
(1981) 11 BOM CK 0012

In the Bombay High Court

Case No : Writ Petition No. 3383 of 1981

Vilas Gangaram Khetle

APPELLANT

Vs

S.D. Rane, Presiding Officer and others

RESPONDENT

Date of Decision : 16-11-1981

Acts Referred:

Bombay Industrial Relations Act, 1946 — Section 27, 3(13)

Central Provinces and Berar Industrial Disputes Settlement Act, 1947 — Section 123A

Citation : (1982) 44 FLR 286

Hon'ble Judges : S.T. Deshpande, J; D.M. Dharmadhikari, J

Bench : Division Bench

Judgement

Dharmadhikari, J.—This petition is filed by the petitioner Vilas Gangaram Khetle, an employee of the 2nd respondent, the Bombay Dyeing and Manufacturing Co. Ltd., against the orders passed by the 1st Labour Court dated 20th October, 1981 and 22nd October, 1981 declaring the strike resorted to by the Technical, Supervisory and Clerical Staff in the New Bleaching Works of the Mills from 5th October, 1981 as illegal under S. 97(1)(a)(b) of the Bombay Industrial Relations Act, 1946 (hereinafter referred to as the said Act).

2. It appears from the record that the respondent-mills filed an application under S. 91 of the Act for a declaration that the strike resorted to by about 316 employees working in the Technical supervisory and clerical sections of the mills is illegal. On receipt of this application notice were issued to all the employees. A public notice was also published in Marathi Daily "Navakal" in the issue dated 10th October, 1980. In response to this public notice respondent employees appeared before the Court. The respondent-employee filed their written statement and raised a preliminary objection regarding the maintainability of the application on the ground that the persons who are employed to do technical, supervisory and clerical work are not "employees" within the meaning of the said expressions defined in the Act. The Rashtriya Mill Mazdoor Sangh a recognised union of the employees working in the textile mills also appeared in the proceeding under S. 27-A of the Act. The said union also filed its say in the

matter. Thereafter by an order dated 20th October, 1981 the learned Judge of the 1st Labour Court came to the conclusion that these workers are employees within the meaning of the Section 3(13) of the Act and as recognised union has appeared before the Court, individual employees have no locus standi to appear in the proceedings. During the course of enquiry one A. G. Vartak, the Labour Officer of the mills was examined on behalf of mills and was cross-examined on behalf of mills and was cross-examined by the union. After appreciating all the evidence on record, both oral and documentary, by its order dated 22nd October, 1981 the Labour Court ultimately came to the conclusion that the strike resorted to by these employees on 5-10-1981 and continued thereafter is illegal under S. 97(1)(a)(b) of the Act. As already observed these two orders are challenged before us in this writ petition.

3. Shri Deshmukh, the learned counsel appearing for the petitioners contended before us that, the employees exclusively doing the work which is clerical, supervisory, technical and managerial in nature are not employees within the meaning of S. 3(13) of the Act. According to the learned counsel S. 3(13) has been amended by Bombay Act LXIII of 1953 and the words "manual and clerical" appearing in the said section prior to its amendment are deleted by the Legislature. This deletion is intentional. The expression used in the definition clause, i.e., "skilled and unskilled" by necessary implication take in its import only employees engaged in the manual work and non others According to Shri Deshmukh expression "skilled and unskilled" is understood in common parlance as denoting to those classes of employees who are engaged in manual work. Skilled and unskilled are attributes of the manual work and does not relate to or have nexus with any other category of employees, i.e., clerical or otherwise. These words must be construed in the sense in which they are understood in Industrial Laws and adjudications. The exclusion of certain categories of employees further indicates that the said exclusion takes in its import only persons employed primarily in the managerial, administrative supervisory or technical capacity. The word "primarily" indicate the exclusion will apply only to those persons who are employed in managerial, administrative, supervisory or technical capacity and in addition are doing manual work. If a person is doing manual as well as managerial work, etc., then the exclusion clause lays down an emphasis on the primary nature of their duties. According to Shri Deshmukh in no case an employee exclusively doing clerical could be brought in to the import of definition Only those employees who are employed to do skilled or unskilled manual work are included, in the substantive part of the definition. So far as the second part of the definition is concerned, it is contended by Shri Deshmukh that by adopting the method of exclusion by necessary implication certain categories of persons are included in the definition Shri Deshmukh then contended that the learned Judge of the Labour Court committed an error in taking recourse to the aims and objects of the legislation. According to the learned counsel as the words and expressions used in the definition are unambiguous and clear any external aid was wholly unwarranted and uncalled for. He also contended that if

the interpretation given by the Labour Court is accepted then the expression "skilled and unskilled" used in the substantive part of the definition will become redundant. In support of this contention, Shri Deshmukh has placed reliance upon a decision of the Supreme Court in *The Gujarat University, Ahmedabad Vs. Krishna Ranganath Mudholkar and Others*, .

4. It was also contended by Shri Deshmukh that assuming that for construing the provision a reference could be made to the aims and objects of the legislation then also the aims and objects of the amending Act support his contention. What is sought to be excluded are the persons drawing basic pay of Rs. 1,000 per month excluding allowances, and are employed primarily for doing work specified in the second part of the definition. By the later part of the definition the scope of the definition is widened to a limited extent only. The second part of the definition is based on the principles of "dominance" and even if said principle is applied, the Legislature only wanted to include within the import of the definition "employees" who are doing some sort of manual work but are primarily engaged in the work referred to in the second part of the definition Persons doing exclusively clerical, managerial, administrative, supervisory or technical nature of work are not included within the scope of the definition. In support of his contention that the words "skilled and unskilled" only apply to the manual nature of work. Shri Deshmukh has placed reliance upon a decision of the Supreme Court in *Burmah Shell Oil Storage and Distribution Company of India Ltd. Vs. The Burma Shell Management Staff Association and Others*, .

5. So far as the merits of the controversy is concerned, it is contended by Shri Deshmukh that the finding recorded by the learned Judge of the Labour Court that the employees concerned had gone on illegal strike is wholly perverse. The employees concerned were not given any opportunity to adduce evidence. The employees had come before the Court with a specific case, namely, that they were prevented from entering the premises by an illegal and unreasonable order issued by the management asking them to give an uncalled for and unwarranted undertaking. According to Shri Deshmukh the material placed on record makes it clear that the employees had not gone on strike but were prevented from joining their duties because of an illegal and unreasonable order issued by the management. The case pleaded by the employees is not taken into consideration by the Labour Court at all and the Labour Court chosen to rely upon the evidence of Shri Vartak, which is wholly hearsay in nature and is, therefore, inadmissible in evidence. Therefore, according to Shri Deshmukh the finding of fact recorded by the Labour Court in this behalf is not based on any legal evidence and is, therefore, perverse.

6. Shri Cama, the learned counsel appearing for respondent Nos. 4, 6 and 7 adopted the arguments advanced by Shri Deshmukh and added that by the amendment the Legislature has widened the scope of the definition by excluding from its import the person who are employed primarily in managerial, administrative, supervisory or technical capacity, and are drawing a basic of

more than one thousand rupees. He also contended that as the words used are clear and unambiguous it is not open to this Court to take recourse to the aims and objects of the legislation, to interpret the section. He also contended that the intention of the Legislature is writ large and that the learned Judge of the trial Court was not right in saying that if the interpretation put forward by the employees is accepted then the scope of definition is not at all widened. According to Shri Cama excluding from its import the persons employed primarily in the managerial, administrative, supervisory or technical capacity and who are drawing a basic pay of more than one thousand rupees, amounts to widening the definition. He also brought to our notice subsequent amendment by the Gujarat Legislature amending the definition of term "employee". In support of his contention Shri Cama has placed reliance upon certain decisions, including the decisions report in *Stock v. Frank Jones*, (1979) L.I.C. 555 , *The Buckingham and Carnatic Co.Ltd. Vs. Venkatiah and Another*, *Madan Mohan Pathak and Another Vs. Union of India (UOI) and Others*, *Dhoom Singh Vs. Prakash Chandra Sethi and Others*, .

7. On the other hand Shri Shrikrishna, learned counsel for the employer contended before us that from the bare reading of the definition it is quite clear that the Legislature wanted to include in it is import all types of employees except those excluded by the exclusion clause of the definition. On the construction of the petitioner large section of the employees will be excluded from the scope of the definition resulting in denial of the production of the Act. Further if the interpretation put forward by the petitioner is accepted then even the semi-clerks who are primarily doing the manual work and are also doing clerical work will also be not covered by the definition. According to the learned counsel it is not correct to say that the expression "skilled and/or unskilled" always go with the manual work. It applies to all sorts of employments and in *Burmah Shell* case the Supreme Court merely reproduced the words from the definitions incorporated in S. 2(s) of the Industrial disputes Act, 1947 and was not concerned with the general nature of the employment pattern. He also contended that the meaning attributed to these words in another Act, cannot be borrowed or imported in the present enactment. In support of his contention that the words "skilled and/or unskilled" are also used in the context of other categories, he has placed reliance upon the decision of the Labour Appellate Tribunal in *Sri W. C. Raymond v. Ford Motor Company of India, Ltd, Bombay 1951 I L.L.J. 167*.

8. So far as the Gujarat amendment is concerned it is contended by the learned counsel that the Gujarat Legislature has amended the said definition to bring it in tune with the Central Legislation. In support of his contention that even the employees doing clerical work are included within the import of the definition, Shri Shrikrishna has placed reliance upon the Standing Orders framed under the Act which apply to the clerical employees. According to Shri Shrikrishna categorisation of the occupations as well as the Standing Orders framed under the Act are indicative of the intention of the Legislature. He also contended that

the definition of the term "employee" cannot be read in isolation torn from the context and will have to be harmoniously construed as a whole together with the other provisions of the Act. In support of his contentions Shri Shrikrishna has placed reliance upon the decisions of the Supreme Court in *K.P. Varghese Vs. Income Tax Officer, Ernakulam and Another*, *Additional Commissioner of Income Tax, Gujarat Vs. Surat Art Silk Cloth Manufacturers Association*, and *Union of India v. R. C. Jain*, 1981 II L.L.J. 402.

9. So far as the merits of the controversy is concerned, it is contended by Shri Shrikrishna that on 5th October, 1981 the employees concerned went on strike in support of their demands which mainly included recognition to their union. As the management received certain reports and the atmosphere became too panicky an undertaking was demanded from the employees to avoid violence and further complication. According to the learned counsel asking for such an undertaking was perfectly legal and justified. In support of this contention he has placed reliance upon a Division Bench decision of this Court reported in *Industrial Tubes Manufacturing Co. Ltd. Vs. S.R. Samant, Judge, Industrial Court and others*, . He also contended that the finding of fact recorded by the Court below that the strike is illegal, is based on oral and documentary evidence and therefore, called for no interference in the extraordinary jurisdiction of this Court under Arts. 226 and 227 of the Constitution of India.

10. Shri Kochar, the learned counsel appearing for the Rashtriya Mills Mazdoor Sangh, the recognised union, has adopted the arguments advanced by Shri Shrikrishna and had contended that the employees known as clerks are in the blood of the Bombay Industrial Relations Act. The provisions of the Bombay Industrial Relation Act are also made applicable to the Banks and if the employees doing clerical work are excluded from the import of the definition, then the majority of the employees working in the banks will not be covered by the present legislation. He also contended that when higher categories of employees, i.e., persons employed primarily in managerial, administrative, supervisory and/or technical capacity and drawing higher pay are included within the import of the definition, it will be wholly unreasonable to construe the provisions in such a way so as to exclude the lower categories of workman such as clerks who are getting lower pay. He then contended that the Act contemplates only one recognised union, which is based on the principle of "one Industry one Union". Therefore, by necessary implication recognition to any other union cannot be granted in the same industry, The union recognised as representative union is entitled to represent all the employees. According to Shri Kochar on the interpretation of the petitioner the persons employed in the watch and ward section as well as peons will be excluded from the scope of the definition. So far as the merits of the controversy is concerned, it is contended by Shri Kochar that by virtue of the provisions of S. 27-A a right is conferred upon the representative union to appear before the Labour Court. Initially the union did not choose to appear because it thought that the controversy involved was between the management and certain employees only. But when the scope

of the controversy was widened and it was contended that none of the persons employed to do the clerical or Supervisor work are covered by the Act, the union though it expedient to intervene in the matter, because till this day for more than twenty-eight years it was accepted on all sides that these categories of employees are covered by the Act. It is then contended by Sri Kochar that the union approached employees concerned but none of them was in a mood to co-operate with the representative-union. As a matter of fact the main dispute raised by the employees who went on strike was based on demand for recognition to their own union and, therefore, none of the employees even cared to approach the recognised union. In spite of this on the basis of the material placed on record the counsel for the union cross-examined the witnesses examined by the employer. Representative of the union had also visited the mills and had made on the spot study On the basis of its own enquiry as well as the material placed on record the union did its best to safeguard the interest of the employees. It is the employees like petitioner who are responsible for this non-cooperation, and, therefore, they cannot be allowed to take advantage of their own wrong.

11. A contention based on the interpretation of the provisions of S. 27-A of the Act was also raised before us. However, in view of the authoritative pronouncement of the Supreme Court in - Santuram Khudai Vs. Kimatrai Printers and Processors Pvt. Ltd. and Others, , Shri Deshmukh did not argue the matter further, and reserved his right to make his submissions in that behalf at the proper forum. A preliminary objection was also raised by Shri Shrikrishna, the learned counsel for the employer that the petitioner has no locus standi to file the present petition. In view of the provisions of S. 27-A of the Act. In support of this contention he has placed reliance upon a Division Bench decision of this Court in Mansukh Gopinath Jadhav Vs. W.M. Bapat and others, In reply to this it was contended by; Shri Deshmukh that the decision of this Court in Mansukh Gopinath's case is distinguishable and is not applicable to the facts and circumstances of the present case. In the said writ petition this Court was concerned with the representative capacity of the union qua a settlement which was the result of the collective bargaining. The settlement which was entered into by the recognised union was for the benefit of a large number of employees. According to Shri Deshmukh in the present case the petitioner is directly affected by the decision of the Labour Court declaring the strike illegal. As a result of this declaration it is open to the employer to prosecute the petitioner under S. 103 of the Bombay Industrial Relations Act. Apart from the penalty contemplated under S. 103 of the Act, the declaration granted by the Labour Court can also form the basis of a departmental enquiry against the petitioner as a result of which he could be removed from service. therefore, the petitioner is directly affected by the order passed by the Labour Court and has, therefore, locus standi to approach this Court. Shri Deshmukh also citizen under Arts. 14 and 226 of the Constitution of India cannot be taken away by the State Legislature by enacting S. 27-A. Relying upon the observations of this Court in Gulabrao Pandurang,

(1957) N.L.J. 419, it is argued by Sri Deshmukh that the powers of the High Court under Art. 226 cannot be taken away by the Legislature and no law passed State Legislature can prevent a person aggrieved from approaching or invoking jurisdiction of the High Court under Art. 226. However, it is not necessary to deal with or decide this question as it is contended by the petitioner that class of employees, he represents, are not employees within the meaning of S. 3(13) of the Act and, therefore, the Labour Court had no jurisdiction to entertain the application filed by the employer, nor the recognised union had any right to represent them.

12. For properly appreciating the controversy raised before us which is mainly based upon the interpretation of definition clause that is S. 3(13) of the Act, it will be worthwhile to reproduce the said definition before and after its amendment in the year 1953. Prior to the amendment the said definition reads as under :

""employee" means any person employed to do any skilled or unskilled manual or clerical work for hire or reward in any industry and includes :

(a) a person employed by a contractor to do any work for him in the execution of a contract with an employer with the meaning of sub-cl. (e) of cl. (14);

(b) a person who has been dismissed or discharged from employment on account of any dispute relating to change in respect of which a notice is given or an application made under S. 42 whether before or after his dismissal or discharge"".

After the amendment by Amending Act LXIII of 1953 the definition reads as under;

"Employee means any person employed to do any skilled or unskilled work for hire or reward in any industry, and includes;

(a) a person employed by a contractor to do any work for him in the execution of a contract with an employer within the meaning of sub-cl. (e) of cl. (14) :

(b) but does not include (i) a person employed primarily in a managerial, administrative, supervisory or technical capacity drawing basic pay (excluding allowance) exceeding one thousand rupees per month"

Therefore, it is quite obvious from the bare reading of the definitions as it stood before amendment and thereafter that the Legislature wanted to enlarge and widen the scope; of the definition. In most of the modern legislation there is an interpretation clause or definition clause enacting that the words or phrases when found in the Act are to be understood as regards that Act in a particular sense. Normally a word or terms is defined in order to give it some artificial meaning. Whenever Legislature wants either to expand or to restrict the normal connotation of the words, the said words is defined. Therefore, definition clause itself will have to be interpreted before it is applied, and interpret it in case of

doubt in a sense appropriate to the general purpose of the enactment. Definition like any other words has to be read in the light of the context having regard to the scheme of the enactment. The construction of the term should be such as would aid the achievement of the object that is sought to be achieved by the Act. A construction that would defeat or frustrate the purpose of the Act, will have to be avoided. It is no doubt true that a contention is raised before us that the words used in the definition clause are clear and unambiguous and, therefore, recourse to the aims and objects cannot be taken. However, in our view this will not be the correct approach. It cannot be forgotten that we are dealing with an amended provision. Amendments are made in the enactment to achieve certain objects. Though initially definition of terms "employee" was restrictive in its nature by the amendment, Legislature wanted to expand and widen its scope. In this context a reference could usefully be made to the latest decision of the Supreme Court in K.P. Varghese Vs. Income Tax Officer, Ernakulam and Another, , wherein the Supreme Court has observed in para 4 of the judgment as under :

The task of interpretation of interpretation of statutory enactment is not a mechanical task.

It is more than a mere reading of mathematical formulate because few words possess the precision of mathematical symbols. It is an attempt to discover the intent of the Legislature from the language used by it and it must always be remembered that language is at best an imperfect instrument for the expression of human thought and as pointed out by Lord Denning, it would be idle to expect every statutory provision to be "drafted with divine prescience and perfect clarity". We can do no better than repeat the famous words of Judge Learned Hand when he said ".... it is true that the words used, even in their literal sense, are the primary and ordinarily the most reliable source of interpreting the meaning of any writing, be it a statute, a contract or anything else. But it is one of the surest indices of a mature and developed jurisprudence not to make a fortress out of the dictionary; but to remember that statutes always have some purpose or object to accomplish, whose sympathetic and imaginative discovery is the surest guide to their meaning". We must not adopt a strictly literal interpretation of S. 52 sub-s. (2) but we must construe its language having regard to object and purpose which the Legislature had in view in enacting that provision and in the context of the setting in which it occurs. We cannot ignore the context and the collocation of the provisions in which S. 52 sub-s. (2) appears, because, as pointed out by Judge learned hand in most felicitous language : "..... the meaning of a sentence may be more than that of the separate words, as a melody is more than the notes, and no degree of particularity can ever obviate recourse to the setting in which all appear and which all collectively create".

Then in para 8 the Supreme Court has made a reference to the object and purpose of the enactment and has further observed.

"It is a sound rule of construction of a statute firmly established in England as far back as 1584 when Heydon's case, [1584] 3 Co. Rep 7 was decided that" - for the sure and true interpretation of all statutes in general for things are to be discerned and considered : (1) What was the common law before the making of the Act, (2) What was the mischief and defect for which the common law did not profile, (3) What remedy the Parliament have resolved and appointed to cure the disease of the Commonwealth, and (4) The true reason of the remedy, and then the office of all the Judges is always to make such construction as shall suppress the mischief, and advance the remedy". In in re Mayfair Property Company, [1898] 2 CH 28, Lindley M.R. found the rule "as necessary now as it was when Lord Coke reported Heydon's case". The rule was re-affirmed by Earl of Halsbury in East-man Photographic Material Company v. Comptroller General of Patents, Designs and Trade Marks, [1898] AC 571, in the following words :

"My Lords, it appears to me that to construe the Statute in question, it is not only legitimate but highly a covenant to refer both to the former Act and to the ascertained evils to which the former Act had given rise, and to the later Act which provided the remedy. These three being compared I cannot doubt the conclusion." This Rule being a Rule of construction has been repeatedly applied in India in interpreting statutory provisions.

Therefore, in our opinion the learned Judge of the trial Court was quite justified in taking into consideration the aims and objects of the amending anactment. The statement of objects and reasons of amending Act read as under :

"It is proposed to widen the definition of the term "employee" so as to bring persons employed primarily in a managerial, administrative, supervisory and technical capacity and drawing basic pay of less than Rs. 350 per month within the purview of the Act."

However, argument was advanced before us by the petitioner that in normal parlance the expression skilled and unskilled is only used in the context of manual labour. In this context a reference was also made to a decision of the Supreme Court in *Burmah Shell* case. In our opinion the said decision is of little assistance while construing the definition in the present Act. In that case the Supreme Court was concerned with the interpretation of term as defined in the Central Act. It is not a sound principle of construction to interpret expressions used in one Act with reference to their use in another Act. Therefore, decisions rendered with reference to construction of one Act cannot apply with reference to the provisions of another Act. This is more so when two Acts are not *pari materia*, and the amended provision indicate different intention. Therefore, for deciding the true scope and effect of the relevant words, the context in which the word occur, the object of the amendment and the policy underlying the statute assumes relevance. The words will have to be construed in the light of their context rather than what may be either their strict etymological sense or their popular meaning apart from the context. In this context a reference could usefully be made to the following observations of the Supreme Court in

Superintendent and Remembrancer of Legal Affairs to Govt. of West Bengal v. Abani Maity AIR 1979 S.C. 29

"Exposition ex visceribus actus is a long recognised rule of construction. Words in a statute often take their meaning from the context of the statute as a whole. They are, therefore, not to be construed in isolation. For instance the use of the word "may" would normally indicate that the provision was not mandatory. But in the context of a particular statute, this word may connote a legislative imperative, particularly when its construction in a permissive sense would relegate it to the unenviable position, as it were, of an ineffectual angel beating its wings in a luminous void in vain." "If the choice is between two interpretations", said Viscount Simon L.C. in *Nokes v. Doncaster Amalgamated Collieries Ltd.*, [1940] AC 1014 "the narrower of which would fail to achieve the manifest purpose of the legislation, we should avoid a construction which would reduce the legislation to futility and should rather accept the holder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result."

13. Therefore, the words and expression used in the definition clause will have to be read in its context. It will have to be interpreted harmoniously so as to make every part of the definition sensible. It will have to be read as a whole and every part of it must be construed with reference to the context and other clauses so as to make a consistent enactment of the whole statute. In the substantive part of the definition the term "employee" is defined in generic terms. It includes any person employed to do any skilled or unskilled work for hire or reward. The words and expression used in this definition clause are all comprehensive. The word "any" means each and every or all. So construed the definition will take in its import all persons employed to do all sorts of skilled and unskilled work. Then comes sub-s. (a) and (b) which relate the persons who are employed by the contractor or persons who are no longer in the employment. Thus having defined the term "employee" in a comprehensive sense, an exception is carved out, by using the expression "but does not include". If this clause was not in the definition, then even the persons who are sought to be excluded would have been included within the definition. Whenever such an expression is used it normally means that but for such exclusion the main part of the provision would have included what is sought to be excluded. It is needless to say that only that can be excluded which is included in the substantive part. Exception is intended to restrain the enacting clause by excluding particular cases. Thus the exclusion clause qualified the generality of the main clause; by providing an exception and taking out as it were from the main enactment a portion, which but for specific exclusion would fall within the main provision. It is well-settled that while construing a provision which is divided by sub-section, or sub-clauses all the constituent parts should be read together because every part or sub-section throws light on another. The intention of the Legislature is further clear if it is construed in the light of the earlier definition. Earlier definition took in its import only persons employed to do any skilled or unskilled, manual, or clerical work

and wholly excluded from its import the persons employed in managerial, administrative or other categories. The Legislature by the amending Act thought it fit to expand the area and field of the enactment to cover wider section of the workers and, therefore, the amendment was introduced by the Act. No. 63 of 1963 to make the scope of the definition more comprehensive. But for the exclusion clause definition would have taken in its import all types of employees including persons employed primarily in the managerial, administrative, supervisory and technical capacity and drawing pay exceeding Rs. 1,000. In the definition as it stands today the words "skilled and unskilled" are retained and the word "Manual" is deleted. The deletion of the word clearly indicates that words "skilled and unskilled" which are of wider import, are used in generic sense so as to include all types of skilled and unskilled employees and the Legislature deleted the words "manual and clerical" to widen the scope of the definition, and also because they are already included in the generic words "skilled and unskilled". If even after the deletion of word "manual" the generic words "skilled and unskilled" are again restricted to the said category only, namely, to "Manual Work" then the very purpose of the amendment will be frustrated. Therefore, it is not possible for us to place a narrower construction which would fail to achieve the manifest purpose of the legislation. It will reduce the amendment to futility. Therefore, if the categories of the workers getting more pay and employed in a higher categories are included within the scope, of the definition, in our view it will be wholly unreasonable to omit from its import employees working in the lower category and getting lower wages like clerks, etc.

14. This question can be considered from one more angle. The exclusion clause indicates that the person employed primarily in a managerial, administrative, supervisory or technical capacity and drawing basic pay (excluding allowance) not exceeding one thousand rupees are included within the scope of definition. A person may be employed primarily in these capacities, but may also be doing work which is manual or clerical in nature. On the construction suggested by the petitioner only those persons who are employed primarily in these capacities and is also doing manual work will be covered by the definition. But it will not cover a persons who is also doing clerical work. Frequently an employee is required to do more than one kind of work. He may be doing manual work as well as supervisory, or administrative or technical work. He may be doing clerical work as well as supervisory work. Thus the categories of person referred to inclusion clause, may also be employed to do more than one kind of work. Therefore, for finding out whether such persons will be included in the definition or not the Legislature has laid emphasis only on his main and primary work coupled with the pay-scale. By cl. (ii) a further power is conferred upon the Government to widen the area and field.

By Maharashtra Act No. 22 of 1965, the Bombay Industrial relation Act was amended to provide for a uniform piece of legislation through the State, governing the relations between employees and employers in the matter of industrial disputes, adjudication and all other cognate and relevant matters by S.

123A. The C.P. and Berar Industrial Disputes Settlement Act, 1947 was repealed. Proviso (1) to S. 123A then provides that the standing order settled, agreement or settlement recorded or registered award made, etc., shall be deemed to have been settled, recorded or registered, entered into, made or passed by the appropriate authority under the corresponding provision of the B.I.R. Act. Section 3(13) was also amended by this Act. No. 22 of 1965. The C.P. and Berar Act, was applicable to the persons employed to do clerical work. It is common knowledge that there are in the field Standing Orders, agreements, settlements and Awards, governing the wages and other conditions of service of the clerical staff also. They are saved by S. 123A (b) of the Act. In our view this subsequent amendment also explains the earlier enactment. The Amending Act No. 22 of 1965, makes in plain beyond any pale of controversy that the term employee as defined in S. 3(13) will include clerical staff. It is by now well-settled that in case of ambiguity the amending Act can be used as an aid in construing the earlier provision. (See Thiru Manickam and Co. Vs. The State of Tamil Nadu,) This is more so when by the same Amending Act, scope of S. 3(13) is widened and figure of one thousand rupees is substituted, so as to cover wider area and field.

15. In this context in our opinion the learned counsel appearing for the employer as well as for the recognised union were right in making a reference to the provisions of the Standing Orders as well as other provisions of the Act. The learned Judge of the trial Court was also right in taking into consideration these various provisions. It appears from the notification issued by the Government as far back as in the year 1947 that the provisions of the present Act were made applicable to the "business of banking". It is common knowledge that so far as the banking companies are concerned, the majority of the employees are employed for doing clerical work. It is not disputed that even after Amending Act 53, the Act continues to apply to the banking companies. Similarly the Standing Orders were framed, in the year 1952 for the clerks working in the textile mills which are settled by the Industrial Court under S. 36(3) of the Bombay Industrial Relations Act. It is not disputed that these Standing Orders are still in force. In our opinion the learned Judge of the Tribunal Court was quite justified in making a reference to these Standing Orders for construing the definition, as they are in the nature of contemporanea exposition furnishing legitimate aid to the construction K.P. Varghese Vs. Income Tax Officer, Ernakulam and Another, . In the view which we have taken it is not necessary to make any detailed reference to the decisions cited before us, or to the qualifications of occupations based on International Standards, extracts of which is produced before us by Shri Deshmukh.

16. So far as the merits of the controversy are concerned before trial Court, the employer had examined Shri Vartak, its Labour Officer and also produced the correspondence between the Mumbai Textile Technicians & Officers Association, and the Management. In para 6 of his deposition Shri Vartak speaks about the cessation of work on 5th October, 1981. According to Shri Vartak, in his presence Mr. Bengeri, the General Manager asked Mr. Thakker and others as to why they

were stopping employees from joining duty. Shri Thakker replied that the employees wanted recognition for R. J. Metha's Union and also revision of salaries as demanded in letter dated 6-3-1981. He also speak about the fact that the employees infact did not report to work on 5-10-1981 and the same position continued, even thereafter. Shri Vartak then stated that on 7th October, 1981 the applicant company put up notice on its notice board asking the employees to start their work. Shri Vartak produced copies of these notice. Thereafter, according to Shri Vartak, because of the reports from the security staff and the departments, company thought it necessary to take an undertaking from the employees. From this it appears that the undertakings were demanded after the strike and not before. So far as the cross-examination of Shri Vartak is concerned. It was admitted by him that there was stoppage of work by the clerks at the Head Office, but he denied, as not known, that the stoppage of work is in sympathy to the employees from the Head Office. It is no doubt true that in the written statement it was stated by the concerned employees that they were absent as they were prevented from joining their duties because of the illegal order passed by the management asking for an undertaking. However, K it is an admitted position that none of the employees concerned entered into the witness box. According to Shri Deshmukh they did not adduce evidence in support of their plea as the recognised union put in an appearance and by virtue of S. 27A and the order passed by the Labour Court on 20-10-1981 by which the Labour Court held that the employees have no locus standi, the employee concerned were prevented from adducing any such evidence. In the affidavit filed before us on behalf of the recognised union, it is stated that the representative of the recognised union tried to contact the employees in the mills and also during the course of proceedings but since the employees concerned were demanding recognition to rival union they did not co-operate with the recognised union. According to the recognised union, non-co-operation of the employees concerned is writ large on record and, therefore, the recognised union should do no better than to cross-examining the witness with the aid of best available material. Thus it appears that though opportunities were available to the employees concerned, because of the rivalry between the unions, they did not choose to get themselves represented by the recognised union. This position is very clear from the fact stated in the affidavit by the recognised union, which are not controverted. The finding recorded by the Labour Court that once the recognised union appeared in the proceeding then the others have no locus standi, is also wholly justified in view of the provisions of S. 27-A of the Act as interpreted by the Supreme court in Santuram Khudai Vs. Kimatrai Printers and Processors Pvt. Ltd. and Others, . In these circumstances it cannot be said that the finding of fact recorded by the Labour Court is not based on any material, or evidence. In this view of the matter this is not a fit case wherein any interference is called for in the extraordinary jurisdiction of this Court under Arts. 226 and 227 of the Constitution of India.

17. Hence Rule is discharged. However, in the circumstances of the case there

will be no order as to costs.

18. At this stage Shri Deshmukh the learned counsel appearing for the petitioner prays for leave to file an appeal to the Supreme Court. However, since we have decided the matter on the basis of the well established principles of interpretation of statutes as laid down by the Supreme Court as well as on the basis of the authoritative pronouncement of the Supreme Court in Santuram's case, (supra) we do not feel that this is a fit case where in such a leave could be granted. Hence leave refused.