

THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 2101 OF 2023

PETITIONER: Abbott India Limited,
A Company incorporated and registered
under the Companies Act, having its
registered office at 3/4, Corporate Park,
Sion Trombay Road, Mumbai-400 071
Through its Senior Manager -HR
(Authorized Representative)
Mr. Shailendrasing Pawar

...VERSUS...

RESPONDENT: Dipak s/o Arunrao Deshmukh,
aged 32 years,
R/o Gajanan Palace No.2, Flat No.3,
Prasad Colony, Near Ice Factory,
Akola, Dist. Akola

Mr. H.V.Thakur, Advocate for petitioner.
Mr. P.V.Kavishar, Advocate for respondent

CORAM : AVINASH G. GHAROTE, J.
DATE : 13/07/2023.

1] **Rule.** Rule made returnable forthwith. Heard finally
with the consent of Mr. Thakur, learned counsel for the petitioner
and Mr. Kavishwar, learned counsel for the respondent.

2] The petition challenges the order passed by the
learned Labour Court on the preliminary issue “whether the
respondent was a ‘workman’ within the meaning of section 2(s) of

the Industrial Disputes Act, 1947". The issue was answered by the learned Labour Court by the order dated 28.07.2022 in favour of the respondent, holding that since the respondent/complainant was doing the work of promoting the sales of products of the petitioner company, therefore, he was not assigned with any supervisory work to look, appoint or take decision to appoint any further employee under him and therefore, the work which was attributed to the respondent-complaint was not supervisory or managerial in nature (pg.115). The learned Industrial Court in revision by the judgment dated 03.01.2023 has dismissed the revision, concurring with the findings of the learned Labour Court that the respondent had no power to recommend and assign work to the subordinate staff or was having any power of purchasing material and/or machinery or was doing any managerial function. (pg.130).

3] Mr. Thakur, learned counsel for the petitioner relying upon the **Standard Chartered Bank vrs. Vandana Joshi and anr, 2010(2) Mh.L.J. 22** contends that in a case of a similar nature of

work assigned, it was held that the person was not a workman. He also places reliance upon **Twenty First Century Printers Limited vrs. K.P.Abraham and another, 2008 SCC OnLine Bom 695** to contend that merely because no one was working under the respondent/complainant, that by itself could not mean that the respondent was a workman.

4] Mr. Kavishwar, learned counsel for the respondent/complainant mainly relies upon the appointment order dated 03.02.2014 to contend that the respondent is a workman, inspite of the designation of his appointment being “Therapy Business Manager”.

5] In **Standard Chartered Bank** (supra) the Court while considering the appointment of the respondent therein as a Personal Financial Consultant in which the key responsibilities were as indicated in para 2 thereof by relying upon the judgment in **Inthru Noronha vrs. Colgate Palmolive (India) Ltd, 2005 (2) Mh.L.J. 884**, has held in para 10 as under;

“10. These duties upon which there is absolutely no dispute or caveat would belie the contention of the first respondent that she was doing work predominantly of a clerical nature. Section 2(s) of the Industrial Disputes Act, 1947 defines the expression "workman" to mean any person "employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward". A Constitution Bench of the Supreme Court in *H.R.Adyanthaya vrs. Sandoz (India) Ltd., 1994 (II) CLR 552* held that in order that a person can be designated as a workman under Section 2(s) he/she must be employed to do work which falls within one of the stipulated categories viz. manual, unskilled, skilled, technical, operational, clerical or supervisory. In other words, it is not enough that a person is not covered by either of the four exceptions to the definition. It is now also a well settled principle of law that the burden lies on the person who asserts the status of a workman under section 2(s) to establish with reference to the dominant nature of his/her duties that the work which is performed falls within one of the stipulated categories in Section 2(s). *Mukesh K. Tripathi vrs. Senior Divisional Manager, LIC, 2004 (III) CLR 534 at para 37 and Ganga Kisan Sahkari Chini Mills Ltd. Vrs. Jaivir Singh, 2007(III) CLR 840 at para 9*”.

Looking to the nature of the services, it has further held in para 18, as under:

“18. The fact that in an organizational structure the employee, in the course of the decision making process, is subject to checks and balances is not a matter which would establish that she/he is a workman within the meaning of Section 2(s). Modern forms of business in corporate organizations put into place a carefully crafted process of checks and balances. Rarely, if ever, would an employee have authoritarian control over business decisions. Employees are made subject to checks and balances both at the lateral and vertical level. Managerial decisions are subject to verification and approval. The fact that decisions of an employee are subject to verification or subject to a system of controls and balances does not establish that the employee is a workman within the meaning of Section 2(s). Managers do not become workmen because their decisions are structured by processes and approvals. Absolute autonomy is not the norm in managerial decision making. Nor does the law insist on absolute discretion or absolute autonomy for a person to be a manager. Basically the answer to the question must depend upon the dominant nature of the duties and responsibilities.

In **Standard Chartered Bank** (supra), reliance was also placed on **Dhruba Kumar Changkokoti vrs. Travel Corporation of India Ltd, 2000(II) CLR 644**, which holds that a person who was employed to promote tourism of a travel company in Eastern Europe could not be regarded as a workman within the meaning of section 2(s) of the ID Act and so also on **Mukesh K. Tripathi vrs. Senior Divisional Manager, LIC, 2004 (III) CLR 534**, which holds that a person who had been recruited to develop the business of the employer could not have done so without being a full fledged officer of the Corporation and would not be a workman within the meaning of section 2(s) of the ID Act. In **Twenty First Century** (supra), while considering a plea as to whether a Purchase Officer was a workman within the meaning of Section 2(s) of the ID Act, the following was the answer :

“13. It was, however, argued that the respondent could not be said to be part of the management because he had no one working under him. The true test must depend on the nature of the function and not whether the person has any other employee working under him. Indeed, an

employee can be at the lowest managerial post and could still be said to perform managerial function. Having regard to the nature of the activity of purchase, it appears that the function must be classified as managerial being part of the controlling and regulating functions of the industry. In this view of the matter, the respondent no.1 must be held to be an employee mainly in a managerial capacity and is, therefore, excepted from the meaning of "workman" by virtue of section 2(s)(iii) of the Act."

6] In light of the above position, it is necessary to consider the terms of appointment of the respondent/complainant. The appointment order dated 03.02.2014 appoints the respondent/complainant as a "Therapy Business Manager" in the management cadre. It further states that the respondent/complainant will be a part of the management team and the roles and responsibilities of the respondent would be as indicated in Annexure-II. Annexure-II reads as under.

“ANNEXURE II

Job Purpose :

As a Therapy Business Manager you will play a leadership role in your territory and will be responsible for Business Development by deployment of Marketing Strategies, developing and executing Commercial Strategy, strengthening Customers Management thereby ensuring achievement of financial and ethical objectives of the Company.

To achieve this you will have authority to develop your customer management plan, approve expiry products credit note of distributors under your control, recommending appointment and credit limits of distributors, plan your resource utilization and participate in Strategy Execution review meetings as to ensure alignment.

Roles and Responsibilities in detail.

Area & Business Planning :

1. Plan and Manage achievement of Sales targets on product wise / Value wise Primary and Secondary Sales, Territory profitability, increase/maintain brand market shares through effective planning of resources, distribution management, Customer Relation Management/ Key Opinion Leader engagement initiatives and control on expenses.
2. Develop and execute Market intelligence plan to obtain feedback on market conditions and impact of promotional strategy on movement of

company's products as well as that of competitors.

3. To meet the business objectives product-wise, value-wise on a monthly basis undertake market development activities, distribution management, Key Opinion Leader engagement initiatives to meet /exceed the said objectives.
4. Develop and align the resource plan to meet the business objective of the company (Territory) and ensure optimal deployment so as to ensure profitability of the assigned territory.
5. Based on market research and customer profiling conducted and evaluated with your involvement evaluate and plan coverage of potential towns in the assigned HQ and prepare/update Standard List of Customers (doctors, chemists and institutions) based on market research and customer profiling.

Business generation & Development

1. Achieve sales target monthly, quarterly, half yearly and yearly sales targets by promoting company's products ethically to customers by using scientific knowledge, communication, persuasive selling skills, action plans, technology and various marketing and selling strategies aligned to the business and resource plan.
2. To create and update customer list having specified number of doctors (G.P. and Specialists) as per the therapy requirement and maintain the same in physical/electronic format.

3. To generate new business for the existing products and for new production introduced to collaborate with activation task force members in executing the activation programme to drive patient awareness program and market development activities.
4. Recommend institutional, governmental, municipal and other rate contracts raised in your territory after assessing the potential of the parties concerned, on approval submit tender documents, do follow up to secure tender, liaise with ordering authority for procurement of orders, collection, etc.
5. Ensure optimal utilization of the Business promotion budget and undertake Key Opinion Leader engagement initiatives in accordance with marketing guidelines and compliance policies.
6. Facilitate the process of successful new product/ products launch in the territory by undertaking correct identification and targetting customers for the new product, meet them at pre determined intervals, effective in clinic promotion and feed back to the company.
7. Execute the customer management plan to ensure that all the customers are covered as per the plan and meet minimum KPIs as follows :
 - a. 100% coverage of repeat Doctors and 90% of standard doctors in a cycle.
 - b. Customer call average as per the customer management plan of the division / therapy.

- c. Market intelligence collection, retailer level inventory management calls as per the product profile and marketing strategy of the therapy/ division.

Distribution Management

1. Prepare and propose strategic distribution plan for the assigned territory for the year to meet business objectives & ensure its supervision and execution.
2. Recommend appointment of a party as a distributor after evaluating its commercial standing, credit worthiness and personal assets.
3. Ensure that stock and sales statements have been sent by the distributors on due dates.
4. Ensure adequate availability of company products at key retailers to meet the patient and customer requirements.
5. Develop and approve distributor orders as per the business plan, ensure proper supply of goods and also ensure that all payments and dues are collected from the Distributor as per distribution policy.
6. Educate and train the distributors on company systems & processes and ensure distributor compliance to agreed service levels as per the need.
7. Train and guide distributors staff on storage and handling of company products as per

requirement of the Indian Drug laws, and Product Safety.

8. Continuously review distributor financial health (pipeline and outstanding) and make appropriate recommendation to company to ensure good business health.
9. Audit and approve claims of breakages and expiry as per financial authority vested in you by the company.
10. Ensure that the claims of the distributors are settled by company within specified time limits.
11. Attend promptly to complaints of customers such as claims for breakages, expiry, damage and short supply and ensure that the same are addressed on priority as per the agreed trade policy.
12. Take responsibility for general reconciliation of company stocks and control activities for the distributors under your control.
13. Gather/prepare statistics for service quality and productivity indicators, conduct customer audits and develop improvement plans.
14. Finding and implementing ways to improve operational efficiency and controlling of costs.

Feedback

1. Develop and implement market feedback plan to ensure that company is kept updated so as to facilitate the review of marketing and sales strategy of the company.

2. Partner with Marketing through Sales and Marketing Advisory Boards and also support development of new product launch strategy by targeted market research.
3. Facilitate strategy formulation process by providing timely feedback to the superiors and company on the latest developments in the market scenario and competitive environment.
4. Provide report on special activation programme, business promotion activities promotion drives conducted with emphasis on impact and return on investment.

You are manager of the company in your territory and will be authorized to build company's reputation in your territory. You will be responsible for practicing and leading other junior team members of the company by setting personal example of excellence in:

1. Lead and execute strict adherence to Abbott Code of Business conduct
2. Set examples on implementation of the code of business conduct, FCPA, Pharmacovigilance to ensure compliance
3. Conformation to all financial and administration systems, compliance to statutory and regulatory norms of the company and laws of the land
4. Demonstrate and promote professional behavior in line with Abbott Values of Pioneering, Achieving, Caring and Enduring.

5. Ensure high level of customer service and manage any difficult customer situations
6. Ensure compliance with internal and external guidelines and ensure minimal comments in audits and other inspections.
7. Ensure transactions and orders are processed with a high level of accuracy and commitment in order to satisfy customer needs
8. Manage attrition of customer and resource bases
9. to attend and participate in Strategy meetings, briefing sessions, doctors meets, workshops, training programmes and any other programmes undertaken by the company to equip you or activities for performance of your job or promote the sales of product of the company or to improve company image.

Sd/-
Authorized Signatory”

7] A perusal of the job purpose, role and responsibilities of the respondent/complainant as indicated in Annexure-II would demonstrate that by no stretch of imagination the respondent could be termed as a ‘workman’. For the purpose of he being termed as a workman, the requirement under section 2(s) of the ID Act are required to be satisfied. The nature of duties which the

respondent is required to perform in terms of the order of appointment and those specifically enumerated in Annexure-II above clearly indicate that the employment of the respondent is neither to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work. The Courts below have not taken into consideration the duties, roles and responsibilities of the respondent as enumerated in Annexure-II to his letter of appointment while rendering a finding that the respondent is a 'workman'. The learned Labour Court in the order dated 28.07.2022 holds the respondent as a 'workman' merely on the ground that the respondent was doing the work of promoting the sales of the products of the petitioner company (pg.115). The learned Industrial Court holds that since the petitioner had failed to show that the respondent has power to recommend and assign work to the subordinate staff or was having the power of purchasing material or machinery or to supervise work of any employees, he was a workman, without considering the dictum in **Standard Chartered Bank** (supra) regarding the changes in the organizational structure on account of passage of time, change in

the modern forms of business as considered in para 18 therein. I therefore do not see any reason to sustain the impugned orders passed by the Courts below. They are therefore quashed and set aside and it is held that the respondent/complainant, considering the nature of the duties, is not a workman. Preliminary issue is answered accordingly.

8] Rule is made absolute in above terms. No costs.

JUDGE

Rvjalit