Bombay High Court The Union Carbide (India) Ltd. vs Ramesh Kumbla & Others on 15 December, 1998 Equivalent citations: 1999 (1) BomCR 705, 1999 (2) MhLj 63 Author: A Savant Bench: A Savant ORDER A.V. Savant, J. 1. Heard both the learned Counsel; Shri Rele for the petitioner employer and Shri S.M. Dharap for respondent No. 1 complainant, who claims to be a workman. 2. The petition is by the employer Union Carbide (India) Limited seeking to challenge the orders dated 22nd October, 1984 (Exh. H) and 29th June, 1990 (Exh. I), both passed by the Presiding Officer, Labour Court, Mumbai and the order dated 4th October, 1994 (Ex. K) passed by the Industrial Court, Mumbai dismissing the revision application filed by the petitioner against the orders passed by the Labour Court. Against the order dated 22nd October, 1984 passed by the Labour Court deciding the preliminary issue that the complaint was maintainable since respondent No. 1 was a "workman", as defined in section 2(s) of the Industrial Disputes Act, 1947 (for short "I.D. Act") or an employee as defined in clause (5) of section 3 of M.R.T.U. & P.U.L.P. Act, 1971 (for short the said 1971 Act), the petitioner had filed a writ petition in this Court. It is, however, common ground that the writ petition was withdrawn with liberty to challenge the finding that the first respondent was a workman after the final outcome of the complaint. That is what the petitioner seeks to do by the present petition. 3. The complaint was filed by the first respondent under section 28 of the 1971 Act alleging that the petitioner had committed unfair labour practices mentioned in Item Nos. 1(a), (b), (d), (f) and (g) to Schedule IV to the 1971 Act. Item No. 1 of Schedule IV reads as under : "1. To discharge or dismiss employees. (a) by way of victimisation; (b) not in good faith, but in the colourable exercise of the employer's rights; (c) by falsely implicating an employee in a criminal case on false evidence or on concocted evidence. (d) for patently false reasons. (e) on untrue or trumpted up allegations of absence without leave; (f) in utter disregard of the principles of natural justice in the conduct of domestic enquiry or with undue haste. (g) for misconduct of a minor or technical character, without having any regard to the nature of the particular misconduct or the past record of service of the employee, so as to amount to a shockingly disproportionate punishment." A few facts may be stated as under : 4. The complainant claims to be an office bearer of the Association of the petitioner's monthly rated staff which is a registered trade union under the Trade Union Act, 1926. The Association was of the view that there were certain grievances of the staff in respect of the salary structure, discrimination, job security and other service conditions. Some meetings took place between the petitioner and the office-bearers of the association and, it is alleged that, certain assurances were given. However, the grievances were not redressed. On 21st August, 1980 services of the first respondent were terminated. The first respondent filed a complaint on 30th September, 1980 in the Labour Court at Mumbai being Complaint (ULP) No. 113 of 1980 alleging unfair labour practices under Item 1(a), (b), (d), (f) and (g) of Schedule IV of the 1971 Act as mentioned above. In the complaint, it was alleged that he was an employee within the meaning of clause (5) of section 3 of the said 1971 Act as also a workman within the meaning of section 2(s) of the I.D. Act, 1947 and was, therefore, entitled to maintain

the complaint and obtain reliefs. 5. The petitioner filed its written statement contending that the first respondent was neither an employee within the meaning of section 3(5) of the said 1971 Act nor a workman within the meaning of section 2(s) of the I.D. Act, 1947. The first respondent was a Supervisor and was working as a part of the managerial staff. His last drawn gross salary was Rs. 3214/- and after some deductions the salary paid was Rs. 2715/-. It was contended that the first respondent was employed in a supervisory capacity and was getting certain benefits which were available only to the supervisory and managerial staff. He was in-charge of allocation of work to the workmen under him; supervising the work of the workmen working under him; planning and executing the maintenance of electrical department; recommanding sanction of leave, allocation and assigning of over-time work, authorising over-time meals in the canteen and sanctioning the issue of parts from stores and also had the power to evaluate the work performance of the workmen in his department. It was, therefore, contended that complaint was not maintainable since the first respondent was not a workman. The first respondent was neither an employee under section 3(5) of the said 1971 Act nor a workman under section 2(s) of I.D. Act. On merits, it was contended that termination of service was valid. 6. In view of these pleadings, the Labour Court framed the preliminary issue as to whether the complaint was maintainable which depended upon the question as to whether the first respondent was a workman within the meaning of section 2(s) of the I.D. Act or an employee as defined under section 3(5) of the said 1971 Act. A finding was recorded at the preliminary stage that the complaint was maintainable since the complainant was held to be a workman as defined in section 2(s) of the I.D. Act. As indicated earlier, a writ petition filed by the petitioner against the said order was withdrawn with liberty to raise the issue after the final disposal of the complaint. 7. Thereafter the complaint was tried and an issue was framed as to whether the petitioner had engaged in unfair labour practices within the meaning of Item 1(a), (b), (d), (f) and (g) of the said 1971 Act which issue was answered in the affirmative excepting Item 1(g). It was further held that the petitioner could not justify the termination of the services of the first respondent under letter dated 21st August, 1980. In the result, the final order was passed on 29th June, 1990 holding that the petitioner was indulging in unfair labour practices under Items 1(a), (b), (d), and (f) of Schedule IV of the said 1971 Act and the order of termination dated 21st August, 1980 was, therefore, set aside. The petitioner was directed to reinstate the first respondent within a period of three months from the date of the order with continuity of service with effect from 21st August, 1980 with full back wages and other consequential service benefits till the date of reinstatement. It may be stated that two complaints were filed. Shri D. Samuel who was working as a supervisor in the mechanical maintenance department had filed a Complaint (ULP) No. 111 of 1980 whereas the first respondent Shri Ramesh Kumbla who was working as a supervisor in the electrical maintenance department had filed a Complaint (ULP) No. 113 of 1980. Both the complaints were heard and disposed of by a common judgment and order dated 29th June, 1990. Identical reliefs were granted in both the complaints since the order of termination of

service dated 21st August, 1980 in both the cases was held to be bad in law and set aside. 8. The petitioner filed Revision Application No. 21 of 1990 in the Industrial Court, Mumbai which has been dismissed on 4th October, 1994. It may be stated that in the case of the other complainant viz. D. Samuel, petitioner had filed Revision Application No. 20 of 1990 which was also dismissed on 4th October, 1994. Against the concurrent findings in the case of D. Samuel, the petitioner had filed Writ Petition No. 2596 of 1994 contending that D. Samuel was not a workman. This Court Rebello, J., by its judgment and order dated 18th July, 1998 held that D. Samuel was not a workman and, therefore, the complaint was dismissed. In the result, the impugned orders were set aside and rule was made absolute in favour of the petitioner. 9. Both the learned Counsel have taken me through the impugned orders and the evidence on record and my attention was invited to some of the decisions on the question as to whether the first respondent was a "workman". In the light of the submissions advanced before me, the only point which arise for my consideration is whether the first respondent Ramesh Kumbla was a 'workman' as defined in section 2(s) of the I.D. Act, which definition has been adopted under Clause (5) of section 3 of the 1971 Act defining the word "employee". Section 2(s) of the I.D. Act reads as under :- "2(s)"workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purpose of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person - (i) who is subject to the Air Force Act, 1950, or the Navy Act, 1957; or (ii) who is employed in the Police service or as an officer or other employee of a prison, or (iii) who is employed mainly in a managerial or administrative capacity, or (iv) who being employed in a supervisory capacity draws wages exceeding one thousand six hundred rupees per mense or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature." Section 3(5) of the 1971 Act defines an "employee" in the following words :- "3(5)"employee" in relation to an industry to which the Bombay Act for the time being applies, means an employee as defined in Clause (13) of sections of the Bombay Act; and in any other case, means a workman as defined in Clause (s] of section 2 of the Central Act." 10. A perusal of the above definitions would show that, in order that the first respondent is held to be a "workman", it must be established that he falls within the main part of the definition in section 2(s) of the I.D. Act and is not excluded by the concluding portion. I am concerned with the first part of sub-clause (iv) of Clause (s) viz. who, being employed in a supervisory capacity draws wages exceeding one thousand six hundred rupees per mense. If, therefore, it is established that the first respondent was employed in a supervisory capacity drawing wages exceedings Rs. 1600/- per mense, he would be outside the purview of the definition of the word "workman" within the meaning of section 2(s) of the I.D. Act. If that be so, the first respondent

would also be outside the purview of the definition of the word "employee" within the meaning of section 3(5) of the 1971 Act. 11. The evidence on record consists of the oral evidence of Ramesh Kumbla, alongwith some of the documents produced by him. As far as the petitioner is concerned, the evidence consists of the oral evidence of Varun Nijhawan, Maintenance Manager, and a large number of documents produced by the petitioner, to show the nature of the predominant duties which are performed by the first respondent. 12. Before dealing with the findings and the evidence on record, I will refer to some of the decisions, to which my attention has been invited by both the learned Counsel. Broadly speaking the test that have emerged from the ratio of the decisions can be summed up as under :- i) It is the dominant purpose of the employment that is relevant and not some additional duties which may be performed by the employee. ii) It is not the designation of the post held by the employee which is relevant, but what is relevant is the nature of duties performed by the employee. iii) The Court has to find out whether the employee can bind the company in the matter of some decisions taken on behalf of the company. iv) What is the nature of the supervisory duties performed by the employee? Do they include directing the subordinates to do their work and/or to oversee their performance? v) Does the employee have power either to recommend or sanction leave of the workmen working under him? vi) Does he have the power to take any disciplinary action against the workmen working under him? vii) Does he have power to assign duties and distribute the work? viii) Does the employee have the authority to indent material and to distribute the same amongst the workmen? ix) Does the employee have power to supervise the work of men or does he supervise only machines and not the work of men? x) Does the employee have any workmen working under him and does he write their confidential reports? I will first refer to some of the decisions of the Apex Court from which these tests have emerged. 13. In Burmah Shell Oil Storage and Distributing Co. of India Ltd. v. The Burmah Shell Management Staff Association and others, , question arose as to whether certain employees of the Burmah Shell Company were "workmen" within the meaning of section 2(s) of the I.D, Act. Some of the employees such as the Transport Engineer, District Engineer, Sales Engineering Representative, District Sales Representatives, Foreman in certain departments were held not to be "workmen" within the meaning of section 2(s) of the I.D. Act. As against this, a Fuelling Superintendent and a Chemist was held to be a "workman". What is, however, relevant to note is the ratio of the decision laying down certain guidelines. The Apex Court emphasised the fact that one has to consider the volume of the work done and who is responsible for the work done. Whether there is any duty to check and inspect the work that is being done? How many persons are working in a particular department; whether the employee has power to give directions to the subordinates and to guide them as to how the job is to be done? Whether he has power to allocate the job amongst the workmen and also to re-allocate the jobs when necessary? Whether he has power to initiate disciplinary action and to ensure that operations in the department were carried efficiently? Whether he can recommend leave being granted? Thus, it was held that if the major part of his duty con-

sisted of supervisory work, rather than his own technical work, which is only incidental to the main work of repairs, servicing, maintenance and fabrication, the employee cannot be treated as a "workman". It was held that a Transport Engineer would not be a workman merely on the ground that he was employed because of his technical knowledge. 14. In the case between (The State Bank of Bikaner and Jaipur and Shri Hari Har Nath Bhargava), (1971) II L.L.J., 331, a clerk of the State of Bank of Bikaner and Jaipur was authorised by a power of attorney to act in a supervisory capacity. His application under section 33-C(2) of the I.D. Act, for computation of supervisory allowance for a period when he was not actually performing the supervisory duties under the Sastry Award was allowed by the Labour Court. The appeal to the Apex Court was dismissed holding that payment of special allowance was called for when an employee discharges duties of a supervisory nature and is accorded the status of a person competent to discharge function of a supervisory character. Once the power of attorney giving wide powers of agency was executed in favour of an employee, it should be held that the management has placed him in a category of persons with responsibility and the employee was to discharge such functions. The fact that he was not actually called upon to discharge such functions, did not take away from him the responsibility or status of a person competent to discharge the function of a supervisory character, and, therefore, the Apex Court held that there was no reason as to why he should be deprived of the supervisory allowance. It is true that the question of construing the definition of a "workman" under section 2(s) of the I.D. Act did not arise for the consideration of the Apex Court in this case and the only question which arose in the application under section 33-C(2) of the I.D. Act was whether the employee was entitled to the supervisory allowance? 15. In Ved Prakash Gupta v. M/s. Delton Cable India (P.). Ltd., , the question arose whether a Security Inspector was a 'workmen' within the meaning of section 2(s) of the I.D. Act. On facts, it was held that the substantial duty of the employee was only of a Security Inspector at the gate of a factory premises and that it was neither managerial nor supervisory in nature, in the sense in which these terms are understood in Industrial Law. On the evidence on record, it was held that he was a 'workman'. 16. In Arkal Govind Raj Rao v. Ciba Geigy of India Ltd., Bombay, , the concerned employee was initially employed as a Stenographer-cum-Accountant, but was later on appointed as an "Assistant" and continued to render the service in that post till his services were terminated. As an Assistant, he was designated as a Group Leader. Question was where an employee has multifarious duties and if a dispute arises as to whether he is workmen or not, the Court must find out what are the primary and basic duties of the person concerned and if he is incidentally asked to do some other duties which may not necessarily be in tune with his basic duties, these additional duties cannot change the character and status of the person concerned. In other words, it has been held by the Apex Court that the dominant purpose of employment must be first taken into consideration and the gloss of some additional duties must be rejected while determining the status and character of the person concerned. On the facts before it, the Apex Court held that the employee, even as a Group Leader, primarily contin-

ued to work and perform the duties which had been found to be clerical. The fact that he asked other clerks to take note of certain circulars and return the documents to him would not go to show that he was performing supervisory or administrative duties. 17. In Vimal Kumar Jain v. Labour Court, Kanpur and another, , the employee was supervising the work of Maintenance Department in the capacity of a Maintenance Engineer and he was doing the work through fitters and turners, who were his subordinates. He had the power to grant leave, initiate disciplinary proceedings and to make temporary appointments. It was held that he was not a "workman". 18. In S.K. Maini v. Corona Sahu Co. Ltd. and others, (1994) II C.L.R. 359 the employee was Shop Manager/Incharge and having regard to the functions of the Shop Manager with reference to the admitted terms and conditions of service, it was held that he was not a "workman" within the meaning of section 2(s) of the I.D. Act. It was emphasised by the Apex Court that it was not possible to lay down any strait-jacket formula which can decide the dispute as to the real nature of duties and functions performed by the employee, This would depend upon the complexity of industrial or commercial organisations where a large number of employees are often required to do more than one kind of work. The determinate factor is the main duty of the employee concerned and not some works incidentally done by him. In other words, it was emphasised that one has to ascertain what, in substance, was the work which the employee was employed to do or does. 19. In the case between (Management of Heavy Engineering Corporation Ltd. and Presiding Officer, Labour Court & others), (1997) I L.L.J. 569, the Apex Court was considering the nature of the duties of a Medical Officer, who was posted at the first aid post alongwith one dresser and his main duty was to give first aid to the workers on duty. He had under him a male nurse, nursing attendant, sweeper and an ambulance driver who would be taking directives and orders from him. It was held that when a doctor discharges his duties of attending to a patient and, in addition thereto, supervises the work of the persons subordinate to him, he cannot be regarded as a 'workman' under section 2(s) of the I.D. Act. The conclusions are to be found in para 12 of the Judgment, at page 573. 20. Let me now consider some of the decisions of this Court in the light of the law laid down by the Apex Court. In Vinayak Baburao Shinde v. 1. S.R. Shinde and others, 1985(1) C.L.R., 318, the employee was a Workshop Foreman. Question arose whether he was a 'workman' within the meaning of section 2(s) of the I.D. Act and an 'employee' within the meaning of section 3(5) of the 1971 Act. Division Bench of this Court held that the word "supervisor" meant to oversee, that is to say to look after the work done by other persons. The words 'supervision' occurring in section 2(s) of the I.D. Act means 'supervision' in relation to work or in relation to persons. The essence of supervision consisted in overseeing by one person over the work of others. It was held that in an industrial establishment, normally, there were three layers of work, one was clerical or the manual work which was done by the workman, the second was the supervisory work done by the supervisor and the third was the highest level of work of a Manager. A 'Supervisor' was distinguished from 'Manager' inasmuch as a Supervisor has no power to command others to do a particular

work. His function was to see that the work was done in accordance with the norms laid down by the management. It was in these facts that a Workshop Foreman was held not to be a workman. 21. In Shrikant Vishnu Palwankar v. Presiding Officer of First Labour Court & others, (1992) I.C.L.R., 184, the employee was a Foreman in Job Department of a newspaper Company. His duty was of checking of blocks and materials from other departments which was of a supervisory nature. He was drawing salary exceeding the prescribed limit. He was assigning the works and allocating jobs. He was also required to indent the material required by different operators working under him. It was held that he was not a "workman" within the meaning of section 2(s) of the I.D. Act. 22. In John Joseph Khokar v. B.S. Bhadange and others, , the employee was working as a Charge hand to which post he was promoted from the post of a mistry. His salary was exceeding the prescribed limit of Rs. 1600/- per month. It was held that if the principal job of the employee was to oversee the work of others and that he was giving instructions to the workmen under him and was overseeing the work done by them, he was discharging the duty of a Supervisor and would not be a workman within the meaning of section 2(s) of the I.D. Act. 23. I have already referred to the decision of Rebello, J., in the companion Writ Petition No. 2596 of 1994 of Union Carbide (India) Ltd. v. D. Samuel & others, 1998(II) C.L.R. 736, where D. Samuel, who was working as a Maintenance Supervisor in the Mechanical Maintenance Department has been held not be a 'workman'. I will refer to the details of that since its facts are similar to the petitioner's case. Suffice it to say that whereas D. Samuel was working as a Supervisor in the Mechanical Maintenance Department, the first respondent was working as a Supervisor in the Electrical Maintenance Department. The last salary drawn by D. Samuel was Rs. 2590/- per month whereas the last salary drawn by the first respondent was Rs. 2715/ -. Pipe fitters and helpers were working under D. Samuel, whereas electricians and helpers were working under the first respondent. In D. Damuel's case, it was held that the evidence on record showed that D. Samuel was treated as a part of Management Staff which had a separate pension scheme and gratuity scheme. Same is the case before me. D. Samuel was delegated duties of recommending leaves, calling for requisition from stores and evaluating the work of employees below him. At the time of promotion, D. Samuel was informed that he was part of the Management and was liable to be transferred anywhere in the country. He participated in the various programmes organised by the Company for its Managerial Personnel. All these facts and attributes are present in the case before me. It was in these facts that it was held that D. Samuel was not a 'workman' and this Court reversed the concurrent findings recorded by the two authorities. 24. In the light of the above position, let me turn to the oral and documentary evidence on record to determine what is the true nature of the predominant duties of the first respondent, who claims to be a "workman" within the meaning of section 2(s) of the Act. 25. As indicated earlier, the evidence on record consists of the oral evidence of complainant Ramesh Kumbla, alongwith certain documents and the oral evidence of the Maintenance Manager of the petitioner viz. Varun Nijhawan and certain documents. A perusal of the evidence on record unmis-

takably shows that, the first respondent was initially appointed as a monthly rated staff on 5-11-1962. He was promoted as a Supervisor on the 14th March 1966. On the 15th May 1975 a letter was issued to the first respondent, which is produced at Exhibit E-6/pg. 151, which shows that the pensionary benefits as per the details in Annexure 'A' to the said Exhibit were extended to the first respondent. Admittedly, these benefits are not available to the workmen. The letter dated 15th May 1975 further shows that the benefits of the Gratuity Scheme as per Annexure "B" to the said letter were also made available to the first respondent, which benefits are not available to the workmen. Apart from the provisions of the Payment of Gratuity Act, the benefits under the Senior Staff Gratuity Scheme at Annexure "B" to the letter dated 15th May 1975 are not available to the workmen and were made available only to the senior staff, including supervisory and managerial staff. The document at Exhibit E-2 /146 is a copy of the sample over-time authorisation slip issued by the first respondent authorising overtime of a workman P.K. Nakre. My attention is invited to many such overtime authorisation slips signed by the first respondent authorising the overtime of different workmen. Exhibit E-3/pg. 147 is a copy of the sample requisition slip issued to the Stores Department under which the first respondent has requisitioned certain material. Many such requisitioned slips are produced on record. Exhibit E-4/pg. 148 is a letter dated 31-1-1997 mentioning the responsibilities of certain staff members, including the first respondent, who was an Electrical Supervisor. It was to be effective from 15th February 1997. His responsibilities have been enumerated as under :- "Mr. R. Kumbla - Electrical Shop (Testing, Overhauling & Repairs). Record-keeping & Preventive Maintenance Scheduling, Electronics and Rotating Shift." "Planned work will be assigned to Rotating Shift Electricians by Mr. R. Kumbla. Each Supervisor will be assigned 2 Electricians and 1 Helper. There will be a 1 common Relief Electrician. Sd/ A. Basu" This will clearly show that the first respondent had two electricians and one helper working under him and he was authorised to assign duties to them. 26. At Exhibit E-7/pg. 169 is the Management List of the Chemco Unit of the petitioner Company. In the maintenance field, the name of IX Samuel is mentioned at the bottom D. Samuel has been held by this Court to be a 'workman' as per the decision in Writ Petition. No. 2596 of 1994. In the Electrical Instructor and Services Department the name of R. Kumbla has been mentioned as a part of the Management, Exhibit-8 dated 26th May 1996 is a Circular issued by the Works Manager prescribing the limits of authority at various levels of Management. As far as the subject of Leave Authorisation, Over-time Meals Authorisation and Regular Authorisation is concerned, the authority lay with the concerned Supervisors like the first respondent. Similarly as far as the authority to order repairs from the shop, the authority lies with the concerned Supervisors like respondent No. 1. Exhibit E-9 dated 4-10-1977 is a circular relating to the Key Managers' Programme for Managers and Senior Assistants that was conducted in Mumbai. Amongst those who were deputed to attend the Key Managers Programme, the name of the first respondent R. Kumbla was mentioned at Serial No. 5 as a person belonging to the Electrical Maintenance Department. The name of D. Samuel is also mentioned at Sr. No.

6 in another list annexed to the said Circular. Exhibit E-10 is the list of Internal Telephone Directory where one finds the name of both respondent No. 1 R. Kumbla and D. Samuel. I am only referring to the main documentary evidence annexed to the petition which forms part of the evidence on record. 27. Turning to the oral evidence it appears that the first respondent had to concede that he had power to authorise over-time meals and power to authorise requisition from the Stores. He feigned ignorance about his powers to evaluate manual work and performance of the workmen. However, in the cross-examination he admitted that he had worked as a Supervisor in the Electrical Shop and was required to do preventive maintenance scheduling and was responsible for electronic repairs. He admitted that two electricians and one helper was working under him. He admitted that he was responsible for the nature of the job assigned to the workmen working under him and to ensure that the job was properly done by them. He admitted that authorisation slips were issued by him under his signature and such authorisation for over-time was not required to be counter-signed by the Manager. He also admitted that it was a Supervisor-a person like him-who issued the authorisation slips for getting free meals. He also admitted that certain evaluation reports were signed by him and it was on the basis of such evaluation reports that certain persons were recommended for employment. The first respondent admitted that he was deputed to attend Key Managerial Programme in April, 1977 and he attended the same. 28. In the oral evidence of petitioner's Maintenance Manager Varun Nijhawan the duties of the first respondent have been spelt out as under :– "a) Allotment of work to the workmen working under him: b) Supervision of the workmen working under him; c) Planning and executing the maintenance and electrical jobs required to be done in the section both with regard to their number of quality; d) Authorising and sanctioning the leave of the workmen supervised by him; e) Allocating and assigning overtime work and also taking a decision as to which workman should carry out which specific job and put in how much of overtime work; f) Authorising overtime meals of the canteen; g) Authorising and sanctioning stores issues regulation forms; h) Annual evaluation of the work performance of the workmen reporting to and supervised by him; i) Issue inter shop orders requiring the Supervisor of another section to instruct workmen working under him to carry out any particular job which the complainant's section is unable to do; j) Maintaining time-sheets showing the man-hours spent on each job for the purpose of costing." 29. Varun Nijhawan categorically stated that the first respondent was discharging the functions which were supervisory in nature and he had under him, two electricians and a helper. It was the respondent who was allocating and assigning the work to them. He was independently taking a decision as to which work was to be done by them in what manner and, if so, by putting what amount of over-time work. The first respondent had full discretion in the matter of sanctioning over-time authorisation. So also he had full discretion in ordering spares from the stores. The evidence of Nijhawan further discloses that the special benefits accorded to the first respondent in the matter of pension and gratuity scheme as per the letter dated 15th May 1975 (Exh. E-6) were not available to the workmen, but were available only to supervisory

and managerial staff. Though it is brought about in the cross-examination of Nijhawan that the first respondent was required to report to the Electrical Engineer Shri Limaye or Shri Zaveri, there is nothing to detract from the evidence in the Examination-in-Chief that the first respondent was employed in a supervisory capacity as contemplated by sub-clause (iv) of Clause (s) of section 2 of the I.D. Act. When questioned as to whether the authorisation of over-time work or meal sanctioned by the first respondent was subject to approval by the higher authorities, Nijhawan denied the suggestion. The suggestion that Kumbla was not concerned with the planning in his Department has been denied by Nijhawan. 30. The evidence discussed above clearly shows that the first respondent was employed in a supervisory capacity and was drawing gross wages of Rs. 3214.60: Net Rs. 2194/-. The predominant nature of his work was supervisory and not technical. It is true that as a Supervisor he was required to do at times, the work himself because of its technical nature. But, in my view, that does not militate against the first respondent being employed primarily in a supervisory capacity as a Supervisor in the Electrical Maintenance Department. He had power to recommend leave and authorise over-time work and over-time free meal. He enjoyed certain special privileges and benefits under the Pension Scheme and the Gratuity Scheme framed by the petitioner Company, the benefits of which were not available to "workmen". The first respondent was deputed to attend the Key Managerial Programme and indeed, attended the same. 31. It is clear from the evidence summed up above that the first respondent was employed in a supervisory capacity drawing wages exceeding the limit stipulated in sub-clause (iv) of sic Clause section (s) of section 2 of the J.D. Act. The argument on behalf of the first respondent that the whole of sub-clause (iv) must be read together and the word "or" after the words "per mensem" must be read as "and" cannot be accepted. Section 2(s)(iv) may again be reproduced for ready reference. "2(s)(iv) who, being employed in a supervisory capacity draws wages exceeding one thousand six hundred rupees per mensem or exercises either by the nature of the duties attached to the office or by reason of the powers vested in him functions mainly of a managerial nature". What is contended by Shri Dharab is that the word "or" underlined above must be read as "and" and that disjunctive must be read as conjunctive. In my view, the section is clearly worded and it is not possible to read the underlined "or" as "and". Sub-clause (iv) of section 2(s) must be split into two distinct parts:– (i) who being employed in a supervisory capacity draws wages exceeding one thousand six hundred rupees per mensem; or (ii) exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature. In my view, the two contingencies are independent of each other and the two clauses must therefore, be read disjunctively and not conjunctively. I need not elaborate on this point since a Division Bench of this Court in Vinayak Shinde's case, 1985(1) C.L.R. 318 (supra) has already rejected the contention that the word "or" occurring after the words "per mensem" in sub-clause (iv) of section 2(s) must be read as conjunctive and not disjunctive. Similar view has been taken in the case of D. Samuel, 1998(II) C.L.R. 736 (supra). In my view, therefore, the person who is employed in a

supervisory capacity and drawing wages exceeding Rs. 1600/- per month would be excluded from the definition of the word "workman" by reason of the first part of sub-clause (iv) of Clause (s) of section 2 of the I.D. Act. The second part of sub-clause (iv) of Clause (s) of section 2 must be read independently of the first part. The word "or" appearing between the two parts of sub-clause (iv) of Clause (s) of section 2 cannot, therefore be read as "and". It has to be read disjunctively and not as a conjunctive. 32. The above discussion would show that on the evidence that was adduced before the Labour Court, no other conclusion was possible save and except that the first respondent was not a workman within the meaning of section 2(s) of the I.D. Act. Unfortunately, the approach of the Labour Court, while passing the impugned order shows non-application of mind to the relevant evidence on record. While it is true that each one of the above mentioned factors which I have indicated in support of my conclusion that the first respondent was employed in a supervisory capacity may not, by itself, be conclusive and determinative of the controversy it was wholly impermissible for the Labour Court to discard all the factors taken together. The Labour Court ought to have considered the cumulative effect of each one of the factors which emerge from the oral and documentary evidence. To say that the authorisation of over-time by itself, was not enough or granting of certain special benefits, by itself was not enough or sanctioning leave application, by itself, was not enough is one thing; but to ignore the cumulative effect of the various factors mentioned above would, in my view, be an approach which would not only be impermissible in law, but would be wholly perverse. The cumulative effect of all the factors mentioned above would indicate only one conclusion viz. that the predominant nature of the duties of the first respondent shows that he was employed in a supervisory capacity. The Labour Court has discarded each of these factors by saying that, by itself, it was not enough to exclude the first respondent from the category of workman. Assuming that be so, in my view, the Labour Court has totally erred in the exercise of its jurisdiction in not considering the cumulative effective of the factors emerging from the oral and documentary evidence on record. Such an error is an error of law apparent on the face of the record and indicates an approach which is nothing short of perverse in law. 33. As far as the order of the Industrial Court dismissing the petitioner's revision, it appears that the Industrial Court has misread and mis-interpreted the provisions of section 44 of the 1971 Act. While section 44 gives power to the Industrial Court to have superintendence over all the Labour Courts and pass certain orders, it must be conceded that such a power does not include the power to re-appreciate the evidence merely because a different conclusion was possible. But where the evidence on record taken as a whole, leads to only one inference, it would be the duty of the Industrial Court, in exercise of its power under section 44, to examine the findings of the Labour Court and to decide whether they are vitiated, either as a result of non-application of mind or perversity in approach. Where there is an error of law apparent on the face of the record and where the cumulative effect of the oral and the documentary evidence leads only to one conclusion. In my view, the Industrial Court is not precluded from exercising its powers and setting aside the finding recorded by

the Labour Court. One of the reasons assigned by the Industrial Court in not upsetting the finding of the Labour Court is that the first order on the preliminary issue as to whether the first respondent was "workman" or not was passed as far back as on 22nd October 1984 and one could not find fault with the order passed in the year 1984, as a result of the law laid down in a subsequent decision. While it is difficult to appreciate this approach reflected in para 50 of the order passed by the Industrial Court, in my view, even on the law as it stood in 1984, the conclusions arrived at by the Labour Court were wholly unsustainable since they disclosed non-application of mind to the cumulative effect of the oral and documentary evidence on record and reflected an approach which was perverse in law. One cannot consider each circumstance in the evidence in isolation and discard it without considering its context and the cumulative effect alongwith the other circumstances which are brought on record. That is precisely what the Labour Court had done while passing the order dated 22nd October 1984 and, in my view, the Industrial Court failed to exercise the jurisdiction vested in it under the erroneous assumption that section 44 of the 1971 Act does not permit an Industrial Court to correct the errors of law apparent on the face of the record which reflect not only perversity of approach, but a perverse finding in law. In the circumstances, it is not possible to uphold the findings recorded by the Labour Court and the Industrial Court that the first respondent was a "workman" under section 2(s) of the I.D. Act. In my view, having regard to the overwhelming evidence on record both oral and documentary, only one conclusion was possible viz. that the respondent was employed in a supervisory capacity and was drawing wages' exceeding the prescribed limit, which at the relevant time was Rs. 500/- and is today Rs. 1600/- per month. In this view of the matter, it is clear that the first respondent was not an "employee" within the meaning of Clause (5) of section 3 of the 1971 Act. If that be so, the complaint filed by the first respondent under section 28 of the 1971 Act would not be maintainable in law. There can be no dispute that for entertaining a complaint under section 28 of the M.R.T.U. and P.U.L.P. Act, 1971, the complainant has to be either a Union or an employee within the meaning of section 3(5) of the 1971 Act. Section 3(5) of the 1971 Act, reproduced above, makes a reference to the definition of "workman" as defined in Clause (s) of section 2 of I.D. Act. 34. In the view that I have taken it must, therefore, follow that the complaint filed by the first respondent in the Labour Court was not maintainable since he was employed in a supervisory capacity and was drawing wages exceeding the prescribed limit under clause (iv) of section 2(s) of the I.D. Act. He is therefore outside the purview of definition of a "workman" by virtue of his case falling under sub-Clause (iv) of section 2(s) of the I.D. Act. 1 have mentioned above that, on identical facts, in the case of a co-workman D. Samuel, who was a Supervisor in the Mechanical Maintenance Department, this Court has taken a similar view, as is clear from 1998(II). C.L.R. 736. Whereas D. Samuel was a Supervisor in the Mechanical Maintenance Department, the first respondent was working as a Supervisor in the Electrical Maintenance Department. Their service conditions, predominant nature of their job, the supervision and control exercised by them, the privileges and perquisites enjoyed by them are almost

identical. My attention has been invited to the details of the evidence in D. Samuel's case and the points of similarity in the two cases where identical evidence was led. That is an additional circumstance for coming to the conclusion that the first respondent is not a "workman" within the meaning of section 2(s) of the I.D. Act. 35. In the result, the writ petition must succeed. It is held that the first respondent was not a "workman" at the time of passing of the order of termination of his service viz. 21st August 1980. The first respondent was therefore, not an employee within the meaning of section 3(5) of the M.R.T.U. & P.U.L.P. Act, 1971. The complaint filed by the first respondent was, therefore, not maintainable under the said 1971 Act. The impugned orders are accordingly set aside and Rule is made absolute in terms of prayer (a). There will be however, no order as to costs. 36. It is brought to my notice that under the interim order dated 3-11-1995 passed in Notice of Motion No. 441 of 1995 in this writ petition, the first respondent was permitted to withdraw the sum of Rs. 4,14,232/- deposited by the petitioner in the Industrial Court, upon his furnishing solvent security to the satisfaction of the Industrial Court. Since the petition succeeds, as a consequential order the first respondent is directed to refund the said amount of Rs. 4,14,232/-within a period of two weeks from today. In the event of the first respondent failing to do so, the petitioner would be entitled to enforce the Bank Guarantee which has been furnished by the first respondent and which is stated to be subsisting. 37. At this juncture, Shri Dharap prays for stay of the operation of this order for a period of eight weeks. In the facts and circumstances of the case. I grant stay to the operation of this order for a period of six weeks. It would, therefore follow that the amount of Rs. 4,14,232 would be liable to be refunded by the first respondent to the petitioner within a period of eight weeks from today. 38. Issuance of certified copy expedited. 39. Petition succeed.