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**(2001) 04 BOM CK 0046**

**In the Bombay High Court**

**Case No : O.O.C.J. W.P. No. 1769 of 1998 with W.P. No. 183 of 1999**

Maria Thomas Gonsalves

APPELLANT

Vs

Concept Pharmaceuticals (P) Ltd. and Another

RESPONDENT

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**Date of Decision : 19-04-2001**

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Industrial Disputes Act, 1947 — Section 2, 25F

**Citation : (2001) 90 FLR 412 : (2002) 4 LLJ 906**

**Hon'ble Judges : R.J. Kochar, J**

**Bench : Single Bench**

**Final Decision : Dismissed**

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## **Judgement**

R.J. Kochar,

1. Both the petitioners in their Petitions respectively are aggrieved by the award passed by the Labour Court in Reference (IDA) No. 218 of 1997 referred by the State of Maharashtra for adjudication of the Industrial Dispute raised by the workman challenging the order of termination dated August 27, 1986 and demanding reinstatement with full back wages and continuity of service.

2. Both the parties filed their pleadings and adduced their respective documentary and oral evidence before the Labour Court. The Labour Court framed two issues on the basis of the pleading that (1) whether the second party is a workman as contemplated under Industrial Disputes Act? and (2) whether her services were illegally terminated? On the first issue the Labour Court recorded affirmative finding that the second party was a workman under the Industrial Disputes Act, 1947. The employer company has challenged this finding of the Labour Court in the above petition. On the second issue the Labour Court has held that the termination of the workman was not illegal on the basis of his finding the Labour Court has rejected the reference. The workman has challenged the second finding of the Labour Court rejecting her reference without granting any relief to her.

3. Both the learned advocates for their respective parties have taken me through the whole mesh of oral and documentary evidence as if I was hearing first appeal against the award of the Labour Court. The facts are very simple. The workman was taken with effect from November 6, 1984 as a Trainee for a consolidated stipend of Rs. 450/- per month. In the aforesaid letter dated November 6 1984 it was made clear that she was offered a position of Trainee for a consolidated stipend of Rs. 450/- per month and that she will not claim any lien for her appointment nor shall claim permanency to the post and that she will be governed by the rules and regulations of the Company. The workman accepted the said order. It further appears that there was a communication from the head of the Department Shri S.P. Tripathi on October 30, 1985 that her performance was not satisfactory and he suggested that on completion of training period on November 5, 1985 the Trainee should be discontinued. In that report he has pointed out that she was not doing proper work in the despatch section inspite of repeated reminders to her. He has also recorded that she was sending letters to wrong sections and wrong officers and wrong persons and that he had received complaints continuously from the depots, field force as wrong letters were sent to them. It was therefore, requested by the head of the despatch section that the workman should be removed from the organisation in order to avoid further problems.

4. It appears that Shri A.B. Gupta, the Managing Director took a humanitarian view and directed extension of her training period as the workman was likely to proceed for maternity leave and therefore she was continued on humanitarian consideration. It appears that she proceeded on maternity leave from November, 1985 to February 1986 and she joined somewhere in the month of March 1986. She was kept in Marketing Department. Earlier she was in the Despatch Section. She continued in the Marketing Department from March 1986 to August 1986. It appears that on August 25, 1986 she requested the Management that she should be regularised, confirmed and made permanent in the employment. It is pertinent to note that in this letter also the workman has shown her position as trainee and that her period of training was extended from time to time. It appears that there was some personal discussion between the workman and the Personnel Manager, which appears to have resulted in termination order dated August 27, 1986 to be terminated from August 30, 1986. The order of termination does not cast any stigma but it merely records that they had personal discussion regarding her performance. The workman was aggrieved, by the said order and challenged the propriety and legality of the said order of termination which was under consideration before the Labour Court.

5. The Labour Court has considered two principal aspects in the matter (1) whether the workman was a workman as defined u/s 2(s) of the Industrial Disputes Act, 1947 and (2) whether her termination was legal and proper. The Labour Court has considered the pleadings of the parties and the entire evidence. The Labour Court has discussed threadbare the entire evidence on record. He has found that the workman was satisfying all the criteria of being a workman

though a label of trainee was put on her. She was required to work in the Despatch Section as a Despatch Clerk and thereafter in the Marketing Department. According to the Labour Court, on the basis of the evidence, the workman could not be continued as a trainee for such a long period and he therefore held that the workman was a workman u/s 2(s) of the Act. She was doing clerical work in both the departments. I, therefore, do not find any infirmity in the findings of the Labour Court holding the workman as a workman within the meaning of Section 2(s) of the Industrial Disputes Act.

6. As far as the question of termination of the workman from employment is concerned the order of termination is innocuously worded. It is possible that the employer did not desire to cast any stigma in the order of termination. It is mentioned in the order of termination that there was some discussion regarding the performance of the workman. The very fact that the so-called training period was extended from time to time, it definitely indicated that her performance was not upto the mark. It is clear from the evidence on record that once she was tried in the despatch department from where there were number of complaints that she was marking letters to different depots and different persons. Such work in the despatch section dislocates the work and causes unbearable difficulties as letters which should go to the right department and right persons were sent to the wrong departments and wrong persons. Such blunders cause inconvenience and delay in the disposal of the matters. From the record and the report of Shri Tripathi it is clear that the work performance of the workman was dissatisfactory. It was only for the humanitarian approach adopted by the Managing Director that the workman was continued after November, 1985, otherwise she would have been terminated in October 1985 itself. The Management continued her period of training during the maternity period so that she did not suffer during this delicate period. When she reported back for work she was tried in the marketing department. It appears that there also her work was not satisfactory which has resulted in her termination from employment. The challenge to the termination is that no opportunity was given to her and that Section 25-F of the Industrial Disputes Act was not complied with. As far as the opportunity of hearing is concerned which is hardly to be stated that she was told from time to time to improve her work and she was pointed the mistakes which she had committed, I fail to understand what more opportunity was required. She was terminated from employment for her unsatisfactory work though not stated so in clear language in the order of termination in the interest of the workman to avoid any stigma in the order of termination. The termination order cannot be said to be an order of retrenchment warranting compliance of Section 25-F of the Act as the workman was not being retrenched as a surplus workman but she was being terminated on the ground of her unsatisfactory work. The employer company has adduced sufficient evidence before the Labour Court about her unsatisfactory work. It is not necessary that there should be evidence to the hilt to show that work performed by her was unsatisfactory. It is always the general and overall assessment of performance which is required to be considered in such cases. The

employer company has examined witnesses before the Labour Court to justify the action of termination of the workman on the point of unsatisfactory work. The Labour Court has considered the entire evidence and material on record and has recorded his findings that the termination order was not illegal and improper. I do not find any infirmity or illegality in the award of the Labour Court warranting interference under extraordinary jurisdiction under Article 226 of the Constitution of India. I also do not find any infirmity in the findings of the Labour Court that the workman was a workman as defined u/s 2(s) of the Industrial Disputes Act. I do not find any substance in both the petitions which stand dismissed. In the circumstances there will be no order as to costs.

7. Certified copy is expedited.