



**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE G. S. AHLUWALIA
ON THE 3rd OF SEPTEMBER, 2024
WRIT PETITION No. 15953 of 2012
ATUL DAVE
Versus
*WEYTH LIMITED***

Appearance:

Shri Satya Prakash Mishra- Advocate for petitioner.

Shri Ritwik Parashar- Government Advocate for respondent/State.

ORDER

This petition under Article 226 of Constitution of India has been filed seeking the following reliefs:-

- (i) finding in regard to Issue No. 5 be modified and it may kindly be held that the petitioner is not guilty of misconduct;
- (ii) finding in regard to Issue No. 6 be modified and it may kindly be held that the petitioner falls in the definition of 'workman' under the provisions of the Industrial Disputes Act, 1947 because apparently there is a typographical error otherwise the finding is in favour of the petitioner;
- (iii) It may kindly be held that the petitioner is entitled to full back wages along with reinstatement and a direction may be issued to the respondent to pay the full back wages to the petitioner along with heavy and compensatory interest.
- (iv) Any other relief this Hon'ble Court may deem fit and proper, may also be granted along with cost.



2. It is submitted by counsel for petitioner that the Labour Court while directing for reinstatement should have granted back wages also. However, it is fairly conceded that this Court by a separate order passed in the case of **Wyeth Limited Vs. Atul Dave** in **W.P. No. 11770/2009** has held that a medical representative is not a Workman and it is fairly conceded that this petition shall also be governed by the said order.

3. A Division Bench of this Court in the case of **Vimal Vs. Abbott Healthcare Pvt. And Others, decided on 17.03.2023** in **W.A. 43/2021** has held as under:-

“8. In **Petcare, Division of Teragone Chemie Pvt. Ltd. (supra)** the Division Bench of this Court at Principal Seat at Jabalpur has considered in detail the issue as to whether Medical Representative or Sales Promotion Officer fall under the definition of “workman” or not and have answered the question in the negative. It has been held in the aforesaid case as under:-

“8. The sole question which has been raised for consideration of this Court is whether the Medical Representatives or the Sales Promotion Officers are the “workman” within the definition of Section 2(s) of the Act of 1947 and whether the Labour Court was having a right to entertain the dispute and the same does not fall under the Industrial Disputes Act.

9. The appellant No.2 appearing in person has heavily relied upon the judgment passed in the case of **German Remedies Limited vs. Presiding Officer, Labour Court No.1, Bhopal** reported in 2006 (II) LLJ 8 MP, wherein it was held that the Labour Court is having jurisdiction to entertain the dispute in respect to Medical Representatives as they fall under the definition as provided in Section 2(s) of the Act of 1947.

10. Learned counsel appearing for the respondent has invited attention of this Court to the judgment passed in the case of **Novartis India Limited (supra)** wherein the earlier



judgment passed in the case of German Remedies Limited (supra) was considered and was held to be not a correct law and it is overruled. The aforesaid aspect was considered by the writ Court, which is clearly reflected from the impugned order.

11. The judgment of the Hon'ble Supreme Court in the case of H.R. Adyanthaya's (supra) is relevant which was subsequently considered by a Division Bench of this Court in the case of Samat Kumar vs. M/s.Parke Davis India Limited reported in 1997 (2) J LJ 353 wherein the definition in Section 2(s) of the Industrial Disputes Act was taken into consideration. The relevant extract is as follows:-

“10. As against it, learned counsel for the respondent No.1 has placed reliance on a case as reported in 1988 (II) MPWN 116 = AIR 1988 SC 1700 (Miss A. Sundarambal v. Govt. of Goa, Deman & Diu and others) whereby it was held that teacher employed in a school is not a workman. But, now dispute stands resolved with respect to the cases of Medical Representative as reported in AIR 1994 SC 2608 [H.R. Adyanthya etc. etc. v. Sandoz (India) Ltd. etc. etc.) whereby it has been held that ‘Workman’ does not include all employees except those covered by four exceptions in said definition of section 2(s) of Industrial Disputes Act. Medical Representatives do not perform duties of ‘skilled’ or ‘technical’ nature and therefore, they are not „workmen“. The connotation of word ‘skilled’ in the context in which it is used, will not include work of a Sales Promotion Employees such as Medical Representative. That word has to be construed ejusdem generis and thus construed, would mean skilled work whether manual or non-manual, which is of a genre of the other types of work mentioned in the definition. The work of promotion of sales of the product or services of the establishment is distinct from and independent of the types of work covered by the said definition.” After returning such finding it was held that the reference



was not maintainable as Medical Representative would not fall within the definition of workman. We are not only bound by the aforesaid judgment but we find the same to be a correct enunciation of law.”

12. From the aforesaid, it is clear that the Constitution Bench judgment of H.R. Adyanthaya’s (supra) was taken into consideration and it was categorically held that Medical Representative or the Sales Promotion Employee do not fall within the definition of a “workman” as defined in Section 2(s) of the Act of 1947.

13. The learned writ court has gone to the extent of considering the definition of “Sales Promotion Employees” as defined under Section 2(d) of the Act of 1976.

14. After going through the definition it is clearly reflected that the person who is engaged in a supervisory capacity, draws wages exceeding sixteen hundred rupees per mensem, will not be covered under the definition. The learned Single Judge has taken into consideration the amount of wages which has been claimed and drawn by the appellant and has clearly held that even if from this angle the case of the appellant is considered, then also he does not fall under the definition of “Sales Promotion Employees” or the “Medical Representative” in terms of Section 2(s) of the Act of 1947.

15. A three-Judge Bench of the Hon’ble Supreme Court in the case of May and Baker (India) Limited vs. Workmen’, reported in AIR 1967 SC 678 had an occasion to directly deal with the question as to whether the Medical Representatives of the company, who are discharged from service, are the workman under the Industrial Disputes Act and the order of reinstatement passed by the Industrial Tribunal was, therefore, valid. The Hon’ble Supreme Court referred to the undisputed nature of the duties of the employees and found that his main work was of canvassing sales. Any clerical or manual work that he had to do was incidental to the said main work, and could not make more than a small fraction of time for which he had to work. In the circumstances, the Hon’ble Supreme Court held that the



Tribunal's conclusion that the employee was a workman under the Industrial Disputes Act was incorrect.

16. The similar issue was considered by a three-Judge Bench judgment of the Hon'ble Supreme Court in the case of Western India Match Company Limited vs. Workman 2 reported in AIR 1964 SC 472. The question before the Court was whether the sales office was entirely independent of the factory or was a department of the one and the same unit of production, and whether Inspectors, Salesman and Retail Salesman of the sales office were workmen within the meaning of U.P. Industrial Disputes Act. The matter was referred by the State Government for adjudication to the Industrial Tribunal on 18.08.1961. After a detailed analysis of the matter, the Bench following the earlier decision in the case of May and Baker's case (supra) has arrived at a similar finding that they cannot be termed as a workman in terms of the definition under the Act of 1947.

17. Similar issue was considered in the case of Burmah Shell Oil Storage and Distribution Company of India Limited vs. Burmah Shell Management Staff Association reported in AIR 1971 SC 922 and again the judgment passed in May and Baker's case (supra) was taken into consideration and the Court has given the verdict in the light of May and Baker's case. The three-Judge Bench in the case of May and Baker (supra) has taken a view that a person to be qualified to be a workman must be doing the work which falls in any of the four categories viz. manual, supervisory, technical or clerical. If a person does not fall within the four exceptions to the aforesaid definition, he is a workman within the definition as provided under Section 2(s) of the Act of 1947. Therefore, the position is clarified by the Hon'ble Supreme Court in the aforesaid cases.

18. The Constitution Bench of the Hon'ble Supreme Court in H.R. Adyanthaya's (supra) has categorically held that the Medical Representatives are not the workman; therefore, the complaint made to the Industrial Court is not maintainable itself. The arguments raised by the appellant that even in the case of H.R. Adyanthaya's (supra), the benefits were extended and they were treated to be the complainant in the



matter and the State Government was given directions but the fact remains that the powers were exercised under Article 142 of the Constitution of India by the Hon'ble Supreme Court. But the law which has been settled in the aforesaid case by the Constitution Bench is clear that the Medical Representatives or the Sales Promotion Officer do not fall under the definition of workman. The learned Single Judge has followed the aforesaid judgment passed by the Hon'ble Supreme Court and has rightly set aside the order passed by the Labour Court. Under these circumstances, we do not have any hesitation to observe that no illegality is committed by the writ court in allowing the writ petition. In absence of any cogent material or a judgment to override the observations made by the writ court and the law settled by the Constitution Bench of the Hon'ble Supreme Court in *H.R. Adyanthaya's (supra)*, no relief can be extended to the appellant.”

9. The Division Bench in the aforesaid case has relied upon the decision of the Hon'ble Supreme Court in **H.R. Adyanthaya (supra)** observing that therein it has been categorically held that the medical representatives are not workmen, therefore the complaint made by Industrial Court is itself not maintainable. It has been further held that the benefits extended in that case were in exercise of powers under Article 142 of the Constitution of India but the law which has been settled is that the Medical Representative or the Sales Promotion Officer do not fall under the definition of 'workmen'. The judgment of Division Bench of this Court in **Novartis India Limited (supra)** has also been taken into consideration in which the judgment of **H.R. Adyanthaya (supra)** was taken into consideration.

10. We are in complete agreement with the observations and findings as recorded by the Division Bench in the case of **Petcare, Division of Tetragon Chemie Pvt. Ltd.(supra)** and do not find any good ground to take a different view. Since the issue raised in this appeal has already been settled in the case of **Petcare, Division of Tetragon Chemie Pvt.**



Ltd. (supra) we have no hesitation to hold that the appellant who was working as a Sales Promotion Officer with the respondents company is not a ‘workman’ within the meaning of Section 2(s) of the Industrial Disputes Act, 1947. As a result, we do not find any illegality in the impugned order passed by the learned Single Judge. The Writ appeal is devoid of merit and is accordingly dismissed.”

4. Accordingly, this petition is **dismissed** on the ground that since the award dated 07.08.2009 passed by Presiding Officer, Labour Court, Khandwa in Case No. 8/98 ID Act Reference has already been set aside by this Court in the case of **Wyeth Limited (supra)** nothing survives in this writ petition.

5. Petition fails and is hereby **dismissed**.

(G.S. AHLUWALIA)
JUDGE

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