

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 17422 of 2014

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Dilip Kumar Jha S/o Late Mahendra Jha Resident of
Village + P.O. Prem Nagar Suhai, District
Sitamarhi, Bihar.

..... Petitioner

Versus

1. The State of Bihar, Department of Labour, Employment and Training now known as Labour and Resources Department, New Secretariat, Patna-15 through its Principal Secretary.
2. Mahindra and Mahindra Ltd., Mahindra Towers, Worli Road No. 13, Mumbai-400018.
3. The Vice President, Human Capital, Mahindra and Mahindra Ltd., Mahindra Towers, PK Khurne Chowk, GM Bhosle Marg, Worli, Mumbai-400018.
4. The President, (HR, Corporate Service AND After Market) Member of Group Management Board, Mahindra and Mahindra Ltd. AND Mahindra Logistics Ltd., Mahindra Towers, PK Khurne Chowk, GM Bhosle Marg, Worli, Mumbai-400018.
5. The Area Manager, Mahindra Logistics Ltd., 3rd Floor, JJ Complex, East Boring Canal Road, Patna-800001.
6. The Mahindra Logistics Ltd., 6th Floor, Mahindra Towers, PK Khurne Chowk, GM Bhosle Marg, Worli, Mumbai-400018.
7. The Chairman, Mahindra Logistics Ltd., 6th Floor, Mahindra Towers, PK Khurne Chowk, GM Bhosle Marg, Worli, Mumbai-400018.
8. The Chief Executive Officer, Mahindra logistics, 2nd Floor, 271, Business Park, Vishweshwar Nagar Road, Goregaon (East), Mumbai-400063.
9. The Head-IR, Mahindra Logistics, 2nd Floor, 271, Business park, Vishweshwar Nagar Road, Goregaon (East), Mumbai-400063.

..... Respondents

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Appearance :

For the Petitioner: Mr. Sanjeev Kumar
For the State: Mr. Prabhat Ranjan, AC to GP-12

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL ORDER

3. 28-07-2015 Heard Sri Sanjeev Kumar, learned
counsel for the petitioner and Sri Prabhat

Ranjan, learned A.C. to Govt. Pleader - 12.

The petitioner, invoking writ jurisdiction of this Court under Article 226 of the Constitution of India, has prayed for quashing of an order dated 09-04-2014 passed by the Presiding Officer, Industrial Tribunal, Patna (hereinafter referred to as the 'Tribunal') in I.D. Case No. 02 of 2012. By the said order, on the preliminary objection being raised by the private respondent, the learned Tribunal rejected the reference case on the ground that it was not an industrial dispute, since the petitioner was not workman within the meaning of Section 2(m) of the Industrial Dispute Act, 1947 (hereinafter referred to as the 'Act').

Short fact of the case is that the petitioner, after being terminated, raised an industrial dispute, which was numbered as I.D. Case No. 02 of 2012. In the application filed before the Tribunal, it was admitted by the petitioner in its petition that the petitioner was appointed as Manager (Credit) and he was also designated as Deputy General Manager. It



was claimed that while terminating, the provision contained in Section 25-F of the Act was not followed. In the case, a preliminary objection was raised on behalf of private respondent, in which, a plea was taken that the petitioner was not a workman within the meaning of the Act and it was also claimed that since he was not a workman, it was not a case of industrial dispute, as provided under the Act. The learned Tribunal, accepting the preliminary objection, has rejected the case on the point of maintainability, which has been assailed by the petitioner in the present writ petition.

Sri Sanjeev Kumar, learned counsel for the petitioner, while pressing the present petition, submits that ofcourse, the petitioner was shown with the designation as Manager or Deputy General Manager, but fact remains that the petitioner was discharging his duty as a Clerk and as such, it was not covered within the exception of Section 2(m) of the Act, rather the petitioner was a workman. He further submits that once the petitioner had claimed that he was discharging the duty of Clerk, without allowing

the party to adduce evidence, it was not advisable for the learned Tribunal to reject the case on the ground of its maintainability. Learned counsel has placed heavy reliance on the judgment of the Apex Court reported in **AIR 2001 SUPREME COURT 3290 (HUSSAN MITHU MHASVADKAR - Versus- BOMBAY IRON & STEEL LABOUR BOARD AND ANOTHER)**. He has placed paragraph - 10 of the said Judgment, which is quoted here-in-below:-

"10. No doubt, in deciding about the status of an employee, his designation alone cannot be said to be decisive and what really should go into consideration is the nature of his duties and the powers conferred upon as well as the functions assigned to him. Even if the whole Undertaking be an Industry, those who are not workmen by definition may not be benefited by the said status. It is the predominant nature of the services that will be the true and proper test. Operations of the Government which are pure and simpliciter administrative and of Governmental character or incidental thereto cannot be characterized to be 'industrial' in nature, be it performed by a department of the Government or by a specially constituted statutory body to whom anyone or more of such functions are delegated or entrusted with. When, as in this case, as disclose from S. 15 of the Act as also the provisions of the scheme, the primary duties of an employee and the dominant purpose, aim and object of employment was to carry out only certain specific statutory duties in the matter of effective enforcement and implementation of the welfare scheme in order to ameliorate and rehabilitate a particular cross-



section of labour, and, if need be, on the basis of his own decision which calls for an high degree of discretion and exercise of power to prosecute the violator of the provisions of the Act, Rules and the provisions of the scheme, we are unable to accord our approval to the claim made on behalf of the appellant that he can yet be assigned the status of a workman without doing violence to the language of S. 2(s) and the very purpose and object of the I.D. Act, 1947. That apart, even judging from the nature of powers and the manner of its exercise by an Inspector, appointed under the Act, in our view, the appellant cannot be considered to be engaged in doing any manual, unskilled, skilled, technical, operational, clerical or supervisory work and the mere fact that in the course of performing his duties he had to also maintain, incidentally, records to evidence the duties performed by him, day-to-day, cannot result in the conversion of the post of 'Inspector' into any one of those nature noticed above, without which, as held by a Constitution Bench of this Court in the decision in H.R. Adyanthaya's case (supra), the appellant cannot fall within the definition of 'workman'. The powers of Inspector and duties and obligations cast upon him as such are identical and akin to law enforcing agency or authority and also on par with a prosecuting agency in the public law field."

He further submits that the preliminary objection, which was raised by the private respondent, was purely mix question of fact and law, which was not required to be adjudicated at preliminary stage. On aforesaid ground, he has

prayed for setting aside the impugned order.

Learned State counsel supports the order of the Tribunal. He submits that the petitioner was drawing remuneration higher than Rupees Eighteen lacs per annum. He further submits that at the time of termination, a cheque of Rs. 1,14,480/- (one lac fourteen thousand four hundred & eighty) was also given to the petitioner. This fact has not been disputed by the petitioner and as such, the order impugned requires no interference.

Besides hearing learned counsel for the petitioner and learned counsel for the State, without issuing notice to private respondent, the Court proposes to decide the issue on the basis of materials on record itself. Two facts are not in dispute i.e. (i) the petitioner was drawing remuneration more than eighteen lacs per annum and (ii) as per designation, he was in managerial category. Now, the question, which has been raised by the petitioner as to whether the petitioner can be termed as a Clerk or not is to be examined. In the present writ petition, the petitioner has brought on record



rejoinder filed by the private respondent before the Presiding Officer in I.D. Case No. 02 of 2012 as well as preliminary objection, which was raised by the private respondent before the Tribunal. In paragraph - 11 of the objection petition at running page 44 (internal page 4), a specific stand was taken by the respondent that **"a bare perusal of the relevant section of the Act would make it clear that the persons employed in a managerial or administrative capacity or the person employed in supervisory capacity drawing salary exceeding ten thousand rupees per month would not be covered by the definition of the 'workman' and thus, such employees cannot invoke the jurisdiction of the Industrial Tribunal"**. The private respondent has further brought on record before the Tribunal that in respect of two employees, the petitioner had placed appraisal sheet assessing their work. Such statement has not been disputed by the petitioner.

In view of the aforesaid fact, it is evident that at least the petitioner was exercising the work in the supervisory capacity.

At this juncture, it would be appropriate to quote the provision contained in Section 2(s) of the Act, which is quoted here-in-below:-

"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 proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an officer or other employee of a prison, or

(iii) who is employed mainly in a managerial or administrative capacity, or

(iv) who, being employed in a supervisory capacity, draws wages exceeding [ten thousand rupees] per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature."

On examination of the record of the present case and examining aforesaid provision, there is no confusion in arriving at the conclusion that the petitioner was not a workman within the meaning of the Act. The simple



reason is that the petitioner himself accepts that he was appointed in the managerial capacity. It has also been accepted that he was also designated as Deputy General Manager, being administrative head and secondly, fact disclosed that in exercise of supervisory jurisdiction, he had given appraisal note in respect of two workman. Certainly, the petitioner may not be covered as workman. Since, he was not a workman, there was no question for raising an industrial dispute. The industrial dispute has been defined in Section 2(k) of the Act, which is quoted here-in-below:-

"2(k) 'industrial dispute' means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, or any person;"

Accordingly, on perusal of the materials on record, the Court is satisfied that the Tribunal has committed no error in accepting the preliminary objection raised by the private respondent on the point of maintainability of the case. Further, the judgment on which the



petitioner has placed heavy reliance may not favour the petitioner, due to the reason that in this case, material on record categorically suggests that the petitioner exercising the supervisory jurisdiction had given appraisal note in respect of two employees, he was getting remuneration above eighteen lacs per annum and at the time of termination, a cheque of Rs. 1,14,480/- was also given to the petitioner as one month remuneration. The question regarding the remuneration or salary in such cases was examined by the Apex Court in detail in a case reported in **AIR 1994 SUPREME COURT 2608 (H. R. Adyanthaya -vs.- Sandoz (India) Ltd.)**. It would be appropriate to quote paragraph - 6 of the judgment, which is quoted here-in-below highlighting the particular lines:-

"6. In the light of the above position of law emerging from the judicial decisions, the statutory provisions and the changes in them, we may now deal with the contentions advanced before us.

It was contended by Shri Sharma, appearing for the workmen that the definition of workman under the ID Act includes all employees except those covered by the four exceptions to the said definition. His second contention was that in any case, the medical representatives perform duties of skilled and technical nature and, therefore, they are workmen within the meaning of the said definition. We are

afraid that both these contentions are untenable in the light of the position of law discussed above. The first contention was expressly negatived by two three-Judge Benches in May and Baker (AIR 1967 SC 678) and Burmah Shell (AIR 1971 SC 922) cases (supra) as has been pointed out in detail above. As regards the second contention, it really consists of two sub-contentions, viz., that the medical representatives are engaged in "skilled" and "technical" work. As regards the word "skilled", we are of the view that the connotation of the said word in the context in which it is used, will not include the work of a sales promotion employee such as the medical representative in the present case. 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. Hence the contention that the medical representatives were employed to do skilled work within the meaning of the said definition, has to be rejected. As regards the "technical" nature of their work, it has been expressly rejected by this Court in Burmah Shell case (supra). Hence that contention has also to be rejected.

Shri Naphade, the learned counsel appearing for the petitioner in W.P. 5259 of 1980 contended that inasmuch as the SPE Act, as it was originally enacted made a distinction between sales promotion employees drawing wages not exceeding Rs. 750/- per mensem (excluding commission) or Rs. 9000/- per annum (including commission) and those drawing wages above the said amounts included only the first category of employees in the said definition, it was discriminatory as against those who fell in the second category and was violative of Art. 14 of the Constitution. According to him, the classification made had no

rational nexus with the object sought to be achieved by the enactment. We are afraid that this argument is not tenable. The service conditions and their protection are not fundamental rights. They are creatures either of statute or of the contract of employment. What service conditions would be available to particular employees, whether they are liable to be varied, and to what extent are matters governed either by the statute or the terms of the contract. The legislature cannot be mandated to prescribe and secure particular service conditions to the employees or to a particular set of employees. The service conditions and the extent of their protection as well as the set of employees in respect of which they may be prescribed and protected, are all matters to be left to the legislature. Hence when a legislation extends protective umbrella to the employees of a particular class, it cannot be faulted so long as the classification made is intelligible and has a rational nexus with the object sought to be achieved. In the present case, the classification made between two categories of the sales promotion employees, viz., those drawing wages up to a particular limit and those drawing wages above it, is fairly intelligible. The object of the legislation further appears to be to give protection of the service conditions to the weaker section of the employees belonging to the said category. The legislature at that particular time thought that it was not either necessary to extend the said protection to all the employees belonging to the said category irrespective of their income or that at that stage the circumstances including the conditions and the nature of the employment and the sales business or operation did not warrant protection to the economically stronger section of the said employees, and that economically weaker among them alone needed the protection. Hence it cannot be said that the classification made of the



said employees on the basis of their income had no rational nexus with the object sought to be achieved, viz., the protection of the weaker section of the said employees. The extension of the protective umbrella could not as a matter of right, therefore, be demanded by those who drew more wages. Even in the definition of the workman under the ID Act as well as under the very SPE Act, the classification of those employed to do supervisory work has been made on the basis of their monthly income although the work done by the two sections of the workmen is the same, viz., supervisory and those drawing wages above the particular limit have been excluded from the said definition. According to us, it is permissible to classify workmen on the basis of their income although the work that they do is of the same nature. The protective umbrella need not cover all the workmen doing the particular type of work. It can extend to them in stages. At what stage which of the said section of the employees should come under the said umbrella is a matter which should be left to the legislature which is the best judge of the matter. We, therefore, do not see any merit in the contention."

In view of the facts and circumstances and the law settled by the Apex Court, there is no ground for interference with the impugned order.

The writ petition stands dismissed.

(Rakesh Kumar, J.)

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