

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

CWP-18854-2016 (O&M)

Date of Decision: 20.02.2018

Karnataka Antibiotics & Pharmaceuticals Ltd.

... Petitioner

Vs.

Amit Sharma and another

... Respondents

CORAM : HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present : Mr. R.K. Bashamboo, Advocate
for the petitioner.

Mr. Dinesh Chander Trehan, Advocate
for respondent No.1.

P.B. BAJANTHRI J. (Oral)

In the instant petition, petitioner has challenged the award passed by the Labour Court dated 9.12.2015 (Annexure P-9).

2. Respondent No.1 was appointed on probation as a Professional Service Representative-I in the petitioner-company on 26.9.2008 in the pay scale of Rs.4700-7725/- and he would draw a total wages of Rs.10800/-. It seems that the petitioner has not been extended the pay attached to the post read with the order of appointment in the guise of respondent not meeting certain targets which were assigned to him. In other words, respondent No.1 is being paid lesser than the pay scale stated in the order of appointment. Thus, he filed an application under Section 33-C-(2) of the Industrial Disputes Act, 1947 (for short "the Act") before the Central Government Industrial Tribunal (for short "CGIT"). CGIT held that respondent No.1 is a workman under Section 2(s) of the ID Act. Thus, the present petition insofar

as determination of the respondent's status as a workman by the CGIT.

3. Learned counsel for the petitioner submitted that having regard to the nature of the appointment and the work assigned to respondent No.1, he is not a workman. Therefore, CGIT has erred in holding that respondent No.1 is a workman. It was further submitted that even though petitioner was appointed as a Professional Service Representative-I. He was discharging the duties of the medical representative. Therefore, medical representative do not fall under the definition of workman as held by the Supreme Court in the case of H.R. Adyanthaya etc. v. Sandoz (India) Ltd. Etc; AIR 1994 (SC) 2608. It was further submitted that certified standing orders not only apply to the workman but it applies even to other employees of the petitioner-company. It was also pointed out that State of Punjab gazette notification relating to workman is not attracted in the present case since the petitioner-company would be with reference to the Central Government. Therefore, CGIT has erred in holding that respondent is a workman and it is liable to be set aside.

4. Per contra, learned counsel for respondent No.1 while resisting the petitioner's contention submitted that respondent No.1 was on probation in the post of Professional Service Representative-I and from para-21 and 29 of offer of appointment, it is evident respondent No.1 is a workman. Certified Standing orders particularly in respect of item No.3 relates to classification of workman, probationer-workman would fall under the definition of workman. Gazette notification of the State of Punjab relating to workman definition includes promotion of sales for hire or reward. He also relied on documents like Annexure R-1/3 wherein Regional Labour Commissioner has specifically held that respondent-workman is not an

officer of the management rather he is a workman. Petitioner's contention relating to that respondent has worked upto 31.03.2010 has been countered by learned counsel for respondent No.1 while pointing out from Annexure R-1/9 and R-1/10 telegrams wherein communication has been made in the month of May 2010. He has also pointed out from Annexure P-4 that there was communication between the petitioner and respondent No.1 on 8.7.2011 and from its contents it is evident that upto June 2011, respondent No.1 was working with the petitioner-company. Therefore, contention of the petitioner that respondent has worked upto 31.3.2010 is contrary to their own documents. Thus, there is no infirmity in the order of the CGIT.

5. Heard learned counsel for the parties.

6. Crux of the matter in the present petition is whether respondent No.1 is a workman or not?

Perusal of the order of appointment, it is crystal clear that his appointment is to the post of Professional Service Representative-I on probation as on the date of respondent No.1's application under Section 33-C-(2) of the Act and his status has not been altered to that of Medical Representative. Therefore, contention of the petitioner that respondent No.1 is Medical Representative cannot be accepted. Further from condition No.21 and 29, it is evident that respondent No.1's status would not change in particularly designation so also applicability of certified standing order. In the certified standing order, item No.3 relating to classification of workman where probationer has been included as workman. That apart Regional Labour Commissioner in his report has held that respondent No.1 is not an officer of the management rather he is a workman having regard to the nature of his duties that he is not discharging the managerial post and

further he has not been entrusted any power in respect of company is concerned. Petitioner has pointed out that respondent No.1's performance was not with reference to the target which has been assigned to him. Therefore, his pay is required to be with reference to the performance chart. The said contention cannot be accepted for the reasons as long as order of appointment is not altered. Respondent No.1 is entitled to pay in terms of the orders of appointment namely in the pay scale of Rs.4700-7725/- and he will draw a total wages of Rs.10800/-.

7. Learned counsel for the petitioner cited following decisions to contend that respondent No.1 is not a workman: Nalin Sinha v. The State of Bihar and others; 2012 (1) PLJR 214; H.R. Adyanthaya etc v. Sandoz (India) Ltd.; 1994 AIR (SC) 2608; Rhone-Poulenc (India) Ltd. v. State of U.P.; 2000 AIR (SC) 3182; Management of M/s. May and Baker (India) Ltd. v. Their Workmen; 1967 AIR (SC) 678 and Burmah Shell Oil Storage and Distributing Co. of India Ltd. v. The Burmah Shell Management Staff Association and others; 1971 AIR (SC) 922.

The aforesaid decisions are distinguishable having regard to the facts of the present case. One of the cited decision is relating to interpretation of State of Maharashtra Rules. Moreover in the cited decision, appellant was stated to be a medical representative. However, in the present case, respondent No.1 is not a medical representative. He is only a Professional Service Representative-I and certified standing orders assigns probationer as workman so also conditions imposed in the order of appointment.

8. In view of these facts and circumstances, there is no infirmity in the order passed by the CGIT dated 9.12.2015. Therefore, petitioner has not

made out a case.

9. Accordingly, petition stands dismissed.

20.02.2018
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned Yes/No

Whether reportable Yes/No