
(2010) 10 BOM CK 0234

In the Bombay High Court

Case No : Appeal No. 67 of 2010 in Writ Petition No. 975 of 2009

Vandana Joshi

APPELLANT

Vs

Standard Chartered Bank Ltd.

RESPONDENT

Date of Decision : 26-10-2010

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 2, 28
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 3(5)

Citation : (2011) 7 ALLMR 627 : (2010) 112 BOMLR 4514 : (2011) 128 FLR 293 : (2011) 2 LLJ 261 : (2011) LLR 126 : (2011) 1 MhLj 415

Hon'ble Judges : Ranjit More, J;Ranjana Desai, J

Bench : Division Bench

Advocate : Party in Person, for the Appellant; J.P. Cama and Ashok Shetty, for the Respondent

Final Decision : Dismissed

Judgement

Ranjit More, J.—The appeal takes exception to the judgment and order dated 17th December, 2009 passed by a learned Single Judge of this Court in Writ Petition No. 975 of 2009 whereby, the respondent's petition was allowed by setting-aside the Industrial Tribunal's award dated 22nd January, 2009. Consequently, the reference CGIT 2/37 of 2007 came to be dismissed.

2. The brief facts giving rise to the present appeal are as follows:

The appellant in pursuance of the personal interview conducted by a Panel of office-bearers of the respondent was offered appointment as Personal Financial Consultant by letter dated 27th April, 2006. The appellant accepted the assignment and communicated her acceptance to the respondent on 28th April, 2006 and accordingly she was appointed vide letter of appointment dated 2nd May, 2006 on a permanent post on a guaranteed Pay of Rs. 2,80,000/- per annum. The letter of appointment stipulated that the appellant was being placed

in the management cadre of the respondent at Band 8-B. The addendum to the letter of appointment contained a declaration that the appellant had read and accepted the terms and conditions of the appointment. The service of the appellant, however, was terminated by letter dated 23rd June, 2006 issued under the signature of Associate Manager, Human Resources on account of improper behaviour and conduct with the customer, Line Manager and fellow colleagues.

The appellant, thereafter, filed an appeal before the Executive Committee of the respondent. Since, there was no response from the respondent, the appellant sent legal notice to the respondent on 22nd July, 2006. The respondent gave reply to the said notice on 9th August, 2006 thereby denying the appellant's allegations. The appellant, thereafter, approached the Ministry of Labour, New Delhi and filed conciliation proceedings vide representation dated 30th August, 2008. The Ministry initiated proceedings for conciliation in which the respondent filed its written statement. The Ministry after considering the appellants representation and respondent's reply by its order dated 19th April, 2007 refused to make reference on the ground that the appellant has not completed 240 days of service and hence, no dispute subsists. The appellant challenged this order by filing Writ Petition No. 4529 of 2007. The High Court allowed the writ petition holding that mere non-completion of 240 days of service would not be a ground for refusal to make a reference. The High Court directed the Ministry of Labour to refer the matter and accordingly reference has been forwarded to the Industrial Tribunal for adjudication of the dispute i.e. "Whether the action of the respondent in terminating the services of the appellant w.e.f. 24th June, 2006 is legal and justified? If not, what relief the workman concerned is entitled to?"

The appellant filed a statement of claim at exhibit "3". The appellant stated that the appointment related to management of Personal Banking Customers which forms part and parcel of the business activity of the Bank. The appellant has further stated that she was answerable to the Branch Manager and was required to work under the instructions and control of the Branch Manager. The statement of claim which was originally filed did not contain averments that the duties of the appellant were clerical in nature. However, in rejoinder filed before the Industrial Tribunal the appellant set up the case that the work which was being rendered was "basically clerical in nature". The appellant stated that being a Personal Financial Consultant, she had no authority or power to authorize or take any decision to complete a transaction. The Personal Financial Consultant and the Regional Head were separated in hierarchy by a Line Manager, Branch Manager and Cluster Head. The appellant claimed that all the Personal Financial Consultants reported to the Line Manager and were not involved in any of the decision making processes or in the discharge of supervisory functions. The appellants case was that she was doing work of a clerical nature and not that of managerial or supervisory nature.

A written statement was filed by the respondent at Exhibit "6" challenging the maintainability of the reference contending that it is illegal, bad in law, without

jurisdiction and liable to be dismissed. The respondent also raised preliminary objections on the maintainability of the reference on the ground that the second party is not a workman within the meaning of Section 2(s) of the Industrial Disputes Act, 1947. It was stated that the appellant was appointed as a Personal Financial Consultant and was placed in Band 8 of the management cadre. The key responsibilities of the said portfolio involved that the appellant achieves allocated business targets and actively cross-sells Consumer Banking products and third party products, generates new business via sales promotions, out-marketing calls and presentations and in-branch contacts, participates actively in branch sales planning to generate action plans for meeting targets, ensures high level of customer service in the branch, manages difficult customer situations, ensures compliance with internal and external guidelines and ensures minimal comments in audits and other inspections, ensures that transactions are processed with a high level of accuracy and commitment in order to satisfy customer needs, ensures validity and completeness of transactions processed and ensures concessions relative to exchange rate, fees, charges etc. are authorized/overridden by appropriate authorities, takes responsibility for general reconciliation and control activities, finds ways to improve operational efficacy and controls costs to meet cost budgets, gathers/prepares statistics for service quality and productivity indicators, responsible for general reconciliation and control activities, be multi-skilled to handle all kinds of transactions and services in the bank and manage attrition of the base. It is further contended by the respondent that the said duties are assigned to the appellant and performed by her and therefore, did not bring her within the ambit of the definition of workman u/s 2(s) of the Industrial Disputes Act, 1947 and thus, the appellant is not entitled to raise an industrial dispute u/s 2(k) of the said Act and as such the Tribunal has no right to entertain, hear and decide the reference.

The appellant adduced evidence of herself. The respondent examined two witnesses viz. Ms. Pooja Banerjee, Associate Manager(Human Resources) and Ms. Tripti Shrivastava, Branch Manager. The Tribunal after appreciating the evidence on the record and after hearing the concerned parties held that the appellant is a workman. The Tribunal further held that the appellant proved that in the absence of completion of 240 days, she is entitled for protection. The Tribunal also held that the respondent failed to justify its action of termination of services of the appellant. The Tribunal accordingly allowed the reference and directed the respondent to reinstate the appellant by giving the benefit of full back wages and continuity of service from the date of her termination till she is reinstated.

The respondent challenged the above judgment and award of the Tribunal by filing Writ Petition No. 975 of 2009 in this Court. The learned Single Judge who disposed of this writ petition by judgment and order dated 17th December, 2009 after hearing the appellant in person and the respondent, came to the conclusion that the Tribunal has failed to consider material aspects of the evidence on the record and to apply tests which are now settled in view of the judgments of the

Supreme Court. The learned Single Judge concluded that appellant is not a workman within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 and therefore, the Tribunal had no jurisdiction to entertain the reference which ought to have been rejected. Consequently, the writ petition was allowed and the award of the Industrial Tribunal was set-aside. This order is impugned in the present appeal.

3. The appellant took us through her statement of claim, written statement of the respondent and evidence of herself as well as that of the witnesses of the respondent. She submitted that the nature of her duties was not related either to marketing or sales and that she was not doing any work of managerial nature. She further submitted that the work which was being rendered by her was related to customer service. The work involved data entry which fell within the description of clerical nature within the meaning of Section 2(s) of the Industrial Disputes Act, 1947. She invited our attention to the admissions of the witnesses of the respondent during their cross-examination to substantiate her case that she is a workman within the meaning of Section 2(s) of the Industrial Disputes Act, 1947. She also submitted that the duties and key responsibilities of the employees appointed in Bands 8-A and 8-B, 9-A and 9B are similar and therefore, on the basis of these duties, she cannot be said to have been working in the management cadre. She submitted that the burden of proof that she is not a workman lies on the respondent and the said burden is not satisfactorily discharged by them. She further submitted that the learned Single Judge of this Court while exercising jurisdiction under Article 227 of the Constitution of India could not have disturbed the finding of the fact recorded by the Tribunal after appreciating the evidence on the record. In order to substantiate the above contentions, the appellant relied upon a decision of the Supreme Court in *Dharangadhara Chemical Works Ltd. v. State of Saurashtra* AIR 1957 264, decision dated 5th January, 2010 in *Special Leave to Appeal (Civil) Nos. 6966/2009 in Harjinder Singh v. Punjab State Warehousing Corporation*, decision of the Supreme Court in *The Punjab Co-operative Bank Ltd. Vs. R.S. Bhatia (Dead) through Lrs.*, , a decision of Supreme Court dated 5th June, 1985 in *Civil Appeal No. 2638 of 1980 in Arkal Govind Raj Rao v. Ciba Geigy of India Ltd. Bombay*, decision of a Division Bench of this Court in *Karnataka Bank Ltd. v. Sunita B. Vatsaraj (Smt.)* 2007 2 CLR 650 and decision of the learned Single Judge in *Shri Aloysius Nunes Vs. Thomas Cook India Ltd.*, .

4. Mr. Cama, learned senior counsel appearing on behalf of respondent contested the appeal. He submitted that the letter of appointment and the addendum to it set out the conditions of appointment and the nature of duties of the appellant. He submitted that during the course of evidence, the appellant admitted the document that reflected the nature of her duties. He further submitted that the appellant during the course of her evidence had admitted that her appointment was on the basis of sales and service and that as a sales person, she had to sell the products of the bank. Mr. Cama contends that the nature of the duties that were performed by the appellant will rule out the appellant's assertion that the

work which was rendered by her was of a clerical nature. He states that it is for the appellant to discharge burden that she falls within the definition of workman as given in Section 2(s) of the Industrial Disputes Act, 1947. Mr. Cama contends that the appellant failed to discharge the said burden and the Tribunal failed to apply its mind in proper perspective to the evidence on the record. The Tribunal failed to apply tests which are now settled in view of the judgments of the Supreme Court and therefore, the learned Single Judge was justified in interfering with the Tribunal's award. Mr. Cama also submitted that in order to fall within the definition of a workman within the meaning of Section 2(s) of the said Act, the appellant must establish that she was employed to do work which falls within one of the stipulated categories in the first part of Section 2(s) and it is not enough to show that she is not covered by either of the four exceptions to the definition. He submitted that though the Tribunal erroneously held that the appellant was not employed in managerial or supervisory capacity, there is no finding by the Tribunal that the appellant was working in any of the categories stipulated in the first part of Section 2(s) of the Industrial Disputes Act, 1947. He asserted that the appellant is working in lower managerial category and therefore, she is not a workman within the meaning of Section 2(s) of the Industrial Disputes Act, 1947. In the above circumstances, he submitted that the learned Single Judge was justified in interfering with the judgment and award of the Tribunal. In order to substantiate his contentions, he relied upon a Constitution Bench judgment in *H.R. Adyanthaya v. Sandoz (India) Ltd.* 1994 II CLR 552, decision of the Supreme Court in *Management of Sonepat Cooperative Sugar Mills Ltd. v. Ajit Singh* 2005 II CLR 66, decision of the Supreme Court in *Mukesh K. Tripathi v. Senior Divisional Manager, LIC and Ors.* 2004 III CLR 534, judgment of the learned Single Judge of this Court in *Dhruba Kumar Changkokoti v. Travel Corporation of India Ltd. and Ors.* 2000 II CLR 644, judgment of the learned Single Judge of this Court in *Inthru Noronha Vs. Colgate Palmolive (India) Ltd. and Others*, , judgment of the learned Single Judge of this Court in *M.G. Bhide v. Britannia Industries Ltd. and Ors.* 2005 III CLR 307 and judgment passed by a Division Bench of this Court in *C. Gupta Vs. Glaxo Smithkline Pharmaceutical Ltd.*, .

5. We have extensively heard the appellant in person and Mr. Cama, learned senior counsel for the respondent. We have gone through the award passed by the Tribunal as well as the impugned judgment and order along with the statement of claim of the appellant and written statement of the respondent. We have also gone through the evidence on the record and relevant documents relied upon by respective parties and the judgments cited at the Bar. The only issue which is required to be considered in this appeal is whether the appellant was a workman within the meaning of Section 2(s) of the Industrial Disputes Act, 1947. A Constitution Bench of the Supreme Court in *H.R. Adyanthaya v. Sandoz (India) Ltd.*'s case (*supra*) held that in order that a person can be designated as a workman u/s 2(s) he/she must be employed to do work which falls within one of the stipulated categories viz. manual, unskilled, skilled, technical, operational,

clerical or supervisory and it is not enough that a person is not covered by either of the four exceptions to the definition. Thus, in order to succeed, the appellant is not only required to prove that she is not covered by either of the four exceptions to the definition, but she falls within one of the stipulated categories in the first part of the definition.

6. The appellant has relied upon the judgment of the learned Single Judge in Aloysius Nunes's case (supra) to contend that the burden of proof that the person was a workman is on the person who disputes character of the person in industrial reference. The decision of the learned Single Judge, however, cannot come to the rescue of the appellant in view of the decision of the Supreme Court in Mukesh K. Tripathi's case (supra) and Ganga Kisan Sahkari Chini Mills Ltd. v. Jaivir Singh 2007 III CLR 840. The Supreme Court in Mukesh K. Tripathi's case (supra) in Paragraph 37 observed as follows:

37. In case any person raises a contention that his status has been changed from apprentice to a workman, he must plead and prove the requisite facts. In absence of any pleading or proof that either by novation of the contract or by reason of the conduct of the parties, such a change has been brought about, an apprentice cannot be held to be workman.

The Supreme Court in Ganga Kisan Sahkari Chini Mills Ltd.'s case (supra) held that the conclusion of the High Court that the burden of proof lies on the employer to establish the nature of appointment is contrary to law. The ratio of the above decisions of the Supreme Court makes it abundantly clear that it is for the appellant to prove that she is a workman within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 with reference to the dominant nature of her duties.

7. In the background of the settled principles of law stated hereinabove, now let us consider whether the appellant is a workman within the meaning of Section 2(s) of the Industrial Disputes Act, 1947. The question as to whether the appellant is a workman or not must be decided with reference to the nature of the duties that were performed by her. The nomenclature in this area of law, as in others, is not decisive. Therefore, the fact that the appellant's letter of appointment dated 2nd May, 2006 refers to the appointment being made in the management cadre of the bank is not decisive of whether the appellant was in fact doing duties which predominantly were those of a workman u/s 2(s) of the Industrial Disputes Act, 1947. The letter of appointment and the addendum to it set out the conditions of appointment and nature of duties of the appellant. The appellant in her evidence admitted having signed and accepted the document and that it reflected the nature of her duties. During the course of evidence before the Industrial Tribunal, the appellant produced documents at Exhibit "18" viz. the letter of appointment, addendum and a document showing job description and key responsibilities. Under the head "Job Role" the duties expected of the appellant included "achieving allocated business targets, ensuring high quality customer service, ensuring external and internal

compliance on all branch transactions, handling difficult customer situations and contributing to the overall achievement of business growth". The "Key responsibilities" were the following:

? Achieve allocated business targets and actively cross-sell Consumer Banking products and third party products.

? Generate new business via sales promotions, out-marketing calls and presentations and in-branch contacts.

? Participate actively in branch sales planning to generate action plans for meeting targets.

? Ensure high level of customer service in the Branch, Manage difficult customer situations.

? Ensure compliance with internal and external guidelines and ensure minimal comments in audits and other inspections.

? Ensure transactions are processed with a high level of accuracy and commitment in order to satisfy customer needs.

? Ensure validity and completeness of transactions processed and ensure concessions relative to exchange rate, fees, charges etc. are authorized/overridden by appropriate authorities.

? Take responsibility for general reconciliation and control activities.

? Find ways to improve operational efficiency and control costs to meet cost budgets.

? Gather/prepare statistics for service quality and productivity indicators.

? Active participation in branch sales planning to generate action plans for meeting targets.

? Responsible for general reconciliation and control activities.

? Be multi-skilled to handle all kinds of transactions and services in bank.

? Manage attrition of the base.

Perusal of the key responsibilities assigned to the appellant broadly included area of generating new business, participation in branch sales, planning to generate action plans for meeting targets and ensuring high level of customer service. The appellant was required to ensure compliance with internal and external guidelines, ensure the processing of transactions with accuracy and to ensure the validity of transactions. The appellant was further required to improve operational efficiency and controlling of costs, responsibility for general reconciliation and control activities and to manage the attrition of the customer base. The appellant was also required to be multi skilled to handle all kinds of transactions and services in the bank.

8. The appellant submitted that the responsibilities which were assigned to her and which were accepted by her were not necessarily those which she had performed. This submission is without any merit, in view of the appellant's admission in Paragraph 15 of the cross-examination in the following words "It is true that at that time, I was served with documents produced with Ex-18 page 7 to 15. It is true that page 8 of Ex-18 shows the nature of my duties. It was signed by me on 4th May, 2006 and was handed over CPU, Chennai. My appointment was on the basis of Sales and Service". In Paragraph 16 of the cross-examination, the appellant also admitted that she had to attend walk-in-customers, get application forms from them and to attend the work as mentioned in the examination-in-chief. She also admitted that as a sales person, she had to sell the products of the Bank like current account, savings account, term deposit.

9. The appellant heavily relied upon the cross-examination of two witnesses viz. Ms. Pooja Banerjee-MW-1 and Ms. Tripti Srivastava - MW-2 who deposed on behalf of the respondent-Bank. During the cross examination, they admitted that the appellant did not have power to sanction leave, she was not supervising anyone's work, nobody was reporting to the appellant and she was not having power to initiate any disciplinary proceedings against any of the employees. They even admitted that the appellant was participating in the meetings where policy decisions were taken. The Tribunal during the course of its award placed a great deal of emphasis on the fact that the appellant could not recommend leave nor could she initiate disciplinary action against other employees. In our opinion, the fact that an employee is not vested with the power to sanction leave or to initiate disciplinary proceedings is not conclusive of the question as to whether the work that is performed by the employee is of managerial or supervisory category. Whether leave can be sanctioned and whether disciplinary proceedings can be initiated is one of the circumstances which may be considered in the balance. The balance, however, has to be drawn on the basis of the overall nature of the duties and responsibilities performed and the dominant nature of the work that is performed by an employee. In this regard, the assertion of the respondent that the appellant was working in Managerial Category No. III is also important. The learned Single Judge of this Court in Inthru Noronha's case (supra) in Paragraph No. 25 has taken note of swift evolution of technology which led to a change in business environment in the following words:

25. In deciding a case such as the present, the Court must be careful not to place its construction of legal categories into a strait-jacket. Business in recent years has been marked by rapid organisational changes. The swift evolution of technology has led to a quantum change in the business environment. Modern managements have to alter the structure of organisation in order to meet the exigencies of the time. Every employee in the managerial cadre may not necessarily have the power to appoint or dismiss personnel nor indeed would an employee engaged mainly in a managerial or administrative capacity always have the power to sanction leave applications. Similarly, the rest of the existence of

control over subordinates may be applicable in certain factual situations, but not necessarily in every conceivable case. In others, control over subordinates may not necessarily be by all personnel in the managerial cadre. The number and strength of the subordinate staff depends upon the nature of the business that is being conducted. It would, for instance, be wholly inappropriate to apply the same test which would govern the organisation of a traditional form of manufacturing business to a business founded on software, bio-genetics or a business at the cutting edge of technology. The interpretation of Section 2(s) must be such as would not lead to stultifying innovation, development and change in managerial practice. Business managers should have a high degree of latitude to promote efficiency in a competitive business environment. Courts are of course vigilant to deal with subterfuge. The important thing for the Court is to evaluate the position of an employee with reference to the nature of his duties in the context of the business where those duties are performed. While traditional tests are undoubtedly of relevance, the weightage which is to be ascribed to each factor must necessarily vary having regard to the nature of business. Insofar as the facts of the present case are concerned, it is not possible to accede to the submission that the work which was being done by the petitioner was essentially of a clerical or operational nature. The nature of his work would show that the functions of the petitioner, going by what he himself described as his functions in his performance appraisal form, was anything but clerical. In the circumstances, the finding which was arrived at by the Industrial Court to the effect that the petitioner was not a workman does not warrant interference under Article 226.

We are in agreement with the above observations. The power to sanction leave or initiate disciplinary proceedings is not decisive factor in arriving at a conclusion whether the employee is a workman u/s 2(s) of the Industrial Disputes Act, 1947 or not. Looking into the dominant nature of the duties and responsibilities performed by the appellant, we are of the opinion that the appellant was appointed in the Bank's lower management cadre.

10. The Tribunal on the basis of admission of respondent's witnesses that the appellant had no authority to sanction leave or initiate disciplinary proceedings held that she is not covered by either of the four exceptions to the definition u/s 2(s) of the Industrial Disputes Act, 1947 and thereafter, proceeded to conclude that the appellant is a workman. In our considered view, the approach is totally erroneous. In terms of the judgment of a Constitution Bench of Supreme Court in H.R. Adyanthaya's case (supra), it is not enough that the person is not covered by either of the four exceptions to the definition u/s 2(s) of the Industrial Disputes Act, 1947 but in addition to this, it is required to show that the employee falls within one of the stipulated categories viz. manual, unskilled, skilled, technical, operational, clerical or supervisory. There is no finding by the Tribunal, whether the appellant falls within one of these categories. In fact there is no averment in the statement of claim of the appellant that her duties were of clerical nature. However, she improved her case in the rejoinder in which she set up a case that the work which she was rendering was basically clerical in nature.

The Supreme Court in *Management of Sonepat Co-operative Sugar Mills Ltd.*'s case (supra) laid down test to determine the job of a clerk. The Supreme Court in this case held that the job of a clerk ordinarily implies stereotype work without power of control or dignity or initiative or creativeness. The Supreme Court further held that the question as to whether the employee has been performing a clerical work or not is required to be determined upon arriving at a finding as regards the dominant nature thereof. The duties assigned to the appellant in the present case show that she was intrinsically associated with the provision of a high level of customer service to the customers of the bank. The dominant nature of work and the duties for which the appellant was engaged, in our opinion, cannot be regarded as stereotype work without an element of initiative or creativeness. Mr. Cama, learned senior counsel in this regard, rightly kept reliance on the decision of the Supreme Court in *Mukesh K. Tripathi*'s case (supra) to contend that in the absence of appellant's pleading in her statement of claim regarding her nature of work being clerical, she could not be allowed to contend that she was discharging duties clerical in nature on the basis of rejoinder subsequently filed before the Tribunal. Even assuming that the appellant has pleaded about nature of clerical duties, we find that she could not prove the same in the light of the Supreme Court judgment in *Management of Sonepat Co-operative Sugar Mills Ltd.*'s case (supra).

11. The appellant heavily relied upon the judgments of the Supreme Court in *Dharangadhara Chemical Works Ltd. v. State of Saurashtra*" case and *Harjinder Singh*'s case (supra), to contend that the learned Single Judge was not justified in disturbing the finding of facts recorded by the Tribunal after appreciating the evidence on the record in exercise of jurisdiction under Article 227 of the Constitution of India. We find that the submission is without any merit. The Supreme Court in *Dharangadhara Chemical Works Ltd. v. State of Saurashtra*" case held that the question whether the relation between the parties was one as between an employer and employee or master and servant was a pure question of fact and where the Industrial Tribunal having jurisdiction to decide that question came to a finding, such finding of fact was not open to question in a proceeding under Article 226 of the Constitution unless it could be shown to be wholly unwarranted by the evidence. Similar view is reiterated by the Supreme Court in latter judgment in *Harjinder Singh*'s case (supra). The facts of the present case, however, are distinguishable. In the present case, the Tribunal has failed to consider the material aspects of the evidence on the record and to apply tests which are now settled in view of the judgment of a Constitution Bench of the Supreme Court in *H.R. Adyanthaya*'s case (supra). In order to fall within the definition of workman u/s 2(s) of the Industrial Disputes Act, 1947, it was not only necessary to show that the appellant is covered in any of the exceptions u/s 2(s) but it was obligatory on her to prove that she falls in one of the categories mentioned in the first part of Section 2(s) of the Industrial Disputes Act, 1947. The Tribunal not only erroneously recorded the finding that the appellant is not covered under the exceptions of Section 2(s) but failed to give any categorical

finding on the issue whether the appellant falls in any one of the categories mentioned in the first part of Section 2(s) of the Industrial Disputes Act, 1947. The Tribunal thus, in our view, committed an error apparent on the face of the record and the learned Single Judge was justified in reversing the finding of the Tribunal.

12. Now, let us consider the judgments cited by the appellant but not referred hereinabove. The reliance on the judgment of the Supreme Court in Punjab Co-operative Bank Ltd.'s case is misplaced. The Supreme Court in the above case was considering the question as to whether the First Respondent was a workman was concluded by the principle of res-judicata since it had been decided in an earlier proceeding between the same parties. The evidence on the record showed that the employee in his capacity as an accountant used to sign the salary bills of the staff, including himself, even while performing the duties of a clerk. The Supreme Court held that this did not render the employee being one employed mainly in a managerial or administrative capacity.

In Arkal Govind Raj Rao's case (supra), the Supreme Court held that the reconciliation of bank statement is one of the most mechanical types of clerical work. However, in the present case on the basis of the dominant nature of the duties of the appellant, we have already concluded that the appellant was employed in the lower managerial cadre. This judgment has, therefore, no application to the facts and circumstances of the present case.

A Division Bench of this Court in Karnataka Bank's case (supra) held that mere designation or nomenclature on the post is not determinative of the duties performed by employee. It was further held that the view taken by the Tribunal on the basis of evidence before it cannot be set-aside by the High Court while exercising its power under Article 226, 227 of the Constitution of India. There is no dispute about the first proposition as we have proceeded on the basis of nature of duties that were performed by the appellant and not on the designation or nomenclature of her post. Regarding second proposition, we have already held that the Tribunal's award was contrary to the tests laid down by the Constitution Bench of the Supreme Court and therefore, the learned Single Judge was right in interfering with the same.

13. Before parting the judgment, a reference must be made to the authorities cited by Mr. Cama, learned senior counsel, which are not referred earlier.

In C. Gupta's case (supra), the appellant was engaged to provide advice and guidance in industrial matters of the company. A Division Bench of this Court after taking into account the duties and functions performed by the appellant held that he was clearly a part of the managerial process of the company insofar as his work was used as tool and aid by the management for a proper conduct of the business of the company.

In Dhruva Kumar Changkokoti's case, a learned Single Judge of this Court after considering the duties performed by the petitioner and the fact that he was

discharging a part of the function on behalf of his employees namely looking after the business and promoting the same in Eastern Europe held that the petitioner is not a workman. The Single Judge further held that though the petitioner had no power to hire or fire and/or control over the employees, he was discharging the function namely looking after the business and promoting the same in Eastern Europe and therefore, he was not held to be a workman.

Another Single Judge of this Court in M.G. Bhide's case (supra) held that the petitioner who claims to be employee of Respondent No. 1 as Saleman is not included in any of the categories like manual, clerical, technical and supervisory and therefore, out of the perview of "employee" u/s 3(5) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 and therefore, was not eligible to move complaint u/s 28 of the Act.

In our view all the above judgments support the respondent's contention that the appellant is not covered by the definition of a workman within the meaning of Section 2(s) of the Industrial Disputes Act, 1947.

14. Taking overall circumstances into consideration, we find that the learned Single Judge has approached the matter from correct point of view. After re-appreciating the evidence on the record, we do not find any error in the impugned judgment and order, warranting our interference with it.

The appeal accordingly fails and same is dismissed as such.