

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

CWP No. 6442 of 2015

Date of decision : 13.05.2019

Manish Arora

....Petitioner

V/s

Presiding Officer, Industrial Tribunal-cum-Labour Court-II, Gurgaon and
anr.

....Respondents

BEFORE : HON'BLE MR. JUSTICE RAJAN GUPTA

Present: Mr. Amandeep Saini, Advocate for the petitioner.

Mr. M.L. Sarin, Sr. Advocate with
Mr. Nitin Sarin, Advocate &
Mr. Ritesh Aggarwal, Advocate for respondent no. 2.

RAJAN GUPTA J.

Petitioner has impugned the order passed by Industrial Tribunal, Gurgaon whereby his claim was rejected, the Tribunal having held that reference was not maintainable as petitioner was not a workman within the meaning of Section 2(s) of the Industrial Disputes Act. Learned counsel for the petitioner has strenuously urged before the court that petitioner did not enjoy any supervisory powers and the Tribunal proceeded on a wrong premise while dealing with the issue as to whether petitioner was a 'workman'. According to him, the post, which the petitioner was holding, is not mentioned in the exclusions contained in Section 2(s) of the Act. Mr. Sarin, on the other hand, contended that petitioner was employed to promote the sales of the Company. He was paid a salary of ₹10,000/- at the relevant

time. By no stretch of imagination, he could be said to fall within the definition of workman.

I have heard learned counsel for the parties and given careful thought to the facts of the case.

Petitioner was appointed by the Company as Sales Executive on a salary of ₹12,780/- per month. Vide, Annexure P-2 dated 16.08.2005, his salary was enhanced to ₹25,000/- and he continued thereafter. His services were, however, dispensed with on 20.08.2006. Petitioner issued a demand notice dated 20.04.2007. Thereafter, reference under section 10 of the Act was made. The Tribunal on appreciation of evidence as well as provisions of Section 2(s) of the Act came to the conclusion that petitioner did not fall within the definition of workman. I find no infirmity with the order.

It is evident that petitioner was appointed as Sales Executive and his salary was fixed at ₹25,000/- on 16.08.2005. As per the deposition of RW1 Pratap Singh, duty of the petitioner was to promote the sales by canvassing about the better quality of product of the Company. During the course of arguments, reference was also made to judgment in *Ranbaxy Laboratories Ltd. vs. State of West Bengal etc. 2014, LLR 256*. However, it transpires that said judgment was in context of State amendment carried out in West Bengal. There is nothing to show that similar amendment has ever been carried out in the State of Haryana. In judgment reported as *M/s India Drugs and Pharmaceuticals Ltd. Vs. State of Jharkhand etc, 2004 LLR 1014*, the Apex court has held that Medical Representatives do not fall within the definition of Workman. In my considered view, having come to the conclusion that petitioner was not covered by definition contained in

Section 2(s) of the Act, Tribunal rightly came to the conclusion that reference was not maintainable.

In view of above, there is no merit in the petition. Same is hereby dismissed.

May 13, 2019

Ajay

(RAJAN GUPTA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No