

(2000) 06 BOM CK 0040
In the Bombay High Court
Case No : A.S.W.P. No. 2745 of 1996

Shantanu G. Joshi

APPELLANT

Vs

Hindustan Antibiotics Limited

RESPONDENT

Date of Decision : 09-06-2000

Acts Referred:

Industrial Disputes Act, 1947 — Section 33C(2)

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

Citation : (2001) 89 FLR 430 : (2001) 3 LLJ 223

Hon'ble Judges : R.M. Lodha, J

Bench : Single Bench

Judgement

R.M. Lodha, J.—By means of this Writ Petition filed under Article 226 of the Constitution of India, the Petitioner seeks to impugn the order dated January 3, 1996 passed by the Labour Court, Nasik, whereby the said Court held that the Petitioner being the medical representative is not workman within the meaning of Section 2(s) of Industrial Disputes Act, 1947.

2. The facts stated in the Writ Petition would show that the Petitioner was employed as an employee of the Respondent-company as a medical representative. He has been in the employment of the Respondent since 1984. Since according to Petitioner certain amounts due to him from the year 1985 were not paid by the Respondent-employer, he made an application u/s 33-C(2) of the Industrial Disputes Act. The said application is being contested by the Respondents. The Labour Court framed a preliminary issue whether the Petitioner was a workman within the meaning of Section 2(s) of the Industrial Disputes Act, 1947. Relying upon the judgment of the Apex Court in H.R. Adyanthaya Vs. Sandoz (India) Ltd., etc. etc., , the Labour Court held that the Petitioner being medical representative was not a workman.

3. Mr. Colin Gonsalves, the learned counsel for the Petitioner submits that to the extent the Petitioner has not been held to be workman within the meaning of Section 2(s) of the Industrial Disputes Act, by the Labour Court, no grievance is

being raised. The grievance of the Petitioner is that by virtue of the provisions of Sub-section (2) of Section 6 of the Sales Promotion Employees (Conditions of Service) Act, 1976, the provision of Industrial Disputes Act has been made applicable in relation to Sales Promotion Employees (Conditions of Service) Act, 1976 and despite the fact that the Apex Court in the 1 judgment cited (supra) has held that the provisions of Industrial Disputes Act became applicable to the medical representatives depending upon their wages from March 6, 1976 to May 6, 1987 and without the limitation of their wages thereof, the Labour Court overlooked this aspect.

4. Mr. M.M. Varma, the learned counsel appearing for the Respondents submitted that the Labour Court constituted u/s 7 of the Industrial Disputes Act by appropriate Government for jurisdiction to adjudicate industrial disputes under the Industrial Disputes Act and may not have jurisdiction to decide the dispute under Sales Promotion Employees (Conditions of Service) Act, 1976 and, therefore, the impugned order does not call for interference. So far as the Labour Court has recorded the finding that the Petitioner being -medical representative was not a workman within meaning of Section 2(s) of the Industrial Disputes Act, 1947 the said finding is not challenged and cannot be faulted. However, there is substance in the contention of Mr. Gonsalves, the learned counsel for the Petitioner that the Labour Court overlooked the observation of the Apex Court in paragraph 29 of the report.

5. The Apex Court, after holding that since medical representative is not workman within the meaning of Section 2(s) of the Industrial Disputes Act, referred to the relevant provisions of the Sales Promotion Employees (Conditions of Service) Act, 1976 which came into effect from March 6, 1976 and applied forthwith to other establishments engaged in pharmaceutical industries by virtue of Sub-section (2) of Section 4 after introducing the definition of the Sales Promotion Employee in Clause (d) of Section 2 of the Act of 1976 and the amendment incorporated with effect from May 6, 1987, in paragraph 29 of the report, the Apex Court observed thus:

"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 medical representatives stated as follows:

"(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 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 March 6, 1976 the provisions of the Industrial Disputes Act became applicable to the medical representatives depending upon their wages up to May 6, 1987 and without the limitation on their wages thereafter and upon the capacity in which they were employed or engaged."

It is thus apparent and clear that by legal fiction provided u/s 6(2) of the Sales Promotion Employees (Conditions of Service) Act, 1976 that the provision of the Industrial Disputes Act, 1947 has been made applicable in revision to Sales Promotion Employees and they are deemed to be workmen. In this view of the matter, though the Petitioner was not workman u/s 2(s) of the Industrial Disputes Act, he was entitled to invoke the provisions of the Industrial Disputes Act. being medical representative by virtue of Section 6(2) of the Act of 1976. This aspect has altogether been overlooked by the Labour Court and, therefore, the impugned order deserves to be modified by holding that the provisions of the Industrial Disputes Act, 1947 shall apply to the Petitioner being medical representative.

6. Writ Petition is accordingly disposed of by following order:

ORDER

7. Though the finding recorded by the Labour Court, Nasik, in the impugned order dated January 3, 1996, that the Petitioner is not a workman within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 is maintained but it is held that the provisions of the Industrial Disputes Act apply to the Petitioner by virtue of provisions of Section 6(2) of the Sales Promotion Employees (Conditions of Service) Act, 1976 and the Petitioner is held to be deemed workman by virtue of the said provisions.

8. The Labour Court, Nasik, is accordingly directed to proceed with the application made by him u/s 33-C(2) in accordance with law.

9. No costs. Rule is disposed of.