
(2015) 08 PAT CK 0101

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 20995 of 2014

Ramashish Kumar

APPELLANT

Vs

Chairman, Lupin Ltd. and Others

RESPONDENT

Date of Decision : 26-08-2015

Acts Referred:

Constitution of India, 1950 — Article 142, 226
Industrial Disputes Act, 1947 — Section 10

Citation : (2015) 147 FLR 301 : (2015) 4 LLN 779 : (2016) LLR 185

Hon'ble Judges : Rakesh Kumar, J.

Bench : Single Bench

Advocate : Sudhir Kumar, for the Appellant; Alok Kumar Sinha, for the Respondent

Final Decision : Dismissed

Judgement

Rakesh Kumar, J.—Heard Sri Sudhir Kumar, learned Counsel for the petitioner, learned AC to AAG-8 and Sri Alok Kumar Sinha, learned Counsel, who has appeared on behalf of respondent Nos. 4 to 7. The petitioner, invoking writ jurisdiction of this Court under Article 226 of the Constitution of India, has prayed for quashing of an order/Award dated 12.2.2014 passed by the Presiding Officer, Labour Court, Purnea in Reference Case No. 02/2013 (Annexure-7 to the writ petition). By the said order, Reference case was rejected on the preliminary objection raised by the Management that the petitioner being a Medical Representative was not a workman within the meaning of section 2(S) of the Industrial Disputes Act. It has further been prayed that after setting aside the impugned order/award, the matter may be remitted back for deciding reference case on its merit.

2. Short fact of the case is that a reference was made under Clause (c) of sub-section 2(A) of section 10 of the Industrial Disputes Act, 1947 by way of issuance of Notification dated 19.7.2013 by the Government of Bihar to decide "Whether termination of Sri Ramashish Kumar by Management, Lupin Limited during the

conciliation proceeding was justified? If not, what relief Sri Kumar was entitled to?"

3. After reference was received in the Labour Court, it was numbered as Reference Case No. 02/2013. Before the Labour Court, a preliminary objection was raised on behalf of the Management on the point of maintainability of the reference on the plea that a Division Bench of this Court in L.P.A. No. 1430/2009 has made it clear that Medical Representatives are not workman under the Industrial Disputes Act. After objection being raised, the matter was heard by the Presiding Officer and by the impugned order i.e. order dated 12.2.2014 accepting the objection, it has been held that reference case was not maintainable and award was passed against the petitioner.

4. Aggrieved with the impugned order, the petitioner approached this Court by filing the present writ petition. Sri Sudhir Kumar, learned Counsel for the petitioner emphatically argued that in view of section 6 of the Sales Promotion Employees (Condition of Service) Act, 1976 (hereinafter referred to as the "SPE Act", in a case of such employees, provisions of Industrial Disputes Act is applicable. He submits that the learned Presiding Officer without appreciating the aforesaid provisions has rejected the award. He has also placed heavy reliance on a Constitution Bench Judgment of the Hon'ble Supreme Court in H.R. Adyanthaya and others v. Sandoz (India) Ltd. and others 1994 (69) FLR 593 (SC). He has placed heavy reliance on paragraph Nos. 27, 28 and 29 of the said judgment, which are quoted herein below:

"27. It will be noticed that under the SPE Act, the sales promotion employee was firstly, one who was engaged to do any work relating to promotion of sales or business or both, and secondly, only such of them who drew wages not exceeding Rs. 750 per mensem (excluding commission) or those who had drawn wages (including commission) or commission not exceeding Rs. 9000 per annum whether they were doing supervisory work or not were included in the said definition. The only nature/type of work which was excluded from the said definition was that which was mainly in managerial or administrative capacity.

28. The SPE Act was amended by the Amending Act 48 of 1986 which came into force w.e.f. 6.5.1987. By the said amendment, among others, the definition of sales promotion employee was expanded so as to include all sales promotion employees without a ceiling on their wages except those employed or engaged in a supervisory capacity drawing wages exceeding Rs. 1600 per mensem and those employed or engaged mainly in managerial or administrative capacity.

29. Section 6 of that Act made the Workmen's Compensation Act, 1923, Industrial Disputes Act, 1947 (the I.D. Act), Minimum Wages Act, 1948, Maternity Benefit Act, 1961, Payment of Bonus Act, 1965 and Payment of Gratuity Act, 1972, applicable forthwith to the medical representatives. Sub-section (2) of the said section while making the provisions of the I.D. Act, as in force for the time being, applicable to the medical representatives stated as

follows:

"(2) The provision 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 the 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."

In other words, on and from 6.3.1976 the provisions of the I.D. Act became applicable to the medical representatives depending upon their wages up to 6.5.1987 and without the limitation on their wages thereafter and upon the capacity in which they were employed or engaged."

5. He further submits that before the Labour Court one another Division Bench Judgment of this Court was not brought to the notice. He submits that the issue, which was involved in the present case, was already set at test by a Division Bench of this Court in a case Pankaj Sharan and Gautam Banerjee Vs. The State of Bihar and Others--> , Accordingly, he submits that the impugned order is required to be set aside and the matter may be remitted back to the Labour Court for deciding the reference on its merit.

6. Sri Alok Kumar Sinha, learned Counsel, who has appeared on behalf of respondent/Lupin Limited, opposing the prayer of the petitioner submits that the order impugned is legal, justified and in accordance with the principle laid down by the Apex Court, on which reliance was placed by the petitioner in H.R. Adyanthaya and others v. Sandoz (India) Ltd. and others 1994 (69) FLR 593 (SC) . He further submits that recently a Division Bench of this Court relying on the judgment of the Apex Court i.e. H.R. Adyanthaya Vs. Sandoz (India) Ltd., etc. etc., has categorically held that the Medical Representatives are not the workman and, as such, the provisions of Industrial Disputes Act is not applicable in such cases. He has referred to paragraph-18 of the Division Bench Judgment Nalin Sinha, represented by General Secretary, E. Merck Field Staff Union Vs. The State of Bihar and Others--> , which is quoted herein below:

"18. Thus in the light of the law laid down by the Apex Court, both in the case of H.R. Adyanthaya (supra) and Rhone-Poulenc (India) Ltd. (supra), it has to be held that a medical representative in view of not performing duties of skilled or technical nature cannot be held as "workman" under I.D. Act. Once I come to the conclusion that the appellant was not a "workman" under the I.D. Act, obviously the reference itself before the Labour Court under section 10 of the I.D. Act has to be held wholly without jurisdiction rendering the impugned award a nullity in the eye of law."

7. On the aforesaid ground, he submits that there is no need to interference with the impugned order.

8. Besides hearing learned Counsel for the parties, I have also perused the materials available on record. Fact remains that the case, on which learned Counsel for the petitioner has placed reliance i.e. H.R. Adyanthaya's case (supra), goes against the petitioner. In paragraph-39 of the Judgment of the Apex Court, it has categorically been held that the Medical Representatives are not the workman. Of course, the said case was in relation to Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practices Act. The Apex Court, even after deciding that the Medical Representative was not a workman, exercising power under Article 142 of the Constitution of India, had directed in favour of the employee/workman. So far as Pankaj Sharan's case (supra), on which reliance has been placed by learned Counsel for the petitioner is concerned, the said case was not in relation to dispute under the Industrial Disputes Act, rather the case was in relation to provisions contained in Bihar Shops and Establishment and, as such, learned Counsel for the petitioner may not get any help from the said judgment. So far as Nalin Sinha's case is concerned, on perusal of para-18 of the judgment, it is evidently clear that the Division Bench of this Court reiterating the law, which was decided by the Apex Court, has categorically held that the Medical Representatives are not the workman and in such cases reference would be illegal. In view of facts and circumstances as well as the law set at rest by the Apex Court as well as reiterated by a Division Bench of this Court, this Court has left with no option but to reject the writ petition.

Accordingly, the writ petition stands dismissed.