

MANU/MP/3584/2022

Equivalent/Neutral Citation: [2023(176)FLR740], 2023LLR405

**IN THE HIGH COURT OF MADHYA PRADESH (JABALPUR BENCH)**

Writ Appeal Nos. 922 of 2006 and 07 of 2019

**Decided On:** 21.12.2022

Petcare, Division of Tetragon Chemie Pvt. Ltd. **Vs.** M.P. Medical and Sales Representatives Association and Ors.

**and**

M.P. Medical & Sales Representative Association and Ors. **Vs.** Provimi Animal Nutrition India Pvt. Ltd.

**Hon'ble Judges/Coram:**

*Ravi V. Malimath, C.J. and Vishal Mishra, J.*

**Counsel:**

*For Appellant/Petitioner/Plaintiff: Jubin Prasad, Advocate*

*For Respondents/Defendant: Party-in-Person*

**Case Category:**

LABOUR MATTERS - MATTERS UNDER INDUSTRIAL DISPUTES ACT, 1947

**ORDER**

**Vishal Mishra, J.**

**1.** Writ Appeal No. 922 of 2006 arises out of an order dated 05.01.2006 passed by the learned Single Judge in dismissing the Writ Petition No. 3253 of 2004 preferred by the appellant-Company against an order dated 18.5.2004 passed by the Presiding Officer, Labour Court No. 1, Bhopal exercising its jurisdiction under Section 33C(2) of the Industrial Disputes Act, 1947 (for short "the Act of 1947"). Whereas, Writ Appeal No. 07 of 2019 arises out of an order dated 01.11.2018 passed by the learned Single Judge in allowing the Writ Petition No. 1307 of 2017 filed by the respondent-Company herein thereby the award dated 6.3.2014 passed by the Labour Court, Bhopal in Case No. 249 of 2003 (ID Act) in favour of the appellants herein was set aside.

**2.** The questions of fact and law involved in both the appeals being identical, they were heard together and are being decided by this common order. However, for the sake of convenience, the facts and grounds stated in Writ Appeal No. 07 of 2019 are taken into consideration.

**3.** It is the case of appellant No. 2-Uttam Kumar Pardasani that he was working in the respondent company as a confirmed employee on the post of Sales Promotion Officer at Bhopal headquarters since 14.02.2000. The petitioner-company is engaged in manufacturing and marketing of animal healthcare products and its products are sold throughout India. The petitioner-company is a pharmaceutical company and the respondent is Medical Representative or a Sales Promotion Officer and is employed in the company. He approached the Assistant Labour Commissioner Bhopal for redressal of

his grievances which was referred for adjudication to Labour Court No. 1. The question which arose for consideration before the Labour Court is that whether the Sales Promotion Officers are falling under the definition of "workman" in terms of Section 2(s) of the Act of 1947. It is his case that he performs in the field and meets the sale targets, which proves that he is performing the job of promotion on sales and business; therefore, he is a Sales Promotion Employee. Therefore, the provisions of Sections 1(4), 2(d), 2(e), 6(2) and 7 of the Sales Promotion Employees (Conditions of Service) Act, 1976 (for short "the Act of 1976") are applicable to him being a workman in terms of Section 2(rr) and 2(s) of the Act of 1947. During the pendency of the proceedings, the services of appellant No. 2 were transferred from Bhopal to Bangalore and his eight months salary and other allowances are being affected.

**4.** It is his case that the respondent before the Labour Court in Case No. 29 of 2006 (ID Act) has clearly mentioned that "the last batch of samples were sent to the applicant herein on 13.08.2003 and thereafter, the applicant never requisitioned for any samples. The applicant neither submitted any report of his working nor claimed his salary or submitted his tour plan or expense statement, making it clear that he was not promoting the sales of the non-applicants products", which clearly shows that the appellant was doing sales promotion work of visiting doctors and distributing samples. It is his case that the Labour Court has rightly adjudicated the matter and passed an award dated 06.03.2014 declaring him to have been a workman in the respondent institution. The aforesaid order was put to challenge by the company in the writ petition. The writ petition was finally allowed holding that the Sales Promotion Officer does not fall in the category of a workman therefore, the Labour Court has no right to entertain the dispute. Being aggrieved by the same, the instant appeal has been filed.

**5.** He has placed reliance upon several judgments of the Hon'ble Supreme Court as well as of the High Court in the cases of H.R. Adyanthaya vs. Sandoz (India) Limited reported in MANU/SC/0525/1994 : (1994) 5 SCC 737; Rhone-Poulenc (India) Ltd. vs. State of U.P. and others reported in MANU/SC/0599/2000 : AIR 2000 SC 3182; SPIC Pharmaceuticals Division vs. Authority Under Section 48(1) of A.P. & Another reported in MANU/SC/7184/2007 : (2007) 2 SCC 616; D.P. Maheshwari vs. Delhi Administration and others reported in MANU/DE/0155/1980 : 1981 (1) SLJ 406 Delhi; R.R. Iyer vs R.P.G. Life Sciences Ltd. reported in 2010 MPLSR 312 (DB); M/s. Dolphin Laboratories Ltd. vs. Judge, Labour Court, Udaipur and another, reported in MANU/RH/0221/2001 : 2001 (90) FLR 257 and Rajasthan Medical and Sales Representatives Union, Ajmer and another vs. M/s. Industrial Research Institute Private Limited and another reported in MANU/RH/0275/2000 : 2000 (87) FLR 563 with respect to the issue involved in the matter and has argued that although the aforesaid judgments were quoted by the learned Single Judge in the order but there is no consideration to the same, which is reflected from the impugned order.

**6.** Learned counsel appearing for the respondents has vehemently contested the matter and submitted that the writ court has not committed any error in allowing the writ petition holding that the Labour Court has no jurisdiction to entertain the dispute as the Sales Promotion Officer or Medical Representative do not fall under the category of workman. He has heavily relied upon the judgment passed by a Division Bench of this Court in the case of Novartis India Limited vs. Vipin Shrivastava and others passed on 11.10.2018 in Writ Appeal No. 75 of 2017, wherein it is categorically held that the dispute relating to a Medical Representative cannot be entertained by the Labour Court as a Medical Representative does not come within the definition of a "workman" as defined in Section 2(s) of the Act of 1947. The learned counsel has confined his argument to the extent that the dispute which has been entertained by the Labour Court

does not fall within the purview of the Industrial disputes. He has further brought to the notice of this Court a judgment passed by the Constitutional Bench of the Hon'ble Supreme Court in the case of H.R. Adyanthaya (supra) which was considered by the Division Bench in the case of Novartis India Limited (supra) clearly holding that the Medical Representatives do not fall within the definition of workman. It is his case that all these judgments were considered by the learned writ court. The writ court has clearly held that the judgment passed on earlier occasion by the Division Bench of this Court has not taken into consideration the judgment passed in the case of H.R. Adyanthaya (supra) wherein the controversy was finally put to rest and merely on the facts of the case, arrived at a conclusion that the medical representatives are falling within the definition of workman. Under these circumstances, the writ petition was allowed. There is no illegality in the impugned order. The judgment of H.R. Adyanthaya (supra) is a basic judgment which has clarified the entire picture. The judgment passed by the writ court is just and proper and does not call for any interference in the present writ appeal. Hence, he has prayed for dismissal of the writ appeal.

**7.** Heard appellant No. 2/party-in-person and learned counsel for respondent-company and perused the record.

**8.** The sole question which has been raised for consideration of this Court is whether the Medical Representatives or the Sales Promotion Officers are the "workman" within the definition of Section 2(s) of the Act of 1947 and whether the Labour Court was having a right to entertain the dispute and the same does not fall under the Industrial Disputes Act.

**9.** The appellant No. 2 appearing in person has heavily relied upon the judgment passed in the case of German Remedies Limited vs. Presiding Officer, Labour Court No. 1, Bhopal reported in MANU/MP/0039/2006 : 2006 (II) LLJ 8 MP, wherein it was held that the Labour Court is having jurisdiction to entertain the dispute in respect to Medical Representatives as they fall under the definition as provided in Section 2(s) of the Act of 1947.

**10.** Learned counsel appearing for the respondent has invited attention of this Court to the judgment passed in the case of Novartis India Limited (supra) wherein the earlier judgment passed in the case of German Remedies Limited (supra) was considered and was held to be not a correct law and it is overruled. The aforesaid aspect was considered by the writ Court, which is clearly reflected from the impugned order.

**11.** The judgment of the Hon'ble Supreme Court in the case of H.R. Adyanthaya's (supra) is relevant which was subsequently considered by a Division Bench of this Court in the case of Samat Kumar vs. M/s. Parke Davis India Limited reported in MANU/MP/0288/1996 : 1997 (2) JLJ 353 wherein the definition in Section 2(s) of the Industrial Disputes Act was taken into consideration. The relevant extract is as follows:-

"10. As against it, learned counsel for the respondent No. 1 has placed reliance on a case as reported in MANU/SC/0282/1988 : 1988 (II) MPWN 116 : AIR 1988 SC 1700 (Miss A. Sundarambal v. Govt. of Goa, Deman & Diu and others) whereby it was held that teacher employed in a school is not a workman. But, now dispute stands resolved with respect to the cases of Medical Representative as reported in MANU/SC/0525/1994 : AIR 1994 SC 2608 [H.R. Adyanthaya etc. etc. v. Sandoz (India) Ltd. etc. etc.] whereby it has been held that 'Workman' does not include all employees except those covered by four exceptions in said definition of section 2(s) of Industrial Disputes Act. Medical Representatives do

not perform duties of 'skilled' or 'technical' nature and therefore, they are not 'workmen'. The connotation of word 'skilled' in the context in which it is used, will not include work of a Sales Promotion Employees such as Medical Representative. That word has to be construed ejusdem generis and thus construed, would mean skilled work whether manual or non-manual, which is of a genre of the other types of work mentioned in the definition. The work of promotion of sales of the product or services of the establishment is distinct from and independent of the types of work covered by the said definition."

After returning such finding it was held that the reference was not maintainable as Medical Representative would not fall within the definition of workman. We are not only bound by the aforesaid judgment but we find the same to be a correct enunciation of law."

**12.** From the aforesaid, it is clear that the Constitution Bench judgment of H.R. Adyanthaya's (supra) was taken into consideration and it was categorically held that Medical Representative or the Sales Promotion Employee do not fall within the definition of a "workman" as defined in Section 2(s) of the Act of 1947.

**13.** The learned writ court has gone to the extent of considering the definition of "Sales Promotion Employees" as defined under Section 2(d) of the Act of 1976.

**14.** After going through the definition it is clearly reflected that the person who is engaged in a supervisory capacity, draws wages exceeding sixteen hundred rupees per mensem, will not be covered under the definition. The learned Single Judge has taken into consideration the amount of wages which has been claimed and drawn by the appellant and has clearly held that even if from this angle the case of the appellant is considered, then also he does not fall under the definition of "Sales Promotion Employees" or the "Medical Representative" in terms of Section 2(s) of the Act of 1947.

**15.** A three-Judge Bench of the Hon'ble Supreme Court in the case of May and Baker (India) Limited vs. Workmen', reported in MANU/SC/0410/1961 : AIR 1967 SC 678 had an occasion to directly deal with the question as to whether the Medical Representatives of the company, who are discharged from service, are the workman under the Industrial Disputes Act and the order of reinstatement passed by the Industrial Tribunal was, therefore, valid. The Hon'ble Supreme Court referred to the undisputed nature of the duties of the employees and found that his main work was of canvassing sales. Any clerical or manual work that he had to do was incidental to the said main work, and could not make more than a small fraction of time for which he had to work. In the circumstances, the Hon'ble Supreme Court held that the Tribunal's conclusion that the employee was a workman under the Industrial Disputes Act was incorrect.

**16.** The similar issue was considered by a three-Judge Bench judgment of the Hon'ble Supreme Court in the case of Western India Match Company Limited vs. Workman 2 reported in MANU/SC/0156/1963 : AIR 1964 SC 472. The question before the Court was whether the sales office was entirely independent of the factory or was a department of the one and the same unit of production, and whether Inspectors, Salesman and Retail Salesman of the sales office were workmen within the meaning of U.P. Industrial Disputes Act. The matter was referred by the State Government for adjudication to the Industrial Tribunal on 18.08.1961. After a detailed analysis of the matter, the Bench following the earlier decision in the case of May and Baker's case (supra) has arrived at a similar finding that they cannot be termed as a workman in terms of the definition under the Act of 1947.

**17.** Similar issue was considered in the case of *Burmah Shell Oil Storage and Distribution Company of India Limited vs. Burmah Shell Management Staff Association* reported in MANU/SC/0373/1970 : AIR 1971 SC 922 and again the judgment passed in *May and Baker's case (supra)* was taken into consideration and the Court has given the verdict in the light of *May and Baker's case*. The three-Judge Bench in the case of *May and Baker (supra)* has taken a view that a person to be qualified to be a workman must be doing the work which falls in any of the four categories viz. manual, supervisory, technical or clerical. If a person does not fall within the four exceptions to the aforesaid definition, he is a workman within the definition as provided under Section 2(s) of the Act of 1947. Therefore, the position is clarified by the Hon'ble Supreme Court in the aforesaid cases.

**18.** The Constitution Bench of the Hon'ble Supreme Court in *H.R. Adyanthaya's (supra)* has categorically held that the Medical Representatives are not the workman; therefore, the complaint made to the Industrial Court is not maintainable itself. The arguments raised by the appellant that even in the case of *H.R. Adyanthaya's (supra)*, the benefits were extended and they were treated to be the complainant in the matter and the State Government was given directions but the fact remains that the powers were exercised under Article 142 of the Constitution of India by the Hon'ble Supreme Court. But the law which has been settled in the aforesaid case by the Constitution Bench is clear that the Medical Representatives or the Sales Promotion Officer do not fall under the definition of workman. The learned Single Judge has followed the aforesaid judgment passed by the Hon'ble Supreme Court and has rightly set aside the order passed by the Labour Court. Under these circumstances, we do not have any hesitation to observe that no illegality is committed by the writ court in allowing the writ petition. In absence of any cogent material or a judgment to override the observations made by the writ court and the law settled by the Constitution Bench of the Hon'ble Supreme Court in *H.R. Adyanthaya's (supra)*, no relief can be extended to the appellant.

**19.** Accordingly, the Writ Appeal No. 07 of 2019 being devoid of merit is dismissed.

**20.** As far as Writ Appeal No. 922 of 2006 is concerned, once after a detailed analysis in Writ Appeal No. 07 of 2019, it is held that the Medical Representatives or the Sales Promotion Employees do not fall under the definition of "workman" as defined in Section 2(s) of the Industrial Disputes Act, and the applications before the Labour Court are not maintainable, there is no question for filing an application under Section 33C(2) of the Act of 1947 as the same can only be entertained against an award passed by the Labour Court. It is not disputed that there is no award against which the writ petition was filed. These are virtually the execution proceedings. Once the award itself is not in existence then no question of filing an application under Section 33C(2) of the Act of 1947. The learned writ court has failed to consider the aforesaid aspect of the case.

**21.** In view of the foregoing reasons, the Writ Appeal No. 07 of 2019 is dismissed. The Writ Appeal No. 922 of 2006 filed by appellant-company is allowed and the order dated 05.01.2006 passed by the learned Single Judge in Writ Petition No. 3253 of 2004 is set aside. Consequently, the Writ Petition No. 3253 of 2004 is dismissed.

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