IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P.(L) No. 4123 of 2019

M/s Panasonic India Private Limited, represented through Mr. Anshuman Kashyap, Sr. Executive (Legal & Secretarial), 1st Floor, ABW Tower, IFFCO Chowk, Sector 25, P.O. & P.S. & District:- Gurgaon-122001. **… … Petitioner**

Versus

Sukesh Kumar, Son of Late Saroj Kumar, Flat No. 401/402, Ganesh Dham Apartment, Road No.3C, New P.P Colony, P.O. +P.S.- Patliputra, Patna-800013, also at Flat No. 14/B, Lotus Apartment, Asiyana Garden, P.O.+P.S. Sonari, District Jamshedpur.

… … Respondent

With

W.P.(L) No. 3746 of 2019

Sukesh Kumar, age about 38 years, Son of late Saroj Kumar, resident of – D/12, Anil Sur Path, Uliyan, P.O. & Police Station-Kadma, Jamshedpur, District-Singhbhum East.

... ... Petitioner

Versus

1. The State of Jharkhand through Secretary, Labour Court Employment Training and Skill Development Department, Government of Jharkhand having its Office at Circular Road, P and T Colony, Nagra Toli, P.O. G.P.O., P.S. Lalpur, District-Ranchi.
2. The Under Secretary, Labour Employment Training and Skill Development Department, Government of Jharkhand having its Office at Circular Road, P and T Colony, Nagra Toli, P.O.G.P.O, P.S. Lalpur, District-Ranchi.
3. M/s. Panasonic India Pvt. Ltd. through its Managing Director, 1st Floor, ABW Tower, IFFCO Chowk, Sector-25, P.O. and P.S. IFFCO Chowk, Gurgaon (Haryana)
4. The Head HR & GA, M/s. Panasonic India Pvt. Ltd., through its Managing Director, 1st Floor, ABW Tower, IFFCO Chowk, Sector-25, P.O. and P.S. IFFCO Chowk Gurgaon (Haryana)

... ... Respondents

CORAM: HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY

In W.P.(L) No. 4123 of 2019

For the Petitioner : Mr. Jitesh Pandey, Advocate
(Through Video Conferencing)
: Mr. Amrit Raj Kisku, Advocate
: Mr. Mrinalini Kachchap, Advocate
For the Respondent : Mr. Raunak Sahay, Advocate

In W.P.(L) No. 3746 of 2019

For the Petitioner : Mr. Raunak Sahay, Advocate
For Respondent No.3 & 4 : Mr. Amrit Raj Kisku, Advocate

C.A.V. On 28.04.2026 ***Pronounced on: 29.08.2026***

1. The impugned order reveals that the learned Labour Court has passed the order under ***Bihar Shops and Establishment Act, 1953, as applicable in the state of Jharkhand (hereinafter referred to as the Shops and Establishment Act***) in B.A. Case No.01 of 2014 on 20.04.2019 and has given a direction to re-instatement of complainant in the employment with continuity of service and with 25 % of back wages. It has also been directed that if the back wages are not paid within 2 months' time of passing of the order, the amount of calculated back wages would carry an interest of 6% per annum till it is actually paid.

2. Both the employer and the employee have filed their respective writ petitions arising out of the same impugned order passed by the learned Labour Court Jamshedpur.

3. ***Writ petition No.4123 of 2019*** has been filed by the employer seeking a writ of certiorari calling for the records of B.S. Case No. 01 of 2014 and to quash and set-aside the impugned orders dated 23.11.2016 (Annexure-3) and 20.04.2019 (Annexure-4) wherein the Ld. Labour Court has held that it has territorial jurisdiction to entertain and adjudicate the present dispute and has subsequently granted a relief of reinstatement with continuity of service and 25% back wages to the employee. Vide the impugned orders dated 23.11.2016 (Annexure-3), the preliminary objection on the point of territorial jurisdiction as raised by the employer was rejected.

4. The concerned employee has also filed a writ application vide ***W.P.(L) No. 3746 of 2019*** seeking a writ of Certiorari for quashing order and judgment dated 20.04.2019 passed by the Presiding Officer, Labour Court, Jamshedpur in connection with B.S. Case No.1 of 2014 to the extent that the learned Labour Court has held that the employee would be entitled for only 25% of his back wages instead of 100% inspite of the fact that the concerned employee has been completed exoneration from his charges and has been directed to be reinstate by the concerned court. A prayer has also been made seeking a

mandamus directing the concerned employer to accept the joining of the employee and give effect to the order and judgment dated 20.04.2019 passed by the Presiding Officer, Labour Court, Jamshedpur in connection with B.S. Case No. 01 of 2014 wherein direction was issued for re-instatement of employee.

5. <u>Submissions of the employer</u>

A. The employee was covered under the definition of sales promotion employee under Section 2(d) of the Sales Promotion Employees (Condition of Service) Act, 1976 and was not competent to file complaint under Section 26(2) of the Bihar Shops and Establishment Act, 1953. Such act would be contrary to the judgment passed by the Division Bench of the Hon'ble High Court of Patna in ***Pankaj Sharan & Gautam Banerjee vs. The State of Bihar & Ors. (2008) 56 (2) BLJR 1445***.

B. The learned counsel has further referred to Annexure-5 of W.P.(L) No. 4123 of 2019, which is a notification issued by the government of India Ministry of Labour Court and Employment dated 31st January, 2011 under Section 3 of the Sales Promotion Employees (Conditions of Service) Act, 1976 and has referred to item 9 thereof i.e. Electrical Appliances and has submitted that the petitioner is dealing with manufacture and sale of electrical appliances and therefore, the respondent, who was appointed as Area Sales Manager–CED vide appointment letter dated 03.07.2012 is governed by the provisions of Sales Promotion Employees (Conditions of Service) Act, 1976 and therefore, the proceeding under Bihar Shops and Establishment Act was not maintainable.

C. The learned Labour Court of Jamshedpur could not have entertained and adjudicated the complaint of the employee when admittedly, the employer had no shop or commercial establishment within the municipal limits of the Jamshedpur.

The establishment in the present case was situated in Ranchi and it has come on record that there was no establishment at

Jamshedpur and therefore, the learned Labour Court Jamshedpur had no jurisdiction to entertain the case under Bihar Shops & Establishment Act. He has submitted that consequently the learned Labour Court Jamshedpur has no jurisdiction and on this count the award is fit to be set aside.

D. Otherwise also, an employee working as Area Sales Manager falls within the exception as provided under Serial No. 5 read with Schedule I of Section 4(2) of the Bihar Shops and Establishment Act, 1953 and hence is not competent to file complaint and not entitled to any relief.

Learned counsel has then referred to the cross examination of the concerned employee and has submitted that the employee has stated in paragraph 25 that the office used to operate from his house and there was no other person apart from himself and with respect to his office at house no license was taken and he was all in all. He has further stated that he also used to report Ranchi Branch Manager.

Learned counsel has also submitted that since the employee was working at Jamshedpur and he used to report at Ranchi, there was only one employee at Jamshedpur and consequently, as per the provisions of Bihar Shops and Establishment Act and the rules framed thereunder the employee would fall under managerial category and therefore, also Bihar Shops and Establishment Act does not apply upon the workman.

E. The employee whose services have been terminated on account of loss of confidence, would not be entitled to the relief of reinstatement as awarded by the learned Labour Court.

Learned counsel has also submitted that though there is no disciplinary enquiry against the employee and he has been terminated, but the fact that he was not attending the office for quite some time stood admitted in his reply to show cause relating to absenteeism vide his reply dated 05th of July, 2013 which was Exhibit-4. He has also submitted that inspite of

repeated opportunities, the employee did not join the services and he was ultimately terminated from his services.

It has also been submitted that there was complete loss of confidence as the employee was not attending his work and therefore, there was no question of re-instatement and since he was already gainfully employed, there was no question of back wages to the extent of 25%.

F. The employee, who was admittedly gainfully employed while he was out of service, is not entitled to the relief of back wages in view of various judicial pronouncements by the Hon'ble Supreme Court. The learned counsel submits that the employee was not entitled to any relief of back wages as awarded by the Learned Labour Court.

On the point, as to whether the employee was gainfully employed, he has submitted during his cross examination that he could not recollect his PAN number nor he could recollect his bank account number. He could not say as to whether after termination he used to file IT return or not. However, he has stated that he was in partnership with his brother in which he has filed the return.

G. The learned counsel for the employer has relied upon following judgements:-

DEFINITION OF EMPLOYEE			
1	B. Gope v. Aldor Welding Ltd., (2016) 14 SCC 702	The applicability of the Bihar Shops and Establishments Act and especially sub-section 2 of Section 4 read with S.I. No. 5 to the Schedule 1 of the 1953 Act deals with the exclusion clause qua the above-mentioned act. If the nature of the work falls outside the purview of the Act, its benefits cannot be claimed. Managerial roles can involve various functions and do not necessarily require the power to appoint or remove staff. What matters is the real character of the duties and not formal authority or	Para No.(s) 9, 10 and 13.

		title.	
2	Tata Engineering & Locomotive Company Limited vs. The Presiding Officer and Ors., MANU/JH/0739/2013	The applicability of the Bihar Shops and Establishments Act, 1953 is subject to the exclusions provided under Section 4(2) read with Serial No. 5 of Schedule I. If the nature of an employee's duties places them within this exclusion, the protections and remedies under the Act, including those under Section 26, cannot be invoked.	Para No.(s) 15, 16, 17, 18 and 19.
3	Pankaj Sharan and Ors. V. The State of Bihar and Ors. MANU/BH/0023/2008.	Sales promotion employees under Section 2(d) of the Sales Promotion Employees Act, 1976, must seek redressal of service disputes through the Industrial Disputes Act as provided under Section 6(2) of the SPE Act. The Bihar Shops and Establishments Act, 1953, is not applicable to them for this purpose. An employee cannot simultaneously claim protection under both statutes, as the remedies and categories are mutually exclusive.	Para No.(s) 3, 7, 9 and 10
4	Ramashish Kumar v. Chairman, Lupin Ltd. And Ors. MANU/BH/0944/2015	If an industrial dispute is not raised by a "workman" under Section 2(s) of the Industrial Disputes Act, 1947, reference to the Industrial Adjudicator is not maintainable. The Bihar Shops and Establishment Act and the Industrial Disputes Act operate in separate spheres and cannot be applied together to confer jurisdiction under the ID Act and compliance with the Bihar Shops and Establishment Act does not substitute or establish "workman" status under the Industrial Disputes Act.	Para No.(s) 8
TERRITORIAL JURISDICTION			
5	Hindustan Lever Limited v. State of Bihar and Ors., MANU/BH/1521/2010	The existence of a shop or establishment in the territorial jurisdiction of the Labour Court is a necessary condition for invoking the BSE Act. Where no such establishment exists, the proper remedy lies under the Industrial	Para No.(s) 16 and 19

		Disputes Act only.	
TERMINATION ON ACCOUNT OF LOSS OF CONFIDENCE			
6.	Air-India Corporation Bombay vs. V.A. Rebellow and Ors., MANU/SC/0414/1972	An employer's decision to terminate an employee based on a bona fide loss of confidence arising from doubts about the employee's suitability for the role is legally valid. Even if the employer's opinion is ultimately incorrect, it is not open to review by industrial adjudication so long as it is formed in good faith. Such termination is not regarded as punitive or for misconduct and is therefore permissible and immune from legal challenge.	Para No.(s) 16.
7	The Divisional Controller, KSRTC v. M.G. Vittal Rao, MANU/SC/1368/2011	Once the employer has lost the confidence in the employee and the bonafide loss of confidence is affirmed, the order of punishment must be considered to be immune from challenge, for the reason that discharging the office of trust and confidence requires absolute integrity, and in a case of loss of confidence, reinstatement cannot be directed.	Para No.(s) 20 and 22
8	Kanhaiyalal Agrawal and Ors. V. Factory Manager and Ors., MANU/SC/0559/2001	The test for loss of confidence applies when the workman holds a position of trust and confidence, abuses that position through acts that forfeit such trust, and his continued employment would be embarrassing or inconvenient to the employer or detrimental to the discipline or security of the establishment.	Para No.12
9	Ajay Shankar Prasad v. State Bank of India and Ors., MANU/JH/1033/2024	Law is well settled that when the management has lost confidence in the employee, the question of reinstatement or reducing the quantum of punishment does not survive.	Para No.(s)20
GAINFUL EMPLOYMENT			
10	Ramesh Chand v. Management of Delhi Transport Corporation,	To claim back wages, initial burden is on Employee to establish that he was not gainfully employed during period of dismissal.	Para No.(s)7

	MANU/SC/0737 /2023		
11	North-East Karnataka Road Transport Corporation v. M. Nagangouda, MANU/SC/7010 /2007	"Gainful employment" would also include self-employment wherefrom income is generated	Para No.(s) 12

6. ***Submissions of employee***

I. ***Learned counsel for the concerned workman*** on the other hand has opposed the prayer and has submitted that a cross writ has been filed by the concerned employee claiming full back wages as the present case is a case of victimization of the employee. ***However, upon query of this Court, he has fairly submitted that there is no finding of victimization by the learned court.***

II. Learned counsel has submitted that the management never raised any objection by referring to the Sales Promotion Employees (Conditions of Service) Act, 1976 or that the employee was sales promotion employee or discharging any managerial or supervisory function and therefore, was an employee within the meaning of Bihar Shops and Establishment Act.

III. Learned counsel has submitted that the judgment relied upon by the management passed in ***Pankaj Sharan & Gautam Banerjee vs. The State of Bihar and others*** reported in ***(2008) 56 (2) BLJR 1445*** does not apply to the facts of this case.

IV. Learned counsel has also submitted that the letter of appointment itself mentions the scope of work and as per the scope of work the duties and responsibilities were to be prescribed by the management from time to time depending upon the exigencies of work. Learned counsel has submitted that mere designation will not decide the duties and responsibilities of the employee and the management did not

lead any evidence with respect to the nature of work assigned to the employee.

V. Learned counsel has further submitted that the workman in his written statement has categorically stated in paragraph 5 that main and dominant duties and responsibilities of the employee was to procure/create purchase orders from local distributer, direct dealers and exclusive brand shop to make billings and collect payments for the same and sent it to the Ranchi Branch Establishment and that the employee never performed any managerial function and also never exercise ultimate control over the affairs of Ranchi Branch Establishment which was under the management and control of Sri Pankaj Kumar.

VI. Learned counsel has submitted that in absence of any pleading and also evidence with respect to the nature of work being actually performed by the employee from the side of the management and management having not taken any plea that the employee was a 'sales promotion employee' and therefore, covered by the aforesaid Sales Promotion Employees (Conditions of Service) Act, 1976 and consequently not covered by the Shops and Establishment Act, the arguments of the employer is completely beyond the case of the respective parties.

VII. With respect to back wages, learned counsel has submitted that the specific plea was raised by the workman that he was not gainfully employed to which there was no denial from the side of the management in their written statement and accordingly the cross examination of the workman has no consequence with respect to his employment as a partner in a partnership firm of his brother.

VIII. Learned counsel has then referred to the judgment which has been relied upon by the petitioner i.e. ***Hindustan Lever Limited v. State of Bihar and Ors.***, passed in ***C.W.J.C. No.5587 of 2006*** and distinguished the judgment by submitting that in the

said case there was no establishment in the State of Bihar to be governed by Bihar Shops and Establishment Act and rather the establishment was in Kolkata which was governed by West Bengal Shops and Establishment Act and the termination letter was issued from Kolkata office at Patna address and in such circumstances it was held that the case filed under Bihar Shops and Establishment Act in Patna was not maintainable. He has further submitted that in the said case it was held that the Bihar Shops and Establishment Act would be applicable in case where the establishments of shops in the State of Bihar as provided under Section 2(6) and 2(16) of Bihar Shops and Establishments Act respectively.

IX. Learned counsel has then referred to the judgment passed by Hon'ble Patna High Court reported in ***1996 SCC online Patna 54*** in the case of ***R.K. Jha and Another vs. H.D. Tanpe and others*** and has submitted the said case was arising out of a proceeding under Bihar Shops and Establishments Act and on the basis of earlier full-fledged decision it has been held that the petitioner of the said case were working in Patna Depot of the company and their services would be deemed to have been terminated at Patna and as such the Labour Court Patna had the territorial jurisdiction to decide the dispute. The Bihar Shops and Establishments Act, 1953 will also be applicable to the case for the same reason.

X. Learned counsel has submitted that admittedly the employee here was posted at Jamshedpur as per the instructions of the management and the employee used to stay at Jamshedpur and work in Jamshedpur where his services were terminated and therefore, the learned Labour Court has rightly held, after considering the materials on record, that the part of cause of action had arising at Jamshedpur and consequently, the petition before Jamshedpur Labour Court was maintainable.

XI. On the point of back wages, learned counsel has relied upon the judgment passed by Hon'ble Supreme Court in the case of ***Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.ED) and others*** reported in ***2013 (10) SCC 324*** and submits that it has been held that in case of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule and further it has been held that ordinarily an employee or workman whose service are terminated and who is desirous of getting back wages is required to either plead or at least make an statement before the adjudicating authority or the court of first instance that he/she was not gainfully employed or was employed on lesser wages and if the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. Learned counsel has submitted that it has been settled law that burden of prove of the existence of a particular fact lies on a person who makes a positive averment about its existence.

XII. On the point of loss of confidence as argued by the learned counsel for the management, it has been submitted that there cannot be any consequence of loss of confidence as the employee was not found guilty of any misconduct and he has been summarily dismissed without following due procedure and without holding any enquiry rather it is the case of victimization and clear cut illegal and arbitrary termination.

XIII. With respect to the issue as to whether the employee working as 'Area Sales Manager' which falls within the exception as provided under Serial No.5 read with Schedule I of Section 4 (2) of Bihar Shops and Establishment Act, 1953, it has been submitted that the designation is not important and as per the

registration certificate issued under Bihar Shops and Establishment Act, Ranchi, there were four employees.

Finding of this Court:-

7. Case of employee

The records of the case show that the employee filed an application under Section 26(2) of the Shops and Establishments Act, alleging that he had been appointed vide appointment letter dated 11.07.2012 and he was terminated by letter dated 18.03.2014 without holding any domestic inquiry. It has been stated by the employee that false charges/allegations have been levelled against the employee. It was stated the employee was appointed as an Area Sales Manager-CED in the grade of Assistant Manager with effect from 03.07.2012 and was posted in the field at the Jamshedpur under Ranchi Branch Establishment. He was confirmed in service on 03.01.2013. It was stated that as per the appointment letter, employee was informed that his duties and responsibilities would be such as would be prescribed by the management from time to time. His main and dominant duties and responsibilities were to procure and create purchase orders from local distributors, direct dealers and exclusive brand shops and to make billing and collect payment for the same and send it to the Ranchi Branch Establishment. It is also alleged that he never performed any managerial functions and never exercised ultimate control over the affairs of the Ranchi Branch Establishment and that the Ranchi Branch Establishment was always under the control of Pankaj Kumar, who was made Opposite Party No. 3. It was further asserted that the applicant was an employee within the meaning of the Shops and Establishments Act. He alleged that Pankaj Kumar had coerced and pressurised the complainant to resign from service and threatened to terminate him if he did not submit resignation. He had also made a complaint to the higher authorities, but did not find any response. It was asserted that by misusing his official password on 05.07.2013, his resignation letter was generated from Ranchi branch

office to which he made a complaint and salary of the employee was illegally withheld since July 2013 at the behest of Pankaj Kumar. The employee protested, but nothing happened.

However, a show-cause notice dated 23.07.2013 was issued to the employee in which it was alleged that he was absent from duty since 05.07.2013 and inspite several opportunities, the employee continued remained absent. A show cause reply was submitted. The employee also instituted a criminal case against Pankaj Kumar. However, the employee was ultimately dismissed on account of illegal absenteeism. The employee claimed that he had been victimised and raised various grounds to set aside his order of dismissal and prayed for reinstatement in service with full back wages.

8. <u>Case of employer</u>

So far as the employer is concerned, they filed a ***preliminary objection*** that the employer had neither any shop nor any establishment within the territorial jurisdiction of Jamshedpur and, therefore, the case was not maintainable at Jamshedpur. It was also asserted that the employee himself had stated that he had been reporting to Ranchi office and that he was working under Pankaj Kumar, whose office was located in Ranchi, in such a situation the proceeding at Jamshedpur was not maintainable.

In the ***written statement***, the aforesaid stand taken by the employer on the point of territorial jurisdiction was reiterated and other allegations were denied. It was stated that the employee absconded from his duties from 05.07.2013 and, inspite of repeated reminders failed to resume at his work. The employee had only stated that he remained in the field during entire period, but failed to show any field work and he also failed to explain the nature of the so-called field work performed by him during that period. It was the case of the employer that the employee had abandoned his service and failed to report to his superior for more than six months and failed to resume duties even after repeated directions of the employer.

9. *Rejoinder of employee*

The employee subsequently filed a ***rejoinder*** to the written statement. The registered certificate under Shops and Establishment Act was filed which indicated that altogether four persons were employed and the name of manager of the establishment was also mentioned. The nature of establishment was shown as office.

10. The concerned employee got himself examined as a sole witness and he was cross-examined by the employer. He also exhibited numerous documentary evidences including his letter of appointment (Exhibit-1), Letter of confirmation (Exhibit-2), the Show-cause notice dated 23.07.2013 (Exhibit-7), Reply to show-cause notice dated 31.07.2013 (Exhibit-8), Termination letter (Exhibit-3) etc.,

11. The employer did not adduce any oral or documentary evidence. However, it is not in dispute that no disciplinary proceedings or domestic enquiry was initiated against the employee.

12. Learned court had rejected the preliminary objection on account of territorial jurisdiction vide order dated 23.11.2016 and while finally deciding the case vide judgment dated 20.04.2019 recorded that the management almost admitted everything what was submitted by the complainant even except that the formal domestic enquiry could not have been initiated and done because of the fact that even despite repeatedly asking, the complainant failed to resume his duty as a result of which the domestic enquiry was not done.

13. The learned court recorded that only controversial issue that remained to be addressed was whether the management had legally passed the order of dismissal without holding domestic enquiry and whether such order of dismissal could be sustained by the court.

14. The learned court has recorded that the opportunity was given to the management to adduce evidence, but they did not adduce any oral or documentary evidence, but the fact remains that the oral

evidence of the employee was on record and he was cross examined by the management.

15. The learned court recorded the admitted fact that no domestic enquiry was held, with respect to the allegation, and the employee was terminated on the misconduct of willful absenteeism as a punishment. The court recorded that the order of dismissal was bad as no domestic enquiry was conducted into the alleged misconduct and held that the dismissal was absolutely illegal and cannot be approved. The learned court also recorded that the management had the option to prove the allegation before the court directly notwithstanding that no domestic enquiry was held, but the management despite having the opportunity to do so, remained reluctant and did not attempt to establish the charges levelled against the employee. The learned court was of the view that the action of the management called for interference.

16. The learned court ultimately set aside the order of dismissal and directed re-instatement of the employee with all consequential benefits and continuity of service.

17. With respect to back wages, the court recorded that employee had pleaded that he was unemployed and had no source of livelihood and the management had not denied this fact. The learned court held that under such circumstances, the employee was entitled for back wages and directed that the employee was entitled to 25% back wages of his loss of salary and further directed that if the back wages are not paid within 2 months, the same would carry an interest of 6% per annum till it is actually paid.

18. After hearing the learned counsel for the parties, the followings issues arise for consideration by this court: -

19. ***Issue No.1:*** ***Whether proceedings under Section 26(2) of Bihar/Jharkhand Shops and Establishment Act, 1953 is maintainable being contrary to the judgment passed by Hon'ble High Court of Patna in Pankaj Sharan & Gautam Banerjee v. The State of Bihar &Ors. (2008) 56 (2) BLJR 1445.***

The judgement *in* ***Pankaj Sharan & Gautam Banerjee (supra)*** decided by Hon'ble Patna High Court does not apply to the facts of this case. In the said case, the employer had raised objection before the learned labour court itself that complaints filed by the employees under section 26 (2) of Bihar Shops and Establishment Act was not maintainable as the employees were sale promotion employees within the meaning of section 2(d) of Sales Promotion Employees (Condition of Service) Act, 1976 and were governed by Sales Promotion Employees (Condition of Service) Act, 1976. The concerned labour court held on facts that the complaints filed by the employees under section 26 (2) of Bihar Shops and Establishment Act was not maintainable as the employees were sales promotion employees within the meaning of section 2(d) of Sales Promotion Employees (Condition of Service) Act, 1976. The judgement of the labour court was upheld in the writ petition and the appeal against the order of the writ court was also dismissed.

20. In the present case, perusal of the written statement filed by the employer does not reveal that, at any point of time, the employer had taken any plea that the employee was governed by the provisions of Sales Promotion Employees (Condition of Service) Act, 1976. Rather, their *only* objection with respect to maintainability of the case was relating to territorial jurisdiction of the establishment. They had asserted that the establishment was having its office at Ranchi and, therefore, the Jamshedpur court had no jurisdiction to entertain the case. It is further not in dispute that the establishment was registered under Bihar Shops and Establishment Act as adapted by the State of Jharkhand upon bifurcation of thee then state of Bihar in the year 2000. It is not permissible for the employer to raise new plea before this Court for the first time in writ jurisdiction challenging the order passed by the learned Labour Court particularly when the point as to whether the employee was a Sales Promotion Employees within the meaning of section 2(d) and hence to be governed by Sales Promotion

Employees (Condition of Service) Act, 1976 is itself a question of fact.

21. Otherwise also, the law is well settled that mere designation of an employee does not determine the nature of work performed by an employee. The employee had simply stated that he was designated as 'Area Sales Manager' in the grade of Assistant Manager and during his employment, his duties primarily consisted of procuring/creating purchase orders from local distributors, direct dealers and exclusive branch shops, raising bills and collecting payments against such sales and forwarding the same to the Ranchi Branch Establishment and as such, he was an employee of M/s Panasonic India Private Limited having their establishment within the meaning of the Jharkhand Shops and Establishments Act. The aforesaid activity of the employee does not by itself bring the employee within the definition of "sales promotion employee" within the meaning of section 2(d) of Sales Promotion Employees (Condition of Service) Act, 1976. The status of a person as sales promotion employee is essentially a question of fact which ought to be raised as a matter of fact which has not been done in the instant case before the learned labour court and cannot be permitted to be raised for the first time before writ court.

22. In view of the aforesaid findings, it is held that impugned proceedings under Section 26(2) of Bihar/Jharkhand Shops and Establishment Act, 1953 cannot be said to be not maintainable on the alleged ground that the employee is sales promotion employee within the meaning of section 2(d) of Sales Promotion Employees (Condition of Service) Act, 1976 as no such objection was taken before the learned labour court and which is essentially a question of fact; further, on facts, the judgment passed by Hon'ble High Court of Patna in ***Pankaj Sharan & Gautam Banerjee (supra)*** does not help the employer in any manner.

23. ***Issue no. 1 is accordingly decided against the employer and in favour of the employee by holding that the impugned proceedings***

under Section 26(2) of Bihar/Jharkhand Shops and Establishment Act, 1953 is maintainable in the aforesaid facts of this case.

<u>Issue No.2:</u> Whether, the learned Labour Court of Jamshedpur could have entertained and adjudicated the complaint of the employee for want of territorial jurisdiction as the employer has no shop or commercial establishment within the municipal limits of the Jamshedpur.

24. This point was raised as a preliminary issue before the learned labour court which was rejected by a speaking order dated 23.11.2016 and is quoted as under for ready reference: -

> *"Appearance have filed on behalf of both parties.*
>
> *By this order I shall decide application dated 13.08.14 filed by opposite party M/S Panasonics India Pvt Ltd for dismissing this complaint case on the point of lack of territorial jurisdiction.*
> *Ld Counsel for the O.P. No. 1 has submitted that this complaint case is not maintainable as this court has no jurisdiction to try the same. O.P. No. 1 is having its offices at Gurgaon and Ranchi. At the time of his termination complainant was posted at Ranchi office and he was reporting to Ranchi office. Therefore this court has no jurisdiction to entertain this case. He has prayed for dismissing this case.*
> *Per contra Ld Counsel for the complainant has argued that complainant was posted and working at Jamshedpur within the territorial jurisdiction of this court. He has been residing at Jamshedpur only where he was communicated his termination. Therefore this court has jurisdiction to try this case and this application is liable to be rejected with heavy cost.*
> *Heard and perused the record. This case has been filed by complainant u/s. 26 (2) of Bihar Shops and Establishment Act 1953 for setting aside his dismissal order dated 18.3.2014 and reinstatement with full back wages and consequential benefits. From perusal of Bihar Shops and Establishment Act 1953, it appears that as such there is no provision in this act regarding jurisdiction of the court for filing complaint case u/s. 26(2). In Tata Iron and Steel Co. Ltd. vrs. Presiding Officer, Labour Court reported in 1989*

BLJR 276, the Hon'ble Patna High Court has settled law on this point by holding that in the absence of any provision in the act regarding jurisdiction, Section 20 of Code of Civil Procedure shall be followed. Perusal of documents filed on record shows that O.P. No.1 has its registered at Chennai and branch offices at Gurgaon (Haryana) and Ranchi. Admittedly O.P. No.1 is not having any branch or sub office at Jamshedpur. Therefore complainant's case is not covered under sub section (a) and(b) of Code of Civil Procedure. In the present case, now it is to be seen whether cause of action wholly or in part has arisen within the jurisdiction of this court and complainant' case is covered under sub section (c) of Code of Civil Procedure or not ? It appears from complainant's appointment letter dated 11.7.2012 that his initial place of posting was at Jamshedpur under Ranchi branch. His termination Letter dated 18.3.2014 was communicated to him at Jamshedpur which is apparent from termination letter itself. Photo copies of show cause dated 23.7.13 and 24.1.14 filed by O.P. in this case, also show that these show cause were communicated to the complainant at Jamshedpur. While deciding issue of territorial jurisdiction of court under Bihar Shops and Establishment Act 1953, the Hon,ble Patna High Court in K.T.V. Prasad Vrs H.D. Tanpe reported in 1996(2) BLJ 420 has been pleased to hold "Para 6 .....It is now well settled that situs of employment of the workman determines the territorial jurisdiction of Tribunal in the case of Industrial and Labour disputes arising from the termination of such employment. ....." In the present case situs of employment of the complainant was Jamshedpur as he was posted at Jamsedpur under the Ranchi branch. He was doing his work at Jamshedpur and his services were terminated when he was working at Jamshedpur. Not only this his termination was communicated to him at Jamshedpur only. Therefore taking into consideration fact and circumstances of the case, law settled in the above mentioned cases and reasons given hereinabove I am of considered view that cause of action for filing this case has partly arisen within the jurisdiction of this court and this court has territorial jurisdiction to entertain this case. Thus this petition is hereby rejected."

25. ***This court finds that the aforesaid order rejecting the objection on account of territorial jurisdiction is a well-reasoned order and does not suffer from any perversity.***

26. The employer has relied upon the judgement passed in the case of ***Hindustan Lever Limited (supra).*** In the said Judgment passed by Hon'ble Patna High Court decided on 22.02.2010 the foundational fact was that the establishment of the management was registered under Bengal Shops and Establishment Act at Kolkata and there was no registration of any establishment in the state of Bihar under Bihar Shops and Establishment Act or any sub-ordinate office in the state of Bihar ; the entire eastern region was divided into sales areas, managed by Area Sales Manager located at Kolkata who was assisted by Sales Officers and territory sales in-charge and their entire salary and wages were also paid from Kolkata office. The letter of appointment, letter of confirmation, promotion, the leave card etc., were all issued from Kolkata office. However, the private respondent therein filed a petition before the Labour Court Patna challenging his order of termination as the termination letter was issued from Kolkata office at Patna address of the private respondent and an objection was raised with regard to maintainability of the application before the Labour Court at Patna. However, the said objection was rejected and consequently, the writ petition filed and the writ petition was also dismissed. It was ultimately held in Paragraph-16 of the aforesaid judgment which is as under: -

> *"**16**. It would appear from the pleadings of the parties that petitioner has its registered office at Mumbai and a Regional Office at Kolkata, which controls and monitor sales and distributions in Eastern Region including State of Bihar. Sales officers have been appointed for distributing the products of the company in different areas. The respondent no.3 has not been able to controvert the submission of the petitioner that it has no establishment or office of the company in the State of Bihar. In my view, the B.S.E. Act, 1953 would be applicable in cases of a establishments or shops established in the State of Bihar, as provided under Section 2(6) and 2(16) respectively. The respondents have brought nothing on record to show that the company has any establishment or premises where goods are being sold either in retail or wholesale by Company's office. It is the case of the petitioner that the*

> *goods are being distributed through distributors, who may have their own premises, but so far as company is concerned, it does not have any establishment, shop of premises of its own as defined under Section 2(6) and 2(16) of the Act. An establishment, shop or office of a distributor distinct from the company or firm cannot be deemed to be its Establishment, shop or office. All the decisions cited by the learned counsel for the respondents are in respect of cases under Industrial Dispute Act, and principles which would govern its territorial jurisdiction. The I.D. Act has a wider application than the B.S.E. Act, which is a local Act and limited to Shop and Establishment established in State of Bihar.* ***A case under B.S.E. Act would be maintainable only if the "shops" and "establishments", in which a person is working, has an establishment in the State of Bihar.*** *The position in respect of Industrial Dispute Act, being a Central Act would be different because of its wider application. The Industrial Dispute Act is not circumscribed by conditions laid down in local Act, which stipulates existence of an establishment and shop in the State of Bihar."* ***(emphasis supplied).***

27. Thus, in the aforesaid case, the court ultimately held that Bihar Shops and Establishment Act, 1953 would be applicable in cases of establishment of shops established in State of Bihar as provided under Section 2(6) and 2(16) respectively. The respondents of the said case had not brought anything on record to show that the company had any establishment or premises where the good were being sold either in retail or wholesale by the company's office. It was the case of the management that the good were being distributed through distributors who may have their own premises, but so far as company is concerned, it did not have any establishment, shop or premises of its own defined under Section 2(6) and 2(16) of the Act. It was held that the Industrial Disputes Act has a wider application than the Bihar Shops & Establishment Act which is a local act and limited to Shops & Establishment Act established in the State of Bihar. A case under Bihar Shops & Establishment Act would be maintainable only if the shops and establishment, in which a person has working, is an

establishment in the State of Bihar. The court held that the case under Shops and Establishment Act was not maintainable at Patna. However, an industrial dispute could be raised and left the concerned employee with a liberty to prefer a case under Bengal Shops and Establishment Act in Bengal or under the industrial disputes act even before the Labur Court/Tribunal at Patna. The said judgement does not apply to the facts of this case as admittedly, the employer has an establishment in Ranchi, Jharkhand registered under Jharkhand Shops and Establishment Act within the same State where the employee was working and the case was filed. In the case of ***Hindustan Lever (Supra)***, the concerned establishment was registered in the State of West Bengal and the case was filed under Bihar Shops & Establishments Act in the State of Bihar and on that count the case was held to be not maintainable in the State of Bihar under Bihar Shops & Establishments Act, which is not the case here, here the establishment is registered within the State of Jharkhand and the cause of action with respect to the employee arose within the State of Jharkhand though in another district i.e. in the District of Singhbhum.

28. In the judgment reported in ***1996 SCC online Patna 54 (Supra)*** the Hon'ble Patna High Court while considering the territorial jurisdiction of Labour Court held that the situs of employment of workmen determines the territorial jurisdiction of a Tribunal in the case of Industrial and Labour Court Disputes arising from the termination of such employment. It was held that the writ petitioner of the said case was working in Patna Depot of the company and thus their services were deemed to have been terminated at Patna and therefore, the learned Labour Court Patna was not legally justified in holding that they had no territorial jurisdiction to try the dispute. It was also held that under Clause (c) of Section 20 of Civil Procedure Code a proceeding can be initiated in a court or tribunal where the cause of action wholly or in part arises and since the petitioners were working at Patna, the cause of action arose at Patna. In the said case the proceeding was initiated under the Bihar Shops & Establishments

Act and the Hon'ble Patna High Court held that the case filed at Patna was maintainable since the services of the petitioners were terminated at Patna.

29. This Court is of the view that the point of territorial jurisdiction is squarely covered by the judgment reported in ***1996 SCC online Patna 54 (Supra)*** in view of the fact that although, the management in the present case has itself registered establishment under Bihar Shops & Establishments Act 1953 at Ranchi, but by virtue of order of posting, the concerned employee was posted at Jamshedpur and there is enough material to show that he was working from his home at Jamshedpur. The letter of termination was also served upon the workman at Jamshedpur. In such circumstances, the cause of action arose at Jamshedpur and consequently, it cannot be said that the court at Jamshedpur did not have the jurisdiction to entertain the petition filed under Bihar Shops & Establishments Act at Jamshedpur as the establishment though registered at Ranchi was certainly within the State of Jharkhand. No such provision could have been pointed out by the learned counsel for the management that the territorial jurisdiction under Bihar Shops and Establishment Act 1953 is restricted to the court where the establishment is registered.

30. ***Thus issue no. 2 is also decided in favour of the employee and against the employer by holding that the learned Labour Court at Jamshedpur could have entertained and adjudicated the complaint of the employee and the case was not bad for want of territorial jurisdiction merely on the ground that employer had no shop or commercial establishment within the municipal limits of the Jamshedpur.***

Issue No.3: ***Whether an employee working as Area Sales Manager which falls within the exception as provided under Serial No. 5 read with Schedule I of Section 4(2) of the Bihar Shops and Establishment Act, 1953 is competent to file complaint and entitled to relief?***

31. This Court is of the considered view that merely because the designation of the employee was 'Area Sales Manager', the same is not conclusive on the fact that the employee was holding a managerial post. As per the appointment letter the employee was supposed to do all the work as may be instructed by the management. Further, it was the specific case of the employer that the employee was reporting and was working under the opposite party no.3 whose office was located at Ranchi where the registered establishment was located. It was never the case of the employer before the learned court that the employee was holding any managerial post so as to exclude the employee from the preview of Jharkhand Shops and Establishment Act. This Court is not inclined to allow the employee to raise such plea for the first time in the writ jurisdiction as the same is essentially a question of fact.

32. It is important to note that section 4(2) read with sl. No. 5 of the schedule I of Jharkhand Shops and Establishment Act provides that where there are more persons working in the name of managerial capacity or in the capacity of supervisor in any establishment, then, where the employees are more than five, not more than 10% of the total number of employees in an establishment shall be exempted. Therefore, by this provision, even those persons who may have been working on the post of Manager or in the supervisory post, they are also given the benefit of the 1953 Act. This was held by this Court in the judgment reported in ***(2011) SCC OnLine Jhar 1291***. The said judgement was subject matter of consideration before the Hon'ble Supreme Court in the judgement reported ***(2016) 14 SCC 702 (supra)*** and the judgment of the High Court was modified only to the extent of full and final settlement of dispute between the parties.

33. The provision of exclusion so as to include the employee involved in this case under managerial category does not apply the facts of this case. With respect to the point as to whether the employee could be said to have been working in managerial capacity as Area Sales Manager, this Court finds that the designation is not decisive and admittedly the establishment was located at Ranchi and as per the

registration of the establishment there were four employees, the management did not lead any evidence to show that the employee in the present case would fall within the exception as provided under Serial No.1 read with 4(2) of Bihar Shops & Establishments Act which provides that 10% of the total employee would be covered by managerial post and would fall outside the purview of Bihar Shops & Establishments Act. Further, no such plea was raised by the management before the learned Labour Court and such plea cannot be entertained for the first time in the writ jurisdiction as the same is essentially a question of fact which would depend upon the number of employees and the position the employee held in the organization.

34. ***Thus, the issue no. 3 is also decided against the employer and in favour of the employee by holding that though the employee was designated as Area Sales Manager but there is no material to show that he fell within the exception as provided under Serial No. 5 read with Schedule I of Section 4(2) of the Bihar Shops and Establishment Act, 1953 as adapted by the state of Jharkhand so as to exclude the applicability of the said Act to the employee involved in this case.***

Plea of loss of confidence.

35. ***So far as the plea regarding loss of confidence*** is concerned, the letter of termination does not reveal any indication of loss of confidence. Rather, the case of the employer is that inspite of repeated opportunities the employee did not join the service. The fact remains that the employee was not subjected to any disciplinary proceeding to be found guilty of any misconduct and at the same time it appears from the reply of the employee that admittedly he was remaining absent from duty by making certain allegation against his senior and also making a statement that he suffered heart disease and was sick and was under treatment, but no such medical documents have been produced on record by the employee. In such circumstances, it cannot be said that the workman was terminated on account of loss of confidence, rather he was terminated on account of unauthorized

absence from his duty and for not jointing the duty inspite of repeated opportunities.

<u>Issue No.4:</u> Whether the employee was entitled to any back wages and if so to what extent?

The employer has challenged the award of 25% back wages on the ground that the employee was gainfully employed and the employee has also challenged the same by filing his separate writ petition and has claimed that he ought to have been awarded full back wages.

36. So far as the point of back wages is concerned, this Court finds that the employee has stated in his written statement that he was not gainfully employed and the employer had not denied this statement in the written statement. However, the same cannot be a ground to allow full back wages to the employee. The materials on record reveals that the employee during his cross examination has himself disclosed that he was working as a partner with his brother and the firm also filed return but he did not disclose his income for the reasons best known to him. However, in such circumstances, the claim of the employee that he was entitled for full back wages as he was not gainfully employed after his termination is misplaced. At the same time, it has not come on record as to what was the extent of the income of the employee which was certainly required to have been disclosed by the employee once he admitted that he filed income tax returns being a partner in the firm of his brother. Thus, the claim of the employee for 100% back wages cannot be allowed. The fact remains that the employee was dismissed without any disciplinary proceedings. In such circumstances, grant of back wages to the extent of 25% while holding that the dismissal was bad in law, does not call for any interference in writ jurisdiction. The exercise of discretion by the learned labour court while granting 25% back wages cannot be said to be arbitrary or perverse in the light of the aforesaid facts and circumstances of this case.

37. ***While deciding Issue No. 4 it is held that the grant of 25% back wages by the learned labour court does not call for any interference.***

38. This Court finds that there is no illegality and perversity in the two impugned orders passed by learned labour court Jamshedpur. As a cumulative effect of the aforesaid findings, both the writs are dismissed.

39. Pending interlocutory application, if any, is closed.

(Anubha Rawat Choudhary, J.)

29.08.2026
Rakesh/-
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A.F.R.