

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF JANUARY, 2024

BEFORE

THE HON'BLE MRS. JUSTICE K.S. HEMALEKHA

WRIT PETITION No.5443/2021 (L-RES)

BETWEEN:

MPHISIS LIMITED,
BAGAMANE WORLD TECHNOLOGY CENTRE,
MARATHALLI RING ROAD,
DODDANEKUNDI VILLAGE,
MAHADEVAPURA,
BENGALURU – 560 048
REPRESENTED BY ITS
AUTHORISED REPRESENTATIVE.

... PETITIONER

(BY SRI MADHUKAR M. DESHPANDE, ADVOCATE)

AND:

SRI ASHOK S. NARAYANPUR,

... RESPONDENT

(BY SRI P.D. SUBRAHMANYA, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO CALL FOR THE RECORDS PERTAINING TO THE REFERENCE NO.29/2017, DECIDED BY THE PRINCIPAL LABOUR COURT, BENGALURU; SET ASIDE THE AWARD DATED 06.10.2020 PASSED IN REFERENCE NO.29/2017 BY THE PRINCIPAL LABOUR COURT, BENGALURU VIDE ANNEXURE-A AND DISMISS THE REFERENCE IN GOVERNMENT ORDER LD/539/IDM/2017 DATED 24.10.2017 VIDE ANNEXURE-G.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED ON 22/01/2024 FOR ORDERS AND COMING FOR PRONOUNCEMENT OF ORDER THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

ORDER

The award dated 06.10.2020 in Ref. No.29/2017 on the file of the Principal Labour Court, Bengaluru (hereinafter referred to as 'the Labour Court' for short) allowing the reference of the respondent is challenged by the Mphasis Limited.

2. The question that falls for consideration before this Court is:

"Whether the nature of duties performed by the respondent would come within the purview of definition of workman under Section 2 (s) of the Industrial Disputes Act, 1947 ('the ID Act' for short)?"

3. Respondent was appointed as a Software Trainee in Mphasis Limited (Software Company) and was subsequently promoted as a Senior System Engineer, later as a Project Engineer. Respondent submitted resignation letter for his personal reason and the same was accepted by the petitioner, relieving letter was issued and all the dues were settled.

4. The respondent raised claim before the Assistant Labour Commissioner seeking reemployment. The matter was referred to the Labour Court by way of reference under Sections 10 (1) (c) and (1) (d) of the ID Act and the Labour Court registered the reference in Ref. No. 29/2017.

5. The respondent filed claim statement contending that he is a workman and is employed by the petitioner with designation of Project Leader, playing the role of technical lead, delivering required goods and services of the company and hence, falls under the workman category.

6. The petitioner filed objection to the claim statement, *inter alia*, contending that the respondent is not a workman as envisaged under Section 2(s) of the ID Act and that the relief sought was not maintainable before the Labour Court. The respondent was working as a Project Lead, under him, four employees were working and reporting to duty and as such, he cannot be termed as a workman to maintain the reference.

7. The Labour Court by the impugned order held that the respondent is a workman as defined under Section 2(s) of the ID Act and refusing employment to the respondent from 29.08.2016 is not justifiable and directed reinstatement to his original post and further held that the respondent is entitled for continuity of service and all other future consequential benefits, however, the claim of backwages and compensation in respect of other reliefs was rejected.

8. Heard Sri Madhukar M. Deshpande, learned counsel for the petitioner and Sri. P.D. Subrahmanya, learned counsel for the respondent.

9. Section 2(s) of the ID Act defines 'workman' as under:

"2. Definitions.—*In this Act, unless there is anything repugnant in the subject or context,—*

(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 purposes 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 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 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 ten thousand 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.”

10. For an employee in an industry to be a 'workman' under the definition, after its amendment by the amending Act of 1982, it is manifest that he must be employed to do:-

- a) Manual work
- b) Unskilled work
- c) Skilled work
- d) Technical work
- e) Operational work
- f) Supervisory work

11. The question as to whether an employee is a 'workman' as defined under Section 2(s) of the ID Act has to be determined with reference to his principal nature of duties and functions. Such a question is required to be determined with reference to the facts and circumstances of the case and the material on record, there is no straight jacket formula which can be determinative of the real nature of duties and functions being performed by an employee in all cases. However, where an employee is employed to do any type of work enumerated in the definition, there is hardly any difficulty in treating him as a 'workman' under the appropriate classification, but in the complexity of industrial or commercial organization, quite a large number of employees are often required to do more than one kind of

work. In such cases, it becomes necessary to determine under which classification, the employee will fall for the purpose of deciding whether he comes within the definition of 'workman' or goes out of it. In ***Burmah Shell Oil Storage & Distribution Coof India Vs. Burmah Shell Management Staff Association & Ors***¹ (*Burmah Shell Oil Storage*) held that in order to bring an employee within the ambit of the definition of 'workman', the nature of work performed by him must fall within one or other of the above seven classifications. The rationale of this holding was that if every employee of an industry was to be a 'workman', except those four in the exceptions, these seven classifications need not have been mentioned in the definition and the workman could have been defined as a person employed in an industry except in a case where he was covered by one of the exceptions. Hence, the specifications of seven types of work obviously were intended to lay down that an employee is to become a 'workman' only if he is employed to do work of one of those types, while there may be employees who, in doing

¹ 1971 AIR 922

any such work, would not be out of the scope of the work without any resort to exceptions. In the said case, the person employed in canvassing and promoting sales for an industry was held to be an employee, but he would not fall within the definition of 'workman' because of his work and would not fall within any of the classifications enumerated in the definition.

12. In ***Management of M/S May and Baker (India) Ltd. Vs. Workmen***² (*M/S May and Baker*), the question was whether the representative would be included in the word 'workman' under Section 2(s) of the ID Act. The Apex Court held that the work of the employee was not as defined under the clauses of 'workman' under Section 2(s) of the ID Act and held that the Tribunal would not have jurisdiction to order reinstatement.

13. The Apex Court in the case of ***Miss A. Sundarambal Vs. Government of Goa, Daman and DIU***

² AIR 1967 SC 678

and others³ (*Miss A. Sundarambal*) held that in order to be a 'workman' a person should be one who satisfy the following condition:

- i. He should be the person employed in an industry for hire or reward;
- ii. He should be engaged in skilled or unskilled manual, supervisory, technical or clerical work and;
- iii. He should not be a person falling under any of the four clauses, i.e., (i) to (iv) mentioned in the definition of workman in Section 2(s) of the ID Act.

14. The Apex Court, placing reliance in the case of ***M/S May and Baker***, held that if the employee therein did not satisfy any of the above descriptions, he would not be a 'workman' even though he is an employee of an industry. The Apex Court in the said decision held that the teacher employed in an educational institution cannot be called a 'workman' because imparting of the education, which is the main function of the teacher cannot be considered as skilled

³ (1998) 4 SCC 42

or unskilled, managerial or supervisory work or technical work or clerical work.

15. The respondent in the instant case admits that he is a Project Lead and he prepares the estimates and plans for work products and also prepares designs and quotes. Ex.M.13 is the self-evaluation prepared by the respondent and it is mentioned in Ex.M.13 that he is used to providing functional and technical work on a regular basis to his team as well as clients and being a project lead, he is to share domain knowledge to mitigate the problems. These statements made by the respondent are self-serving. It is also relevant to note that the respondent, in unequivocal terms, has deposed that he is working as a project lead, a managerial position in the petitioner-company and he is not a workman. The relevant portion of the evidence of W.W.1 is extracted below:

"5. ನಾನು ಬ್ಯಾಚುಲರ್ ಆಫ್ ಇಂಜಿನಿಯರಿಂಗ್ ಇನ್ ಕಂಪ್ಯೂಟರ್ ಸೈನ್ಸ್ ದಲ್ಲಿ ವಿದ್ಯಾಭ್ಯಾಸ ಮಾಡಿ ಪದವಿಧರನಾಗಿದ್ದೇನೆ. ನಾನು ಆರಂಭದಲ್ಲಿ ಸಾಫ್ಟ್‌ವೇರ್ ಟ್ರೈನಿ ಎಂದು ನೇಮಕಾತಿ ಗೊಂಡಿದ್ದೆನು ಎಂದರೆ ಸರಿ. ನಾನು ಸದರಿ

ಪದವೀಧರನಾಗಿದ್ದರಿಂದ ಆರಂಭದಲ್ಲಿ ನನ್ನ ನೇಮಕಾತಿಯನ್ನು ಆ ರೀತಿ ಮಾಡಲಾಗಿತ್ತು ಎಂದರೆ ಸರಿ. 1996 ರಲ್ಲಿ ನನಗೆ ಪದನ್ನೋನ್ನತಿ ಕೊಟ್ಟಿದ್ದು ನಾನು ಅಸೋಸಿಯೇಟ್ ಸಿಸ್ಟಮ್ ಇಂಜಿನಿಯರ್ ಎಂದು ಪದನ್ನೋನ್ನತಿ ಕೊಟ್ಟಿದ್ದರು. 1997 ರಲ್ಲಿ ನನಗೆ ಮತ್ತೊಂದು ಪದನ್ನೋನ್ನತಿ ಅಂದರೆ ಸಿಸ್ಟಮ್ ಇಂಜಿನಿಯರ್ ಎಂದು ಕೊಟ್ಟಿದ್ದರು. ಅದಾದನಂತರ ಅಂದರೆ 1998 ರಲ್ಲಿ ನನಗೆ ಸೀನಿಯರ್ ಸಿಸ್ಟಮ್ ಇಂಜಿನಿಯರ್ ಎಂದು ಪದನ್ನೋನ್ನತಿ ಕೊಟ್ಟಿದ್ದರು. 2001ನೇ ಇಸವಿಯಲ್ಲಿ ನನಗೆ ಪ್ರೊಜೆಕ್ಟ್ ಇಂಜಿನಿಯರ್ ಎಂದು ಪದನ್ನೋನ್ನತಿ ಕೊಟ್ಟಿದ್ದರು. ನಾನು ಜೂನ್ 2016 ರವರೆಗೆ ಇದೇ ಹುದ್ದೆಯಲ್ಲಿ ಕಾಯಂ ನಿರ್ವಹಿಸುತ್ತಿದ್ದೆನು.

6. ಪ್ರೊಜೆಕ್ಟ್ ಲೀಡ್ ಎನ್ನುವ ಹುದ್ದೆ ಒಂದು ಪ್ರಾಜೆಕ್ಟ್ ಗೆ ಸಂಬಂಧಪಟ್ಟದಾಗಿದೆ ಎಂದರೆ ಸರಿ. ಜೂನ್ 2016 ರ ವರೆಗೂ ನಾನು 4 ಪ್ರೊಜೆಕ್ಟ್ ಗಳಲ್ಲಿ ಪ್ರೊಜೆಕ್ಟ್ ಲೀಡ್ ಎಂದು ಕಾಯಂ ನಿರ್ವಹಿಸಿದ್ದೇನೆ. ಮೈನ್ ಪ್ರಾಜೆಕ್ಟ್ ನಂ.1 ಎಫ್‌ಎಕ್ಸ್‌ಆರ್‌ಎಸ್, ನಂ.2 ಫಾಸ್ಟ್ 2 ಆಫ್ ಲೈನ್ (ಅಂದರೆ ಫಾಸ್ಟ್ 2 ರಿಕ್ವೇಯರ್ ಮೆಂಟ್ಸ್), ನಂ.3 ಜಿಎಸ್‌ಎಸ್ ಮೈಗ್ರೇಷನ್ (ಟೆಕ್ನಿಕಲ್ ಲೀಡ್), ನಂ.4 ಎಸ್ ಅಪ್ಪಿಕೇಷನ್. 2ನೇ ಪಂಗಡದವರ ಪಕ್ಷಗಾರರ ಅವಶ್ಯಕತೆಗಳೇನೂ ಎನ್ನುವುದನ್ನು ಗಮನದಲ್ಲಿರಿಕೊಂಡು 2ನೇ ಪಂಗಡದವರಿಗೆ ನಿರ್ವಹಿಸಬೇಕಾದಂತಹ ಕಾರ್ಯಗಳ ರೂಪುರೇಷಗಳನ್ನು (**programs**) ಮಾಡಿ ಕೊಡುವ ಒಂದು ಯೋಜನೆ ಅಂದರೆ ಸರಿ. ಒಬ್ಬ ಗ್ರಾಹಕನ ವ್ಯವಹಾರಿಕ ಅವಶ್ಯಕತೆಯನ್ನು ಅರಿತುಕೊಂಡು ಆತನಿಗೆ ಉಪಯುಕ್ತವಾಗುವಂತಹ ತಂತ್ರಾಂಶಗಳನ್ನು ಬೆಳವಣಿಗೆ ಮಾಡಿ ಆತನಿಗೆ ಕೊಡುತ್ತೇವೆ ಎಂದರೆ ಸರಿ. ಒಂದು ಯೋಜನೆಯಿಂದ ಇನ್ನೊಂದು ಯೋಜನೆ ಅದರ ಉದ್ದೇಶ ಕಾರ್ಯಕ್ಷಮತೆ, ತಂತ್ರಾಂಶವುಳ್ಳ (**output**) ಒಂದು ಯೋಜನೆಯನ್ನು ತಯಾರಿಸುತ್ತೇವೆ ಎಂದರೆ ಸರಿ.

7. ಸಾಮಾನ್ಯವಾಗಿ ಒಂದು ದೊಡ್ಡ ಪ್ರೊಜೆಕ್ಟ್ ನಲ್ಲಿ ಸುಮಾರು 10-18 ಜನರು ಇಂಜಿನಿಯರಸ್ ಇರುತ್ತಾರೆ. ಚಿಕ್ಕ ಪ್ರೊಜೆಕ್ಟ್ ನಲ್ಲಿ ಸುಮಾರು 4

ಜನ ಇಂಜಿನಿಯರಸ್ ಇರುತ್ತಾರೆ. ಚಿಕ್ಕ ಪ್ರೊಜೆಕ್ಟ್ ನಲ್ಲಿ ಸುನೀತಾ ಚನ್ನೇಗೌಡ, ರಜತ್ ಶರ್ಮಾ, ಸೋಮ ಚೌದ್ರಿ, ಚಾಸ್ವೀನ್ ಸರಗುಣರಾಜ್ ಎನ್ನುವ ಇಂಜಿನಿಯರ್ ಗಳು ಕೆಲಸ ಮಾಡಿದ್ದಾರೆ ಎಂದರೆ ಸರಿ. ನಾನು ಮೇಲ್ಕಂಡ ಇಂಜಿನಿಯರ್ ಗಳಿಗೆ ಪ್ರೊಜೆಕ್ಟ್ ನ ದೈಯೋದ್ದೇಶಗಳೇನು ಹಾಗೂ ಅದರ ಮಾಡಬೇಕಾದ ಕೆಲಸಗಳನ್ನು ನಾನು ಹೇಳಿಕೊಡುತ್ತಿದ್ದೆ ಎಂದರೆ ಸರಿ. ಮೇಲ್ಕಂಡ ಈ ಇಂಜಿನಿಯರ್ ಗಳು ಹೊರತುಪಡಿಸಿ ಬೇರೆ ಇಂಜಿನಿಯರ್ ಗಳು ಸಹ ನನ್ನೊಂದಿಗೆ ಪ್ರೊಜೆಕ್ಟ್ ನಲ್ಲಿ ಕೆಲಸ ಮಾಡುತ್ತಿದ್ದಂತಹ ಸದರಿ ಇಂಜಿನಿಯರ್ ಗಳು ಮಾಡುತ್ತಿದ್ದ ಕೆಲಸದಲ್ಲಿ ಏನಾದರೂ ಲೋಪದೋಷಗಳು ಇದ್ದಲ್ಲಿ ಅವುಗಳನ್ನು ಸರಿಪಡಿಸುವ ಕೆಲಸ ನಾನು ಮಾಡುತ್ತಿದ್ದೆನು ಎಂದರೆ ಸರಿ.

8. ನಾನು ಈ ಮೇಲೆ ಹೇಳಿದಂತಹ ಪ್ರೊಜೆಕ್ಟ್ ಗಳು ಹೊರದೇಶಗಳಿಗೆ ಮತ್ತು ಅಲ್ಲಿನ ಗ್ರಾಹಕರಿಗೆ ಉಪಯೋಗವಾಗುವಂತಹ ಪ್ರೊಜೆಕ್ಟ್ ಗಳಾಗಿದ್ದು, ಅಂದರೆ ಅಮೇರಿಕಾ, ಯುಎಇ, ದಕ್ಷಿಣ ಆಫ್ರಿಕಾ, ನಾನು ಭಾರತದಲ್ಲಿ ಅಲ್ಲ ವರದೇಶಗಳಲ್ಲೂ ಸಹ ನಾನು ಕಾರ್ಯನಿರ್ವಹಿಸಿದ್ದೇನೆ ಎಂದರೆ ಸರಿ. ನಾನು ಹೊರದೇಶದ ಪ್ರೊಜೆಕ್ಟ್ ಗಳಿಗೆ ಸಂಬಂಧಪಟ್ಟಂತೆ ಅವುಗಳನ್ನು ಸಿದ್ಧಪಡಿಸುವುದಕ್ಕಿಂತ ಮುಂಚೆ, ಅಲ್ಲಿನ ಗ್ರಾಹಕರೊಂದಿಗೆ ಅವರ ಅವಶ್ಯಕತೆಗಳನ್ನು ತಿಳಿದುಕೊಳ್ಳುವುದಕ್ಕೋಸ್ಕರ ನಾನು ಖುದ್ದಾಗಿ ಅವರೊಂದಿಗೆ ಸಂಪರ್ಕ ಮಾಡಿ ಸಂಭಾಷಿಸಿ ತಿಳಿದುಕೊಳ್ಳುತ್ತಿದ್ದೆನು. ಒಂದು ಸಂಪೂರ್ಣ ಯೋಜನೆ ಯಶಸ್ವಿ ಮಾಡುವುದಕ್ಕೋಸ್ಕರ ಅದರ ಆಗೂ ಹೋಗುಗಳ ಅವುಗಳ ಹೊಣೆಗಾರಿಕೆ ಸಂಪೂರ್ಣವಾಗಿ ನನ್ನ ಮೇಲೆ ಇರುತ್ತದೆ ಎಂದರೆ ಸರಿ.”

16. The person who is given the post of project leader at no stretch of imagination can be implied that he was doing clerical, manual or technical work to come under the purview of the definition of the 'workman'. The nature of duties

performed by the respondent must be in the yardstick to determine whether he is a 'workman' or not?

17. The proposition is now well settled that an employee is held to be employed to do that work which is the main work is required to do, even though he may be incidentally doing other types of work. In cases where an employee is employed to do purely one of the seven types of work, enumerated in the definition of 'workman', there would be no difficulty in treating him to be a 'workman' under the appropriate classification. The material placed and the evidence of the respondent indicate that his work is not manual, clerical or technical but falls under the managerial category, wherein imparting and taking decisions is the main work of the respondent. The respondent work is to estimate and plan available before work (design/coding/unit testing), undertook the knowledge, transition of YES application, understanding YES implementation from sources point of view, providing analysis for change request notified, proactively set up applications and DB, during the course of

development, initiated individual (mainly new joiner) to design and develop their respective ITGs and work items along with assignments in YES, undertook DB tuning exercise for FX RS Product with respect to international and ground shipments. The work assigned to the respondent would not come in any of the classification envisaged under Section 2 (s) of the ID Act and the duties performed were neither clerical nor manual and thus, the Labour Court had no jurisdiction to order reinstatement. The amount in deposit by the respondent pursuant to the order dated 12.12.2023 is ordered to be returned, in light of this Court holding that the respondent is not a workman. Accordingly, this Court pass the following:

ORDER

- i. Writ petition is ***allowed.***
- ii. Impugned order of the Labour Court is hereby ***set-aside.***

- iii. Amount in deposit with accrued interest, if any, to be refunded to the respondent on proper identification in accordance with law.
- IV. It is needless to observe that, dismissal of the claim petition will not come in the way of the workman claiming any entitlement in accordance with law.

**SD/-
JUDGE**

MBM