13. Rule accordingly made absolute with costs.

14. Issuance of certified copy is expedited.

Parties to act on an ordinary copy of this order duly authenticated by the Court Sheristedar.

 