

## John Joseph Khokar Vs Bhadange B. S. And Others.

**Court:** Bombay High Court

**Date of Decision:** Sept. 2, 1997

**Acts Referred:** Industrial Disputes Act, 1947 " Section 2(s)

**Citation:** (1997) 4 ALLMR 584

**Hon'ble Judges:** R.M. Lodha, J

**Bench:** Single Bench

### Judgement

@JUDGMENTTAG-ORDER

1. The only question raised in the present writ petition and that needs consideration is : whether the Petitioner John Joseph Khokar is a workman

within the meaning of Section 2(s) of the Industrial Disputes Act, 1947.

2. The said question arises from the facts which briefly stated are : The Petitioner was appointed in the Mazagaon Dock Limited, a company

registered under the Companies Act having its factory at Dockyard Road, Mazagaon, Bombay - 2nd Respondent on April 10, 1968 as Fitter-

Weapon in the Weapon and Electronics Department. On February 1, 1970 he was promoted as Weapon Mechanic Grade II. He was then

promoted as highly skilled employee on June 1, 1972. Further promotion was accorded to the Petitioner on December 2, 1975 in Special Marine

Grade and thereafter as Mistry on June 1, 1976. The next promotional post from Mistry is charge hand and Petitioner alleges that one post of

charge hand fell vacant on April 1, 1986. On November 19, 1987 Shri K. D. Loh, the 3rd respondent was promoted on the post of charge hand

w.e.f. December 1, 1986 though according to Petitioner, the Respondent No. 3 was much junior to him and was also promoted as Mistry much

later than him. The Petitioner filed the complaint before the Industrial Court, Mumbai under Item-9, Schedule-IV, of the Maharashtra Recognition

of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 ("MRTU & PULP Act") challenging the said action of Respondent No. 2

and it was prayed that it be declared that the 2nd Respondent herein has indulged in unfair labour practice and may be directed to promote the

Petitioner to the post of charge hand in Weapon and Electronics Department w.e.f. December 1, 1986. The said complaint was contested by the

Respondent No. 2 herein and one of the objections raised was that Petitioner was not work-man within the meaning of Sec. 2(s) of the Industrial

Disputes Act since he was doing supervisory work, and holding supervisory post and, therefore, complaint was not maintainable and Petitioner

was not entitled to any relief in the complaint. After recording the evidence the Industrial Court was persuaded by the objection raised by the

Respondent No. 2 herein and it held that Petitioner was not workman, though on merits it held that the Petitioner was senior most employee and

his name was also recommended by departmental head to the authorities for giving promotion to him; but since Petitioner was not held workman

the complaint was dismissed.

4. Mr. Vaidya, the learned counsel for the Petitioner stoutly urged that on the basis of the evidence on record it was clear that Petitioner was

technical hand and he was engaged as Mistry in Weapon and Electronics Department and with the help of the workers he used to do the job of

installation of weapon equipments in various shifts and therefore, he was workman u/s 2(s) of the Industrial Disputes Act, 1947. In support of his

contentions Mr. Vaidya relied upon the judgments of the Apex Court in National Engineering Industries Ltd. Vs. Shri Kishan Bhageria and Others,

, and Arkal Govind Raj Rao Vs. Ciba Geigy of India Ltd. Bombay, . He also relied upon the judgment of the learned single judge of this Court in

Inter Globe Air Transport, A Division of Inter Globe Enterprises (Private) Limited and Smt. Leela Deshpande and Anr. 1994 (2) LLN 559.

5. Mr. Rele, on the other hand, the learned counsel appearing for second Respondent vehemently opposed the submissions of the learned counsel

far the Petitioner and urged that on the face of the averments made in the complaint, the Petitioner cannot be said to be workman. He referred to

the complaint extensively wherein Petitioner pleaded that he was doing supervisory job. He also urged that from the evidence led by the Petitioner

as well as second Respondent, it was clearly established that Petitioner was not a workman and he was engaged in supervisory job. Mr. Rele, thus

supported the reasoning given by the Industrial Court and to buttress his argument relied upon two Division Bench Judgments of this Court viz.

Vinayak Baburao Shinde v. I. S. R. Shinde and Ors. 1985 I CLR 318, and Bombay Dyeing and Manufacturing Company Ltd. Vs. R.A. Bidoo

and another, .

6. Section 2(s) of the Industrial Disputes Act, 1947 defines workman which reads thus :

Section 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 Army 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 mensem or exercises, either by

the nature of the duties attached to the office or by reason of the power vested in him, functions mainly of a managerial nature.

7. u/s 2(s), aid employee who is employed in supervisory capacity and draws wages exceeding Rs. 1600/- p.m. is excluded from being workman.

Admittedly, the petitioner at the relevant time was drawing wages of Rs. 2500/- p.m. obviously exceeding Rs. 1600/- p.m. and, therefore, the

crucial question is whether the Petitioner was engaged in supervisory work as Mistry with the second Respondent.

8. In All India Reserve Bank Employees Association Vs. Reserve Bank of India, , the Apex Court was dealing with the definition of workman in

Section 2(s) and while construing the word "supervise" observed that the word supervise and its derivatives are not of precise import and most

often construed in the light of the context, for unless controlled, they cover an easily simple oversight and direction as manual work coupled with a

power of inspection and superintendence of manual work of others.

9. In Burmah Shell Oil Storage and Distribution Company of India Ltd. Vs. The Burma Shell Management Staff Association and Others, , the

Apex Court considered the question whether transport engineers in Burmah Shell Oil Storage and Distribution of India limited were workmen or

not and held that main work done by the employee should be held to be work done by him to find out whether he is a workman or not. The ratio

of the judgment is succinctly expressed in the head note of the report which reads thus:

A person cannot be assumed to be a workman on the ground that he does not come within the four exceptions in Sec. 2(s). The specification of

the four types of work in the definition in Sec. 2(s) obviously is 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, not doing any such work, would be out of the scope of the word

"workman" without having to resort to the exceptions.

In practice, quite a large number of employees are employed in Industries to do work of more than one of the kinds mentioned in the definition. In

such cases, it would be necessary to determine under which classification he will fall for the purpose of finding out whether he does or does not go

out of the definition of "workman" under the exceptions. For this purpose, a workman must be held to be employed to do that work which is the

main work he is required to do, even though he may be incidentally doing other type of work.

10. The Apex Court in *National Engineering Industries v. Shri. Krishna Bhageria* (Supra) was seized of the question of whether an internal auditor

working in the company was a workman or not and after considering his main duties and the work it was held that he was not doing any kind of

supervisory work. It was held that since the employee had no independent right or authority to take decision and his decision did not bind the

company and, therefore, on the basis of the evidence on record the conclusion reached by the Labour Court that he was a workman and not a

supervisor affirmed by the Division Bench of the High Court did not require any interference.

11. An employee who does multifarious duties, is a workman or not, was the question raised in *Arkal Govind Raj Rao* (supra) and the Apex Court

held that the Court must find out the primary and basic duties of the person concerned and if he is incidentally asked to do some other work which

may not necessarily be in tune with the basic duties, then these additional duties cannot change character and status of the employee. The Apex

Court thus highlighted dominant purpose of employment and ruled that 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. It was thus ruled that the test is what is primary, basic, or dominant

nature of duties for which the person whose status is under enquiry was employed, a few extra duties were hardly relevant to determine the status

and the words like managerial or supervisory may have to be understood in their proper connotation.

12. In *Vinayak Baburao Shinde*, (supra) the Division Bench of this Court observed that the word "supervise" means to oversee i.e. to look after

the work done by other persons, and, the word "supervision" occurring in Section 2(s) of the Industrial Disputes Act means supervision in relation

to the work or in relation to the persons. According to Division Bench, the essence of supervision consists in overseeing by one person over the

work of others and this also involved power in the person overseeing to direct and control the work done by the person over whom he was

supervising.

13. In *Inter Globe Air Transport* (supra), the learned single judge of this Court was dealing with the case of the employee who was designated as

Regional Sales Manager. Looking to her predominant duties which consisted of booking of air tickets and other incidental jobs such as

maintenance of lists, typing on computers, visiting travel agents, distributing time-tables and fare sheets, taking on reservations, making reservations,

delivering tickets getting visas, dispatching greeting cards, etc. this Court held that the employee was workman and the mere fact that some control

over other clerks was given would not change the position of clerk to that of supervisor or manager irrespective of her designation.

14. The position that emerges from the aforesaid discussion is that in determining the question whether a person employed by the employer is

workman u/s 2(s) of Industrial Disputes Act or not, the Court has principally to see main or substantial work for which the employee has been

employed and engaged to do. Neither the designation of the employee is decisive nor any incidental work that may be done or required to be done

by such employee shall get him outside the purview of workman, if the principal job and the nature of employment of such employee is manual,

technical or clerical. In hierarchy of employees, some sort of supervision by the employee over the employees of the lower ladder without any

control may not by itself be sufficient to bring that employee in the category of supervisory, yet if the principal job of that employee is to oversee

the work of employees who are in the lower ladder of the hierarchy and he has some sort of independent discretion and judgment, obviously such

employee would fall within the category of supervisor. Each case would depend on the nature of the duties predominantly or primarily performed

by such employee and whether such function was supervisory or not would have to be decided on facts keeping in mind correct principles. Where

the employee possesses the power of assigning duties and distribution of work such authority of employee may be indicative of his being supervisor

doing supervision. In a broad sense supervisor is one who has authority over others : someone who superintends and directs others. An employee

who in the interest of the employer has responsibility to directly control the work done by the other workers and if the work is not done correctly

to guide them to do it correctly in accordance with norms shall certainly be a supervisor. A supervisory work may be distinguished from

managerial and administrative work and, so also a supervisor from manager and administrator. Supervisor's predominant function is to see that

work is done by workers under him in accordance with the norms laid down by the management : he has no power to take any disciplinary action.

15. Reverting to the facts I find that it is petitioner's own case in his complaint that as Mistry he is supposed to in fact supervise all the work done

by 29-30 workmen employed in the Weapon and Electronics Department. That supervisory work, according to him, is done by him along with

one charge hand and one more mistry. In his complaint, therefore, a clear case is made out that he is discharging the duties of supervisor and is

engaged for supervising the work of other workmen. In his affidavit also he has deposed to that effect that he along with one charge hand and one

more mistry is required to supervise the work done by 29-30 workmen employed in that department and he does in fact supervise all the said

workmen. In cross examination he admits that his job is to allocate the work to the workmen given under him and to get the work done from them.

He has also admitted that workmen given to work under him are allotted different work by him in connection with weapon installation in the shifts.

He has to see that jobs allocated to workmen are done by them. He also admits that whenever overtime is required to be taken from workmen he

takes the decision as to who among the workers should be asked to do overtime. Much capital was sought to be drawn by the learned counsel for

the Petitioner from the statement made by him in his cross examination that as Mistry in weapon mechanical department with the help of workers

under him he has done installations of weapon equipments in various shifts and in that context, it is urged by the learned counsel for the Petitioner

that the Petitioner is workman. I am afraid the inference drawn by the learned counsel for the Petitioner from this statement in cross examination is

of no help on the face of clear admissions made by him which refer to his predominant duties and functions that he was doing supervisory jobs and

supervising work of 29-30 workmen in the department; the allocation of work to the workmen is done by him and also to decide who of the

employee should be given overtime. The job specifications of mistry has been placed on record by the second Respondent and from the said job

specifications it is seen that he instructs workmen wherever necessary on the correct method of carrying out the specific jobs and if necessary may

demonstrate such methods. He follows up all jobs under his charge and ensures that work progresses satisfactorily. He also ensures that correct

tools and materials are available to the workmen under him as required and that work is being carried out by them correctly according to his

instructions. He inspects completed work and work in progress to ensure that his instructions are being carried out and that work is correct to the

specifications. Obviously therefore, petitioner's job is to oversee the work of the workmen under him. In other words, he supervises the work

done by the other workmen and the duties and functions of the Petitioner is that of supervisor. In this view of the matter, the finding recorded by

the Industrial Court that Petitioner is not workman cannot be faulted being based on proper appreciation of evidence on record and upon

application of correct principles of law warranting no interference by this Court in extraordinary jurisdiction.

16. Writ petition accordingly has no merit and is dismissed. Rule is accordingly discharged. No costs.