
(1996) 08 MP CK 0060
In the Madhya Pradesh High Court
Case No : L.P.A. No. 27 of 1994

Sanat Kumar

APPELLANT

Vs

Parke Davis (India) Ltd.

RESPONDENT

Date of Decision : 20-08-1996

Acts Referred:

Industrial Disputes Act, 1947 — Section 2

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

Citation : (1997) J LJ 353 : (1999) 3 LLJ 476

Hon'ble Judges : Shamboo Singh, J; R.D. Shukla, J

Bench : Division Bench

Advocate : S.N. Saxena, for the Appellant; G.S. Patwardhan, for the Respondent

Final Decision : Dismissed

Judgement

R.D. Shukla, J.—This order shall dispose of L.P.A. No. 27/1994 and the Cross-objection filed by the respondent No. 1.

2. The L.P.A. is directed against the Judgment & Order dated July 5, 1994, of learned Single Judge, passed in M.P. No. 1422/1993, whereby while partly accepting the petition filed by the respondent No. 1 remanded the case back to respondent No. 2 i.e., State Government for decision on the point of "workman" u/s 2(s) of the Industrial Disputes Act, before referring the matter for adjudication to the lower Court.

3. The brief history of the case is that respondent No. 1 filed a petition under Articles 226/ 227 of the Constitution seeking quashment of order of reference Annex. "L" of petition whereby the dispute was referred to the Labour Court i.e., respondent No. 4 here. The reference made in Hindi reads as under:

Vernacular matter omitted.

English translation of the reference is - Whether termination of Sanat Kumar Bandi (appellant here) is legal and valid? If not, what relief he is entitled for and

what direction can be given in the matter to the Employer?

4. The respondent No. 1 filed a petition with the assertions that it is a Company registered under the Companies Act carrying on the business of manufacture and sales of pharmaceutical and consumer products. Respondent No. 4 (appellant here) was employed by the petitioner as Professional Service Representative on December 5, 1986, (Annexure-"A"). Thereafter, he was promoted as Field Manager in Grade-V in the Management Grade w.e.f. January 1, 1971, by order dated January 5, 1971. He was confirmed on this post w.e.f. July 1, 1971, by order dated August 17, 1971, (Annexures B & B/1) to the petition. Later on the aforesaid post was designated as Area Sales Manager. The services of respondent (appellant here) was dispensed with vide order dated September 19, 1990, (Annexure "C"). The appellant here raised industrial dispute on the assumption that he was a workman. The respondent No. 3 here Conciliation Officer took up the matter for conciliation.

The Company resisted the aim and asserted that Sanat Kumar was not a workman. It was contended by the Company that Sanat Kumar (respondent No.4), appellant here was conferred with Managerial and Administrative duties with salary exceeding Rs. 1600/-. The Company produced documents showing the duties assigned to Shri Sanat Kumar and tried to demonstrate that Shri Sanat Kumar was working in supervisory capacity.

The Labour Commissioner (respondent No. 3 here) passed an order (Annexure - "L") on December 15, 1992, and referred the dispute as above. The proceedings were started before the Labour Court vide case No. 45/1992. The same was challenged by the Company by way of Writ Petition. Learned Single Judge remanded back the file to respondent No. 2 State for reconsideration and to decide as to whether respondent No. 4 (appellant here) is a workman within the meaning of Section 2(s) of the Industrial Disputes Act and thereafter to pass appropriate order in accordance with Law. Hence, this appeal by respondent No. 4 Shri Sanat Kumar Bandi.

5. The contention of the learned counsel for the appellant is that this is an incidental matter which ought to have been decided by the Labour Court and, therefore, learned Single Judge was not justified in remanding back the case to the State Government for consideration. The second contention of the learned counsel for the appellant is that point of jurisdiction could be raised by the Company before the Labour Court, who could decide the matter and, therefore, if necessary the same could be agitated before Superior Court in hierarchy of Labour Court and as alternative remedy is available the learned Single Judge as not justified in exercising jurisdiction under Article 226/227 of the Constitution. Learned counsel for the respondent No. 1 company has, on the other hand, submitted that since Labour Court lacks initial jurisdiction reference was bad in law and unless State Government comes to conclusion that Shri Sanat Kumar is a workman, which is not the matter could not be referred to Labour Court for adjudication. The respondent company has filed cross objection and further

submitted that firstly appellant here is not a "workman" and secondly he will be governed by Sales Promotion Employees (Condition of Service) Act, 1976 and as a Medical Representative he does not come within the perview of workman.

6. We have heard rival contentions of the learned counsel. There is a special Act governing the service conditions of Sales Promotion Employees as the title speaks that this Act may be called Sales Promotion Employees (Conditions of Service) Act, 1976. Section 6(2) of Sales Promotion Employees (Conditions of Service) Act, 1976 reads as follows :

"6(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 the Act and for the purpose 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 in to that dispute."

Plain reading of the Section would indicate that Industrial Disputes Act shall apply to or in relation to such employees as they apply to or in relation to worker within the meaning of Industrial Disputes Act. Therefore, the crux of the matter would be whether appellant here would be deemed to be a workman?

7. Section 2(s) of Industrial Disputes Act, 1947 (No. XIV of 1947) defines workman for the purposes of Act, which reads as under:

"Section 2(s), "workman" means any person (including an 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 of any proceedings under this Act in relation to an industrial dispute, includes any such person who had been dismissed, discharged or retrenched in connection with, or as a connection of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person.

(i)

(ii)

(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 by resign of the powers vested in him, functions mainly of a managerial nature."

This goes to show that a person engaged in managerial or administrative capacity or if employed in a supervisory capacity draws wages exceeding one thousand six hundred per month shall not come within the definition of workman.

8. We have perused the petition and the reply filed by respondent No. 1 before the learned single Judge. The Company has made an averment in para-4 that Sanat Kumar (appellant here) was working in managerial capacity and his salary was more than Rs. 1600. In para 5.8 it has been further pleaded that respondent No. (appellant have) draws a salary of Rs. 5725 p.m. plus perquisites. In reply to para 5.8 of the petition, appellant, who was respondent No. 4, has made an averment that his basic salary was Rs. 3,425 p.m. from April '90. Thus, in any way, admittedly the salary of the appellant was more than Rs. 1600 p.m. In such a situation he will not come within the purview of a "workman".

9. Learned counsel for the appellant drew our attention to Section 10(4) of the Industrial Disputes Act and submitted that this is a matter incidental there to and, therefore, it ought to be decided by the Labour Court. Section 10(4) of the Industrial Disputes Act, 1947 reads as under:

"10(4). Where in an order referring an Industrial dispute to a Labour Court, Tribunal or National Tribunal under this Section or in a subsequent order, the appropriate Government has specified the points of dispute for adjudication, the Labour Court or the Tribunal or the National Tribunal, as the case may be, shall confine its adjudication to these points and matters incidental thereto."

Learned counsel, thereafter, referred to a case as reported in 1991 MPLJ 225 Rajya Gramin Vikas Sansthan, Jabalpur v. State of Madhya Pradesh and Ors., wherein it was held that Labour Court can decide question of jurisdiction as the same is covered under the expression incidental thereto. Learned counsel also referred to a case as reported in 1984 G.C. 153 D.P. Maheshwari v. Delhi Admn. and Ors. as submitted that in matters of labour dispute Article 226/136 cannot be allowed to be used to break resistance of workmen.

Learned counsel has also referred to a case as reported in (1979 I LLJ I (SC) Avon Services Production Agencies (P) Ltd. v. Industrial Tribunal, Haryana and Ors., in support of his contention.

10. As against it, learned counsel for the respondent No. 1 has placed reliance on a case as reported in Miss A. Sundarambal Vs. Government of Goa, Daman and Diu and Others, whereby it was held that teacher employed in a school is not a workman, but, now dispute stands resolved with respect to the cases of Medical Representative as reported in H.R. Adyanthaya Vs. Sandoz (India) Ltd., etc. etc., etc. whereby it has been held that workman does not include all employees except those covered by four exceptions in said definition of Section 2(s) of Industrial Disputes Act. Medical Representatives do not perform duties of "skilled" or "technical" nature and therefore they are not workmen. The connotation of word "skilled" in the context in which it is used, will not include work of a Sales Promotion Employees such as Medical Representative. That word has to be construed ejusdem generis and thus construed, would mean skilled work whether manual or non manual, which is of a genre of the other types of work mentioned in the definition. The work of promotion of sales of the product

or services of the establishment is distinct from and independent of the types of work covered by the said definition.

11. In the present case firstly admittedly appellant here was drawing salary more an Rs. 1600 p.m.; secondly he being a Medical Representative would not fall within the definition of "workman" even otherwise. In view of above we hold that reference made by the State Government to the Labour Court was wholly without jurisdiction. Since Sanat Kumar, respondent No. 4 (appellant here) does not fall within the definition of workman at all, within the definition of Industrial Disputes Act and his services are further governed by Sales Promotion Employees (Conditions of Service) Act, 1976 the State Government had no power to refer the matter to the Labour Court or Industrial Court as the case may be. The order of Reference Annexure -"L" is wholly without jurisdiction.

12. Normally we would not have interfered in the matter and would have directed the parties to agitate the matter before the Labour Court, but as the initial jurisdiction of the Court is lacking and the reference order is wholly without jurisdiction we are inclined to accept the cross objection filed by the respondent.

13. As a result, the appeal fails and the cross-objection is allowed. Order of learned single Judge remanding the case to the State Government is set aside. We further note, that the appellant here does not fall within the category of workman and therefore his case cannot be referred to Labour Court and as the Reference made to the Labour Court is wholly without jurisdiction the Reference (Annex. "L") deserves to be and hereby quashed. In the facts and circumstances of the case parties shall bear their own costs. Counsel fee Rs. 500.