

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5938 of 2017

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Amresh Kumar S/o Sri Surendra Prasad Singh, Resident of F-43, P.C. Colony,
Kankarbagh Colony, P.S. Kankarbagh, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Government of Bihar, Secretariat Building, Patna.
3. The Labour Commissioner, Government of Bihar, Secretariat Building, Patna.
4. The Joint Labour Commissioner, Government of Bihar, Secretariat Building, Patna.
5. The Deputy Labour Commissioner, Government of Bihar, Niyojan Bhawan, Bailey Road, Patna, Bihar.
6. The Assistant Labour Commissioner, Siwan.
7. The Labour Superintendent-cum- Conciliation Officer, Siwan.
8. Glaxo Smithklin Pharmaceuticals Ltd., Dr. Annie Besant Road, Warli, Mumbai- 400030, through its Regional Sales Manager 401, 402, Kashi Place, Patna 800001.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Shri Prakash Tiwari, Adv.
For the Respondent/s	:	Smt. Anuradha Singh-SC 21
		Mr. Anshuman, Adv.
		Mr. Kumar Samarjeet Singh, AC to SC 21

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 07-03-2019

Heard learned counsel for the petitioner and learned
counsel for the State.

In the present case, the issue is in a narrow compass, as
has been claimed that the Labour Department has wrongly refused
to exercise its jurisdiction and power to refer the dispute before the
competent Labour Court for adjudication.



The petitioner was a Medical Representative of the Glaxo Smithkline Pharmaceutical Limited and he was dismissed from service. As per the Management, after due enquiry, the action was taken against the petitioner. The petitioner raised industrial dispute under section 10 read with section 2 (A) of the Industrial Dispute Act before the Deputy Labour Commissioner, Siwan, who called both the parties for reconciliation, whereafter he recommended for reference for adjudication and whereafter finally the Labour Commissioner in exercise of power has opined that the matter be referred to the Labour Court, Chapra in view of order passed in L.P.A. No. 1798 of 2012, but till date no reference has been made that compelled the petitioner to approach this Court for giving direction to the Labour Department to make reference with regard to the termination of service. This Court has examined the issue of reference and adjudication in L.P.A. No.1798 of 2012 which has specifically dealt with the case of the Medical Representative. It will be relevant to quote paragraphs 16 and 17 of the said judgment, are as follows:-

“A perusal of the judgment of this court reported as Nalin Sinha’s case (Supra) shows that the appeal was withdrawn when the issue was transfer of a Medical Representative. Though different opinions stands rendered by the Judges but the reading of the judgment does not show that the issue whether the Medical



Representatives fall under the substantive definition of Section 2(d) of the SPE Act or any of the exceptions has not been examined. In view of the said fact, the said judgment does not provide any assistance to the argument raised that the Medical Representatives are not competent to raise an industrial dispute as they are not the workmen within the meaning of section 2 (d) of the Industrial Disputes Act. The issue has to be examined keeping in view the definition of Section 2 (d) of the SPE Act. Once the Medical Representatives are covered by the SPE Act, the dispute resolution maximum is provided under the Industrial Disputes Act, 1947 would be applicable.

In view of the above, we set aside the order passed by the Labour Court and that by the learned Single Bench and remit the matter to the learned Labour Court to decide the question of fact as to whether the appellant falls within the purview of excepted category under Section 2 (d) of the SPE Act i.e. as to whether he was engaged in a supervisory capacity drawing more than Rs.1600/-per mensem as the wages or engaged in a managerial or administrative capacity”

In view of the aforesaid discussion of the Division Bench, the State Government is required to exercise power under section 10 of I.D. Act vis-a-vis SPE Act properly, as Labour Department is not adjudicatory body but they have been granted power of conciliation. When the conciliation fails, in such



circumstance, the Labour Department cannot withhold reference without any valid reason.

In such view of the matter, this Court directs the Labour Department to refer the dispute of the present petitioner before the appropriate Labour Court for adjudication. This Court does not give any opinion on its merit which will be adjudicated by the court of competent jurisdiction. The Labour Court would decide all issues about the entitlement of the petitioner.

With the aforesaid direction, this petition is allowed to the aforesaid extent.

(Shivaji Pandey, J)

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AFR/NAFR	NAFR
CAV DATE	N/A
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