

(2009) 01 AHC CK 0023
In the Allahabad High Court

Merind Ltd. and Another

APPELLANT

Vs

Prescribed Authority (Under Payment of Wages Act) and
Assistant Labour Commissioner and Another

RESPONDENT

Date of Decision : 12-01-2009

Acts Referred:

Industrial Disputes Act, 1947 — Section 2
Minimum Wages Act, 1948 — Section 2
Payment of Wages Act, 1936 — Section 1, 15, 16, 17, 18

Citation : (2009) 122 FLR 272 : (2009) 4 LLJ 120

Hon'ble Judges : Sabhajeet Yadav, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sabhajeet Yadav, J.—Heard Sri Yashwant Verma, learned Counsel for the petitioners and Sri Arun Kumar Singh for respondent No. 2.

By this petition, the petitioners have sought relief of writ of certiorari for quashing the proceeding of P.W.A. Case No. 18/2005 Ajit Singh v. Merind Ltd. and Anr. pending before the Prescribed Authority (under Payment of Wages Act)/ Assistant Labour Commissioner, Bijnor, Uttar Pradesh. Another relief for writ of prohibition restraining the respondent No. 1 from entertaining or adjudicating upon the proceedings in P.W.A. Case No. 18/2005 has also been sought for. This petition was allowed in open Court on December 2, 2008 with indication that reasons will be given later on, therefore, the same are given hereinafter.

2. The brief facts leading to the case are that respondent No. 2 made an application on April 6, 2004 u/s 15 of Payment of Wages Act, 1936 hereinafter referred to as "the 1936 Act" before respondent No. 1/Prescribed Authority under 1936 Act, Bijnor and claimed wages amounting to Rs. 1,26,162.50/-. A further sum of Rs. 12,61,625/- was claimed as compensation in terms of Section 15(3) of the said Act. The petitioners filed their written statement on July 14, 2004. Apart from reply on merits the attention of respondent No. 1 was also drawn to

the jurisdictional issue raised by the petitioners with regard to the applicability of provisions of the 1936 Act and the authority of respondent No. 1 to adjudicate upon the claim laid down by respondent No. 2. In the said written statement the petitioners have inter alia stated that the respondent No. 2 was employed as a sales representative by the petitioners and was engaged in the work of carrying samples of medicines and other products manufactured by the petitioners to doctors etc. and was enjoined to educate and apprise them of the attributes, functions and advantages of the products of the petitioners. A copy of appointment letter issued to the respondent No. 2 dated March 15, 1997 is on record as Annexure-1 of the writ petition. It is stated that the respondent No. 2 was transferred from Bijnor to Dimapur (Assam) in the year 2003 where he was to join duties by August 18, 2003. But the respondent No. 2 had failed to join duties at Dimapur and remained absent without leave unauthorizedly thereafter and since the respondent No. 2 failed to join the place of posting, no salary was paid to him on the principle of no work no pay.

3. Feeling aggrieved against the aforesaid action the respondent No. 2 made aforesaid application dated April 6, 2004 purporting to be u/s 15 of the 1936 Act and claimed the wages referred above. It is also stated that the respondent No. 2 being a sales promotion employee is neither a workman nor he was employed in any industrial or other establishment as defined u/s 2(ii) of the said Act. The term and conditions of services of respondent No. 2 are governed exclusively by Sales Promotion Employees (Condition) of Services Act 1976 (hereinafter referred to as "1976 Act") and the provisions of the 1936 Act stand expressly and impliedly excluded. It is also stated that the application upon which the respondent No. 1 has taken cognizance is patently without jurisdiction as admittedly the respondent No. 2 in his application has claimed to have been employed on monthly salary of Rs. 13,825/-, thus the respondent No. 2 stood excluded from the operation of provisions of the 1936 Act by virtue of provisions of Section 1(6) of the 1936 Act which places a maximum ceiling limit on the salary of employee at Rs. 1600/- per month for applicability of the said 1936 Act but despite request of the petitioners the respondent No. 1 has not decided the question of jurisdiction first, instead thereof has proceeded to fix the case for evidence by fixing date November 2, 2004 for final hearing.

4. It is stated that aggrieved by the aforesaid action and apprehending that the respondent No. 1 would not decide the issue of jurisdiction, the petitioners preferred Writ Petition No. 44452/2004 in which an order dated October 27, 2004 was passed by this Court directing the respondent No. 1 to first decide the issue of jurisdiction. Aforesaid order dated October 27, 2004 passed by this Court was placed before respondent No. 1 but instead of abiding by the direction of this Court, the respondent No. 1 had fixed November 2, 2004 for evidence by imposing cost of Rs. 2000 upon the petitioners. Aggrieved by the aforesaid action, the petitioners filed Writ Petition No. 48217/2004 wherein this Court vide order dated November 10, 2004 directed the respondent No. 1 to first consider the application of petitioners about the question of jurisdiction thereafter proceed

further in the matter. Thereafter vide order dated December 21, 2004 the objections raised by the petitioners were rejected by the respondent No. 1 and he proceeded to hear the matter on merit.

5. The aforesaid order was challenged by the petitioners by means of writ petition No. 10794/2005 wherein this Court on March 10, 2005 was pleased to direct that the proceedings before the respondent No. 1 may go on and final order may also be passed but no recovery in pursuance of final order would be made without leave of the Court. Subsequent to the aforesaid order being passed, the respondent No. 1 by an order dated March 24, 2005 was pleased to allow the claim of respondent No. 2 directing payment of Rs. 1,26,162.50/- as wages together with compensation amounting to eight times the above and holding the petitioners liable to pay a sum of Rs. 11,35,462.50/-. A copy of the order dated March 24, 2005 passed by respondent No. 1 is on record as Annexure-9 to this petition. Thereafter the petitioners moved a review application which came to be dismissed on June 24, 2005. The aforesaid two orders have been challenged by the petitioners in writ petition No. 10794/2005 by means of amendment application.

6. In the meantime the respondent No. 2 has yet again laid a claim before respondent No. 1 u/s 15(2) and (3) of the 1936 Act seeking wage for the period April 1, 2004 to February 28, 2005 amounting to Rs. 1,65,900/-together with compensation amounting to Rs. 18,24,900/-. The aforesaid application was registered before the respondent No. 1 as P.W.A. case No. 18/2005 and notices on the same have been issued by respondent No. 1 on July 15, 2005 fixing July 28, 2005 as date for hearing. A copy of notice dated July 15, 2005 is on record as Annexure-11 to this petition.

7. The aforesaid proceedings are challenged by means of instant writ petition inter alia on the ground that respondent No. 2 was employed on wages amounting to Rs. 13,825/- per month, therefore, the claim of respondent No. 2 is clearly excluded by virtue of provisions of Section 1(6) of the 1936 Act. Section 1(6) of the said Act places ceiling limit on wage of employees drawing Rs. 1600/- per month and excluded from the operation of Act all those employees who may be earning wages more than Rs. 1600/- per month. It is also submitted that respondent No. 2 was not employed in any industrial or other establishment as defined u/s 2(ii) of the 1936 Act, therefore, the claim laid down by him seeking adjudication u/s 15 of the 1936 Act is without authority of law. Admittedly the respondent No. 2 was a sales promotion employee whose terms and conditions of the service were governed by the provisions of the 1976 Act, which impliedly excluded the operation of the 1936 Act, hence respondent No. 1 on the admitted facts has committed manifest illegality in assuming the jurisdiction and issuing the notice to the petitioners in the claim set up by respondent No. 2. In support of his submissions learned Counsel for the petitioners has placed reliance upon a decision of Hon"ble Apex Court rendered in Life Insurance Corporation of India v. Anwar Khan (since deceased) through

8. It is submitted that the respondent No. 1 is not appropriate authority as contemplated under 1936 Act and to the best of the information of petitioners there is no notification issued by the State Government empowering the Assistant Labour Commissioner, Bijnor to act as Prescribed authority for the purpose of hearing and deciding the claim laid u/s 15 of the 1936 Act. It is further submitted that the claim of respondent No. 2 is even otherwise not maintainable inasmuch as he has not complied with the order of transfer and had not joined his place of posting. He was thus not entitled to wages on principle of no work no pay. The respondent No. 2 had also not taken any step under law to challenge the order of transfer nor was the operation of same stayed and suspended by any Court or Tribunal or authority, therefore, on this count also the claim of respondent No. 2 for wages is wholly without jurisdiction and not maintainable.

9. A detail counter affidavit has been filed in the writ petition on behalf of respondent No. 2 whereby learned Counsel for the respondent No. 2 has made serious attempt to justify the proceedings undertaken u/s 15 of the 1936 Act by the respondent No. 2 before the Prescribed Authority/respondent No. 1. In paras 4 and 5 of the counter affidavit it is stated that by notification dated March 31, 1978 issued u/s 22F of the Minimum Wages Act, 1948 (hereinafter referred to as "1948 Act") the provisions of Sections 15 - 25 of the 1936 Act were made applicable to the employees of scheduled employment and respondent No. 2 is engaged in scheduled employment under the provisions of 1948 Act, therefore, the provisions of Section 1(6) of the 1936 Act would not apply in the case of respondent No. 2 so as to create any bar in respect of the applicability of the provisions of Section 15 of the 1936 Act. In para 18 of the counter affidavit although it was admitted that the respondent No. 2 was employee on wage of Rs. 13,825/- per month but it was stated that since the respondent No. 2 has made application u/s 15(2) and Section 15(3) of the 1936 Act, therefore, the bar created by Section 1(6) of the 1936 Act will not apply in the case of respondent No. 2. In paras 19 and 20 of the counter affidavit it is further stated that since the respondent No. 2 has been engaged in Pharmaceutical industry and/or notified industry u/s 3 of 1976 Act, therefore, he is workman u/s 6(2) of 1976 Act and the provisions of Sections 15 - 25 of the 1936 Act are fully applicable in case of respondent No. 2, thus the proceedings u/s 15(2) and Section 15(3) of the Act 1936, initiated by the respondent No. 2 before respondent No. 1 is well within the ambit of authority under law and cannot be called in question before this Court in instant writ petition.

10. Having considered the rival submissions of learned Counsel for the parties, the questions which arise for consideration of this Court are as to whether in the wake of provisions of Section 1(6) of 1936 Act, the provisions of the said Act shall apply to employees of scheduled employment by virtue of notification issued u/s 22F of the 1948 Act, who are drawing wage over and above Rs.

1600/- per month? and if not, as to whether the application moved by the respondent No. 2 under the provisions of Section 15(2) and 15(3) of the 1936 Act is maintainable or not?

11. To appreciate the rival contention of the parties and questions in controversy it would be essential to have a survey of relevant provisions of certain Acts having material bearing on the issue hereinafter.

12. Section 1 of the 1936 Act deals with the short title, commencement and extent of applicability of the Act as under:

1. Short title, extent, commencement and application.-(1) This act may be called the Payment of Wages Act, 1936.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

(4) It applies in the first instance to the payment of wages to persons employed in any (factory, to persons) employed (otherwise than in a factory) upon any railway by a railway administration or, either directly or through a sub-contractor, by a person fulfilling a contract with a railway administration (and to persons employed in an industrial or other establishment specified in sub-clauses (a) to (g) of Clause (ii) of Section 2).

(5) The State Government may, after giving three months' notice of its intention of so doing, by notification in the Official Gazette, extend the provisions of this Act or any of them to the payment of wages to any class of persons employed in any establishment or class of establishments specified by the Central Government or a State Government under sub-clause (h) of Clause (ii) of Section 2:

Provided that in relation to any such establishment owned by the Central Government, no such notification shall be issued except with the concurrence of that Government.

(6) Nothing in the Act shall apply to wages payable in respect of a wage-period which, over such wage-period, average one thousand six hundred rupees a month or more.

13. Section 2 of the 1936 Act defines various expressions used or employed under the Act as under:

Section 2 Definitions- In this Act, unless there is anything repugnant in the subject or context, -

(ii) "industrial or other establishment" means any-

(a) tramway service, or motor transport service engaged in carrying passengers or goods or both by road for hire or reward;

(aa) air transport service other than such service belonging to or exclusively employed in the military, naval or air forces of the Union or the Civil Aviation Department of the Government of India;)

(b) dock, wharf or jetty;

(c) inland vessel, mechanically propelled;)

(d) mine, quarry or oil-field;

(e) plantation;

Notes.- When there is a manager who is entrusted with the affairs of the company, the directors of the Company cannot be said to be employers.

(f) workshop or other establishment in which articles are produced, adapted or manufactured, with a view to their use, transport or sale;

((g) establishment in which any work relating to the construction, development or maintenance of buildings, roads, bridges or canals, or relating to operations connected with navigation, irrigation or to the supply of water, or relating to the generation, transmission and distribution of electricity or any other form of power is being carried on;)

((h) any other establishment or class of establishment which the Central Government or a State Government may, having regard to the nature thereof, the need for protection of persons employed therein and other relevant circumstances, specify, by notification in the Official Gazette.)

14. From perusal of provisions of Section 1 of the 1936 Act it appears that by virtue of Sub-section (4) of the said Section the provisions of the 1936 Act applies in the first instance to the payment of wages to persons employed, in any factory, to persons employed otherwise than a factory, upon any railway by a Railway Administration either directly or through a sub-contractor and to persons employed in an industrial or other establishment specified in sub-clause (a) to (g) to Clause (ii) of Section 2 of the said Act. Besides this, Clause (5) of Section 1 of the 1936 Act further authorises the State Government to extend the provisions of said Act or any of them to the payment of wages to any class of persons employed in any establishment or class of establishment specified by Central Government or State Government under sub-clause (h) of Clause (ii) of Section 2 of the 1936 Act. However, Sub-section (6) of Section 1 prescribes wage limit for applicability of the provisions of the 1936 Act to the employees drawing wages to the extent of Rs. 1600/- per month and class of employees referred hereinbefore drawing wages exceeding sixteen hundred rupees per month are excluded from the operation of the provisions of the 1936 Act.

15. Now an incidental question arises for consideration that what would be legal impact and implication of provisions of Section 22F of 1948 Act over the provisions of the 1936 Act? This question can be simplified in a manner as to whether by a notification u/s 22F of the 1948 Act, the provisions of the 1936 Act,

can be made applicable to the employees of scheduled employment, who are drawing the wages over and above Rs. 1600/- per month despite exclusion of such employees from operation of provisions of the 1936 Act by virtue of the provisions of Section 1(6) of the 1936 Act? In this connection, it is necessary to point out that the provisions of Section 22F of the 1948 Act empower the appropriate Government to apply all or any of the provisions of the 1936 Act, by notification in Official Gazette to the wages payable to employees of scheduled employments under the 1948 Act despite anything contained in the 1936 Act.

16. For ready reference the provisions of Section 22F of the Minimum Wages Act, 1948 are extracted as under:

(F) Application of Payment of Wages Act, 1936, to scheduled employments.-(1) Notwithstanding anything contained in the Payment of Wages Act, 1936 (4 of 1936), the appropriate Government may, by notification in the Official Gazette, direct that, subject to the provisions of Sub-section (2), all or any of the provisions of the said Act shall, with such modifications, if any, as may be specified in the notification, apply to wages payable to employees in such scheduled employments as may be specified in the notification.

17. From a plain reading of the provisions of Section 22F of the 1948 Act, it is clear that notwithstanding anything contained in the 1936 Act, the appropriate Government may by notification in the official Gazette direct that all or any of the provisions of said Act shall apply to the wages payable to employees of scheduled employment. A Scheduled employment is defined u/s 2(g) of the 1948 Act to mean, an employment specified in schedule or any process or branch of work forming part of such employment.

18. The opening word of Section 22F of 1948 Act, starts with non-obstante clause. A non-obstante clause is usually used in a provision to indicate that provision should prevail despite anything to the contrary in" provision mentioned in such non-obstante clause. It implies that in case there is any inconsistency or a departure between non-obstante clause and another provision, one of the object of such a clause is to indicate that it is non-obstante clause which would prevail over the other clause. It does not, however, necessarily mean that there must be repugnancy or inconsistency between the two provisions in all such cases. Normally non-obstante clause operates to remove obstacles contained in relevant existing laws which come in the way of giving effect to the provisions contained in the enactment to which non-obstante clause is attached but non-obstante clause cannot be construed to widen the scope and effect of enactment to which the non-obstante clause is attached nor can non-obstante clause be interpreted to water down the natural scope and effect of the enactment to which it is attached. Non-obstante clause is usually employed to give overriding effect to certain provisions over some contrary provisions that may be found either in the same enactment or some other enactment that is to say to avoid the operation and effect to all contrary provisions as held by Hon"ble Apex Court in Union of India (UOI) and Another Vs. G.M. Kokil and Others,

19. In view of aforesaid legal position it is clear that despite anything contained in the provisions of the 1936 Act all or any of the provisions of said Act shall apply to the wages payable to the employees of scheduled employments under the 1948 Act, as may be specified in the notification issued by appropriate Government. It implies that despite the provisions of the 1936 Act may not cover the employees of scheduled employment under 1948 Act on its own strength and by authority of their extension to employee of any other establishment u/s 1(5) of the 1936 Act nevertheless, appropriate Government may extend all or any of the provisions of the 1936 Act to wages payable to employees of scheduled employments under the 1948 Act. As indicated earlier that the provisions of the 1936 Act are applicable to only those employees who are covered by that Act and employees of any establishment or class of establishments to whom the provisions of the 1936 Act are extended by notification issued by State Government u/s 1(5) of the 1936 Act alone and not employees of other establishments. However, by virtue of provisions of Section 22F of 1948 Act, it could be extended to the employees of scheduled employment under 1948 Act also. But in my considered opinion, it does not mean that by virtue of a notification issued under the provisions of Section 22F of the 1948 Act, the class of employees who are expressly excluded from the operation of the provisions of the 1936 Act, may also be included by such notification under the provisions of 1948 Act, which is sub-ordinate legislation.

20. It is for the simple reason that sub-ordinate legislation/delegated legislation cannot transgress the limit of such legislation to which it is sub-ordinate. In this view of the matter even assuming as contended by learned Counsel for the respondent No. 2 that the provisions of Sections 15 - 25 of the 1936 Act are extended to employees of scheduled employment under 1948 Act by virtue of notification issued by appropriate Government u/s 22F of the said Act, even then since the employees drawing wages over and above Rs. 1600/- per month are expressly excluded from the operation of provisions of the 1936 Act, therefore, the employees of scheduled employment under the 1948 Act drawing the salary over and above Rs. 1600/-per month cannot be held to be included by such notification. However, employees of scheduled employment under the 1948 Act, who are drawing salary below the ceiling limit of Rs. 1600/- per month may be entitled to get the benefit of provisions of Sections 15 - 25 of the 1936 Act, if the notification so specifies.

21. There is yet another reason to support the view taken hereinbefore. The provisions of the 1936 Act are intended to regulate the payment of wages payable to the employees covered by the said Act. It is intended to ensure the disbursement of wages to such employees within the prescribed time limit and that no deduction other than those authorised by law are made by the employers. While extending the benefits of the provisions of the said Act, a ceiling limit on the wages of such employees is fixed by the legislature whereby the employees drawing the wage to the extent of Rs. 1600/- per month are covered by the said Act, and those, who are drawing the wages over and above

Rs. 1600/- per month are expressly excluded from the operations of the provisions of the said Act by the competent legislature by virtue of Section 1(6) of the said Act, therefore, in my considered opinion, if the competent legislature itself has expressly excluded the employees drawing the wages over and above Rs. 1600/-per month from the operation of the provisions of the 1936 Act, it is very difficult to assume that employees of scheduled employment under the 1948 Act who are drawing wages over and above Rs. 1600/- per month can be included to get the benefit of the provisions of the 1936 Act, by a notification issued u/s 22F of the 1948 Act by appropriate Government, which is subordinate legislation.

22. The aforesaid-view further fortified by a decision rendered by Hon''ble Apex Court in Dr D.C. Wadhwa and Others Vs. State of Bihar and Others, wherein it was held that a Constitutional authority cannot do indirectly what it is not permitted to do directly. If there is constitutional provision inhibiting the constitutional authority from doing an act, such provision cannot be allowed to be defeated by adoption of any subterfuge. The legislature cannot violate the constitutional prohibitions by employing an indirect method. That would be clearly a fraud on the constitutional provision.

23. In view of the aforesaid discussion, there can be no scope for doubt to hold that since the provisions of Section 1(6) of the 1936 Act provides for ceiling limit as to wages of employees so as to exclude from the purview of the said Act, therefore, persons whose wages exceed such ceiling limit, any provisions of the 1936 Act shall not apply to them. Thus, the sales promotion employees, who are alleged to be the employees of scheduled employment under the 1948 Act drawing wages over and above Rs. 1600/- per month stand excluded by virtue of provisions of Section 1(6) of 1936 Act from the purview of the said Act and the provisions of the said Act cannot be held applicable to them. Any other view contrary to it, would defeat the aims and objects of the 1936 Act, as it would be doing a thing indirectly, what cannot be done directly.

24. Now the issue has to be examined in the light of provisions of the 1976 Act. Section 2 of the said Act defines various words and expressions used under the Act as under:

2. Definitions.- In this Act, unless the context otherwise requires-

(a) "establishment" means an establishment engaged in pharmaceutical industry or in any notified industry;

(b) "notified industry" means an industry declared as such u/s 3;

((d) "sales promotion employee" 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 included any such persons-

(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.

Explanation: For the purpose of this clause the wages per mensem of a person shall be deemed to be the amount equal to thirty times his total wages (whether or not including, or comprising only of, commission) in respect of the continuous period of his service falling within the period of twelve months immediately preceding the date with reference to which the calculation is to be made, divided by the number of days comprising that period of service;)

(e) all words and expressions used but not defined in this Act and defined in the Industrial Disputes Act, 1947, shall have the meaning respectively assigned to them in that Act.

25. Section 6 of the 1976 Act has adopted various enactments by reference and applied to the sales promotion employees of pharmaceutical and notified industry as under:

6. Application of certain Acts to sales promotion Employees: (1) The provisions of the Workmen's Compensation Act, 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).....

(3) The provisions of the Minimum Wages Act, 1948, 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, employees within the meaning of that Act.

(4) The provisions of the Maternity Benefit Act, 1961, as in force for the time being, shall apply to, or in relation to, sales promotion employees, being women, as they apply to, or in relation to, women employed, whether directly or through any agency, for wages in any establishment within the meaning of that Act.

(5) The provisions of the Payment of Bonus Act, 1965, 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, employees within the meaning of that Act.

(6) The provisions of Payment of Gratuity Act, 1972, 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, employees within the meaning of that Act.

(7) Notwithstanding anything contained in the foregoing sub-sections.

(a) in the application of any Act referred to in any of the said sub-sections to sales promotion employees, the wages of a sales promotion employee for the purposes of such Act, shall be deemed to be his wages as computed in accordance with the provisions of this Act;

(b) where an Act referred to in any of the said sub-section provides for a ceiling limit as to wages so as to exclude from the purview of the application of such Act persons whose wages exceed such ceiling limit, such Act shall not apply to any sales promotion employee whose wages as computed in accordance with the provisions of this Act exceed such ceiling limit.

26. From a plain reading of the aforesaid provisions of the 1976 Act it is clear that Section 2 of the 1976 Act defines "establishment" which means an establishment engaged in "pharmaceutical industry" or "in any notified industry". "Notified industry" defines to mean an industry declared as such u/s 3 of the said Act. Section 2 (d) of 1976 Act defines "sales promotion employee" means any person by whatever name called, 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 1600 rupees per mensem; or (ii) who is employed or engaged mainly in a managerial or administrative capacity.

27. Section 6 of the 1976 Act has adopted and applied various labour laws to the sales promotion employees by reference as they apply to or in relation to employees within the meaning of said Acts. Thus, the provisions of Workmen Compensation Act, 1923, Minimum Wages Act, 1948, Maternity Benefit Act, 1961, Payment of Bonus Act, 1965 and Payment of Gratuity Act, 1972 were made applicable to the sales promotion employees engaged in pharmaceutical industry or in any notified industries. However, Section 6 (7) of the 1976 Act provides that notwithstanding any thing contained in the foregoing sub-sections where an Act referred to in any of the such sub-sections provides for a ceiling limit as to the wages so as to exclude from the purview of application of said Act, persons whose wages exceed such ceiling limit, such Act shall not apply to any sales promotion employees whose wages as computed in accordance with the provisions of this Act exceed such ceiling limit.

28. It is necessary to point out that medical representative whose main and substantial work is to do canvassing for promoting sales is not "workman" within the meaning or Section 2(s) of Industrial Disputes Act, 1947 but that class of" persons has been extended the benefit of Industrial Disputes Act by adopting the provisions of the said Act by reference u/s 6(2) of the 1976 Act. Industrial Disputes Act, 1947 has been amended by Amendment Act (46 of 1982). By virtue of Section 24 of Amendment Act, Section 6(2) of 1976 Act has been omitted but Central Government has not given effect to said clause as per notification No. S.O.606 (E) dated August 21, 1984. As logical consequence, it will have to be held that Section 6(2) of 1976 Act has not been omitted and it continues to be in force as held in Ripu Daman Bhanot Vs. The Presiding Officer, Labour Court and Others, It means that in spite of omission of Section 6(2) of 1976 Act, the provisions of Industrial Disputes Act continues to apply to the sales promotion employees.

29. But Section 6(7)(b) of the 1976 Act excludes application of aforesaid labour

laws in relation to the sales promotion employees whose wages exceed ceiling limit prescribed by such labour laws. It implies that if particular enactment prescribed any ceiling limit of wages payable to the employees for exclusion of applicability of the provisions of such labour laws, the class of sales promotion employees drawing such wages shall be excluded from applicability of such labour laws, and only those sales promotion employees, who are drawing wages below the ceiling limit prescribed by such labour laws would be entitled to get the benefits of such labour laws. Therefore, it is essential to examine as to whether Industrial Disputes Act, 1947 has prescribed any ceiling limit on the wages to the employees for exclusion of such employees from operation of the provisions of the said Act.

30. In order to examine the aforesaid issue it is necessary to extract the provisions of Section 2(s) of the Industrial Disputes Act, 1947 which defines the expression "workman" as under:

2(s) "workman" means any person (including and apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes or any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957) or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office of by reason of the powers vested in him, functions mainly of a managerial nature.

31. From perusal of Section 2(s) of Industrial Disputes Act it is clear that a person who is employed in any industry to do any manual unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward whether the term of employment be expressed or implied, would be treated as workman, but a person, who is employed in supervisory capacity draws wages exceeding 1600/- rupees per mensem or exercises either by nature of his duties attached to the office or by reason of powers vested in him functions mainly of a managerial nature would not be treated to be workman. Aforesaid provision of the Industrial Disputes Act, prescribed conditions for exclusion of a person from the definition of workman, one of which is that the person must be employed in

supervisory capacity and drawing wages exceeding 1600/-rupees per month and another condition is that person must be exercising power of managerial in nature, but it cannot be held that a person merely drawing wages exceeding Rs. 1600/-per month alone, would be excluded from the definition of workman. It implies that for such exclusion he must be working in supervisory capacity besides drawing salary exceeding Rs. 1600/- per month, therefore, a person, who is drawing salary exceeding Rs. 1600/- per month is treated to be workman within the meaning of" the Industrial Disputes Act, if he is not working in supervisory capacity but since a person drawing wages exceeding Rs. 1600/- per month is excluded from operation of the provisions of the 1936 Act by virtue of provisions of Section 1(6) of the said Act, therefore, such person cannot be held to get the benefit of provisions of the 1936 Act irrespective of his job and as to whether he is workman or not because of the reason that the provisions of Section 1(6) of the said Act expressly excludes the operation of the 1936 Act in relation to persons who is drawing wages over and above Rs. 1600/- per month. Thus, there can be no scope for doubt to hold that sales promotion employees who are drawing wages over and above Rs. 1600 per month are not entitled to invoke the provisions of the 1936 Act irrespective of fact that they are workman or not under Industrial Disputes Act, as they are expressly excluded from the purview of the 1936 Act. However, such sales promotion employees, who are drawing wages within the ceiling limit would get benefits of the provisions of the 1936 Act by virtue of the provisions of Section 6(2) and Section 6(7)(b) of the 1976 Act.

32. The view taken hereinbefore also finds support from a decision of Supreme Court rendered in Life Insurance Corporation of India v. Anwar Khan (supra), wherein while dealing with the applicability of provisions of Section 1(6) of the 1936 Act the Hon"ble Apex Court has held that if the Act is inapplicable to a person as per provisions of the 1936 Act, mere applicability of a State labour legislation to such person would not bring the person within the purview of the 1936 Act.

33. The pertinent observations made by Hon"ble Apex Court in paras 8, 12 and 13 of the aforesaid decision are extracted as under 2007 II LLJ1027 at p. 1029:

8. Section 15(3) of the Act with the proviso reads as follows:

(3) When any application under Sub-section (2) is entertained, the authority shall hear the applicant and the employer or other persons responsible for the payment of wages u/s 3, or give them an opportunity of being heard, and, after such further inquiry (if any) as may be necessary, may, without prejudice to any other penalty to which such employer or other person is liable under this Act, direct the refund to the wages, together with the payment of such compensation as the authority may think fit, not exceeding ten times the amount deducted in the former case and not exceeding twenty-five rupees in the latter, and even if the amount deducted or the delayed wages are paid before the disposal of the application, direct the payment of such compensation, as the authority may think

fit, not exceeding twenty-five rupees.

(a) a bona fide error or bona fide dispute as to the amount payable to the employed person, or

(b) the occurrence of an emergency, or the existence of exceptional circumstances such that the person responsible for the payment of the wages was unable, though exercising reasonable diligence, to make prompt payment, or

(c) the failure of the employed person to apply for or accept payment.

11. ...Once Section 1(6) of the Act applies, the nature of the job is irrelevant. Whether the Field Officers are workmen or not is really of not relevance in view of Section 1(6) of the Act. Section 15 of the Act is relatable only to claim under the Act. The entitlement for compensation is only under the Act and there is no scope for compensation under the Adhiniyam. The compensation has to be worked out in terms of Section 15 of the Act. There cannot be a claim both u/s 15 of the Act and Section 18 of the Adhiniyam.

12. Learned Counsel for the respondent submitted that proviso to Section 15(3) cannot be pressed into service because the dispute is relatable to amount payable. In this case LIC disputes the entitlement. We find the plea to be without any substance. The question of payability of an amount arises only when somebody is entitled to an amount. The proviso makes it clear that when there is bona fide dispute about the amount payable, compensation cannot be awarded.

34. From perusal of the aforesaid decision it is clear that the Hon''ble Apex Court has held that once Section 1(6) of the 1936 Act applies to a person, the nature of his job is irrelevant. Whether the field officers are workman or not is really of no relevance in view of Section 1(6) of the 1936 Act. Section 15 of the Act is relatable only to claim under the Act. The entitlement for compensation is only under the Act and there is no scope for compensation if the Act does not apply, as the compensation has to be worked out in terms of Section 15(3) of the 1936 Act.

35. In view of the aforesaid categorical statement of law enunciated by Hon''ble Apex Court, there can be no scope for doubt to hold that the respondent No. 2 who was admittedly drawing Salary Rs. 13,825/- per month is excluded from the operation of provisions of the 1936 Act by virtue of the provisions of Section 1(6) of the said Act, irrespective of fact whether he is workman or not by virtue of Section 6(2) of the 1976 Act, which continues to apply to him and irrespective of fact as to whether he is excluded from Industrial Disputes Act by Section 6(7)(b) of 1976 Act or not, therefore, he is not entitled to invoke the provisions of Section 15(2) and 15(3) of the 1936 Act. As such the claims set up by him u/s 15(2) and 15(3) of the 1936 Act in my considered opinion is not maintainable before the prescribed authority under the Act 1936. Therefore, the Assistant Labour Commissioner, Bijnor has no jurisdiction to entertain and proceed with P.W.A. Case No. 18/2005 Ajit Singh v. Merind Limited and Anr. pending before

him. The entire proceeding is without jurisdiction and is liable to be quashed. Accordingly, the same is hereby quashed. In the result, the writ petition succeeds and is allowed.

36. There shall be no order as to costs.