



Sayali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.1030 OF 2025

**ATUL
GANESH
KULKARNI**

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Automatic Electric Limited,

A-279, Road No.16-A, Wagle Industrial
Estate, Thane 400 604, OFFICE address:
Rectifier House, 570, Naigaon Cross Road,
Wadala, Mumbai - 400 031
(through Sharad D. Bal, Director)
Age 55 years

... petitioner

Vs.

Tukaram Mahadev Mejari,

Shreyas Coop. Housing Society,
Block No.20, Plot No.RH/152/1,
MIDC Residential Area,
Dombivli (East), District Thane

... respondent

Mrs. Anjali Purav for the petitioner.

Ms. Nivedita Deshpande for the respondent.

CORAM : AMIT BORKAR, J.

RESERVED ON : MAY 7, 2026.

PRONOUNCED ON : MAY 8, 2026

JUDGMENT:

1. By the present petition filed under Articles 226 and 227 of the Constitution of India, the petitioner has called in question the legality, correctness, validity, and propriety of the impugned

Judgment and Order dated 25 July 2017 passed by the Industrial Court in Revision Application (ULP) No. 69 of 2017, whereby the Revision Application preferred by the petitioner came to be rejected and the Judgment and Order dated 29 May 2017 passed by the First Labour Court, Thane in Complaint (ULP) No. 281 of 2004 came to be confirmed.

2. The facts giving rise to the present petition, as pleaded and set out by the petitioner, may briefly be stated thus. The petitioner Company was having two separate manufacturing units at Thane. One of the units, namely the Meter Division, was situated at Plot No. A-279, Road No. 16-A, Wagle Industrial Estate, Thane. Apart from the said unit, the petitioner Company was also operating another Meter Division at Lonavala since the year 1960. According to the petitioner, the Meter Division situated at Wagle Industrial Estate, Thane was permanently and irrevocably closed with effect from 24 May 2008 pursuant to the notice dated 21 March 2008 issued in that behalf. The respondent initially joined the services of the petitioner Company as a worker and, from time to time, came to be promoted to higher posts. It is the case of the petitioner that with effect from 01 March 2004, the respondent was promoted to the post of Commercial Officer in the managerial cadre. According to the petitioner, the respondent failed to discharge his duties efficiently and satisfactorily while functioning as a Commercial Officer. It is alleged that meters were wrongly dispatched to customers and several complaints were received from customers regarding deficient and unsatisfactory services rendered by the respondent. The petitioner contends that continuation of the

respondent in service was detrimental to the interest of the Company and that the Management had lost confidence in the respondent. In the aforesaid circumstances, the services of the respondent came to be terminated in accordance with the terms and conditions governing his employment by way of simpliciter termination. The respondent, being aggrieved thereby, instituted a Complaint alleging commission of unfair labour practices under Item Nos. 1(a), (b), (d), and (f) of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, along with an application seeking interim relief. According to the petitioner, the decision to terminate the services of the respondent was taken strictly in accordance with the contractual terms governing his employment.

3. Upon appreciation of the oral as well as documentary evidence placed before it, the Labour Court recorded a finding that the respondent did not fall within the definition of “employee” under Section 3(5) of the MRTU & PULP Act and further held that the respondent had failed to establish the allegations levelled in the Complaint. Consequently, the Complaint came to be dismissed. Being dissatisfied with the said Judgment and Order, the respondent preferred Revision Application (ULP) No. 50 of 2009 before the Industrial Court. The principal contention advanced by the respondent in the said Revision Application was that he squarely fell within the ambit of the expression “employee” as defined under Section 3(5) of the MRTU & PULP Act and that the Labour Court had committed an error in dismissing the Complaint by holding that he was not an employee within the meaning of

Section 2(s) of the Industrial Disputes Act. The Industrial Court, by allowing the Revision Application, set aside the finding recorded by the Labour Court in its Order dated 06 June 2011 to the effect that the complainant was not an employee under Section 3(5) of the MRTU & PULP Act. Thereafter, the Complaint was restored to the file of the Labour Court for adjudication of the remaining issues on merits.

4. After remand of the proceedings, the Labour Court once again heard the parties and, by Judgment and Order dated 22 May 2014, proceeded to dismiss the Complaint. The Labour Court again framed the issue as to whether the complainant was an employee within the meaning of Section 3(5) of the MRTU & PULP Act and answered the same in the negative. The Labour Court also recorded findings against the complainant on the remaining issues, namely whether the respondents had engaged in unfair labour practices as alleged and whether the complainant was entitled to the declaration and consequential reliefs prayed for in the Complaint.

5. The respondent thereafter preferred Revision Application (ULP) No. 55 of 2014 challenging the course adopted by the Labour Court in once again framing and deciding the issue as to whether the complainant was an employee under Section 3(5) of the MRTU & PULP Act, despite the said issue having already been concluded by the Industrial Court in the earlier round of litigation. It was contended that the matter had been remanded only for adjudication of the remaining issues on merits. The said Revision Application came to be partly allowed. By Clause (c) of the

operative part of the order, the Industrial Court directed the concerned Labour Court to decide Issue Nos. 2 and 3 afresh on the basis of the oral and documentary evidence already adduced by the parties and further observed that, in the event the parties intended to adduce additional evidence, appropriate opportunity shall be granted to them to lead both oral and documentary evidence before deciding the said issues on merits.

6. After the matter was remanded, though liberty had been granted to both parties to adduce oral evidence, the respondent complainant did not initially lead any further oral evidence and, consequently, the petitioner also did not examine any witness. The Labour Court thereafter heard the submissions advanced on behalf of the parties and posted the matter for pronouncement of Judgment. However, when the matter was fixed for Judgment, the respondent on 18 June 2015 tendered an Affidavit of the same date in the absence of the Advocate representing the petitioner. According to the petitioner, the Labour Court considered the said Affidavit without granting any opportunity to the petitioner either to respond to the contents thereof or to cross-examine the respondent in relation thereto. The Labour Court thereafter proceeded to decide the Complaint on merits and, by Judgment and Order dated 31 July 2015, allowed the Complaint.

7. Being aggrieved by the aforesaid Judgment and Order dated 31 July 2015 passed by the Labour Court, the petitioner preferred Revision Application (ULP) No. 91 of 2015 before the Industrial Court. The Industrial Court allowed the said Revision Application and remanded the matter to the Labour Court with a direction to

adjudicate Issue Nos. 2 and 3 afresh after affording both parties an adequate opportunity to adduce evidence. The Industrial Court further directed that an opportunity be granted to the respondents in the Complaint to cross-examine the complainant.

8. Upon reconsideration of the matter after remand, the Labour Court, by Judgment and Order dated 29 May 2017, allowed the Complaint and directed the petitioner Company to pay full back wages together with continuity of service and all consequential benefits with effect from 04 December 2004 till 01 January 2013, the date on which the complainant attained the age of superannuation. Being dissatisfied with the said Judgment and Order, the petitioner Company preferred Revision Application (ULP) No. 69 of 2017 before the Industrial Court. The Industrial Court, by its Judgment and Order dated 25 July 2023, rejected the said Revision Application. According to the petitioner, the said Judgment is cryptic in nature and does not properly consider the issues arising in the proceedings. It is in these circumstances that the present writ petition has been instituted.

9. Mrs. Anjali Purav, learned Advocate appearing on behalf of the petitioner, submitted that the documentary evidence produced on record and duly exhibited before the Labour Court clearly established that the respondent, while functioning as Head of the Packing Department, was discharging duties of administrative and managerial character. She submitted that the documents on record demonstrated that the respondent used to sign and approve leave applications of workmen working in the Packing Department, independently correspond with customers of the Company, sign

invoices, delivery challans and other official documents pertaining to dispatch and administration. According to her, the aforesaid material unmistakably indicated that the predominant nature of duties performed by the respondent was supervisory, administrative and managerial in character. It was submitted that the Revisional Court failed to properly appreciate the said documentary evidence and instead placed reliance upon a volunteered statement made by the complainant that the workmen used to obtain leave permission from one Shri Dalvi, who was stated to be a Supervisor. Learned Counsel submitted that the Revisional Court ignored the categorical admission of the respondent that Shri Dalvi was holding the post of Leading Hand and further overlooked the admitted position that the respondent occupied a position superior to the said post of Leading Hand.

10. Learned Counsel further submitted that the respondent had admittedly handled cash transactions relating to payment of octroi and the said fact stood admitted by the respondent himself in the course of evidence. However, according to her, the Revisional Court erroneously interfered with the finding recorded by the Labour Court merely on the basis of the statement made by the Management witness that he was looking after finance and administration of the Company. She submitted that the Labour Court, after considering the entirety of duties and powers exercised by the respondent, had rightly concluded that the predominant nature of duties performed by him was administrative and supervisory. It was contended that the Revisional Court incorrectly observed that the finding recorded by

the Labour Court at page 29 of its Judgment, namely that entrustment of cash for octroi payments indicated administrative and supervisory functions, was unsustainable on the basis that the Management witness himself was concerned with finance and administration. According to the petitioner, the said reasoning adopted by the Revisional Court is wholly misconceived and contrary to the evidence available on record.

11. Learned Counsel submitted that once the issue as to whether the complainant was an employee within the meaning of Section 3(5) of the MRTU & PULP Act had already been decided in the negative by the predecessor Labour Court and the said finding had thereafter been interfered with by the Industrial Court in Revision by remanding the matter only for adjudication of the Complaint on merits, there was neither any necessity nor any jurisdiction available to the Labour Court to once again frame and decide the issue relating to the status of the complainant as an employee under Section 3(5) of the MRTU & PULP Act.

12. It was further submitted that the Labour Court, with a view to extend unwarranted relief and benefit to the respondent, selectively relied upon certain pleadings and documents produced by the respondent while completely ignoring material documentary evidence placed on record by the petitioner. Learned Counsel particularly invited attention to the promotion letter issued to the respondent, wherein the terms and conditions governing his appointment and service in the managerial cadre were specifically set out. According to her, the Labour Court failed to give due consideration to the said material document while

adjudicating the controversy.

13. Learned Counsel further assailed the finding recorded by the Labour Court that termination of the services of the complainant without affording him an opportunity to explain the circumstances against him amounted to breach of principles of natural justice and consequently constituted unfair labour practice under Item 1(f) of Schedule IV of the MRTU & PULP Act. She submitted that the said finding is legally unsustainable. According to her, the respondent was serving as a Commercial Officer in the managerial cadre and the action taken against him was not in his capacity as a workman. Therefore, there was no requirement in law to hold a departmental enquiry by following the principles of natural justice contemplated under Item 1(f) of Schedule IV to the MRTU & PULP Act before effecting termination of his services. On the aforesaid grounds, learned Counsel prayed that the impugned Judgments and Orders passed by the Labour Court as well as the Industrial Court be quashed and set aside.

14. Per contra, Ms. Nivedita Deshpande, learned Advocate appearing for the respondent, submitted that the respondent, though designated as a Commercial Officer, was in fact discharging duties pertaining to three distinct sections of the Company, namely the Repairs Section, Dispatch Section and Excise Section. She submitted that the respondent was not performing any managerial or administrative functions of an independent nature and was essentially engaged in routine clerical, operational and co-ordination work connected with the functioning of the said departments. According to her, the respondent was therefore a

workman within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 and consequently an employee within the meaning of Section 3(5) of the MRTU & PULP Act. Elaborating her submissions, learned Counsel stated that in the Repairs Section the respondent used to receive defective meters from customers and thereafter forward the same to the concerned department for repairs. It was further his duty to co ordinate the movement of such meters within the prescribed timelines depending upon the urgency communicated by the customers and to collect repair charges payable by the customers in accordance with the prescribed schedule of charges. Learned Counsel further submitted that the respondent was also entrusted with duties in the Dispatch Section. In the said section, meters received after packing from different locations were required to be dispatched to customers in accordance with their orders and instructions. The respondent used to coordinate with transporters and courier agencies for arranging transportation and delivery of the meters. It was submitted that the vendors carried out primary packing whereas secondary or final packing was undertaken in the Company's Packing Department under the supervision of the respondent. The respondent used to guide the workmen working in the Packing Department and supervise day to day functioning of the final packing and dispatch activities. According to her, approximately five workmen were working in the Packing Department whose work was being coordinated by the respondent. The respondent also used to correspond with transporters and courier agencies and sign leave applications of workers working in the Packing

Department as part of routine administrative formalities connected with the functioning of the section.

15. Learned Counsel further submitted that the respondent was also handling duties relating to the Excise Department. It was his responsibility to complete excise formalities in accordance with statutory requirements and departmental regulations. The respondent used to maintain records regarding quantity of meters manufactured, quantity dispatched and assessable value of the goods for the purpose of calculating excise duty payable thereon. It was also his duty to arrange and submit bank guarantees whenever goods were sent outside the country for exhibition purposes so as to secure requisite clearance from the Excise Department. Learned Counsel submitted that while discharging the aforesaid duties, the respondent was required to exercise initiative depending upon the exigencies of work. She further submitted that the respondent was drawing salary of Rs.11,700/ and was availing certain terms and conditions applicable to employees placed in the management cadre. Learned Counsel for the respondent further submitted that the issue as to whether the complainant was an employee within the meaning of Section 3(5) of the MRTU & PULP Act stood conclusively determined by the Industrial Court by its order dated 06 June 2011 and the same was reiterated and confirmed by the Industrial Court in its subsequent order dated 27 January 2015. She submitted that the petitioner never challenged the said order dated 27 January 2015 nor reserved any liberty to assail the same at a subsequent stage. Consequently, according to her, the said finding attained finality and the petitioner is now

precluded from re agitating the said issue in the present proceedings.

16. Learned Counsel submitted that the respondent had reserved his right to challenge the order dated 06 June 2011 in view of the law laid down in the case of *D.P. Maheswari and Delhi Administration*, 1983 (47) FLR 477 (SC) since the remaining issues had been remanded to the Labour Court for final adjudication. According to her, it is only after the Labour Court finally decided the Complaint on merits by Judgment and Order dated 29 May 2017 and the Industrial Court confirmed the same by order dated 25 July 2023 that all the orders passed in the proceedings have now been assailed in the present writ petition. She pointed out that after the first remand, the Labour Court had by order dated 22 May 2014 dismissed the Complaint and the respondent had thereafter challenged the same in Revision substantially on the ground that once the Industrial Court had already decided the issue relating to the status of workman or employee, the Labour Court could not have reopened and reconsidered the said issue afresh.

17. Learned Counsel further submitted that though the Industrial Court had considered all the issues arising in the proceedings, it had not finally adjudicated the issue relating to the status of the respondent as workman or employee on merits and therefore the same continued to remain open to challenge. She submitted that the Labour Court had thereafter rightly considered all issues in the Complaint. By order dated 27 January 2015, the Industrial Court partly allowed the Revision Application and specifically held that

the Labour Court had committed an error in law in once again deciding the issue regarding status of the respondent as workman or employee, particularly when the said issue already stood concluded by the earlier order dated 06 June 2011 passed by the Industrial Court. According to her, the limited right reserved to challenge the earlier order continued only till final adjudication by the Labour Court after remand and came to an end upon passing of the final order dated 22 May 2014.

18. Learned Counsel submitted that after the second remand, the Labour Court decided the remaining issues by Judgment and Order dated 31 July 2015. The said Judgment was challenged by the petitioner Company in Revision Application No. 91 of 2015 and the only contention urged therein was that the respondent had filed an affidavit after the matter was reserved for Judgment and that no opportunity had been granted to the petitioner to cross examine the respondent or object to the said affidavit. According to her, if the petitioner was genuinely aggrieved by the order dated 06 June 2011 deciding the issue of workman or employee, then the petitioner ought to have challenged not only the said order but also the subsequent order dated 27 January 2015 passed by the Industrial Court affirming the same. She submitted that any right allegedly reserved could not continue indefinitely and since the petitioner accepted the order dated 27 January 2015 without challenge, the petitioner is now estopped from assailing the earlier order dated 06 June 2011.

19. Learned Counsel further submitted that even otherwise, on merits, the Industrial Court in its order dated 06 June 2011 had

correctly considered the predominant nature of duties discharged by the respondent. She submitted that the Labour Court had primarily relied upon leave cards to conclude that the respondent was performing supervisory and administrative duties and therefore was not a workman or employee. According to her, even assuming that the respondent had signed leave cards, the same by itself would not convert duties essentially clerical in nature into managerial or supervisory duties. At the highest, the same could be regarded as incidental functions performed in the course of multifarious clerical duties. Learned Counsel submitted that the evidence led by the respondent regarding the clerical nature of his duties remained unshaken in cross examination. She further submitted that the evidence of the Management witness itself demonstrated that the nature of duties discharged by the respondent remained substantially the same even after his promotion as Commercial Officer. It was also brought on record that although the respondent was denied benefits available under settlements entered into with the Union, he was simultaneously denied service benefits extended to officers, managers and engineers after April 2004. Learned Counsel further pointed out that certain leave cards produced on record contained signatures of one Mr. Nadkarni, who was merely a Clerk, in the column meant for Section Head and therefore the mere act of signing leave cards could not conclusively establish that the respondent was performing supervisory or managerial duties. According to her, the dominant and paramount nature of duties discharged by the respondent being clerical in character, his status as an employee

stood clearly established.

20. Learned Counsel lastly submitted that the evidence led by the respondent was not properly considered by the Labour Court while deciding the issue relating to his status as an employee. She submitted that while determining whether a person is a workman or otherwise, the Court is required to ascertain the primary, dominant and substantive nature of duties actually discharged by such person and that occasional or incidental performance of duties not strictly aligned with the principal functions would not alter the essential character or status of the employee concerned. In support of the said proposition, reliance was placed upon the judgment of the Supreme Court in the case of *Arkal Govind Raj Rao v. Ciba Geigy of India Ltd.*, reported in *AIR 1985 SC 985*.

REASONS AND ANALYSIS:

21. I have considered the material submissions made by both sides with care. The controversy in the present matter is not of mere words in the designation. The real question is as to what was the actual and substantial work of the respondent, and whether the same would bring him within the legal fold of “employee” under Section 3(5) of the MRTU and PULP Act read with the meaning of “workman” under Section 2(s) of the Industrial Disputes Act. The law on this point is not left uncertain after the judgment in *H.R. Adyanthaya v. Sandoz (India) Ltd.*, (1994) 5 SCC 737. The Court there has held that the person must be employed to do work which falls in the recognised categories. It is not enough to say that he is not excluded by the exceptions. The

substance of duties is the test, and incidental work alone cannot alter the character.

22. Now, the petitioner has placed reliance upon the documentary evidence which is produced before the Labour Court as well as the admissions which have come on record in the oral evidence of the respondent. According to the petitioner, the respondent was never performing work of a routine clerk whose duty was confined only to carrying out ministerial instructions under direct supervision of superior officers. The petitioner has attempted to demonstrate from the evidence that the respondent was occupying a position carrying substantial responsibility in the establishment and that the actual nature of duties performed by him had supervisory and administrative complexion. The record shows that the respondent was functioning as Head of the Packing Department. This designation, in ordinary industrial set up, cannot be viewed as without any significance. A person placed as Head of a Department carries some degree of authority, responsibility, and control over the activities of that section. Therefore, while deciding the status of the respondent, the Court cannot completely detach the designation from the actual functions performed by him.

23. The documentary evidence produced on record further indicates that the respondent was entrusted with various duties which cannot be treated as clerical in nature. The respondent was signing leave applications of workmen attached to the Packing Department. He was signing invoices and delivery challans concerning dispatch of materials and finished goods. He was independently corresponding with customers regarding dispatch

schedules, repair work and movement of materials. The evidence shows that he was handling cash in relation to octroi payment and was dealing with excise formalities connected with dispatch and movement of goods. He was also coordinating activities relating to repairs section and dispatch section. A person who is trusted with such responsibilities is expected to exercise judgment and supervision in day to day administration of the department. It is difficult to accept that all these functions can still be reduced to the category of clerical work performed under command without any independent responsibility.

24. The Court also cannot lose sight of the fact that industrial adjudication proceeds more on substance than on labels. In many industrial establishments, employees are sometimes given one designation but may in reality perform entirely different work. Therefore, the Court is under obligation to examine what exactly the employee was required to do. In the present matter, the documentary material produced by the petitioner does show that the respondent was handling activities connected with supervision of movement of goods, coordination with workmen, dispatch management and compliance related work. Such duties require not merely physical performance of tasks but also supervision over execution of work by others. The authority to sign leave applications itself indicates that some amount of control over subordinate workmen was vested in the respondent. Leave sanction directly concerns discipline and functioning of the department. Therefore, this aspect carries value while examining the true nature of employment.

25. The petitioner is therefore justified in submitting that the Revisional Court ought to have appreciated the cumulative effect of the documentary evidence and oral admissions instead of isolating one answer in cross examination or one statement regarding Shri Dalvi. Judicial appreciation of evidence cannot proceed by separating one line from the entire evidence and then treating that isolated line as conclusive. The Court must see the evidence in continuity. Merely because the respondent stated that some leave permissions were also obtained from Shri Dalvi would not erase the authority exercised by the respondent in relation to the department. More importantly, the evidence itself discloses that Shri Dalvi was functioning as a Leading Hand and the respondent was occupying a position above him. In industry comparative placement of employees becomes relevant because it reflects the supervisory chain existing in the establishment. If the respondent was above the Leading Hand and was independently dealing with dispatch, leave and customer communication, then such material certainly supports the petitioner's case that the respondent was not functioning as a clerk.

26. The submission of the petitioner regarding the respondent occupying a position above the post of Leading Hand therefore deserves consideration. A Leading Hand ordinarily acts as intermediary between ordinary workmen and supervisory staff. Such a post itself carries some supervisory flavour. Therefore, where the respondent was superior to the Leading Hand and was independently exercising powers relating to dispatch, leave approval and coordination activities, the Court cannot brush aside

such evidence. In industrial matters, the Court is often required to infer the nature of employment from functioning of the establishment and from the responsibilities discharged by the employee. Therefore, the absence of some managerial order is not decisive if the evidence otherwise shows supervisory and administrative functions.

27. The Court further finds from the evidence that the respondent was coordinating dispatch of finished goods, communicating with transporters and customers, supervising packing operations and ensuring compliance with excise procedures. Such duties necessarily involve independent judgment and responsibility. Excise related work itself requires careful attention because errors may expose the establishment to statutory consequences. Similarly, dispatch management involves ensuring timely movement of goods, coordinating labour and transport arrangements and maintaining communication with customers. These duties therefore indicate that the respondent was participating in actual execution and supervision of operational functions of the establishment.

28. At the same time, the submissions advanced by the respondent also require due consideration because the Court cannot proceed only from the employer's version without examining the contrary material. Learned Counsel for the respondent has argued that the respondent was doing mixed duties connected with day to day functioning of the factory and that substantial part of his work remained operational and clerical. According to the respondent, he was receiving meters for repairs,

forwarding them to concerned departments, arranging transportation, coordinating dispatch schedules, maintaining excise records and preparing bank guarantees for goods sent outside India for exhibition purposes. It is true that some of these duties do contain clerical and operational elements. The respondent has also pointed out that the nature of work substantially remained same even after promotion as Commercial Officer. Further submission is made that although the respondent was denied benefits available to ordinary workmen under settlement, he was simultaneously not granted higher service benefits available to officers, engineers and managers. These aspects are certainly relevant while evaluating the true status of the respondent.

29. The Court is conscious designation alone can never be decisive. There are several cases where employees are designated as supervisors or officers merely to keep them outside the labour legislation, though in reality they continue to perform ordinary clerical work. Therefore, the Court is required to carefully examine the actual nature of duties and not become influenced merely by nomenclature. The respondent is therefore correct in contending that the Court must look to the dominant duties discharged by him. The respondent's argument that he was doing mixed work involving clerical and operational elements cannot therefore be rejected at threshold without scrutiny.

30. A supervisory employee may also prepare documents, sign papers, maintain records or correspond with transporters. Such incidental clerical duties do not alter the essential nature of

employment. In industrial administration, supervisory staff often perform clerical tasks connected with supervision of the department. Therefore, the presence of some clerical work is not decisive.

31. The legal position laid down repeatedly by the Supreme Court is that the Court must ascertain the principal and dominant nature of duties for which the employee was engaged. In the present matter, the evidence discloses that the respondent was simultaneously handling repair section activities, dispatch coordination and excise related compliance. He was interacting with customers and transporters. He was supervising packing activities and sanctioning leave of workmen. He was ensuring movement and dispatch of materials in accordance with customer requirements and operational needs. These duties indicate coordination, supervision and administrative responsibility extending over different sections of the establishment. Such composite functions cannot be equated with clerical duties without any independent responsibility or discretion.

32. The Court also finds significance in the fact that the respondent was entrusted with responsibilities affecting functioning of several sections of the Company. Responsibility attached to a post is itself an important indicator in deciding the true character of employment. A person who is entrusted with dispatch management, customer communication and excise compliance is expected to ensure smooth operational functioning of the establishment. Excise work particularly involves accountability because statutory compliance is involved. Likewise,

dispatch and movement of goods require supervision over subordinate staff and coordination of activities. Therefore, though the respondent may have performed some clerical work in course of his duties, the overall character and complexion of the work appears more supervisory and administrative.

33. The reliance placed by the respondent on the circumstance that some leave cards also contained signatures of another Clerk in the column of Section Head also does not assist the respondent. Such isolated instances cannot determine legal status of the employee. In industrial establishments, for administrative convenience, another employee may sometimes sign documents during absence or otherwise. Such occasional signing by another person does not destroy the larger evidence indicating supervisory role of the respondent. The Court cannot ignore the totality of evidence merely because one or two leave cards carried signatures of another employee.

34. Similarly, merely because the respondent occasionally performed routine office tasks would not convert the essential nature of his employment into clerical employment. The Supreme Court in *H.R. Adyanthaya* has clearly observed that incidental duties are not determinative while deciding the status of workman. The predominant and principal nature of duties alone governs the issue. If every supervisory employee who performs incidental clerical work is treated as workman, then distinction recognized by industrial law between clerical staff and supervisory staff would practically disappear. That is not the legal position recognised by the statute or by judicial precedents.

35. Therefore, upon cumulative appreciation of the oral and documentary evidence, this Court is of the considered opinion that the respondent has failed to displace the material relied upon by the petitioner. The evidence, when read as a whole, indicates that the respondent was entrusted with supervisory responsibility, administrative coordination and operational control. The clerical work pointed out on behalf of the respondent appears only incidental and ancillary to the larger functions discharged by him. Consequently, the contention of the petitioner regarding the dominant nature of duties performed by the respondent deserves acceptance.

36. The objection raised by the respondent proceeds substantially on foundation that since the petitioner did not separately challenge the earlier order dated 27 January 2015 at the relevant time, the petitioner is now precluded from questioning correctness of the findings recorded therein. However, such submission cannot be accepted in absolute terms without examining the nature and width of powers exercised by this Court under Articles 226 and 227 of the Constitution of India. The jurisdiction exercised by the High Court under the aforesaid constitutional provisions is not identical to ordinary appellate jurisdiction where the Court is confined only to examining correctness of final decree in narrow manner. The jurisdiction under Articles 226 and 227 is supervisory, constitutional and equitable in character. The High Court, while exercising such powers, performs constitutional duty of ensuring that subordinate Courts and Tribunals act within jurisdiction, follow settled legal

principles and do not render findings which suffer from perversity, patent illegality or jurisdictional infirmity.

37. Therefore, merely because at some earlier stage remand order was not independently challenged by a party, the same by itself would not create an absolute prohibition against examination of correctness of such order when the final adjudication itself is brought under challenge before this Court. If such principle is accepted, then in many matters the High Court may become helpless even in cases where the final adjudication is founded upon an erroneous interlocutory order which has affected the entire course of proceedings. Constitutional jurisdiction cannot be reduced to such limitations because the object of supervisory powers is ultimately to ensure fairness in administration of justice.

38. The Court also cannot ignore practical realities which ordinarily arise in labour litigation. Proceedings under labour laws frequently travel through several stages before attaining finality. A complaint may first be adjudicated by the Labour Court. Thereafter, one party may carry the matter before the Industrial Court in revision. The Industrial Court may remand the matter back on some preliminary issue. Again evidence may be led. Fresh findings may be recorded. Once again revisions may be preferred. Thus, labour adjudication often proceeds in multiple rounds over long periods of time. In many matters, preliminary issues themselves consume several years before final adjudication of dispute takes place. If parties are compelled to challenge each intermediate order before the High Court, the result may be unnecessary multiplication of proceedings. One writ petition may

be filed against a remand order. Another petition may be filed against framing of issue. Yet another petition may be filed against procedural directions. Such repeated interruptions may delay the final adjudication and may frustrate the object underlying labour jurisprudence, namely speedy resolution of industrial disputes. Labour law intends expeditious adjudication because disputes concern livelihood and industrial peace. Therefore, Courts discourage piecemeal challenges unless immediate interference becomes necessary.

39. It is also important to notice that many interlocutory or remand orders do not finally determine substantive rights and liabilities of parties. Such orders often regulate procedure, decide preliminary aspects or direct reconsideration of certain issues while keeping the main controversy pending for adjudication. A party may therefore bona fide decide to await completion of proceedings instead of approaching the High Court against every adverse order passed during pendency of the matter. Such conduct cannot be treated as acquiescence. Mere non challenge at intermediate stage does not always mean acceptance of correctness of the order.

40. The Court while exercising constitutional jurisdiction is ultimately concerned with legality of final adjudication and impact of earlier findings upon such adjudication. Therefore, the proper question is not merely whether an earlier order was separately challenged, but whether such order has materially influenced the legality of the final judgment. If an interlocutory order forms foundation of the final adjudication, then the High Court is

competent to examine whether the same suffers from legal infirmity. To deny such examination merely on procedural ground may in some cases result in perpetuation of illegality.

41. The petitioner is therefore justified in contending that once the final orders dated 29 May 2017 and 25 July 2023 are under challenge before this Court, it becomes permissible for this Court to examine correctness of earlier orders which formed basis for the ultimate adjudication. Final adjudication is built upon earlier findings recorded during continuation of proceedings. If earlier findings are unsustainable, then the Court cannot separate the final order from the earlier process leading to it. The legality of the final decision must therefore be examined in entirety.

42. The constitutional power of superintendence vested in this Court exists to advance justice. Procedural law is intended to aid justice. It is not intended to create grounds preventing the Court from examining legality of proceedings where injustice is alleged. Therefore, if the petitioner has approached this Court after culmination of proceedings and has challenged the final adjudication, this Court would still possess power to examine whether interlocutory findings have affected legality of the final judgment.

43. At the same time, the objection raised on behalf of the respondent also cannot be rejected altogether as wholly meritless. Litigation cannot be permitted to remain endlessly reopenable. If parties consciously accept an order, participate in subsequent proceedings without protest and permit matters to proceed on that

basis, such conduct may become relevant while considering extent to which earlier orders should later be reopened. However, the principle of finality is not mechanical. Its application depends upon nature of the order, stage of proceedings and effect upon final adjudication. Every interlocutory order does not attain such rigid finality that the High Court becomes entirely powerless to examine its correctness at later stage. Much depends upon whether the order was purely procedural, whether it substantially affected rights of parties, whether proceedings continued thereafter, and whether challenge to final adjudication involves reconsideration of earlier findings. Therefore, the effect of non challenge to an intermediate order cannot be treated uniformly in all situations without regard to factual context.

44. In the present matter, the order dated 27 January 2015 was passed during continuation of the complaint proceedings. The matter had not attained finality at that stage. The Labour Court was still required to adjudicate remaining issues. Rights of parties were yet to be determined. Thereafter, the matter again travelled through further stages resulting ultimately in orders dated 29 May 2017 and 25 July 2023. Thus, the order dated 27 January 2015 formed part of continuous process and cannot be viewed in isolation detached from later proceedings.

45. In such circumstances, merely because the petitioner did not independently challenge the order dated 27 January 2015, this Court cannot be rendered powerless to examine whether the findings recorded therein have affected legality of the final adjudication. Constitutional jurisdiction under Articles 226 and

227 cannot be curtailed merely because the petitioner chose to challenge the matter after culmination of proceedings.

46. This Court is therefore of the considered opinion that although the respondent is justified in contending that non challenge to earlier orders is a relevant factor, such circumstance cannot operate as bar against exercise of supervisory jurisdiction by this Court. Ultimately, the paramount duty of this Court is to ensure that final adjudication between parties is free from legal infirmity.

47. In the result, the overall assessment of the evidence, the admissions and the documents leads me to hold that the respondent was not established to be an employee within Section 3(5) of the MRTU and PULP Act. The dominant nature of his duties was supervisory and administrative, with some managerial colour also appearing from the record. The impugned findings of the Labour Court and the Industrial Court do not reflect a correct application of the legal test. The writ petition deserves to succeed.

48. In view of the foregoing discussion and for the reasons recorded hereinabove, the following order is passed:

- (i) The Writ Petition is allowed;
- (ii) The Judgment and Order dated 25 July 2023 passed by the Industrial Court in Revision Application (ULP) No. 69 of 2017 and the Judgment and Order dated 29 May 2017 passed by the First Labour Court, Thane in Complaint (ULP) No. 281 of 2004 are quashed and set aside;

- (iii) Complaint (ULP) No. 281 of 2004 filed by the respondent under the provisions of the MRTU & PULP Act, 1971 stands dismissed;
- (iv) It is held that the respondent has failed to establish that he was an “employee” within the meaning of Section 3(5) of the MRTU & PULP Act, 1971 read with Section 2(s) of the Industrial Disputes Act, 1947;
- (v) Consequently, the directions issued by the Labour Court granting reinstatement benefits, continuity of service, back wages and consequential benefits stand set aside;
- (vi) Rule is made absolute in the aforesaid terms;
- (vii) In the facts and circumstances of the case, there shall be no order as to costs.

(AMIT BORKAR, J.)