

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**WRIT PETITION NO. 12392 OF 2016
WITH
CIVIL APPLICATION NO. 7601 OF 2018**

VHB Life Sciences Ltd,
(Through its Authorized Officer)
AB/50 Government Industrial Estate,
Charkhop Village,
Kandivalli (West),
Mumbai.

... PETITIONER

VERSUS

Dilip S/o Chimanrao Suryawanshi,
Age : 45 years, Occ : Service,
R/o. 135-A, Prabhat Nagar,
Deoput, dhule
Tal & Dist. Dhule.

... RESPONDENT

Shri. V. J. Dixit, Senior Advocate i/b N. E. Deshmukh, Advocate
for the petitioner
Shri. Umesh A. Bhadgaonkar, Advocate for the respondent

CORAM : M. G. SEWLIKAR, J.

RESERVED ON : 6th August, 2021

PRONOUNCED ON : 13th October, 2021

JUDGMENT :-

1. This writ petition under Article 227 of the
Constitution of India is preferred by the original respondent

against the judgment and order passed by the learned Industrial Court, Dhule dated 28th November, 2016 in Rev/ULP/3 of 2016 confirming the judgment and order passed by the learned Labour Court, Dhule in Criminal (ULP) No. 5 of 2016 whereby petitioner has been held to be indulging in unfair labour practice and thereby set aside the termination of respondent.

. In brief facts can be stated as under:

2. Respondent (original complainant) was appointed as Medical Representative at Dhule by the petitioner on 23rd May, 2005. His work was to promote sale of the medicines produced by petitioner-company by visiting Doctors, Chemist and canvass about the medicines. Respondent-complainant was appointed on probation for a period of six months. On and from 11th September, 2006 services of the complainant were upgraded as Territory Manager but there was no change in the nature of work of the respondent-complainant. Respondent was governed by Sales Promotion Employees (Conditions of

Service) Act, 1976 (for sort 'The Act') in addition to other acts. Since there was increase in the sale of the company products, respondent was declared entitled to incentive by the quarter ending 30th September, 2006. Respondent, when demanded this incentive, he was transferred to Guwahati in the State of Assam. He was again brought to Dhule on 28th July, 2007. On 17th March, 2008 respondent was transferred to Chandrapur. Soon after his joining, petitioner withdrew his work from 05th April, 2008 and again in the month of June, 2008 respondent was transferred to Dhule. On 16th June, 2008, respondent received a letter at Dhule informing him that he was working unauthorizedly there. He was neither paid monthly wages nor the expenses he had incurred. On 06th October, 2008 petitioner served a notice to show cause as to why the respondent failed to attend the meeting at Mumbai. Respondent replied to it mentioning therein that riot had erupted and curfew was clamped at Dhule, owing to which he could not attend the meeting. Petitioner did not accept the explanation tendered by the respondent and terminated the

services of the respondent with effect from 24th January, 2009. Services of the respondent were terminated under colourable exercise of employers right without holding any domestic enquiry. He was not paid retrenchment compensation also. Thus, there is violation of Section 25 (F) of the Industrial Disputes Act, 1947. Respondent, therefore, filed complaint before Labour Court under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (M.R.T.U. & P.U.L.P. Act, 1971).

3. Petitioner filed written statement at Exhibit C-22. Petitioner contended that the complaint is not maintainable as respondent was not a "Workman" and he was working in managerial and supervisory cadre. He was working as "Territory Manager" and he was exclusively responsible for sale of product of the respondent. He was independently deciding the manner in which the sale would be increased. It further contended that the respondent was on probation when services were terminated. He was not a permanent employee

as his services were not confirmed. Therefore, it was not necessary to hold domestic enquiry. In terms of service conditions, services of respondent could be terminated at any stage since he was on probation. Respondent was found guilty of misconduct and misbehaviour. Respondent failed to achieve the target of sale provided by the petitioner. Respondent failed to visit the doctors regularly. On all this counts petitioner contended that respondent's services were terminated. It, therefore, prayed for the dismissal of the complaint.

4. Learned Labour Court held that the respondent was a Workman within the meaning of Sales Promotion Employees (Conditions of Service) Act, 1976. It also held that respondent was a permanent employee and his services could not have been terminated without holding domestic enquiry. It further held that petitioner indulged in unfair labour practice and directed petitioner to cease and desist from indulging in unfair labour practices.

5. This decision of the learned Labour Court was challenged in Revision No. 3/2016 by the petitioner. Learned Member Industrial Court confirmed the judgment and order passed by the learned Labour Court. The learned Member Industrial Court also held that respondent was a Workman within the meaning of the Sales Promotion Employees (Conditions of Service) Act, 1976. It also held that he was a permanent employee and domestic enquiry ought to have been held before termination of his services. It also held that the informant was employed as a Medical Representative. His services were subsequently upgraded and he was appointed as Territory Manager. The learned Member Industrial Court, therefore, upheld the decision of the learned Labour Court. This order is impugned in this writ petition.

6. Learned senior counsel Shri. Dixit for the petitioner submitted that respondent is not a Workman within the meaning of Sales Promotion Employees (Conditions of Service) Act, 1976. He submitted that

petitioner was initially appointed as a Medical Representative and subsequently he was appointed as Territory Manager. He submitted that as a Territory Manager he had to take independent decisions. Therefore, his services were managerial in nature and therefore, respondent cannot be called a Workman within the meaning of M.R.T.U. & P.U.L.P. Act. He further submitted that in terms of *H.R. Adyanthaya and Others Vs. Sandoz (India) Ltd. And Others (1994) 5 Supreme Court Cases 737* it has been held that Medical Representative is not a Workman. He also placed reliance on the case of *Unichem Laboratories Ltd. Vs. Sanjay Goyal and another, M.P. No. 2653/2018* (Madhya Pradesh High Court) in which also it is held that Medical Representative is not a Workman within the meaning of the Industrial Disputes Act. He submitted that therefore, Labour Court has no jurisdiction to entertain this complaint. He further submitted that respondent served only for three years. Therefore, if this Court comes to the conclusion that respondent is a

Workman and he is entitled to back wages, considering the period of service, he may not be granted full back wages but may be granted compensation. He, therefore, prayed for dismissal of the complaint.

7. Learned counsel Shri. Bhadgaonkar submitted that respondent is a Workman. He submitted that respondent was appointed as Territory Manager. A Territory Manager does not fall within the scope of Sales Promotion Employees (Conditions of Service) Act, 1976. He submitted that work of respondent though he was appointed as Territory Manager, remains to be of clerical nature. He was not authorized to sanction leave. No employee was his subordinate. For this reason he submitted that the judgment of learned Labour Court as confirmed by the Industrial Court is proper.

8. The expression Sales Promotion Employee is defined in Section 2(d) of Sales Promotion Employees

(Conditions of Service) Act, 1976 it reads thus:

"2(d)"sales promotion employee" means any person by whatever name called (including an apprentice) employed or engaged in any establishment for hire or reward to do any work relating to promotion of sales or business, or both, but does not include any such person-

- (i) who, being employed or engaged in a supervisory capacity, draws wages exceeding sixteen hundred rupees per mensem; or
- (ii) who is employed or engaged mainly in a managerial or administrative capacity.

9. Duty list of respondent is produced at Exhibit C-50.

As per duty list it appears that respondent was supposed to work as Sales Promotion Employee for sale of pharmaceutical products of the petitioner company. It is pertinent to note that petitioner was appointed as Territory Manager. His duty list shows that he was supposed to report the petitioner on day to day basis about the sale of pharmaceutical products of the petitioner company. He was supposed to meet doctors. This shows that he was not exclusively working as Sales Promotion Employee. His predominant duty was to collect the information of sale of products and forward it to the head office. No one was placed under him as a subordinate. Therefore, he was not

working exclusively as Sales Promotion Employee but most of his duties pertained to collecting of information, processing it and forwarding it to the head office. This is exclusively a clerical work. He was not authorized to take any decision. Therefore, the conclusion drawn by the Industrial Court that respondent is a Workman is correct and I do not find any reason to disturb those findings.

10. Now the question is whether respondent should be paid full back wages or compensation as claimed. Admittedly domestic enquiry was not held. Respondent was removed as according to petitioner he was on probation. However, learned Industrial Court has rightly held that services of respondent were upgraded as Territory Manager. If respondent was not a confirmed employee, his services would not have been upgraded. This finding of the learned Industrial Court is sound and no interference is called for in it.

11. So far as back wages are concerned. Learned

senior counsel Shri. Dixit for the petitioner placed reliance on the case of *Punjab Ex-Servicemen Corporation through Chairman-Cum-Managing Director Vs. Harinder Singh, 2016 DGLS(SC)702, The Management of Panitole Tea Estate Vs. The Workmen, 1971(1) Supreme Court Cases 742*. Respondent worked only for close to three years. He was terminated in the year 2009. It cannot be said that he was without employment for all these years. It is true that petitioner tried to establish that petitioner was working in LinkedIn. However, petitioner failed to prove it. But the fact remains that no one can remain without job for such a long period. Therefore, in the peculiar facts and circumstances of this case, I deem it appropriate to award compensation of Rs. 8 lakhs (Rupees Eight Lakhs). Petitioner has already deposited 2,29,625/- in this Court. Therefore, petitioner will have to pay remaining balance of Rs. 5,70,375/- (Rupees Five Lakh Seventy Thousand Three Hundred Seventy Five only).

12. In view of the above judgment and order of learned Industrial Court is confirmed with this modification. The petition stands dismissed.

. Pending application, if any, stands disposed of.

[M. G. SEWLIKAR, J.]

LATER ON

. Learned counsel Shri. Deshmukh for the applicant seeks stay to this judgment for a period of 4 weeks as he wants to challenge before the Hon'ble Supreme Court. He further states that during that period he will deposit amount of Rs.5,70,375/- in this Court.

. Judgment is stayed for a period of 4 weeks.

[M. G. SEWLIKAR, J.]

ssp