

Revision filed on : 2.01.2018.
 Registered on : 2.01.2018.
 Decided on : 30.01.2019.
 Duration : 1 Y 0 M 28 D.
 Exh. _____

IN THE INDUSTRIAL COURT (MAHARASHTRA)
NAGPUR BENCH, NAGPUR.

REVISION APPLICATION (ULP) NO.01 OF 2018.
IN
COMPLAINT (ULP) NO.04 OF 2016
(CNR NO.MHIC31-000002-2018)

1] M/s NSSL Limited.,
 T-44/45, MIDC Industrial Area,
 Hingna Road, Nagpur,
 Through its General Manager.

2] Jayaswal Neco Industries Ltd. Works,
 Thanod Road, Anjora,
 Distt.-Rajnandgaon, Chattisgarh.

... Revision
Petitioner

: Versus :

Niraj S/o Keshavrao Gawli,
 Aged about 36 years, Occu. Nil,
 R/o Gaddigodam, Near Sundarbag
 Police Station, Nagpur.

... Revision
Opponent

REVISION APPLICATION (ULP) NO.02 OF 2018.
IN
COMPLAINT (ULP) NO.06 OF 2016
(CNR NO.MHIC31-000003-2018)

1] M/s NSSL Limited.,
 T-44/45, MIDC Industrial Area,

Hingna Road, Nagpur,
Through its General Manager.

2] Jayaswal Neco Industries Ltd. Works,
Thanod Road, Anjora,
Distt.-Rajnandgaon, Chattisgarh.

... Revision
Petitioner

: Versus :

Ramkrishna S/o Govindaji Ambilduke,
Aged about 39 years, Occu. Nil,
R/o Plot No.200, New Mhalgi Nagar,
Near Gajanan Mandir, Besa,
Hudkeshwar Road, Nagpur.

... Revision
Opponent

REVISION APPLICATION (ULP) NO.03 OF 2018.
IN
COMPLAINT (ULP) NO.03 OF 2016
(CNR NO.MHIC31-000004-2018)

1] M/s NSSL Limited.,
T-44/45, MIDC Industrial Area,
Hingna Road, Nagpur,
Through its General Manager.

2] Jayaswal Neco Industries Ltd. Works,
Thanod Road, Anjora,
Distt.-Rajnandgaon, Chattisgarh.

... Revision
Petitioner

: Versus :

Sunil S/o Rajendra Thakur,
Aged about 31 years, Occu. Nil,
R/o Plot No.183, Pardhi Nagar,
MIDC, Hingna Road,
Nagpur.

... Revision
Opponent

Coram :- SHRIKANT K. DESHPANDE, Member,
Industrial Court, Nagpur.

Appearances :-

Mr. D.R. Karnik, Advocate for the Revision Petitioner.

Mrs. G. Mohite, Advocate for the Revision Opponents.

COMMON JUDGMENT

(Delivered on 30th January 2019)

1] An identical question of facts and law is involved in the above revisions u/s 44 of the Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practices Act, 1971(hereinafter referred to as the ULP Act) based on the orders dated 22/11/2017 passed by the Ld. Judge, First Labour Court, Nagpur (Trial court) in Comp.(ULP) No.03/2016, 4/2016, 6/2016 are being disposed of by this common Judgment and order.

2] The facts giving rise to the present Revisions can be narrated as under that, the original complainants challenged their dismissal after enquiry before the Trial court in Comp.(ULP) No.03/2016, 4/2016, 6/2016, alleging the unfair labour practice on the part of the original respondent. During pendency of the matter, the original respondent moved an application Exh.C-4 for Dismissal of the complaint on the ground that, the original complainant is not an "employee" u/s 3(13) of Maharashtra Industrial Regulation Act and the Trial court has no territorial jurisdiction to decide the complaint. After obtaining say from the original complainants the Trial court vide its order dated 22/11/2017 rejected those applications by separate

orders. Those orders passed by the Trial court are the subject matter of the present revision.

3] According to the Revision petitioner-company the dismissal order was issued from Anjora, District-Rajnandgaon (M.P.) and the original complainants were not working at Nagpur when dismissed. They were transfer from Nagpur to Anjora, however, that transfer order was not the subject matter of challenged, enquiry was conducted against the original complainant at Anjora, therefore, no cause of action arose within the territorial jurisdiction of the Nagpur court. Similarly the original-complainants were working in technical capacity drawing more than 6,500/- rupees per month, therefore, not an employee, still without considering the same the Trial court rejected the applications for Dismissal of complaint as such the orders impugned in the revisions are erroneous thus the Revision petitioners/original respondents pray for setting-aside the order under revision.

4] In response to the notice, Mrs. Mohite Advocate put her appearance for the Revision opponents/original complainants. The Record and Proceeding has been called from the trial court.

5] I have heard Mr. Karnik Advocate for the Revision petitioners and Mrs. Mohite Advocate for the Revision opponents. The following points arises for my determination. My findings and reasons to them are as below.

<u>POINTS</u>	<u>FINDINGS</u>
1] Whether the order under revision suffers from error apparent on the face of record ?	...Yes.
2] Whether the revision petitioner is	

entitled for relief as prayed ?

...Yes, partly.

REASONS

6] **POINT NO. 1 :-** I have given anxious consideration to the oral submissions advanced on behalf of the parties, in the light of application for Dismissal of complaint and the orders under revision. Undisputedly by application for dismissal of complaint the original respondent objected the maintainability of the complaint on the ground that, original complainant are drawing more than Rs.6,500/- per month as basic pay, appointed in technical capacity, therefore, not employee and cause of action for the complaints for dismissal arose not within the territorial jurisdiction of the Trial court, however, those applications filed by the original respondents were came to be rejected only on the ground that, these issues cannot be decided without giving any opportunity to the original complainant. True it is that the objection regarding the status of the original complainant as “employee” is a mixed question of facts and law, therefore, can be decided only after recording the evidence of the parties on merit, therefore, the order to that extent does not seems to be erroneous.

Moreover, though the original respondents raised objection regarding the territorial jurisdiction of the Trial court, which is certainly based on pure question of law and can be decided even without recording the evidence of the parties, however, in the whole order under revision, there is no whisper about the territorial jurisdiction of the Trial court. It seems that, the Trial court lost sight

on the aspect of territorial jurisdiction and not utter a single word in the order under revision. In such circumstances the order under revision certainly seems to be erroneous for want of non consideration of the aspect of territorial jurisdiction. In short, the orders under revision suffers from error apparent on the face of record, hence I answered this point in the affirmative.

7] **POINT NO.2** :- Once I have observed that, the orders under revision suffers from error apparent on the face of record, then the Revision petitioner is certainly entitled for setting-aside the orders under revision as prayed.

It is worthwhile to mention here that, once the order under revision are quashed and set-aside, then the applications for Dismissal of complaint needs to be decided afresh by appreciating the various factual aspect available on record, therefore, it will be just to remand the matter to the Trial court for deciding the applications afresh by giving an opportunity of hearing to the parties and decide the applications expeditiously on or before 28th February 2019 strictly in accordance with the law. In short the Revision petitioners are entitled for relief as prayed, hence I answer this point partly in the affirmative.

In the result I proceed to pass the following order.

Order

- I] The Revisions are partly allowed.
- II] The orders dated 22/11/2017 below Exh.C-4 are quashed and set-aside.
- III] The matter is remanded back to the Trial court for

fresh decision expeditiously by giving proper opportunity of hearing to the parties and decide the application for Dismissal of complaint strictly in accordance with the law on or before 28/02/2019.

- IV] No order as to cost.
- V] R and P be send back to the trial court immediately.
- VI] Parties are directed to appear before the Trial court on 8th February 2019.
- VII] Copy of order be kept in each case.

Place : Nagpur.

Dated : 30th January, 2019.

(Shrikant K. Deshpande)

Member,

Industrial Court No.1, Nagpur.

Argued on : 30.01.2019.

Judgment dictated on : 30.01.2019.

Judgment transcribed on : 31.01.2019.

Judgment checked & signed on : 31.01.2019.