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IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.40518 of 2023

M/s. Sanofi India Ltd., Mumbai

Petitioner

-versus-

***Sanofi Employees and Allied
Workers Union, Ludhiana and
others***

Opposite Parties

Advocates appeared in this case:

For petitioner : Mr. Goutam Mukherjee, Senior Advocate

Opposite party no.2 : In person

Amicus Curiae : Mr. S. K. Das, Advocate

CORAM:

JUSTICE ARINDAM SINHA

JUSTICE SIBO SANKAR MISHRA

J U D G M E N T

Date of hearing and Judgment : 19th December, 2023

ARINDAM SINHA, J.

1. Mr. Mukherjee, learned senior advocate appears on behalf of opposite parties (management) in WP(C) no.26815 of 2023. He refers to our order dated 12th December, 2023 in said writ petition and submits, there was

direction for the writ petition of his client [WP(C) no.40518 of 2023], to be listed. It has not been listed. The writ petition [WP(C) no.40518 of 2023] is available in Court. It is treated on day's list and taken up. Petitioner in W.P.(C) no.26815 of 2023, who is opposite party no.2 in W.P.(C) no.40518 of 2023, appears in person.

2. Mr. Mukherjee submits, opposite party no.2 was appointed as a sales promotion employee with supervisory, managerial and administrative duties. He draws attention to his appointment letter dated 11th August, 2011 to demonstrate that basic salary was ₹9,500/- per month. He relies on section 2(d)(i) and (ii) and section 6 in Sales Promotion Employees (Conditions of Service) Act, 1976 to submit, Industrial Disputes Act, 1947 does not apply to said opposite party.

3. Going back to the appointment letter he relies on clause 24 in it, reproduced below.

“24. No suit or proceeding in respect of any dispute under this appointment letter shall be instituted in any Court of Justice, save and except Courts exercising civil jurisdiction in Mumbai.”

Opposite party no.2 (in his client's writ petition) cannot maintain purported industrial dispute under section 2-A(2) in Industrial Disputes Act, 1947. He prays for interference by quashing the proceeding in respect of I.D. Case no.10 of 2023 pending in the labour Court, Bhubaneswar.

4. Perused the writ petition of opposite party no.2 (Mr. Lenka). Annexure-2 series contains, inter alia, his application/statement of claim under section 2-A(2). We reproduce below paragraph-1 from it.

“1. That, the applicant was appointed in the non-applicant's company through appointment letter dated 11/08/2011 (Annexure-1) as a Sales Promotion Employee on the glorified designation of Sr. Scientific Sales Executive and his daily work was to visit 7 doctors and 4 medical stores in a day to promote non-applicant company's products through Detailing folder/Visual aid and offer/distribute samples and gifts provided by the non-applicant company. He was also required to visit distributors appointed by the company.”

(emphasis supplied)

Mr. Lenka's case is he was appointed as sales promotion employee on said appointment letter dated 11th August, 2011.

5. Section 2(d)(i) and (ii) in the Act of 1976 excludes from being a sales promotion employee, a person who being employed or engaged in supervisory capacity draws wages exceeding ₹1,600/- per mensem or who is employed or engaged mainly in managerial or administrative capacity. In this context, paragraphs 2, 3 and 4 from the application under section 2-A(2) are reproduced below.

“2. That, for the purpose of above said field work, the applicant was required to go on tours as per the tour programme approved by the non-applicant company.

3. That, after completing above said field work of visiting doctors and medical stores, the applicant was required to enter the details of his daily field work on his company’s website “Omnipresence”, which was considered as his attendance, since the applicant was only a field worker.

4. That, in view of the above said field work done by the applicant, the said applicant is covered under the Sales Promotion Employees (conditions of service) Act, 1976 along with its amendment in 1986 and so the provisions of Industrial Disputes Act, 1947, are applicable to him.”

6. It appears from the statement of claim under section 2-A(2), Mr. Lenka asserts he was appointed and discharged functions of a sales

promotion employee. He has not made any statement saying he was employed or engaged in a supervisory capacity. He has also not said he was employed or engaged mainly in a managerial or administrative capacity. Before us we have reliance on his appointment letter, which by its several clauses includes supervision, managerial and administrative functions to be discharged by the appointee. We sitting in writ jurisdiction cannot decide on fact regarding what was the nature or scope of work or responsibilities discharged by Mr. Lenka in his period of engagement with the management. The appointment letter not disputed does not ipso facto make the execution of it to be proved as a fact.

7. Mr. Mukherjee relies on view taken by a Division Bench in the High Court of Madhya Pradesh on **judgment dated 11th October, 2018** in **W.A. no.75 of 2017 (Novartis India Limited vs. Vipin Srivastava and Ors.)**.

He relies on paragraph-13 in the judgment, reproduced below.

“13. In view of the aforesaid judgment, the question as to whether a person is a workman within the meaning of section 2(s) of the ID Act mainly depends upon the nature of the industry, type of work in which he is engaged, organizational set up of particular unit of industry and other factors. In the present case, the respondent was

engaged as Sales Representative in a Pharmaceutical Company. His primary duty was to visit doctors, chemists as well as stockiest. Meeting different professionals to promote sale of product of the appellant cannot be said to be manual or clerical work as it requires knowledge of product, its uses and also persuasive skills. The respondent may not be controlling any subordinate but he was master of the work assigned to him. The manner of performing the job was solely in the discretion of the respondent. The interest of the management was that the Medical Representative should achieve the sales target. The supervisory capacity necessarily has to be examined keeping in view the manual, unskilled, skilled, clerical work and the person performing such work is a workman. May be, he does not supervise any person but he is the master of his own affairs reporting to management only in respect of quantification of sales, therefore, a Medical Representative cannot be treated to be a workman within the meaning of section 2(s) of the ID Act.”

(emphasis supplied)

8. Facts as appearing from **Novartis India Limited** (supra) are that a medical representative had his service terminated on 21st December, 2013, without enquiry or notice. He raised the industrial dispute. The management said that he is a salesman engaged in promotion of sales, who is not a

workman and therefore the labour Court had no jurisdiction in the matter. He obtained award from the labour Court. The management moved the writ Court but was unsuccessful before the learned single Judge. The view taken by the Division Bench was on the intra Court appeal. The Bench considered some clauses under definitions section 2 in Industrial Disputes Act, 1947. It also considered a few such clauses in the Act of 1976. Bearing in mind definition of workman under section 2(s) in the Act of 1947, there was view taken by paragraph-13, reproduced above. It appears to us the Bench made a distinction between work which required knowledge of product and use of persuasive skill by the person being master of the work assigned to him in his discretion, to be different from manual or clerical work. A sales promotion employee was said to be required to discharge the former category of work and therefore, cannot be treated to be a workman within meaning of section 2(s).

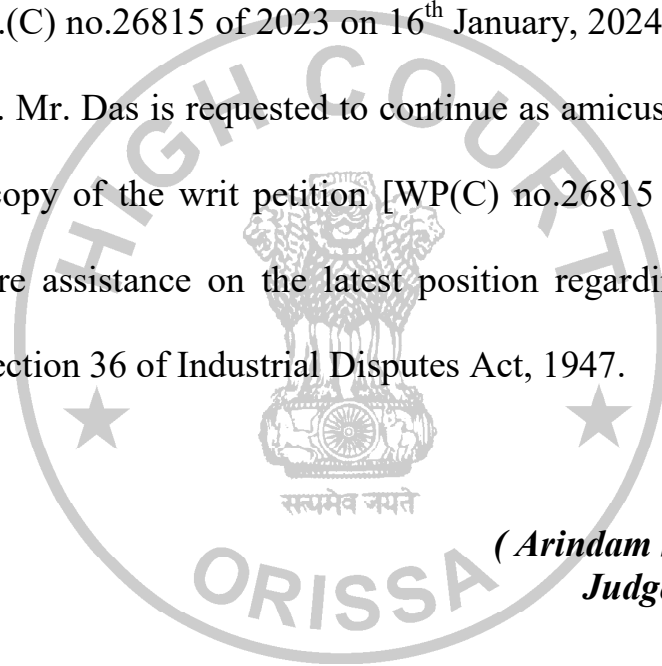
9. On careful perusal of section 2(d)(i) and (ii) in the Act of 1976 we find, sales promotion employees are those who do sales promotion. A person engaged in a supervisory capacity and drawing wages exceeding ₹1,600/- per mensem is not a sales promotion employee. Nor is a person

engaged mainly in a managerial or administrative capacity a sales promotion employee. In other words, a person who is a sales promotion employee is not engaged in supervisory, managerial or administrative capacity. He is a person engaged in sales promotion, who may draw any amount of wages and comes within meaning of sales promotion employee under the definition. Section 6 in that Act makes applicable provisions of Industrial Disputes Act, 1947 to or in relation to sales promotion employees as they apply to or in relation to workman within meaning of said Act. In the circumstances, we respectfully disagree with the view taken in **Novartis India Limited** (supra), excluding medical representatives/sales promotion employees on having application of provisions in Industrial Disputes Act, 1947 to them, going by the nature of work they perform, of sales promotion.

10. Mr. Das, learned advocate present in Court draws attention to Odisha amendment in respect of clause (s) of section 2 in Industrial Disputes Act, 1947. The insertion by amendment includes sales promotion in the clause as applicable in Odisha. Mr. Das is appointed amicus curiae for having assisted the Court.

11. In view of aforesaid, W.P.(C) no.40518 of 2023 is dismissed. The dismissal will not prevent the management from establishing on facts, in the reference, its contention that execution of work done by Mr. Lenka was in supervisory/managerial/administrative capacity, to take him outside meaning of sales promotion employee given in the Act of 1976.

12. List W.P.(C) no.26815 of 2023 on 16th January, 2024 as prayed for by Mr. Mukherjee. Mr. Das is requested to continue as amicus curiae. Registry will supply a copy of the writ petition [WP(C) no.26815 of 2023] to Mr. Das. We require assistance on the latest position regarding vires of sub-section (4) in section 36 of Industrial Disputes Act, 1947.



(Arindam Sinha)
Judge

(S. S. Mishra)
Judge

Prasant