



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

Writ Petition No. 8304 of 2019

Irakant Chandrodaya Bansod ..vs.. TTK Healthcare Limited, Chennai through its Dy. General Manager and ors.]

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. Feroz Khan, Advocate for the petitioner
Mr. G. K. Bhusari, Advocate for respondent nos. 2 and 3

CORAM : ANIL L. PANSARE J.

DATED : 30-07-2024

Heard.

2. Having heard both sides and having gone through the material placed before me, it appears that the petitioner has filed compliant under the provisions of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour practices Act, 1971 (for short 'MRTU and PULP Act'). Though the complaint has been filed as workman, learned counsel for the petitioner submits that this complaint has been filed by the employee and the term 'employee' is defined under Section 3(5) of the MRTU and PULP Act as under.

“(5) “employee” in relation to an industry to which the Bombay Act for the time being applies, means an employee as defined in clause (13) of section 3 of the Bombay Act; and in any other case, means a workman as defined in clause(s) of section 2 of the Central Act and a sales promotion employee as defined in clause (d) of section 2 of the Sales Promotion Employees (Conditions of Service) Act, 1976.”

3. As could be seen, the employee includes a sales promotion employee as defined in clause (d) of section 2 of the Sales Promotion Employees (Conditions of Service) Act, 1976. Section 2(d) of the Sales Promotion Employees (Conditions of Service) Act defines the 'sales promotion employees' to mean;

“(d) ‘sales promotion employees’ 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.

Explanation. - For the purposes of this clause, the wages per mensem of a person shall be deemed to be the amount equal to thirty times his total wages (whether or not including, or comprising only of, commission) in respect of the continuous period of his service falling within the period of twelve months immediately preceding the date with reference to which the calculation is to be made, divided by the number of days comprising that period of service.]”

4. Learned counsel for the petitioner has placed reliance upon the judgment in the case of ***H. R. Adyanthaya etc. Vs. Sandoz (India) Ltd. [1995(I) LLJ 303 SC]*** to contend that in view of the amendment, which came into force with effect from 6-5-1987, the petitioner would fall in the category of employee. The Hon'ble Supreme Court in paragraph no. 19 observed thus :

“19. The SPE Act was amended by the Amending Act 48 of 1986 which came into force w.e.f. 6-5-1987. By the said amendment, among others, the definition of sales promotion employee was expanded so as to include all sales promotion employees without a ceiling on their wages except those employed or engaged in a supervisory capacity drawing wages exceeding Rs. 1600/- per mensem and those employed or engaged mainly in managerial or administrative capacity.”

5. Learned counsel for respondent nos. 2 and 3 submits that petitioner's services have been excluded in terms of what has been said by the Hon'ble Supreme Court.

6. I need not go into this controversy in as much as the Industrial Court has dismissed the complaint by relying only on the provisions of the Industrial Disputes Act, 1947. According to the Industrial Court, the petitioner does not fit in the category of 'workman' under Section 2(s) of the Industrial Disputes Act. The Industrial Court failed to recognize that the complaint was filed under the MRTU and PULP Act which covers petitioner under Section 3(5). In that view of the matter, the order impugned is unsustainable. Writ petition is accordingly partly allowed.

7. Order dated 8-4-2019 passed by Industrial Court No. 2, Nagpur below Exh. C/3 in Comp. (ULP) No. 220/2018 is quashed and set aside.

8. Comp. (ULP) No. 220/2018 is relegated back to the Industrial Court, Nagpur to decide it afresh in the light of what has been said in the body of the order.

9. The parties shall appear before the Industrial Court on 19-8-2024.
10. Writ petition is disposed of in above terms.

(Anil L. Pansare, J.)

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