



Ravinder Kumar Sangal was the son-in-law of the managing director and had been receiving total remuneration in excess of Rs. 36,000 per annum without the prior sanction of the Central Government, he was liable for consequences enumerated in s. 314(2B) and/or 314(2C).

4. Mr. Sangal feeling aggrieved and claiming that his monthly remuneration was not more than Rs. 3,000 has brought the present petition under s. 633(2) of the Companies Act, 1956, read with r. 9 of the Companies (Court) Rules, 1959. He contends that he should be released from any liability which he may have incurred under s. 314(1B) read with s. 312(2B) and/or s. 314(2C).

5. The petition is opposed from the side of the Registrar of Companies on the ground that it is not maintainable under s. 633 and that his total yearly remuneration in fact exceeded Rs. 36,000.

6. Section 314(1B) of the Companies Act lays down that no relative of a director or manager shall hold any office or place of profit in the company which carries a total monthly remuneration of not less than Rs. 3,000 except with the prior sanction of the company by a special resolution and the approval of the Central Govt.

7. Section 314(2C) further provides that if any office of profit is held in contravention of the provisions of all the proviso to sub-s. (1B), the director, relative or manager concerned shall be liable to refund to the company any remuneration received or the monetary equivalent of any perquisite enjoyed by him.

8. The case of the petitioner has been that he did not know that the company had not taken the approval of the Central Govt., and that he was throughout under the impression that the company must have taken due steps for complying with the legal provisions in connection with his appointment and remuneration. In any case he contends that his salary did not exceed Rs. 3,000 per month. So far as the medical expenses and encashment of leave are concerned, they depended upon whether the petitioner needed medical attention or whether he did not avail of his leave. Similarly, the bonus depended upon whether the company had made sufficient profits and whether bonus had been paid to other employees working in the establishment as well. It is pointed out that during the year 1980-81 the petitioner did not receive reimbursement of any medical expenses or any payment in lieu of earned leave.

9. The first question to be considered is whether the petition is maintainable under s. 633 of the Companies Act. The same envisages that if any officer of a company has reason to apprehend that any proceeding will or might be brought against him in respect of any negligence, default, or misfeasance, he may apply to the High Court for relief and the court on such application shall have the same power to relieve him as it would have had if it had been a court before which a proceeding against that officer for negligence, default or misfeasance had been brought. The objection of the Registrar is that the petitioner cannot be treated as

an officer of the company. I, however, do not agree. Section 2(30) of the Companies Act gives an inclusive definition of the expression "officer", and elaborates that it includes manager as well. The petitioner as marketing manager can as such be treated as an officer of the company entitled to seek protection under s. 633.

10. Section 217 of the Companies Act requires attachment to every balance-sheet laid before a company in general meeting, a report by its board of directors which shall include the name of every employee who was in receipt of remuneration in aggregate of not less than Rs. 36,000. The term "remuneration" here is assigned the same meaning as given in the Explanation to s. 198. That Expln. to s. 198 reads as under :

"Explanation. - For the purposes to this section and section 309, 310, 311, 348, 352, 381, and 387, "remuneration" shall include, -

(a) any expenditure incurred by the company in providing any rent-free accommodation, or any other benefit or amenity in respect of accommodation free of charge, to any of the persons specified in sub-section (1);

(b) any expenditure incurred by the company in providing any other benefit or amenity free of charge or at a concessional rate to any of the persons aforesaid;

(c) any expenditure incurred by the company in respect of any obligation or service which, but for such expenditure by the company, would have been incurred by any of the persons aforesaid; and

(d) any expenditure incurred by the company to effect any insurance on the life of, or to provide any pension, annuity or gratuity for, any of the persons aforesaid or his spouse or child."

11. This inclusive definition though extended to a number of sections of the Companies Act has not been specifically extended to s. 314. The latter section not only postulates "remuneration" but speaks of "total monthly remuneration." The expression "monthly", according to the Webster's Third New International Dictionary, denotes once a month, by the month, relating to a month, payable every month, based on a month, having a duration of one month, occurring, appearing or being made, done or acted upon every month or once a month.

12. The wide definition of the term "remuneration" as given in s. 198 has not been made applicable by the Legislature in its wisdom to s. 314 as well. That apart, this latter provision is based on the total remuneration which an officer of a company may get from month to month. The emphasis is thus not on what he gets on the whole in a year, but on his monthly remuneration. The reference, Therefore, by the Registrar of Companies to the total yearly earnings exceeding Rs. 36,000 is misplaced. The query has to be directed towards his monthly emoluments. The word "monthly" necessarily connotes anything taking place once a month, relating to a month, payable every month, based on a month, having a duration of one month, occurring, appearing or being made done or

acted upon every month or once a month. No other implication has been stressed. Considered in this context, the payment of bonus, reimbursement in lieu of privilege leave not availed, employer's contribution to provident fund, reimbursement of medical expense, etc., cannot be treated as events of monthly regularity or occurrence. They are dependent upon certain events happening during the course of the entire year, and as and when they take place. Perhaps, with regard to the employer's contribution to provident fund, it can be said that the same might be monthly in case any specific amount every month was contributed. In the three years involved in this petition, the amount of such contributions added to the salary did not raise that to more than Rs. 36,000 in any year. In the other two years, the addition was nominal. On the whole it could not be said that the monthly remuneration of the petitioner which had not even reached the highest of the pay scale Rs. 1,500-150-3,000 exceeded Rs. 3,000, which should have required the approval of the Central Govt. There cannot be, Therefore, any occasion for action under s. 314(2C) of the Companies Act. The petition is accordingly allowed.