

CM No.11277 of 2016 in/and
CWP No.6308 of 2003

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Date of decision: 15.03.2017

CM No.11277 of 2016 in/and
CWP No.6308 of 2003 (O&M)

Suneet Goel

...Petitioner

Vs.

Presiding Officer, Central Government, Industrial Tribunal ...Respondents
 -cum- Labour Court, Chandigarh & others

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Mansur Ali, Advocate, for the petitioner.

Mr. Prateek Mahajan, Advocate, for respondents No.2 & 3.

RAJIV NARAIN RAINA, J. (ORAL)

CM No.11277 of 2016

Having heard learned counsel for the parties, the application for early hearing is allowed and the main writ petition is taken up on Board for final disposal today itself.

CWP No.6308 of 2003

Heard on main matter.

The petitioner had elected his legal remedy through the Industrial adjudication praying for reinstatement etc. and was successful in securing a reference from the Labour Commissioner to the Labour Court. The Award was passed on 21.01.2003 after trial. The Labour Court non-suited the petitioner on the finding that he did not qualify as 'workman' within the meaning of Section

2(s) of the Industrial Disputes Act, 1947 (for short 'the Act') being a Development Officer in the Life Insurance Corporation of India.

Aggrieved by the Award, the petitioner approached this Court and during the pendency of the petition, the Supreme Court rendered decision in Life Insurance Corporation of India Vs. R. Suresh, (2008) 11 SCC 319 declaring 'Development Officer' as workman. The petitioner brought that judgment to the notice of this Court, but before the present petition could be decided, the Supreme Court in Chauharya Tripathi & others Vs. Life Insurance Corporation of India & others, (2015) 7 SCC 263 followed the earlier Constitution Bench decision of the Supreme Court in H.R.Adhyanthya Vs. Sandoz (India) Ltd., (1994) 5 SCC 737 and declared the law in *R. Suresh's* case *per incuriam*, by applying the law in *Sandoz* case. As a result, the Development Officers are no longer 'workmen' within the meaning of Industrial Disputes Act, but are covered by separate laws including Sales Promotion Employees (Conditions of Service) Act, 1976 etc.

Since the Labour Court had not decided the case on merits as against the discharge order passed during probation, but had dismissed the reference for lack of jurisdiction on account of finding on jurisdictional fact that the claimant was not a 'workman', the petitioner would lose his valuable right to assail that order before the proper Forum if the matter is left in a limbo. Mr. Mansur Ali appearing for the petitioner prays and I think rightly, that he may be granted liberty to approach the appropriate Forum, so that the petitioner can vindicate his grievances in accordance with law in a Forum which has plenary jurisdiction over the subject matter. Therefore, he commends that the Court may be pleased to allow him to withdraw his demand notice with reference to the Industrial Disputes Act and the same may be treated as a demand for justice/representation to the Management so that he can take

appropriate steps from that stage to ventilate his grouse against the original order of discharge from service visited on his client. On the other hand, the reference itself may be declared as invalid in view of declaration of law in *Sandoz* and *Chauharya Tripathi* cases.

There is merit in the contention of the learned counsel since the petitioner has a right to avail effective remedy elsewhere and, therefore, must have a remedy since right to sue subsists. Since there has been no adjudication on merits, prejudice will not be caused to either of the parties, when the point decided was on jurisdiction.

Accordingly, the reference to the Labour Court is nullified. The writ is dismissed. Nevertheless, the petitioner is relegated to his remedy before the proper Forum, where he may plead all exceptions as are available to him in law even in the face of long passage of time spent bona fide in pursuit of relief in this Court. Henceforth, the impugned award will not be read by a Court of law. Similarly, the Management will be liberty to take all pleas available in defense of such action in case brought for adjudication.

The petition is disposed of accordingly and with the above liberty.

15.03.2017
Vimal

[RAJIV NARAIN RAINA]
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>No</i>