

10.08.2023
sayandeep
Sl. No. 03
Ct. No. 12

FMA 723 of 2018

With

IA No. CAN 1 of 2017(Old CAN 11941 of 2017)

Ms. Cadila Pharmaceuticals Ltd.

-Versus-

Second Industrial Tribunal & Ors.

Mr. Soumya Majumder
Mr. Shounak Mukhopadhyay
Mr. Sayantan Bose
Mr. Sattik Rout

.....for the appellant

Mr. Balaram Patra
Mr. Subhodeep Bhattacharjee
Ms. Susmita Ghosh

.....for the respondents

The present appeal is filed challenging the order of the learned Single Judge dated 29.03.2017 dismissing the writ petition No. 492 (w) of 2017. The said writ petition was filed by the appellant challenging the award of the Tribunal dated 13th July, 2016 in case No. VIII-01 of 2007 of Industrial Tribunal, the respondent No. 1 herein. The 3rd respondent raised a demand for grant of grade pay, scale of pay and annual increment in respect of sales promotion employees of appellant company. The said dispute was referred to first respondent. Before the first respondent, the third respondent as well as the appellant let in oral and documentary evidence. The first respondent, the Industrial Tribunal considered the materials placed before it passed an award dated 13.07.2016 that sales promotion employees are entitled to grade pay, scale of

pay and annual increment. The appellant challenged the said award by filing the Writ Petition No. 492(w) of 2017 before this Court. The learned Judge considering oral and documentary evidence let in before the Tribunal and law as established by judicial pronouncement dismissed the writ petition holding that there is no reason to interfere with the award of the Tribunal.

Against the said order, the present appeal is filed.

The learned Counsel reiterated averments in the writ petition and contended that he learned Judge failed to consider that there are 2,578 employees in the appellant company and for the sake of seven employees, the policy of the company cannot be changed. The appellant company has already given proper pay protection and incentives to all the employees. Learned Judge erred in holding that the service condition prevailing all over the India can be deviated if circumstances demand for particular reason. The sales promotion employees are not workman and Industrial Dispute Act is not applicable. The learned Judge failed to see that by introduction of new policy, there will be disparity among the employees working in West Bengal and the employees in rest of the India. The learned Judge failed to consider the documents filed by the appellant company and erroneously held that the employees are entitled for grade pay, scale of pay and

annual increments. The order of the learned Judge is illegal and liable to be set aside and prayed for allowing the writ petition.

Learned counsel appearing for the third respondent submitted that workers were paid grade pay, scale of pay and annual increments when they were working in Cadila Pharmaceuticals Ltd.. The sales promotion employees became employees of appellant company. But the employees were not given benefits of grade pay, scale of pay and the annual increments which they were receiving while working in Cadila Pharmaceuticals Ltd. The Tribunal as well as the learned Single Judge considered all the materials and given the benefits to the employees of appellant company. There is no error in the award and the order of the learned single Judge and prayed for dismissal of the appeal. The learned counsel appearing for the appellant elaborately referred to the documents filed and argued before this Court.

Heard learned counsel appearing for the appellant and third respondents and perused the entire materials on record.

From the materials on record, it is seen sales promotion employees of Cadila Pharmaceuticals Ltd. were given Grade pay, scale of pay and annual increments. From the said company by bifurcation the appellant company came into existence. The sales promotion employees became employees of appellant's

company but employees were not given the benefits of Grade pay, Scale of pay and annual increments which they were receiving while working in Cadila Pharmaceuticals Ltd. In the dispute raised by the third respondent, the third respondent let in oral and documentary evidence to show that they were receiving the benefits earlier and the same was denied by the appellant company. The witnesses examined on behalf of the appellant admitted that benefits given earlier were not given by the appellant to its employees. The witness of the appellant further admitted in the cross-examination that employees were not informed about the discontinuation of the benefit and that employees will be paid incentives only based on their performance.

The Tribunal considering the evidence and other materials held that sales promotion employees are workman and are entitled to the benefits. Before the learned Judge, it is a case of the appellant that a new policy cannot be introduced by the Tribunal and such new policy introduced for few employees who were working in the West Bengal will create disparity among the employees working in other part of the India in the appellant's company. The learned Judge has given reason for introduction of new policy and also considering the Judgment on this issue held that for a particular reason a new policy can be introduced if the situation is warrants. There is no error in such conclusion.

Further the witness of the appellant has admitted that benefits enjoyed by the employees in the Cadila Pharmaceuticals Ltd. were not given by the appellant after bifurcation of the appellant's company and employees were not informed about the withdrawal of such benefits after bifurcation. The learned Judge considering the evidence of witnesses of the appellant confirmed the award of the Tribunal that employees working in the appellant company are entitled for benefits claimed by them. An award can be set aside in writ proceedings only if the said award suffers from errors on the face of the award. In the present case, there is no error in the award of the Tribunal as well as the order of the learned Judge. The learned Judge dealt with all the objections raised by the appellant and has given cogent reason for not accepting the claim of the appellant.

For the above reason, appeal fails and dismissed without any order as to costs.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(V.M. Velumani, J.)

(Rai Chattopadhyay, J.)