



Saraswati Poddar
Senior Associate

BOMBAY HC ON EMPLOYEE WITH SUPERVISORY RESPONSIBILITIES

A. Introduction.

The Bombay High Court (“**HC**”) in *Rohit Dembiwal* case,¹ held on January 2, 2024, that the IT analyst of Tata Consultancy Services Ltd. (“**TCS**”) is not a ‘workman’ under the Industrial Disputes Act, 1947 (“**ID Act**”).

B. Facts.

1. In June 2010, Rohit Dembiwal (“**Dembiwal**”) was appointed as IT Analyst in TCS and his services were confirmed after probationary period and he was drawing a salary of Rs. 57,108/.
2. In October 2011, Dembiwal’s services were terminated by TCS. His contention was that his services were terminated without following the due process of law.
3. He filed a complaint before the Labour Court (“**LC**”). In 2021, LC dismissed the same holding that he is not a ‘workman’² as defined under the ID Act.
4. Also, he is an ‘employee’³ as defined under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (“**MRTU & PULP Act**”). Therefore, it also held that LC did not have jurisdiction to adjudicate the complaint.
5. Aggrieved by the LC’s order, Dembiwal approached the Industrial Court (“**IC**”) by a revision petition. IC also upheld the order of the LC.
6. In 2023, aggrieved by the decision of the IC, Dembiwal filed a Writ Petition (“**WP**”) before the HC.

C. Parties’ Contentions Before the HC.

1. Dembiwal contended that: (a) the LC failed to appreciate the admitted documents on record and his role at TCS; (b) that he was simply an IT analyst doing technical work and hence is was a workman.
2. TCS contended that Dembiwal’s main role was that of a supervisory nature and having managerial ability, competence and empowerment.

D. HC’s Judgment & Reasoning.

HC upheld the decision of the LC & IC and observing that:

¹*Rohit Dembiwal vs. Tata Consultancy Services Limited and others*, (2024) SCC OnLine Bom 6.

² Section 2(s) of the ID Act.

³ Section 3(5) of the MRTU & PULP Act.

1. Dembiwal was assigned to the project as a ‘Module Leader’ where he was guiding a team of seven members and admittedly he was group leader interacting with his employer’s client in that capacity which was evident from one of exhibits.
2. From the witness and his evidence, it was clear that work ethic and character of work performed by the Dembiwal was indeed supervisory and managerial in nature.
3. He was involved in management, supervisory, or administrative activities such as approving team members’ timesheets and leave, managing their expense reimbursements, assessing their appraisals, making business choices, etc.
4. He is not a ‘workman’ and LC does not have jurisdiction to try the case.
5. Relied on Supreme Court’s ratio laid down in *Delhi Transport Corporation* case:⁴ “It is clear that predominant nature or substantial work performed by the employee has to be analysed and any designation of employee or any incidental work done by him cannot determine or qualify him as a workman or otherwise.”
6. Held that: “The onus and burden of proof to show the same is that on the Petitioner and in the present case while attempting to discharge the burden, the Petitioner’s own deposition and cross examination proves to the contrary.”⁵

This *Counselence Connect* contains information in a nutshell on a recent change in law. This is not legal advice and must not be treated so. For legal advice, please contact us at: info@counselence.com.
Past issues of *Counselence Connect* are available on the ‘Newsletters’ page of our website
(www.counselence.com)

⁴ *Delhi Transport Corporation vs. Shyam Lal*, (2004) LLR SC 991.

⁵ Paragraph 10 of the Judgment.