HIGH COURT OF MADHYA PRADESH: JABALPUR

(Division Bench)

Writ Appeal No. 75/2017

Novartis India Limited .....Appellant

Versus

Vipin Shrivastava .....Respondents
& others

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CORAM:

Hon'ble Shri Justice Hemant Gupta, Chief Justice
Hon'ble Shri Justice Vijay Kumar Shukla, Judge

Appearance:

Shri Naman Nagrath, Senior Advocate with Shri Abhijeet Awasthi, Advocate for the Appellant.

Smt. Shobha Menon, Senior Advocate with Shri Rahul Choubey and Shri Anoop Shrivastava, Advocates for the Respondent No.1.

Whether Approved for Reporting: Yes

Law Laid Down:

- ✓ 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". Meeting different professionals to promote sale of product of Pharmaceutical Company cannot be said to be manual or clerical work done by the Medical Representatives as it requires knowledge of product, its uses and also persuasive skills. May be, the Medical Representative 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 Industrial Disputes Act, 1947. - *All India Reserve Bank Employees' Association and another v. Reserve Bank of India and another, AIR 1966 SC 305; H.R. Adyanthaya and others v. Sandoz (India) Ltd. and others (1994) 5 SCC 737; Samat Kumar v. M/s Parke Davis India Ltd., 1997 (2) JLJ 353; Division Bench*
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decision of Patna High Court in Deepak Kumar v. State of Bihar (2016) 149 FLR 528 – ***relied****.*

- ✓ Single Bench decision of this Court in *German Remedies Limited v. Presiding Officer, Labour Court No.1, Bhopal and others (2006 Vol.II, LLJ 8 MP)* holding that the Medical Representative is a "workman" is not correct enunciation of law and is, thus, ***overruled***.

Significant Paragraphs: 7, 12 to 18

Reserved on: 03.10.2018

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O R D E R

{Pronounced on this **11th day of October, 2018**}

Per: Hemant Gupta, Chief Justice:

The challenge in the present intra-court appeal is to an order passed by the learned Single Bench on 20.12.2016 in Writ Petition No.6862/2016 (*Novartis India Ltd. v. Vipin Shrivastava and others*) wherein challenge made by the appellant to the Award and other orders passed by the Labour Court remained unsuccessful.

2. Though, before the learned Single Bench inter-alia challenge to the Award was also on the ground that it is an *ex parte* award but in view of undisputed documents on record, mostly produced by the workman himself, we need not go into the question as to whether the award is an *ex parte* Award or not but the only question required to be examined is: as to whether the Medical Representative employed with the appellant w.e.f. 01.12.2004 is a "workman" within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 (for short "the ID Act") competent to raise a dispute before the Labour Court.
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3. The brief facts borne out from the record are that the respondent was appointed as Medical Representative w.e.f. 01.12.2004 but his services were terminated on 21.12.2013 without conducting any inquiry or issuing notice. The respondent raised an industrial dispute challenging the termination of his services whereas, the appellant submitted that the respondent is a Salesman engaged in the promotion of sales, who is not a workman, therefore, the Labour Court has no jurisdiction in the matter.

4. The basis of the termination is that a separation package was issued for 139 employees including the respondent on 17.01.2013 over and above the retrenchment compensation who chose to resign. Resultantly, the services of 139 employees including the present respondent were dispensed with.

5. Learned Labour Court held that the services of the respondent have been terminated on the ground of non-performance but there is no evidence to such effect and, therefore, the termination of services of the respondent is retrenchment within the meaning of Section 2(oo) of the ID Act. The learned Labour Court relied upon a judgment of the Supreme Court rendered in **H.R. Adyanthaya and others v. Sandoz (India) Ltd. and others (1994) 5 SCC 737**, to hold that the Medical Representative is a workman, competent to invoke the jurisdiction of the Labour Court. Reliance was also placed upon a Single Bench order of this Court in **German Remedies Limited v. Presiding Officer, Labour Court No.1, Bhopal and others (2006 Vol.II, LLJ 8 MP)**. After returning such finding, the Labour Court set aside the termination of services of the respondent and ordered his reinstatement with full back-wages.

6. In the writ petition filed by the appellant, the learned Single Bench again relied upon paragraphs 39 and 40 of the judgment passed in **H.R. Adyanthaya**'s case (supra) to hold that the respondent is a workman under Section 2(s) of the ID Act and thus, dispute could be raised by him before the Labour Court.

7. The argument of the learned counsel for the appellant is that the respondent is not a workman as he is a qualified Pharmacist. It is asserted that the workman, as defined under Section 2(s) of the ID Act, means a person who is employed to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work but a workman, who is employed in a supervisory capacity and draws salary of more than Rs.1,600/- per month prior to amendment in the ID Act by Act No.24 of 2010 wherein Rs.1,600/- was substituted to Rs.10,000/-, is excluded. It is argued that since the respondent was employed as a Pharmacist in the sales promotion of the medicines manufactured by the appellant, therefore, he would not be covered within the meaning of word "workman" as defined under Section 2(s) of the ID Act. It is also argued that the judgment of the Supreme Court in **H.R. Adyanthaya**'s case (supra) has not been examined in right perspective wherein the Supreme Court was considering number of appeals including the appeals wherein the Medical Representatives were not governed either by the ID Act or the Sales Promotion Employees (Conditions of Service) Act, 1976 (for short "the SPE Act") and all such appeals were dismissed. The appeals on behalf of the employees whose services were terminated in the year 1976 and 1977 were also dismissed as the wages of the employees concerned were not less than Rs.750/- per month

excluding commission prior to coming into force of the SPE Act. Civil Appeal No.818/1992 was allowed but not on the question that the appellant is a workman but while exercising the powers conferred under Article 142 of the Constitution of India directing the State Government to treat the employee's complaint as an industrial dispute under the ID Act. The Court has not found any favour with the argument raised that the Medical Representatives perform duties of skilled and technical nature and therefore, are workmen and also held that the work performed by Sales Promotion Employees will not fall within the word "operational" and therefore, such argument was also not accepted. The relevant findings of the judgment in **H.R. Adyanthaya**'s case (supra) read as under:-

> "**27**. It will be noticed that under the SPE Act, the sales promotion employee was firstly, one who was engaged to do any work relating to promotion of sales or business or both, and secondly, only such of them who drew wages not exceeding Rs.750 per mensem (excluding commission) or those who had drawn wages (including commission) or commission not exceeding Rs. 9000 per annum whether they were doing supervisory work or not were included in the said definition. The only nature/type of work which was excluded from the said definition was that which was mainly in managerial or administrative capacity.
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> **28.** 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.
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> **29**. …….. In other words, on and from 6-3-1976 the provisions of the ID Act became applicable to the medical representatives depending upon their wages up to 6-5-1987 and without the limitation on their wages thereafter and upon the capacity in which they were employed or engaged.

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33. It was contended by Shri Sharma, appearing for the workmen that the definition of workman under the ID Act includes all employees except those covered by the four exceptions to the said definition. His second contention was that in any case, the medical representatives perform duties of skilled and technical nature and, therefore, they are workmen within the meaning of the said definition. We are afraid that both these contentions are untenable in the light of the position of law discussed above. ……. 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. 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 Oil Storage & Distribution Co. of India Ltd. v. Burmah Shell Management Staff Assn, (1970) 3 SCC 378. Hence that contention has also to be rejected.

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36. All that remains, therefore, is CA No. 818 of 1992 where the dispute arose out of transfers of the employees concerned effected on 16-2-1988. The complaint was made to the Industrial Court under the Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971 (the 'Maharashtra Act'). There is no doubt that in view of Section 3(18) of the Maharashtra Act the definition of 'workman' under that Act would be the same as under the ID Act. The definition of 'workman' under the ID Act will obviously not cover the sales promotion employee within the meaning of SPE Act. It was contended on behalf of the workmen that since the ID Act was amended by insertion of the words 'skilled' and 'operational' and the SPE Act was amended to make all sales promotion employees, irrespective of their wages, 'workmen' w.e.f. 6-5-1987, it should be held that the definition of 'workman' under the ID Act covered the sales promotion employees. Hence the Maharashtra Act was applicable to the medical representatives. Reliance was also placed on an observation of this Court in Kasturi and Sons (P) Ltd. v. N. Salivateeswaran, AIR 1958 SC 507 which is as follows:

> "It is true that Section 3 sub-section (1) of the Act provides for the application of the Industrial Disputes Act, 1947, to or in relation to

> working journalists subject to sub-section (2); but this provision is in substance intended to make working journalists workmen within the meaning of the main Industrial Disputes Act."
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> *** *** ***
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> **39**. We are, therefore, of the view that the contention raised on behalf of the management in this appeal, viz., since the medical representatives are not workmen within the meaning of the Maharashtra Act the complaint made to the Industrial Court under that Act was not maintainable, has to be accepted. Hence the complaint filed by the appellant-workmen under the Maharashtra Act in the present case was not maintainable and hence it was rightly dismissed by the Industrial Court.
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> **40**. Although we hold that the complaint filed by the workmen is not maintainable under the Maharashtra Act, we are of the view that taking into consideration the fact that a long time has lapsed since the filing of the complaint, it is necessary that we exercise our powers under Article 142 of the Constitution, which we do hereby and direct the State Government to treat the employee's said complaint as an industrial dispute under the ID Act and refer the same under Section 10(1)(d) of the said Act to the Industrial Tribunal, Bombay within four weeks from today. The Industrial Tribunal shall dispose of the reference within six months of the date of reference."

8. On the other hand, on the strength of the order of termination dated 21.12.2013 (Annexure-E, at page 561 of appeal paper book), learned counsel for the respondent pointed out that respondent cannot be said to be engaged in a supervisory capacity so as to be excluded from the definition of "workman" within the meaning of Section 2(d) of the SPE Act or Section 2(s) of the ID Act. The relevant assertion in the letter of termination, referred to by the learned counsel for the respondent, reads as under:-

> "You have been appointed and are currently working in the Company as a Medical Representative. Your primary duty is to promote sales of company's products for which you are required to visit Doctors, Chemists as well as Stockists. You are aware that your performance and/or productivity levels are measured on this basis. Further even while

> the signing of the settlement dated 24.1.2012, between Novartis India Limited, Pharmaceuticals Division and Novartis Employees Union, the concerned employees and union assured to render complete and wholehearted cooperation so as to improve the competitive status of the company as well as the earning capacity by improving efficiency and productivity. In the said settlement, by way of incentive, a clause was also incorporated that those who achieve growth will be given an incentive. All employees were further given substantial increase in salaries and benefits on the assurance of performance."

9. The respondent has filed additional return before the learned Single Bench wherein the pay slips for the month of December 2012, June, 2013, November, 2013 and December 2013 have been produced. Such pay slips reveal that total earning of the respondent is more than Rs.50,000/- in each month except in the month of November, 2013. The total earnings of the respondent-employee, as per his own showing, are as under:-

Relevant Extract of Pay Slips of Respondent No.1 Vipin Shrivastava

EMPLOYER : NOVARTIS INDIA LIMITED

Sl. No.	**Month/Year**	**Total Earnings (without deductions)**	**Net Salary (after deductions)**
1.	December, 2012	Rs.64,612.16	Rs.53,017.16
2.	June, 2013	Rs.51,297.85	Rs.43,358.85
3.	November, 2013	Rs.34,464.59	Rs.28,409.59
4.	December, 2013	Rs.62,608.43	Rs.53,584.43

10. Having heard learned counsel for the parties, we find that the present appeal deserves to be allowed.

11. Before we deal with the rival contentions of the learned counsel for the parties, it would be apt to quote the relevant provisions of the ID Act and the SPE Act, which read as under:-

"Industrial Disputes Act, 1947.

2. Definitions – In this Act, unless there is anything repugnant in the subject or context, -

xxx xxx xxx

xxx xxx xxx

(rr) "wages" means all remuneration capable of being expressed in terms of money, which would, if the terms of employment, expressed or implied, were fulfilled, be payable to a workman in respect of his employment, or of work done in such employment, and includes-

(i) such allowances (including dearness allowance) as the workman is for the time being entitled to;

(ii) the value of any house accommodation, or of supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of food grains or other articles;

(iii) any travelling concession;

(iv) any commission payable on the promotion of sales or business or both;

but does not include-

(a) any bonus;

(b) any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the workman under any law for the time being in force;

(c) any gratuity payable on the termination of his service;

xxx xxx xxx

(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 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."

*Substituted to "ten thousand rupees"
by Act 24 of 2010, S.2 (w.e.f. 15.9.2010)

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The Sales Promotion Employees (Conditions of Service) Act, 1976.

2. Definitions. – In this Act, unless the context otherwise requires, –

xxx xxx xxx

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(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 purpose 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 this 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;"

12. The test to decide who is a workman within the meaning of Section 2(s) of the Industrial Disputes Act, 1947, was explained by the Labour

Appellate Tribunal of India in the case of **Ford Motor Company of India Ltd. v. Ford Motors Staff Union, 1953-II Lab. LJ 344 (LATI.-Bom.)**. The Court observed as under:-

> "**4.**…… Essentially the question whether a person is a workman or not will depend upon the nature of the work which he does; whether it is manual or clerical work skilled or unskilled; and the true question is: Is his work in the main clerical or manual so that he falls within the definition of a "workman"; the question whether he is a supervisor or exercises directional or controlling power poses merely a negative test of a "workman" which cannot be conclusive. This is ultimately a question of fact, at best one of mixed fact and law, though what the true legal inference should be from the facts found or admitted will be a question of law. How far the circumstance that the employee has supervisory powers should be regarded as affecting the question will really depend upon the nature of the industry, the type of work in which he is engaged, the organisational set up of the particular unit of industry and like factors."

13. The Supreme Court in its judgment in **All India Reserve Bank Employees' Association and another v. Reserve Bank of India and another, AIR 1966 SC 305** has taken note of the aforesaid decision in **Ford Motor Company** (supra) and held as under:-

> "(**25**) It may be mentioned here that Mr. Chari attempted to save the employees in Class II from the operation of the exceptions in Cl. (iv) by referring to their duties which he said were in no sense 'supervisory' but only clerical or of checkers. He also cited a number of cases, illustrative of this point of view. Those are cases dealing with foremen, technologists, engineers, chemists, shift engineers, Asstt. Superintendents, Depot Superintendents, godown-keepers etc. We have looked into all of them but do not find it necessary to refer to any except one. In Ford Motor Co. of India Ltd. v. Ford Motors Staff Union, 1953-2 Lab. LJ 444 (LATI-Bom), the Labour Appellate Tribunal correctly pointed out that the question whether a particular workman is a supervisor within or without the definition of 'workman' is "ultimately a question of fact, at best one of mixed fact and law….." and "will really

> depend upon the nature of the industry, the type of work in which he is engaged, the organisational set up of the particular unit of industry and like factor". The Labour Appellate Tribunal pertinently gave the example that "the nature of the work in the banking industry is in many respects obviously different from the nature and type of work in a workshop department of an engineering or automobile concern." We agree that we cannot use analogies to find out whether Class II workers here were supervisors or doing mere clerical work. No doubt, as Mr. Chari stated the work in a Bank involves layer upon layer of checkers and checking is hardly supervision but where there is a power of assigning duties and distribution of work there is supervision. In Lloyds Bank Ltd. v. Pannalal Gupta, 1961-1 Lab.LJ 18 (SC), the finding of the Labour Appellate Tribunal was reversed because the legal inference from proved facts was wrongly drawn. It is pointed out there that before a clerk can claim a special allowance under para 164(b) of the Sastry Award open to Supervisors, he must prove that he supervises the work of some others who are in a sense below him. It is pointed out that mere checking of the work of others is not enough because this checking is a part of accounting and not of supervision and the work done in the audit department of a bank is not supervision."

14. 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 stockists. 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.

15. The judgment in **H.R. Adyanthaya**'s case (supra) has come up for consideration before a Division Bench of this Court in **Samat Kumar v. M/s Parke Davis India Ltd., 1997 (2) JLJ 353** wherein the reference to Labour Court was subject matter of challenge on the part of the management. Though the workman was said to be working as Area Sales Manager in managerial capacity drawing salary of more than Rs.1,600/-, therefore, he was not a workman but while examining the scope of **Adhyanthaya'**s case (supra), the Court has held that 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 under Section 2(s) of the ID Act. The relevant extract of the Division Bench judgment reads as under:-

> "**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.

16. Learned Single Bench of this Court in **German Remedies Limited**'s case (supra) relying upon **H.R. Adyanthaya**'s case (supra) held that the Medical Representative is a workman. The relevant extracts of the said decision in **German Remedies Limited**'s case read as under:-

> "**14**. With regard to meet out, the objections - the petitioner about the status of respondent No. 2, whether he would be a workman within the meaning of Section 2(s) of the Industrial Disputes Act, 1947, has to be dealt with. The Apex Court had an occasion to consider a similar question in a judgment *H.R. Adyanthaya v. Sandoz (India) Ltd. and others [(1994) 5 SCC 737*]. The Apex Court in the said case was considering the status of Medical Representatives and the Apex Court came to the conclusion that since there had been an amendment in the provisions of the Industrial Disputes Act, 1947 and also by virtue of the provisions of Section 6 of the Sales Promotion Employees (Conditions of Service) Act, 1976 makes application to the provisions of the Industrial Disputes Act, 1947 as in force for the time being, therefore, the Apex Court held that a Medical Representative shall be a workman within the meaning of Section 2(s) of the Industrial Disputes Act, 1947.
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> **15.** The aforesaid judgment passed by the Apex Court had also been considered by the Rajasthan High Court in *Dolphin Laboratories Ltd. v. Judge, Labour Court, Udaipur and Another* 2001-II-LLJ-559 (Raj.) and

> also by Punjab & Haryana High Court in *Ripu Daman Bhanot v. Presiding Officer, Labour Court, Ludhiana and Ors. 1997-I-LLJ-557 (P&H*). The aforesaid two High Courts have also dealt with the similar questions and relying upon the ratio of *Sandoz's* case (supra) held that Medical Representative is a workman for the purpose of Section 2(s) of the Industrial Disputes Act, 1947.
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> **16.** In view of the aforesaid law laid down by the two High Courts based upon the earlier judgment passed by the Apex Court in *Sandoz's* case (supra), this objection of the petitioner also cannot be accepted."

The Single Bench in **German Remedies Limited**'s case (supra) has misread the judgment in **H.R. Adyanthaya**'s case (supra) to hold that Medical Representatives are workmen within the meaning of Section 2(s) of the ID Act. In fact, three categories were created by the Supreme Court. In respect of the Medical Representatives engaged prior to enactment of SPE Act w.e.f. 06.03.1976, they were held not governed either by ID Act or SPE Act. In respect of employees whose services were terminated after 06.03.1976, the appeals were dismissed for the reason that it is not the case of the employees that their wages were less than Rs.750/- per month excluding commission, therefore, the SPE Act did not apply to them. The only dispute which was referred to Industrial Court under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practice Act, 1971 was in respect of transfer of the employees affected on 16.02.1988. The Supreme Court found that the definition of workman under ID Act will not cover the sales promotion employees within the meaning of SPE Act. The argument raised that the sales promotion employees are skilled or operational employees was not accepted. Therefore, the order of the learned Single Bench is not the correct reading of **H.R. Adyanthaya**'s case (supra) and is, thus, overruled.

17. A Division Bench of Patna High Court in **Deepak Kumar v. State of Bihar (2016) 149 FLR 528**, held as under:-

> "**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."

18. In view of the said fact, the Award passed by the learned Labour Court and the order passed by the learned Single Bench is set aside holding that the Medical Representative is not a workman within the meaning of Section 2(s) of the ID Act and Section 2(d) of the SPE Act. The appeal stands **allowed** and disposed of.

(HEMANT GUPTA)
CHIEF JUSTICE

(VIJAY KUMAR SHUKLA)
JUDGE

S/