

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO.7521 OF 2016
ALONG WITH
WRIT PETITION NO.6839 OF 2016**

Chordia Food Products Limited	]
55, Hadapsar Industrial Estate,	]
Solapur Road, Pune 411 013	]..... Petitioner
versus	
Nitin Prabhakar Gurav	]
Residing at Sadhana Cooperative	]
Housing Society, Plot No.31,	]
Hadapsar, Pune 411 042	]..... Respondent.

**Mr. Kiran Bapat i/by M/s. Desai and Desai Associates for the Petitioner.
Mr. Nitin A Kulkarni for the Respondent.**

**CORAM : R. M. SAVANT, J.
DATE : 26th August 2016**

ORAL JUDGMENT

1 Rule in both the above Writ Petitions, with the consent of the learned counsel for the parties made returnable forthwith and heard.

2 The writ jurisdiction of this Court is invoked against the judgments and orders both dated 05/02/2016 passed by the learned Member, Industrial Court Pune in Revision (ULP) No.34 of 2014 and Revision (ULP) No.58 of 2014. By the first order the Revision (ULP) No.34 of 2014 filed by the Petitioner herein came to be dismissed and by the second order the Revision (ULP) No.58 of 2014 filed by the Respondent herein came to be allowed, and resultantly the order passed by the Labour Court came to be modified to the

extent of setting aside the order granting compensation to the Respondent and substituting the same by the grant of reinstatement and full back wages.

3 It is not necessary to burden this Order with unnecessary details having regard to the final directions that are to be issued.

The Respondent herein had filed Complaint (ULP) No.225 of 2000 against the Petitioner herein who is a manufacturer of spices, pickles and other eatables. The said complaint was filed invoking Item 1(a), (b), (d) and (f) of Schedule IV of the MRTU & PULP Act 1971. The said complaint was founded on the fact that the Respondent herein is a sales promotion representative. he was getting salary of Rs.4,300/- per month and though he was designated as Supervisor, he was not assigned with any powers of that post. The Respondent's services came to be terminated on 20/06/2000 with effect from 27/06/2000. It was the case of the Respondent that his services were terminated without following any procedure or payment of retrenchment compensation. A declaration was also sought by the Respondent herein that the said termination was illegal and that the Petitioner by terminating his services has indulged in an unfair labour practice.

4 The Petitioner herein who is the original Respondent filed its written statement. It was the case of the Petitioner that the Respondent was carrying out the activities which were detrimental to the sales of the Petitioner.

The Petitioner had lost confidence in the Respondent and a decision was therefore taken to terminate his services. It was therefore the case of the Petitioner that the action of termination of the services of the Respondent herein for the reasons mentioned did not constitute any unfair labour practice.

5 On the basis of the aforesaid pleadings the Labour Court framed the issues amongst which was the issue whether the complainant i.e. the Respondent herein is a workman as defined under Section 2(s) of the Industrial Disputes Act and consequently ;not a workman under Section 3(5) of the MRTU & PULP Act, 1971. The learned Judge of the Labour Court on the basis of the material on record and especially having regard to the fact that the Petitioner had not produced any material to show that the Respondent Complainant was working in a supervisory capacity held that the Respondent Complainant was a workman within the meaning of Section 2(s) of the Industrial Court. The learned Judge of the Labour Court also found fault with the action of the Petitioner in terminating the services of the Respondent, Complainant which according to it was without following the procedure and therefore issued a declaration that the Petitioner has indulged into unfair labour practice under Item 1(b) (d) and (f) of Schedule-IV of the MRTU & PULP Act, 1971. The learned Judge of the Labour Court however did not reinstate the Respondent Complainant and did not grant back wages but granted Rs.3,00,000/- as compensation to the Respondent Complainant.

6 The Petitioner aggrieved by the Judgment and Order dated 21/02/2014 passed by the learned Judge of the Labour Court carried the matter in Revision by filing Revision (ULP) No.34 of 2014. Since the issue as to whether the Respondent Complainant was a workman was put into contention by the Petitioner, the Industrial Court proceeded to adjudicate upon the said issue. Before the Industrial Court the judgment of the Apex Court in the matter of *H. R. Adyanathaya and ors v/s. Sandoz (India) Ltd. and ors* reported in *(1994) 5 SCC 737* was cited as also the provisions of the Sales Promotion Employees (Conditions of Service) Act, 1976 were adverted to and especially the definition of Sales Promotion Employee within the meaning of the said Act. The Industrial Court for a reason different than given by the Labour Court held that the Respondent was a workman. According to the Industrial Court the Respondent Complainant fell within the definition of the word “Sales Promotion Employee” as postulated in the said Sales Promotion Employees Act. This conclusion the Industrial Court arrived at on the basis that in the definition of the Sales Promotion Employee covers a person employed or engaged in “any establishment” and since the Respondent is working in the establishment of Petitioner as Sales Promotion Employee he is a workman within the meaning of the said Act. In so far as the judgment in *H. R. Adyanathaya and ors* (supra) is concerned, the Industrial Court arrived at a conclusion that the said judgment would have no application in the facts and

circumstances of the present case wherein the Respondent Complainant was not working as a medical representative. The Industrial Court therefore confirmed the finding of the Labour Court as regards whether the Respondent was a workman albeit for a different reason.

7 In so far as grant of lumpsum compensation to the Respondent Complainant is concerned, which was granted by the Labour Court, the same was set aside and the Industrial Court directed the Petitioner to reinstate the Respondent - Complainant with full back wages.

8 The learned counsel appearing on behalf of the Petitioner Shri K S Bapat would assail the finding of both the Courts below as regards the Respondent Complainant being a workman. It was the submission of the learned counsel for the Petitioner that the Labour Court has erred in recording the finding to the said effect merely on the ground that no evidence was led by the Petitioner to show that the Respondent was working in a supervisory capacity. In so far as the Industrial Court is concerned, it was the submission of the learned counsel for the Petitioner that the findings of the Industrial Court based on the definition of Sales Promotion Employee was erroneous having regard to the meaning of the word “establishment” in the said Act.

9 Per contra, the learned counsel appearing for the Respondent

Complainant Shri Kulkarni sought to support the order passed by the Industrial Court but not with any deal of conviction. The learned counsel for the Respondent however fairly stated that the issue as to whether the Respondent Complainant is a workman has not been satisfactorily adjudicated upon by the Industrial Court having regard to the provisions of the Sales Promotion Employees Act and the judgment of the Apex Court in *H. R. Adyanathaya and ors* (supra).

10 Having heard the learned counsel for the parties, in my view, without elaborating further on the findings recorded by the Industrial Court on the aspect of whether the Respondent Complainant is a workman lest the said observation may affect or influence the adjudication by the Industrial Court on the remand of the matter. In my view, the adjudication of the Industrial Court especially having regard to the provisions of the Sales Promotion Employees Act and also having regard to the tests laid down in so far as the definition of “workman” in Section 2(s) of the Industrial Disputes Act is concerned is not satisfactory. The Industrial Court has without adverting to the meaning of “establishment” has hastened to conclude that the Respondent Complainant is a Sales Promotion Employee within the said Act and would therefore come within the definition of the workman as postulated in Section 3(5) of the MRTU & PULP Act, 1971. In the said process the Industrial Court has glossed over the proposition of law laid down by the Apex Court in *H. R.*

Adyanathaya and ors (supra) in which judgment the Apex Court has referred to earlier judgment in the matter of May & Baker (India) Ltd. V. Workmen reported in AIR 1967 SC 678 and in the matter of Burmah Shell Oil Storage & Distribution Company of India Ltd v/s. Burmah Shell Management Staff Association reported in 1970 3 SCC 378. Hence the impugned orders both dated 05/02/2016 are required to be quashed and set aside and are accordingly quashed and set aside, and the Revision Application (ULP) No.34 of 2014 filed by the Petitioner herein and the Revision Application (ULP) No.58 of 2014 filed by the Respondent Complainant are required to be relegated back to the Industrial Court for a de-novo consideration in terms of the observations made herein above. On remand the Industrial Court to decide the Revision Applications latest by 31st December 2016. Needless to state that the contentions of the parties are kept open for being urged before the Industrial Court. The Revision Applications would be tried on their own merits and in accordance with law uninfluenced by the earlier orders and the instant order. Both the above Petitions are allowed to the aforesaid extent. Rule in both the Petitions is accordingly made absolute with parties to bear their respective costs of the Petitions.

[R.M.SAVANT, J]