

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition No. 3827 of 2003**

Siraj Ahmad, S/o Shri Mansoor Ahmad, aged about 41 years,
R/o House No. 13/914, Mitra Vihar, Link Road, Bilaspur (C.G.)

---- Petitioner**Versus**

1. State of Chhattisgarh, through the Secretary, Ministry of Labour,
D.K.S. Bhawan, Raipur (C.G.)
2. Labour Officer, Labour Office, Bilaspur
3. Hindustan Lever Ltd., Bombay Branch, through its Regional
Manager, Uttara Plot No. 2, Sector-ii, C.B.D. Bellapur, Navi
Mumbai -400614

---- Respondents

For Petitioner : Dr. N.K. Shukla, Senior Advocate
with Shri Vikram Sharma, Adv.

For Respondents No. 1 & 2 : Shri S. Majid Ali, Panel Lawyer.
For Respondent No. 3 : Shri Pawan Kesharwani, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****11/05/2017**

(1) The petitioner's services as territory Sales Incharge of the Hindustan Lever Limited was terminated by that Company by order dated 18.01.2002. He made an application under Section 10 of the Industrial Disputes Act, 1947 (henceforth "Act, 1947") to the Labour Officer for referring the dispute to the jurisdictional Labour Court. That application was rejected by the Labour Officer by order dated 28.05.2003 holding that he is not the workman within the meaning of Section 2(s) of the Act, 1947 and the provisions of Act of 1947 is not applicable to the employees covered under the Sales Promotion

Employees (Condition of Service) Act, 1976 (henceforth “Act, 1976”), against which, instant writ petition has been filed questioning the same.

(2) Learned counsel appearing for the petitioner would submit that the petitioner falls within the definition of workman under the Industrial Disputes Act, 1947 by virtue of Section 6(2) of the Act, 1976 and, therefore, Labour Officer committed illegality in holding that provisions of Industrial Disputes Act is not applicable to the Sales Promotion Employees, thus, the impugned order is liable to be set aside.

(3) On the other hand, counsel for the respondents support the writ petition.

(4) I have heard learned counsel appearing for the parties, considered their rival submissions made hereinabove and also gone through the record with utmost circumspection.

(5) Section 6(2) of the Act, 1976 states as under :-

(6) **Application of certain Acts to sales promotion employees.-** The provisions of Workmen’s Compensation Act, 1923 (8 of 1923), as in force for the time being, shall apply to, or in relation to, sale promotion employees as they apply to, or in relation to, workmen with the meaning of that Act.

(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.”

(6) A focused study of the Section 6(2) of the Act, 1976 would show that provisions of Industrial Disputes Act, 1947 has been made applicable in relation to the Sales Promotion Employees.

(7) The question as to whether Section 6(2) of the Act, 1976 has been omitted by virtue of Section 24 of the I.D. (Amendment) Act, 1982 came up for consideration before the Division Bench of the High Court of Punjab & Haryana in the matter of **Ripu Daman Bhanot Vs. The Presiding Officer, Labour Court, Ludhiana & others** reported in **1997 (1) LLJ 557**, in which has been held that as per notification of the Central Government dated 21.08.1984, Section 24 had not been given effect to and, therefore, Section 6(2) of the Act, 1976 is still in the statute book and it has been observed as under:-

“4. Before coming to the main question, we may mention that the various provisions, contained in the Industrial Disputes Act, 1947, have been amended by the Industrial Disputes (Amendment) Act, 1982 (Central Act No.46 of 1982). Section 1(2) of the Amendment Act provides that it shall come into force on such date as Central Government may, by notification in the Official Gazette, notify. By virtue of section 24 of the Amendment Act No.46 of ‘1982 Act’, Section 6(2) of ‘1976 Act’ has been omitted. The provisions contained in clauses ‘a’ ‘b’ ‘d’ to ‘k’ of Section 2 and Sections 3, 4, 5, 6, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19,20,21 and 23 of the Amendment Act have been brought into force by notification No. S.O. 606 (E) dated August 21, 1984. This shows that in its wisdom, the Central Government has not given effect to clause 24 of Amending Act No.46 of ‘1982 Act”. As a logical consequence, it will have to be held that Section 6(2) of ‘1976 Act’ has not been omitted and it continues to remain in force.

Coming to the main question, we may deem it proper to

reproduce Section 2(d) and Section 6(1) and (2) of '1976 Act' which read as under:

“2(d). ‘sales promotion employees’ means any person by whatever name called (including an apprentice) employed or engaged in any establishment for hire or reward to do any work relating to promotion of sales or business, or both, but does not include any such person:

(i) who, being employed or engaged in a supervisory capacity, draws wages exceeding sixteen hundred rupees per mensem; or

(ii) who is employed or engaged mainly in a managerial or administrative capacity;

Explanation : For the purpose of this clause, the wages per mensem of a person shall be deemed to be the amount equal to thirty times his total wages (whether or not including, or comprising only of, commission) in respect of the continuous period of his service falling within the period of twelve months immediately preceding the date with reference to which the calculation is to be made, divided by the number of days comprising that period of service.”

“Application of certain Acts to Sales Promotion Employees.

(1) The provisions of Workmen’s Compensation Act, 1923 (8 of 1923), 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 that Act.

(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 any industrial dispute, a sales promotion employee shall be deemed to include a sales promotion who has been dismissed,

discharges or retrenched in connection with, or as a consequence of, that dispute or whose dismissal, discharge or retrenchment had led to that dispute.”

The definition or ‘sales promotion employees’ reproduced above, shows that any person employed or engages in any establishment for hire or reward to do any work relating to promotion of sales or business or both is included within the ambit of it. However, those engaged in supervisory capacity and drawing wages exceeding sixteen hundred rupees per mensem are excluded from this definition. Similarly, those who are engaged in mainly managerial or administrative capacity are also excluded. By Section 6(2), the provisions of the Industrial Disputes Act, 1947 have been made applicable to sales promotion employees as they apply to the persons who are workmen within the meaning of the Act and for one purpose of any proceeding under that Act in relation to an industrial dispute, a sales promotion employee who has been dismissed, discharged or retrenched in connection with or as a consequence of such dispute. On a plain reading of these provisions, it becomes clear that even though employees engaged in the promotion of sales of business may not fall within the definition of ‘workman’ under Section 2(s) of “1947 Act”, they have been treated as workman by virtue of deeming clause incorporated in Section 6(2) of ‘1976 Act.’.

(8) In view of above, it is crystal clear that Section 6(2) of the Act, 1976 has not been omitted by virtue of Industrial Dispute (Amendment) Act, 1982.

(9) In view of the findings recorded by Punjab & Haryana High Court in the matter of **Ripu Daman Bhanot** (supra) and that Section 6(2) of the Act, 1976 has not been omitted by the I.D. (Amendment Act, 1982; and the provisions of Industrial Disputes Act, 1947 applies to the Sales Promotion Employees, this Court is of the considered opinion that the finding of Labour Officer that provisions of Industrial Disputes Act is not

applicable to the Sales Promotion Employee covered under Act, 1976 is contrary to Section 6(2) of the Act, 1976 and is liable to be set aside.

(10) Accordingly, the writ petition is allowed. Order impugned dated 28.05.2003 is hereby set aside. Appropriate Court is directed to consider and refer the dispute to the appropriate Labour Court for hearing and disposal in accordance with law.

(11) No order as to costs.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-