

(2016) 03 PAT CK 0026

In the Patna High Court

Case No : Letters Patent Appeal No.1798 of 2012

Deepak Kumar

APPELLANT

Vs

State of Bihar, Department of Labour Employed and Training,
Now known as Labour & Resource Department through its
Principal Secretary and Anr.

RESPONDENT

Date of Decision : 09-03-2016

Acts Referred:

Industrial Disputes Act, 1947 — Section 10

Sales Promotion Employees (Conditions of Service) Act, 1976 — Section 2(d), 6

Citation : (2016) 2 BBCJ 44 : (2016) 2 CLR 227 : (2016) 149 FLR 528 : (2016) LabLR 507 : (2016) 2 PLJR 284

Hon'ble Judges : Hemant Gupta;Navaniti Pd. Singh, JJ.

Bench : Division Bench

Advocate : Alok Kumar Sinha, Advocate, for the Respondent

Final Decision : Disposed off

Judgement

Hemant Gupta, J. - The present Letters Patent Appeal arises out of an order passed by the learned Single Bench of this Court on 19th of September, 2012 in C.W.J.C. No. 17351 of 2012, whereby the writ application filed by the appellant against an Award passed by the Presiding Officer, Labour Court on 24th April, 2012 remained unsuccessful.

2. The appellant was appointed as a Trainee Medical Representative. A Show Cause Notice cum Enquiry Notice (Charge Sheet) was issued to him on 13th of December, 2002. Later, he was dismissed on 30th of March, 2003. The appellant raised an industrial dispute which was referred for adjudication before the Labour Court, Muzaffarpur but on an objection by the management, the reference was found to be not maintainable in view of the judgment of this Court in Nalin Sinha v. The State of Bihar and others, 2012 (1) PLJR 214. The writ application against the said order remained unsuccessful.

3. Earlier the matter came up before the Letters Patent Bench on 9th of

November, 2012 when the appeal was dismissed. However, the said order in the Letters Patent Appeal was set aside by the Hon"ble Supreme Court and the matter remitted back to this Court. It is thereafter, the matter has been placed before us.

4. Learned counsel for the appellant relies upon the Division Bench judgment of Punjab-Haryana High Court reported as (1997) 1 LLJ 557 Ripu Daman Bhanot v. The Presiding Officer, Labour to contend that Section 6(2) of the Sales Promotion Employees (Conditions of Service) Act, 1976 (hereinafter referred to as "SPE Act") has not been omitted as Section 24 of the Industrial Disputes (Amendment) Act 1982 (Act No.42 of 1982) has not been enforced omitting the said sub-section, whereas some other provisions of the Amending Act has been notified on August 21, 1984. Thus, the Division Bench has held that the provisions of Industrial Disputes Act became applicable to the Medical Representatives depending upon their wages up to May 6, 1987 and without the limitation on their wages thereafter in view of the capacity in which they were employed or engaged. The Division Bench has considered the Supreme Court judgment in H.R. Adyanthaya etc. etc. v. Sandoz (India) Ltd. etc. etc., A.I.R. 1994 Supreme Court 2608.

5. On the other hand, learned counsel for the management refers to a Division Bench judgment of this Court in the case of Nalin Sinha's case (Supra), wherein it has been held that the Medical Representatives are not workmen governed by the provisions of the Industrial Disputes Act, 1947.

6. We have heard learned counsel for the parties and find that the question whether the appellant, a Medical Representative, is governed by the provisions of Industrial Disputes Act, 1947 in terms of Section 6(2) of the SPE Act or not depends upon the questions of fact i.e. as to whether such employee has been employed or engaged in a supervisory capacity drawing wages exceeding Rs. 1600/- per mensem or whether he is employed or engaged in a managerial or administrative capacity. Unless the exceptions as mentioned above are satisfied, the Sales Promotion Employee would be governed by the Industrial Disputes Act, 1947 in view of Section 6(2) of the SPE Act.

7. At this stage, it will be advantageous to reproduce certain relevant provisions of the SPE Act. Section 2(d) of the SPE Act, as amended vide Central Act No. 48 of 1986 with effect from 6th of May 1987, reads as under:-

"2(d) "sales promotion employees" means any person by whatever name called (including an apprentice) employed or engaged in any establishment for hire or reward to do any work relating to promotion of sales or business, or both, but does not include any such person-

(i). who, being employed or engaged in a supervisory capacity, draws wages exceeding sixteen hundred rupees per mensem; or

(ii). who is employed or engaged mainly in a managerial or administrative

capacity.

6(1) The provisions of the Workmen's Compensation Act, 1923 (8 of 1923), as in force for the time being, shall apply to, or in relation to, sales promotion employees as they apply to, or in relation to, workmen within the meaning of that Act.

(2) The provisions of the Industrial Disputes Act, 1947 (14 of 1947), as in force for the time being, shall apply to, or in relation to, sales promotion employees as they apply to, or in relation to, workmen within the meaning of that Act and for the purposes of any proceeding under that Act in relation to an industrial dispute, a sales promotion employee shall be deemed to include a sales promotion employee who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute or whose dismissal, discharge or retrenchment had led to that dispute."

8. The SPE Act was enacted to have a separate legislation for governing the conditions of service of Sales Promotion Employees. Once an employee is a Sale Promotion Employee within the meaning of Section 2(d) of the SPE Act, the machinery for redressal of the grievances is under the Industrial Disputes Act as provided in Section 6(2) of the SPE Act. Therefore, it is required to be examined whether the appellant is a Sale Promotion Employee falling within Section 2(d) of the SPE Act.

9. The Sales Promotion Employee as defined under the SPE Act as reproduced above includes any person by whatever name called (including an apprentice) employed or engaged in any establishment for hire or reward to do any work relating to promotion of sales or business, or both. The main provision is wide enough to include all categories of employees engaged for hire or reward to do any work relating to promotion of sale of business. The petitioner falls within such category. As admittedly he was appointed as a person to promote sale of the pharmaceutical products, as is evident from Charge Sheet dated 13th December, 2002, which is to the effect that the appellant has failed to achieve the targets of sale of group of medicines. The notice (Annexure-2 to the writ petition) itself recites the appellant as a Medical Representative. Therefore, he is a Sales Promotion Employee. But there is exclusion clause of Sales Promotion Employees and not all Sales Promotion Employees are the employees within the meaning of Section 2(d) of the SPE Act. The employees who are employed or engaged in supervisory capacity drawing wages exceeding Rs. 1,600/- per mensem is the first category which are not the Sales Promotion Employees. The second category is the employees who are employed or engaged mainly in a managerial or administrative capacity.

10. In the present case, there is no evidence of the wages being paid to the appellant or whether he was engaged in a supervisory capacity so as to be excluded from the category of Sales Promotion Employees. There is no evidence as to whether the appellant is engaged in managerial or administrative capacity

either. In the absence of such questions of fact having been determined by the Labour Court, the assertion of the management that the appellant as a Medical Representative is not governed by the Industrial Disputes Act, 1947 is not tenable. Once the appellant satisfies the condition of Sales Promotion Employees within the meaning of Section 2(d) of the SPE Act, certain Statutes become applicable to such an employee including the Industrial Disputes Act, 1947. The adjudication of disputes of sales promotion employee is in terms of the Industrial Disputes Act, 1947 alone. There is no machinery of dispute adjudication under the SPE Act. Such disputes are to be decided under the Industrial Disputes Act, 1947 itself. Therefore, in the absence of any finding of fact in respect of nature of employment of the appellant and the wages payable to him, it cannot be said that the appellant, a Medical Representative, is not entitled to take recourse to the remedy by invoking provisions of the Industrial Disputes Act, 1947 in view of Section 6(2) of the SPE Act.

11. The definition of workmen under Section 2(s) of the Industrial Disputes Act, 1947 is not relevant definition to determine the nature of the employment of the Sales Promotion Employee as SPE is a special Act which will govern the nature of employment and the consequences thereof.

12. Now, the judgment in H.R. Adyanthaya's (supra) deals with a number of cases of the Medical Representatives. Some have been allowed and some have been dismissed but the discussion of the Court is that the classification of those employed to do supervisory work is reasonable. The Court held to the following:-

"In the present case, the classification made between two categories of the sales promotion employees, viz., those drawing wages up to a particular limit and those drawing wages above it, is fairly intelligible. The object of the legislation further appears to be to give protection of the service conditions to the weaker section of the employees belonging to the said category. The legislature at that particular time thought that it was not either necessary to extend the said protection to all the employees belonging to the said category irrespective of their income or that at that stage the circumstances including the conditions and the nature of the employment and the sales business or operation did not warrant protection to the economically stronger section of the said employees, and that economically weaker among them alone needed the protection. Hence it cannot be said that the classification made of the said employees on the basis of their income had no relation nexus with the object sought to be achieved., viz., the protection of the weaker section of the said employees. The extension of the protective umbrella could not as a matter of right, therefore, be demanded by those who drew more wages. Even in the definition of the workman under the Industrial Disputes Act, 1947 as well as under the very SPE Act, the classification of those employed to do supervisory work has been made on the basis of their monthly income although the work done by the two sections of the workmen is the same, viz., supervisory and those drawing wages above the particular limit have been excluded from the said definition. According to us, it is permissible to

classify workmen on the basis of their income although the work that they do is of the same nature. The protective umbrella need not cover all the workmen doing the particular type of work. It can extend to them in stages. At what stage which of the said section of the employees should come under the said umbrella is a matter which should be left to the legislature which is the best judge of the matter. We, therefore, do not see any merit in the contention."

(Emphasis supplied)

13. It is after returning such finding, Civil Appeal No. 235 of 1983 and Civil Appeal No. 242 of 1990 were dismissed for the reason that employees have not stated that their wages were less than Rs. 750/- per mensem or Rs. 9000/- per annum in terms of the provisions of originally enacted section 2(d) of the SPE Act. It was only the transfer of employees, subject matter of Civil Appeal No. 818 of 1992, where the complaint under Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, was referred to Industrial Tribunal. The definition of the workman is same in the said Act as under the Industrial Disputes Act, 1947. It was held that definition of workman under the Industrial Disputes Act, 1947 will not obviously cover the Sales Promotion Employees within the meaning of SPE Act. The Court observed as under:-

"We are, therefore, of the view that the contention raised on behalf of the management in this appeal, viz., since the medical representatives are not workmen within the meaning of the Maharashtra Act the complaint made to the Industrial Court under that Act was not maintainable has to be accepted. Hence the complaint filed by the appellant-workmen under the Maharashtra Act in the present case was not maintainable and hence it was rightly dismissed by the Industrial Court."

14. Even after holding so, in exercise of the powers conferred under Article 142 of the Constitution, the Court directed to treat the employee's said complaint as an Industrial Disputes and referred the same for adjudication by the Industrial Tribunal under section 10(1)(d) of the Industrial Disputes Act, 1947.

15. A reading of the aforesaid judgment shows that the classification whereby certain categories of sales promotion employees were excluding from its definition has been upheld. It is only in respect of dispute under the Maharashtra Labour Act, the Medical Representatives were not found to be a workman. The present case is not similar as the issue raised and decided before the Supreme Court.

16. A perusal of the judgment of this court reported as Nalin Sinha's case (Supra) shows that the appeal was withdrawn when the issue was transfer of a Medical Representative. Though different opinions stands rendered by the Judges but the reading of the judgment does not show that the issue whether the Medical Representatives fall under the substantive definition of Section 2(d) of the SPE Act or any of the exceptions has not been examined. In view of the said fact, the said judgment does not provide any assistance to the argument raised

that the Medical Representatives are not competent to raise an industrial dispute as they are not the workmen within the meaning of section 2(d) of the Industrial Disputes Act. The issue has to be examined keeping in view the definition of Section 2(d) of the SPE Act. Once the Medical Representatives are covered by the SPE Act, the dispute resolution maximum is provided under the Industrial Disputes Act, 1947 would be applicable.

17. In view of the above, we set aside the order passed by the Labour Court and that by the learned Single Bench and remit the matter to the learned Labour Court to decide the question of fact as to whether the appellant falls within the purview of excepted category under Section 2(d) of the SPE Act i.e. as to whether he was engaged in a supervisory capacity drawing more than Rs.1600/- per mensem as the wages or engaged in a managerial or administrative capacity.

18. With the said direction and observation the present Letters Patent Appeal stands disposed of.

Navaniti Prasad Singh, J. :- I agree.