

Bombay High Court S.A. Sarang vs W.G. Forge & Allied Industries ... on 14 February, 1995 Equivalent citations: 1995 (70) FLR 967, (1996) ILLJ 67 Bom Author: B Srikrishna Bench: B Srikrishna JUDGMENT B.N. Srikrishna, J. 1. The Petitioner in this Writ Petition challenges an Award dated 30th August, 1984 made by the First Labour Court, Thane in Reference (IDA) No. 211 of 1977 under the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act"). 2. The Petitioner is an employee in the service of the erstwhile company, known as "W. G. Forge & Allied Industries Ltd." which has gone into liquidation as a result of the order made in Company Petition No. 7 of 1992. By an order dated 11th March, 1993, made by the learned Company Judge in Company Application No. 551 of 1992 in Company Petition No. 7 of 1992, leave was granted to the Official Liquidator to implead himself as party - respondent to this writ petition. Although the Deputy Official Liquidator personally appeared before this Court on 9th June, 1992, he has not chosen to appear thereafter, nor has appearances of any advocate been filed. Dr. Kulkarni, learned Advocate appearing for the petitioner, states that he is pressing this petition for the limited purpose that even though the original company had gone into liquidation. If he can persuade this Court to the view that the employee was "workman" within the meaning of Section 2(s) of the Act, then his dues would be entitled to higher priority in the liquidation proceedings. 3. The Petitioner was employed in the service of the erstwhile Company from 12th February, 1968 till he was removed from service on 6th December, 1975. He challenged his removal from service by raising an industrial dispute, which came to be referred to the Labour Court vide Reference (IDA) No. 211 of 1977. Before the Labour Court, a preliminary issue was raised as to whether the petitioner was a "workman" within the meaning of Section 2(s) of the Act. Parties led their evidence, and, upon consideration of the same, the Labour Court, by its impugned order, held that the Petitioner was not a "workman" within the meaning of Section 2(s) of the Act, that the dispute pertaining to him would not amount to an "industrial dispute" within the meaning of Section 2(k) of the Act and, accordingly, rejected the Reference and denied relief. Hence, this Writ Petition. 4. As rightly contended by Dr. Kulkarni, the mere description of the Petitioner as a "Security Supervisor" would not, per se, convert him into a supervisory officer, so as to fall within the exclusory provision contained in clause (iv) of Section 2(s) of the Act. The law on the subject is clear and, irrespective of a designation, it is the actual work done by the employees which is determinative of whether he falls within the scope of the definition of "workman" under Section 2(s) of the Act or he falls within the exclusory provision in clause (iv) of Section 2(s) of the Act. 5. The evidence on record consisted of documents and oral testimony. The evidence on record is equivocal and does not clinchingly indicate the nature of the work done by the Petitioner. All documents produced by the first respondent could also be explained away and did not definitively show that the Petitioner was employed as a Supervisor. The oral evidence is equally ambiguous. Normally in this state of record, this Court would be reluctant to interfere with the factual conclusions recorded by the Labour Court. However, Dr. Kulkarni invited my attention to one contention advanced in the

Writ Petition, viz., that the Labour Court had failed to take into account and give due weightage to the fact that, even in the charge-sheet dated 30th August, 1976 issued to the petitioner, it had been stated : “The above act of yours amounts to gross negligence of duties, insubordination and an act subversive of discipline on the premises of the establishment which constitutes misconduct as per the Model Standing Orders.” (Emphasis mine) He contended that a perusal of the impugned Award would show that the Court has not applied its mind to this crucial aspect of the matter, which in his submission, amounted to a clear admission of the First Respondent on the contested issue. He submits that, if the employer himself treats the employee as a person covered by Model Standing Orders and it cannot be disputed that Model Standing Orders would apply only a “workman” as defined in Section 2(s) of the Act then, such conduct on the part of the employer would be tantamount to an admission that the employee was “workman”, as defined by the Act. Since the contention appears to be based on documents on record and on a so-called admission of the First Respondent, though earlier documents had not been placed before the record of the Labour Court, at my instance Dr. Kulkarni has brought to my notice Show Cause Notices and Chargesheet given to the Petitioner on earlier occasions. They are, Show Cause Notice dated 23rd August 1971, Show Cause Notice dated 4th December 1972, Show Cause Notice dated 21st March, 1974, Charge-sheet dated 1st July, 1974 and Show Cause Notice dated 28th September, 1974. Dr. Kulkarni was directed to place on record true copies of the said documents, which he did by filing a compilation containing the true copies of the said documents, which are placed on record of this Writ Petition. 6. Uniformly, in each Show Cause Notice and charge-sheet, it has been alleged that the act imputed to the Petitioner was a misconduct under the Model Standing Orders. It is not possible to ignore the cumulative effect of this conduct on the part of the First Respondent Employer. To what extent, the contention of Dr. Kulkarni need to be accepted. If an employer continuously and consistently proposes and takes action against its employee on the footing that he is covered by the Model Standing Orders (thereby implying that the employee is a “workman” within the meaning of the Act), then such employer must be estopped from denying the said fact when the dispute regarding the dismissal of the employees finally lands up before an industrial adjudicator. If is unfortunate that the Third Respondent-Official Liquidator has not chosen to appear before the Court and assist the Court. However, the Show Cause Notices and Charge-sheet pointed out to me cannot be ignored and due weightages will have to be given to them. Considering the cumulative effect of these documents, I am of the view that the Petitioner was a “workman” within the meaning of Section 2(s) of the Act and, therefore, the impugned order needs to be interfered with. 7. In the result, the Writ Petition is allowed. Rule made absolute. The impugned order of the Labour Court is quashed and set aside and it is held that the Petitioner is a “workman” within the meaning of Section 2(s) of the Act and that Reference (IDA) No. 211 of 1977 is tenable. The said Reference is remanded to the First Labour Court, Thane, for trial and disposal in accordance with law and the findings made in this judgment. The Third Respondent shall pay the costs of

the Petitioner quantified at Rs. 500.00. A copy of this judgment be forwarded to the Third Respondent. 8. Certified copy expedited.