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W.P.No.352 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 09.12.2024

ORDERS PRONOUNCED ON: 28.01.2025

CORAM

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.352 of 2024
and W.M.P.No.409 of 2024

S.Raja

... Petitioner

Vs.

Management:

1.Dr.Rajesh Jain

Managing Director

Panacea Biotec Pharma Ltd

Corporate Office

B-1, Extn/G-Mohan Cop

Indl.Estate, Mathura Road

New Delhi – 110 044.

2.Ankesh Jain

Director

Panacea Biotec Pharma Ltd

Corporate Office

B-a, Extn./G-Mohan Cop,

Industrial Estate, Mathura Road

New Delhi – 110 044.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to quash the impugned order dated on 31.08.2023 in O.P.No.113 of 2022, CRN No.TNCH0E0001452022 of the Presiding Officer, II



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Additional Labour Court, Chennai.

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For the Petitioner : Mr.S.Raja, Party-in-Person
For the respondents : No appearance

ORDER

This Writ Petition is filed challenging the Award of the II Additional Labour Court, *Chennai*, made in O.P.No.113 of 2022 dated 31.08.2023. By the said Award, the claim petition filed by the petitioner under Section 2 (A) (2) of *the Industrial Disputes Act, 1947* (In short referred to as 'the Act') was rejected by the Labour Court.

A. Case of the Petitioner:

2. The case of the petitioner is that he joined the respondent / Management on 09.09.2014 as Area Business Manager. When the petitioner had put in sincere and honest service of 2228 days, suddenly, he received an illegal termination order from the Management on 29.08.2020. Therefore, he raised a dispute. Conciliation failed and hence the Claim Petition.

B. Case of the Management:



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3. The case of the Management is that it is only the Management, viz., *Panacea Biotec Pharma Ltd*, which was the employer of the petitioner. Arraying the Managing Director and one of the Director individually and filing a Claim Petition is bad for misjoinder of the relevant parties. The petitioner was appointed as Area Business Manager – Institutional Sales vide appointment letter dated 09.09.2014. He was taken in employment by the respondent with continuity of service with effect from 01.02.2020. He was transferred from *Chennai* to *Udhaipur* by the Management vide transfer order dated 29.08.2020, in accordance with the terms of his employment. He did not report for duty till the date of termination, despite several communications as well as verbal instructions. Therefore, he was terminated from service and the Management sent his full and final settlement and has also made payment of gratuity as full and final settlement.

3.1. It is the further case of the Management that the petitioner was not at all a Workman within the meaning of the Act. He was last paid a monthly salary of Rs.56,335/-. Therefore, the petitioner neither claim as a Workman under the provisions of Section 2 (s) of the Act, nor he can claim to be a sales promotion employee as defined under Section 2 (d) of the *Sales Promotional Employees (Conditions of Service) Act, 1976*.



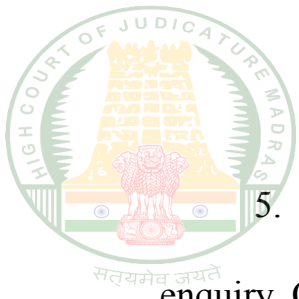
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C. Petitioner's Submissions:

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4. The petitioner claimed that at the time of termination, he was working as Area Business Manager – Institutional Sales. In the institutional sales, the Management appoints experienced and matured person as an official who are the face of the Management and have to deal with the Government institutions like Defence, ESI, CGHS, Railways, State Medical Corporations and all other autonomous bodies etc.,. The role of the Area Business Managers are to deal with the customers working at the position of Directors, Chief Medical Director, Medical Superintendent etc., His competence decides the volume of the business of the Management. The Area Business Manager has to meet his area target and need to meet achievements for the growth of the Management. Further, he has to ensure functional operations of the Management, so that the work exigencies of the Management are made. The petitioner – *Raja* was performing all the aforesaid jobs and was dealing with the institutional customers like, the defence, Tamil Nadu Medical Council, Kerala Medical Services Corporation Limited, Autonomous bodies like, JIPMER, *Puducherry*.

D.Proceedings before the Labour Court:



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5. On the strength of the said pleadings, the Labour Court took up the enquiry. On behalf of the Workman, the petitioner examined himself as **W.W.1** and Exhibits **W.1 to W.25** were marked. On behalf of the Management, one Sandeep Kumar Singh was examined as **M.W.1** and Exhibits **M.1 to M.4** were marked.

5.1. The Labour Court considered the case of the parties. By considering the Judgment of the High Court of Madhya Pradesh in *Unichem Laboratories Ltd. Vs. Sanjay Goyal and another* (M.P.No.2653 of 2018 dated 27.06.2019) where the said High Court had relied upon the earlier Division Bench Judgment of that Court in *Novartis India Limited Vs. Vipin Shrivastava*, the Labour Court held that the petitioner was employed mainly in managerial and administrative capacity and as such is not a Workman and hence rejected the Claim Petition. Aggrieved by which the Workman is before this Court.

E.The Submissions:

6. Heard *Mr.S.Raja*, appearing as Party-in-Person. There is no representation on behalf of the respondent – Management.

6.1. *Mr.S.Raja*, appearing as Party-in-Person, by taking this Court through the written arguments and the additional written arguments filed by him would submit



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that the Labour Court erred in holding that he was not a Workman and that his petition is very much maintainable, in view of the Judgment of the learned Single Judge of the Allahabad High Court in ***Nicholas Piramal India Ltd., Vs. Presiding Officer, Labour Court***¹. He would also rely upon the Judgment of the Gujarat High Court to claim that he is entitled for reinstatement as well as back wages. He would also rely upon other Judgments to contend that the Labour Court erred in holding that his petition is not maintainable.

6.2. Upon considering the submissions made by the Party-in-Person and on perusal of the materials, the following questions arise for consideration in the present case:

- (i) Whether or not the petitioner is entitled to approach the Labour Court under Section 2 (A)(2) of the ID Act ?
- (ii) Whether the termination of services of the petitioner is justified ?
- (iii) To what relief the petitioner is entitled to ?

F. Question No.(i):

7. The question of whether the Sales Promotion Employees / Medical

¹ (2023) SCC OnLine All 4247



Representatives are Workman within the meaning of Section 2 (s) of the Act and whether they can approach the Labour Court for redressal of their grievances, was the subject matter of several decisions. Since the pronouncements were not uniform, the question was referred to a Constitution Bench which has dealt with the same and authoritatively answered the issue in ***H.R.Adyanthaya and Others Vs. Sandoz (India) Ltd., and Others***².

7.1. Firstly, the Constitution Bench framed the questions as follows:-

“The question that falls for consideration in these matters is whether the ‘medical-representatives’, as they are commonly known, are workmen according to the definition of “work- man” under Section 2 [s] of the Industrial Disputes Act, 1947 [the ‘ID Act’]”

7.2. Thereafter, the Constitution Bench took notice of the original definition of the term 'Workman' contained in the Act and the subsequent amendments in the year 1956 and thereafter, in the year 1982 and the said portion of the Judgment can be beneficially extracted as hereunder:-

“The definition under this section has undergone changes since its first enactment. It is necessary to keep in mind the said changes since the decisions of this court delivered on the point from time to time are based on the definition, as it stood at the relevant time. The definition, as it stood originally when the ID Act came into force w.e.f. April 1, 1947, read as follows:

² (1994) 5 SCC 737



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“[s] “workman” means any person employed [including an apprentice] in any industry or unskilled manual or clerical work for hire or reward and includes, for the purposes of any proceeding under this Act in relation to an industrial dispute, a workman ischarged during that dispute, but does not include any person employed in the naval, military, or air service of the Crown”.

2. It was amended by Amending Act 36 of 1956 which came into force from August 29, 1956 to read as follows:

“[s] “workman” means any person [including an apprentice] employed in any industry to do any skilled or unskilled manual, super- visory, technical or clerical work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge, or retrenchment has led to that dispute, but does not include any such person [i] who is subject to the Army Act, 1950, or the Air Force Act, 1950 or the Navy [Discipline] Act, 1934; or

[ii] who is employed in the police service or as an officer or other employee of a prison; or

[iii] who is employed mainly in a managerial or administrative capacity; or

[iv] who, being employed in a supervisory: capacity, draws wages exceeding five hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.”

3. The change brought about by this Amendment was that the persons employed to do “supervisory” and “technical” work were also included in the definition for the first time by this Amendment, although those who



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were employed in a supervisory capacity were so included in the definition provided their monthly wage did not exceed Rs. 500/-. The definition of 'workman' was further amended by Amending Act 46 of 1982 which was brought into force w.e. f. August 21, 1984. It read as:-

“[s] “workman” means any person [including an apprentice] employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge, or retrenchment has led to that dispute, but does not include any such person-

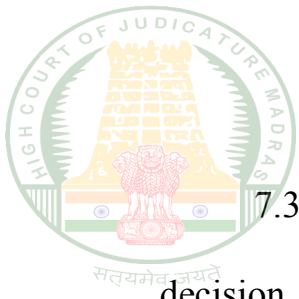
[i] who is subject to the Air Force Act, 1950 [45 of 1950], or the Army Act, 1950 [46 of 1950], or the Navy Act, 1957 [62 of 1957]; or

[ii] who is employed in the Police service or as an officer or other employee of a Prison; or

[iii] who is employed mainly in a managerial or administrative capacity; or

[iv] who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercise, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.”

4. The first change brought about by this amendment was that whereas earlier only those who were doing unskilled or skilled manual work were included in the said definition, now those who did any unskilled or skilled work, whether manual or not, came to be included in it. The second and the most important change that was brought about was that those persons who were employed to do "operational" work were also brought within the fold of the said definition.”



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7.3. Subsequently, the Constitution Bench considered the three Judges Bench decision in *May & Baker (India) Ltd, Vs. Their Workmen*³ and held that in the pre-amended scenario, an employee whose duties were predominantly clerical in nature and manual alone will come within the definition of the Workman. Thereafter, the Constitution Bench noted an amendment in the definition and after considering all the Judgments had laid down the legal position that any person to claim himself to be a Workman within the definition of Section 2 (s) of the Act, it is not enough that he does not fall within the exceptions mentioned in the Section, but he should also fall under any of the categories which are expressly mentioned viz., manual, unskilled, skilled, technical, operational, clerical or supervisory. The relevant portion of the Judgment in paragraph No.24 is extracted hereunder:-

“24.....Hence the position in law as it obtains today is that a person to be a workman under the ID Act must be employed to do the work of any of the categories, viz., manual, unskilled, skilled, technical, operational, clerical or supervisory. It is not enough that he is not covered by either of the four exceptions to the definition. We reiterate the said interpretation.”

7.4. The Constitution Bench held that even after the amended Section 2(s) of the Act, the type of work performed by the Sales Promotion Employees / Medical Representatives cannot be regarded as ‘technical’ or ‘skilled’. The relevant portion

3 (1961) II LLJ 94



of the Judgment of the Constitution Bench in paragraph No.34 is extracted

hereunder:-

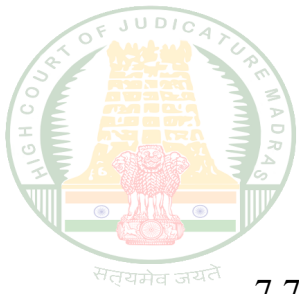
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“34.Hence the contention that the medical representatives were employed to do skilled work within the meaning of the said definition, has to be rejected: As regards the “technical” nature of their work, it has been expressly rejected by this Court in *Burmah Shell* case [supra]. Hence that contention has also to be rejected.”

7.5. Again, the Constitution Bench had held that on an interpretation of the terms based on the principle of *ejusdem generis*, the type of work performed by these Medical Representatives cannot be held as 'operational' also. The relevant portion of the Judgment in paragraph No.38 is extracted hereunder:-

“38. We are afraid that these contentions are well-placed. We have already pointed out as to why the word “skilled” would not include the kind of work done by the sales promotion employees. For the very same reason, the word “operational” would also not include the said work.
.....”

7.6. Therefore, it held that the Medical Representatives are Sales Promotion Employees by the nature of their work, being promotion/pitching of sales, do not fall within any of the types of work enumerated under Section 2 (s) of the Act and therefore, they cannot be a Workman, within the meaning of Section 2(s) of the Act.



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7.7. The particular case which was dealt with by the Hon'ble Supreme Court of India in the above matter arose under *the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971* (in short referred to as 'the Maharashtra Act') which adopted the definition under *the Industrial Disputes Act* and therefore, the Hon'ble Supreme Court of India held that the complaint filed by the Workman was not maintainable under the *Maharashtra Act* as if they were only a Workmen within the definition as per Section 2 (s) of the Act.

7.8. While so, deciding the reference incidentally, in paragraphs Nos.26 to 31, the Hon'ble Constitution Bench also took note of the *Sales Promotion Employees (Conditions of Service) Act 1976* and the amending Acts. The Hon'ble Supreme Court of India considered Section 6 (2) of the said Act and the fact that before the amendment, those of the Sales Promotion Employees who were receiving wages less than Rs.1600/- were entitled to the protection under the Act and thereafter, by the Act 48 of 1986, when the Sales Promotion Employees (Conditions of Service) Act, 1976 was amended with effect from 06.05.1987, the definition was expanded irrespective of the quantum of wages. After the discussion about the amendment in paragraph No.28 and after considering Section 6 (2) of the



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Act in paragraph No.29, the Constitution Bench has also categorically found that the provisions of the Act became applicable to the Medical Representatives with effect from 06.03.1976, depending on their wages and after 06.05.1987, without limitation on their wages and upon the capacity in which they are employed or engaged, the provisions of the Act became applicable to them. It is essential to extract paragraphs No.28 to 30, which reads as follows:-

“28. The SPE act was amended by the Amending Act 48 of 1986 which came into force w.e.f. May 6, 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.

29. Section 6 of that Act made the Workmen’s Compensation Act, 1923, Industrial Disputes Act, 1947, [the ID Act], Minimum Wages Act, 1948, Maternity Benefit Act, 1961, Payment of Bonus Act, 1965 and Payment of Gratuity Act, 1972, applicable forthwith to the medical representatives. Sub-section [2] of the said section while making the provisions of the ID Act, as in force for the time being, applicable to the medical representatives stated as follows “[2] The provisions of the Industrial Disputes Act, 1947 [14 of 1947], as in force for the time being, shall to, or in relation to, sales promotion employees as they apply to, or in relation to, workmen within the meaning of that Act and for the purposes of any proceeding under that Act in relation to an industrial dispute, a sales promotion employee shall be deemed to include a sales promotion employee who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute or whose dismissal, discharge or retrenchment had led to that dispute.”

30. In other words, on and from March 6, 1976 the provisions of the ID Act became applicable to the medical representatives depending upon their wages upto May 6, 1987 and without the limitation on their wages thereafter and upon the capacity In which they were employed or engaged.”



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7.9. Thus, a reading of the Constitution Bench Judgment, leaves no doubt whatsoever that the Sales Promotion Employees / Medical Representatives *per se* do not fall within the definition of Section 2 (s) of the Act, however, by Section 6 (2) of the *Sales Promotion Employees (Conditions of Service) Act, 1976*, the Act is made applicable to them by treating them on par with the Workman. Section 6 (2) of the *Sales Promotion Employees (Conditions of Service) Act, 1976*, extracted supra in the Judgment of the Constitution Bench itself. A reading of Section 6(2) leaves no doubt that if a person comes within the definition of the term 'Sales Promotion Employee' then the *Industrial Disputes Act* as in force for the time being shall apply to Sales Promotion Employees as if there are Workmen within the meaning of the ID Act. The *Sales Promotion Employees (Conditions of Service) Act, 1976* also further specifies that an employee who was dismissed, discharged or retrenched shall also be deemed to be a Sales Promotion Employee to raise a dispute.

7.10. Section 2(d) of the *Sales Promotion Employees (Conditions of Service) Act, 1976* is extracted hereunder for ready reference:-

“2[(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



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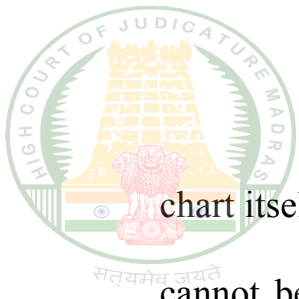
person—

(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;]”

7.11. The Labour Court in this case only relied upon the Judgment of the Madhya Pradesh High Court. A perusal of the Judgment of the Madhya Pradesh High Court, it only relied upon the earlier pronouncement of the Division Bench of that Court in *Novartis India Limited's case* (cited supra). In *Novartis India Limited's case* (cited supra) the Hon'ble Division Bench of the Madhya Pradesh High Court had only held that the Sales Promotion Employees are not Workman within the meaning of Section 2 (s) of the ID Act. Further, in the instant case, by virtue of Section 6 (2) *Sales Promotion Employees (Conditions of Service) Act, 1976*, the provisions of the Act has been applied. In that view of the situation, the Labour Court in only one sentence holds the position of the petitioner is administrative and managerial in nature. In this regard, as rightly contended by the Party-in-Person, the designation of the employee is irrelevant. When the work flow



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chart itself shows that there is no other employee under the petitioner, the petitioner cannot be stated to be in a supervisory or managerial capacity. He is called as a Area Sales Manager, because, he has to pitch and promote the sales. He has to manage only the sales target. Therefore, it cannot be said that his employment is in a managerial or an administrative capacity. His employment is pure and simple, especially it is only for a sales promotion. Merely because the petitioner is qualified and is a matured person and also employed to promote sales with the bigger institutions does not alter the provisions vis-a-vis the definition of the sales promotion employee as per Section 2 (d) of the Act.

7.12. When the Management itself in its pleadings extracted supra, whereunder, it has been held that the primary duty of the petitioner is to meet the sales target in his area and to promote institutional sales with the autonomous and State owned institutions. In view thereof, I hold that the petitioner is only a sales promotion employee and he is not employed in any supervisory, managerial or administrative capacity. Therefore, the findings of the Labour Court made in this regard is unsustainable. Accordingly, I answer the question.

G. Question Nos.(ii) & (iii):

8. Since the Labour Court had non suited the workman only on the



preliminary issue, the issue was to whether the non-employment is justified or not has to be gone into on merits. The cause title of the dispute shall also be deemed as the Management of *Panacea Biotec Pharma Ltd*, represented by its Managing Director -*Dr.Rajesh Jain* and the issue can be answered on merits by the Labour Court. An opportunity of letting in further evidence with reference to the merits of the disputes shall be granted to either party. They can choose to let in additional evidence if any and thereafter the matter can be decided on merits in accordance with law.

H. The Result:

9.In the result, this Writ Petition stands disposed of on the following terms:-

- (i) The award of the II Additional Labour Court, *Chennai*, dated 31.08.2023 made in O.P.No.113 of 2022 shall stand set aside;
- (ii) The O.P. No. 113 of 2022 is remanded back to the II Additional Labour Court, *Chennai*, for consideration of the merits of the issue by considering the petitioner as a workmen within the definition of Section 2(s) of the Industrial Disputes Act, 1947, as directed supra;
- (iii) the matter can be taken up and disposed as expeditiously as possible;
- (iv) No Costs. Consequently, the connected miscellaneous petition is closed.



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Neutral citation : Yes

To

The Presiding Officer, II Additional Labour Court, Chennai.

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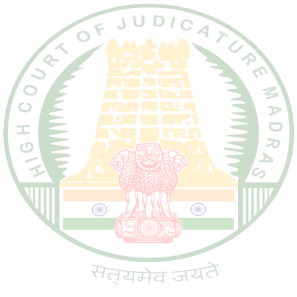
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D.BHARATHA CHAKRAVARTHY, J.,

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Pre-Delivery Order made in
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28.01.2025



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D.BHARATHA CHAKRAVARTHY.J.

This matter is posted today before this Court under the caption
“For Being Mentioned”.

2. It is seen that in the 3rd line of paragraph No.2 of the order dated 28.01.2025 instead of mentioning “**2289 days**”, it is wrongly mentioned as “**2228 days**” and in the same Paragraph in the 4th line, the date of termination has been wrongly mentioned as “**29.08.2020**” instead of “**15.12.2020**”.

3. The Registry is directed to carry out the necessary corrections and issue a fresh order copy.

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