

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5202 of 2022

Vishal Singh Son of Vijay Kumar Singh, Resident of Alka Hospital, Patel Chowk, Vijay Nagar, Bailey Road, P.S.- Rupaspur, District- Patna, Bihar- 800014

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Department of Labour Resources, Bihar, Patna.
2. M/s Sun Pharmaceutical Industries Ltd (Previously Known as M/s Ranbaxy Laboratories Limited) Registered Office at SPARC, Tandalja, Varodara- 390020 and Corporate Office at Sun House, Plot No. 201, B/1 Western Express Highway, Goregaon I, Mumbai- 400 063
3. The Presiding Officer, Labour Court, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Sumeet Kumar Singh, Adv
	:	Mr. Shivam Singh, Adv.
	:	Mr. Amarendra Kumar, Adv.
	:	Mr. Kumar Vikram, Adv.
	:	Mr. Kumar Avinash, Adv.
	:	Ms. Alka Singh, Adv.
For Respondent No. 2	:	Mr. Rajiv Kumar Singh, Sr. Adv.
	:	Mr. Manish Kumar, Adv.
	:	Mr. Indrajeet Bhushan, Adv.
For the Respondent/s	:	Mr. Ajay Kumar Rastogi (Aag10)
	:	Mr. Sushil Kumar Singh, AC to AAG10

CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY
ORAL JUDGMENT

Date : 19-04-2025

Heard the learned counsel for the parties.

The present writ petition has been filed for the following

relief(s):-

“(i) For issuance of writ in the nature of Certiorari quashing the order dated 20/12/2021 passed in Reference Case No. 03 of 2016 by the Learned Presiding Officer, Labour Court, Patna, (hereinafter referred as "impugned order") whereby and whereunder, he has been pleased to reject the claim of petitioner that he is covered under the definition of employee as stated in Section 2(d) of The Sales Promotion Employees (Conditions of Service) Act, 1976 (hereinafter referred as "Sales Promotion Employees Act") as well as



his termination from company without hearing him during the process of enquiry has been upheld which is absolutely illegal and goes against a statutory definition given in the Sales Promotion Employees Act as well as in many decisions of the this honourable High Court as well as of Supreme Court of India.

(ii) For issuance of writ in the nature of Mandamus, directing and commanding upon the respondent Management to treat him as workman and grant him all consequential back wages for the period to which he was illegally terminated and restore his appointment in the respondent Company.

(iii) For holding and declaring that the decision of the learned Presiding Officer, Labour Court, Patna passed in Reference Case No.03 of 2016 dated 20/12/2021 is absolutely bad in law and is based upon incorrect judgment and erroneous interpretation of statutory provisions of Sales Promotion Employees Act as well as Industrial Dispute Act, 1947 and as such requires to be set aside.

(iv) For such other relief(s), under the facts stated below, as lordships may deem fit and proper.”

3. The admitted facts in the present case are that the petitioner was appointed as Sales Promotion Employee in the respondent Company from 11.11.2009 thereafter, the post of the petitioner was re-designated as HDL Executive. That in the year 2014, the petitioner received an E-mail stating that the referral given by Dr. Ajit Kumar Sinha was false as the said doctor was not in the country from 28.03.2014 to 05.04.2014 and called for his explanation, to which the petitioner has submitted his explanation. The petitioner aggrieved by the unfair labour practices adopted by the management had approached the Deputy Labour



Commissioner who in turn has issued notice to the respondents. The respondents instead of submitting the explanation to the said show cause notice have terminated the services of the petitioner vide letter dated 10.03.2015. Thereafter, the conciliation between the parties failed and the matter was referred to the Labour Court under Section 10 (1) (c) of the Industrial Disputes Act, 1947 (ID Act). The Labour Court vide order dated 20.12.2021 passed in Reference Case No. 03 of 2016 rejected the claim of the petitioner and held that he is covered under the definition of the employee as stated in Section 2(d) of the Sales Promotion Employees (Conditions of Service) Act, 1976 (SPE Act).

4. Learned counsel appearing on behalf of the petitioner has argued that the finding given by the Labour Court is without any legal basis. Learned counsel has stated that the authority instead of giving a finding on the facts of the case has misdirected itself in rejecting the claim of the petitioner based on the judgment of Hon'ble Madhya Pradesh High Court in W.A. No. 75 of 2017 dated 11.10.2018. Learned counsel has stated that the authority without going through the evidence led by both the parties has simply reiterated the judgments and abruptly came to the conclusion that the claim of the petitioner does not need any consideration and rejected the same. Learned counsel has stated



that under similar circumstances, this Hon'ble Court in LPA No. 1798 of 2012 while reiterating the law has set aside the award passed by the Labour Court and remanded the matter back to the Labour Court concerned for dealing with the matter afresh and giving a finding on the fact. Learned counsel has relied on the following judgments in support of his case.

i. Deepak Kumar v. State of Bihar reported in **2016 SCC Online Pat 1866**;

ii. Deepak Kumar v. State of Bihar SLP Civil No. 11706 of 2013 dated 9.05.2014.

iii. Ripu Daman Bhanot versus The Presiding Officer reported in (1997) **1LLJ 557**

iv. Sanofi India Ltd. v. Sanofi Employees & Allied Workers Union reported in **2023 SCC Online Ori 6738**

v. Nicholas Piramal India Ltd. v. Presiding Officer Labour Court reported in **2023 SCC Online All 4247**

vi. Union of India vs. Chajju ram (dead) by Lrs. And Ors. reported in (2003) **5 SCC 568**

vii. Bharat petroleum corpn. Ltd. And anr. Vs. N.R. Vairamani and Anr. reported in (2004) **8 SCC 579**

viii. Novartis India Ltd. v. Vipin Shrivastava reported in **2018 SCC Online MP 1931**.

ix. Oryx Fisheries (P) Ltd. v. Union of India reported in (2010) **13 SCC 427**

x. U.P.S.C Versus Bibhu Prasad Sarangi and Others reported in (2021) **4 SCC 516**.

5. When queried by this Court, the learned Senior Counsel Mr. Rajiv Kumar Singh assisted by Mr. Manish Kumar appearing on behalf of the respondent-Company has fairly admitted that there is no finding of fact given by the Labour Court



as to whether the petitioner falls under the definition of Section 2(d) of the SPE Act or under Section 2(s) of the ID Act.

6. A perusal of the judgment passed by the Labour Court reveals that the authority while extracting the arguments made by the petitioner as well as the respondent-Company and, thereafter, reiterating evidence led by the parties has given its finding based on the judgment of the Hon'ble Supreme Court in the case of ***H.R. Adyanthaya Versus Sandoz (India) Limited*** reported in **(1994) 5 SCC 737** and also the judgment of the Hon'ble Madhya Pradesh High Court passed in W.A. No. 75 of 2017 dated 11.10.2018. The Labour Court has not discovered the evidence led by the parties and straight away came to the conclusion based on the above judgment. There is no finding of fact as to whether the petitioner fits into the exempted categories of Section 2(d) of the SPE Act or whether he is a workman under ID Act. It is pertinent to note that the Division Bench in LPA No. 1798 of 2012 while framing the above issue has held as under;

“Medical Representative, is governed by the provisions of Industrial Disputes Act, 1947 in terms of Section 6(2) of the SPE Act or not depends upon the questions of fact i.e. as to whether such employee has been employed or engaged in a supervisory capacity drawing wages exceeding Rs. 1600/- per mensem or whether he is employed or engaged in a managerial or administrative capacity. Unless the exceptions as mentioned above are satisfied, the Sales Promotion Employee would be



governed by the Industrial Disputes Act, 1947 in view of Section 6(2) of the SPE Act.

9. The Sales Promotion Employee as defined under the SPE Act as reproduced above includes 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. The main provision is wide enough to include all categories of employees engaged for hire or reward to do any work relating to promotion of sale of business. The petitioner falls within such category. As admittedly he was appointed as a person to promote sale of the pharmaceutical products, as is evident from Charge Sheet dated 13th December, 2002, which is to the effect that the appellant has failed to achieve the targets of sale of group of medicines. The notice (Annexure-2 to the writ petition) itself recites the appellant as a Medical Representative. Therefore, he is a Sales Promotion Employee. But there is exclusion clause of Sales Promotion Employees and not all Sales Promotion Employees are the employees within the meaning of Section 2(d) of the SPE Act. The employees who are employed or engaged in supervisory capacity drawing wages exceeding Rs. 1,600/- per mensem is the first category which are not the Sales Promotion Employees. The second category is the employees who are employed or engaged mainly in a managerial or administrative capacity.

Once the appellant satisfies the condition of Sales Promotion Employees within the meaning of Section 2(d) of the SPE Act, certain Statutes become applicable to such an employee including the Industrial Disputes Act, 1947. The adjudication of disputes of sales promotion employee is in terms of the Industrial Disputes Act, 1947 alone. There is no machinery of dispute adjudication under the SPE Act. Such disputes are to be decided under the Industrial Disputes Act, 1947 itself.”

7. Having regard to the same, the impugned order dated 20.12.2021 passed by the Labour Court is set aside and the matter remanded back to the Labour Court for dealing with the same



afresh. The Labour Court has to examine the entire issue keeping in view the definition of the Section 2(d) of the SPE Act. The authority shall decide the question of fact as to whether the appellant falls within the exempted categories under Section 2(d) of the SPE Act or not. The present writ petition is disposed of directing the Labour Court to consider the matter afresh and pass a reasoned order. The authority shall decide the issue and endeavor to complete the same as expeditiously as possible preferably within a period of twelve weeks from the date of receipt of a copy of this order. It is needless to mention that before passing any orders, both the petitioner as well the respondent-Company shall be given an opportunity of hearing. Any orders passed shall be communicated to the parties. It is also made clear that this Court has not gone into the merits of the case and leaving all issues open to be raised, agitated by both the parties and to be decided by the Labour Court.

8. With the above direction, the present writ petition stands disposed of.

(A. Abhishek Reddy, J)

Ayush/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	22.04.2025.
Transmission Date	NA

