

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.16934 of 2018

Date of Decision: 11.12.2018

Pfizer Limited Pfizer Estate

... Petitioner

Versus

Presiding Officer, Industrial Tribunal,
Bathinda and another

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Neeraj Yadav, Advocate,
for the petitioner.

Mr. Inderjeet Sharma, Advocate,
for Mr. Deepak Gupta, Advocate,
for the caveator/respondent.

RAJIV NARAIN RAINA, J.(Oral)

1. The management did not plead, deny or prove that the respondent-workman had not completed 240 days of service in the preceding 12 calendar months from the date of termination on April 01, 2013. It is settled that a fact not denied specifically is admitted by the party. Therefore, there was no need for the Labour Court to have thrashed out in any detail the issue on this jurisdictional fact to acquire jurisdiction to determine the subject matter on compliances of the conditions precedent to retrenchment. As far as the contention goes that the respondent was not a workman by definition, to examine this aspect I have gone through the letter of appointment of the respondent dated December 05, 2001 signed by Mr. Harold Walder, Vice President, Human Resources, Pfizer Limited and accepted by the respondent on December 19, 2001 by appending his signatures on the service agreement. There is sufficient indication in the 18

terms and conditions of the appointment letter that the nature of work assigned to the respondent-workman was to promote sales of company products which required extensive travelling and regular visits to doctors, chemists, wholesalers, C&FAs, depots, Government Hospitals and Institutions and such other places/customers as may be instructed by his superiors from time to time for the purpose of promoting, servicing and developing business. His place of posting and territory would be determined at the management's discretion. The respondent had to keep full and accurate accounts of all the transactions undertaken by him according to the instructions of the company. He was required to submit to the company periodical statement of accounts and other reports as may be required/instructed from time to time. His attendance in the field was to be monitor through daily reports of visits to prospective clients in such form and containing such particulars as may be directed from time to time. Submission of daily reports was essential to attendance. Non-submission or non-receipt of daily reports will be considered as proof of absence from duty. Pfizer described him in his appointment letter as Professional Service Officer (PSO).

2. Though described an “officer” yet he does not appear to have performed any supervisory duties of a managerial nature as he had no control over the working of others and thus would clearly fall on the side of labour and not part of the management. There are indications in the appointment letter from one of its terms that the respondent will be covered under the Employees' Provident Funds & Miscellaneous Provisions Act, 1952. The job entailed mainly tour and travel. He would fall in the category

of a medical representative or a salesman exercising no managerial or supervisory powers in the hierarchy of the organization. The Labour Court has understood this issue in the correct perspective by referring to the Sales Promotion Employees (Conditions of Service) Act, 1976. A sales promotion employee is a 'workman' by virtue of an amendment made by the State of Punjab to the Industrial Disputes Act, 1947 ("1947 Act").

3. The Labour Court went into the evidence and found nothing on record to show that the claimant's duty was of a managerial nature. It was not shown that any staff was working under him or was under his control seeking directions from him. The primary duty assigned to him was to promote the products of the company. As such, the Labour Court held that the claimant's case falls under the definition of Sales Promotion Employees and the contention put forth by the management in this regard that he is not a "workman" did not hold good.

4. The Labour Court relied on the decision of this Court in Ripu Daman Bhanot v. The Presiding Officer, Labour Court, Ludhiana, 1997 (76) FLR 476 and the Supreme Court judgment in SPIC Pharmaceuticals Division v. Authority Under Section 48 (1) of A.P. and another, 2007 (2) SCT 561. The Supreme Court observed in this case that the provisions of the 1947 Act were applicable and provided remedy to Sales Promotion Employees, which is a special enactment dealing with the service conditions of sales promotion employees employed in the establishment and are engaged in pharmaceutical industries. Pfizer is a multi-national pharmaceutical company. On these premises, the Labour Court held that it had jurisdiction over the matter. Since the termination had not been brought

about properly the Court held the workman to be entitled to reinstatement to the post and place where he lastly worked at the time of removal from service and allowed him continuity of service. The termination order was set aside and the relief of back wages was moulded to 50% of the arrears of back wages from the date of demand notice till joining duty to be paid within three months from joining failing which, the workman was held entitled to interest @6% per annum from the date of reference till realization.

5. I have no reason to differ with the view taken by the labour court as I do not find any legal infirmity or any error apparent on the face of record in the impugned award dated March 19, 2018 passed by the learned Presiding Officer, Industrial Tribunal, Bathinda,.

6. Having heard the learned counsel for the petitioner and learned counsel for the caveator at some length, I find the petition is wholly devoid of merit and would dismiss it.

7. It is ordered accordingly.

8. Award be implemented on expiry of the period for presenting an appeal against this judgment and order.

(RAJIV NARAIN RAINA)
JUDGE

11.12.2018
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Whether speaking/reasoned Yes

Whether reportable No