RESERVE JUDGMENT

Court No. - 17

AFR

Case :- WRIT - C No. - 1004529 of 2007

Petitioner :- M/S Nicholas Piramal India Ltd. And Ors
Respondent :- Presiding Officer Labour Court Lko.And 3 Ors.
Counsel for Petitioner :- Dr. R.K.Srivastava,Nishchal Jagdhari
Counsel for Respondent :- C.S.C.,Birendra Pd. Singh,Sanjay Saxena

Hon'ble Alok Mathur,J.

1. Heard Dr. R.K. Srivastava and Sri Nischal Jagdhari, learned counsel for the petitioner as well as learned Standing Counsel for the respondents.

2. By means of present writ petition the petitioner has assailed legality and validity of award dated 24.01.2007 passed by the Labour Court, Lucknow thereby allowing claim preferred by respondent no. 2 – workman and holding that domestic enquiry held against the workman was illegal and arbitrary and order passed against the workman as a result of domestic enquiry, was set aside holding that the workman was entitled to continue in service with effect from the date of his termination alongwith all consequential benefits.

3. Brief facts giving rise to the present case are that the respondent no. 2 – workman was initially appointed as clerk in M/s Nicholas Piramal India Ltd. with effect from 10.04.1973. Subsequently, by means of order dated 22.09.1982, he was appointed as Trainee Technical Representative and further was appointed on the post of Medical Representative.

4. It is stated that while discharging his duties as Medical Representative the workman-respondent no. 2 was involved in certain acts of misconduct and most specifically submitting false call reports from 05.10.1996 to 18.10.1996 of visiting Doctors and Chemists to

whom in fact he has not visited. For his acts of misconduct an explanation was sought by means of a letter dated 07.12.1996 and not being satisfied with his explanation a regular enquiry was instituted. Accordingly charge sheet was issued to the workman-respondent no. 2 on 04.04.1997. Respondent no. 2 was duly heard in the said proceedings, and he defended himself. The enquiry proceedings were held at New Delhi on 6th and 7th May, 1988 but the respondent no. 2 did not appear and on his request the enquiry was fixed for 10.06.1998, but he again did not appear and the matter was adjourned for 23.06.1998. On 23.06.1998, respondent no. 2 appeared and filed his documents.

5. The enquiry concluded and the enquiry officer submitted his report where he found all the charges levelled against respondent no. 2 – workman to be proved. The workman was given show cause notice alongwith a copy of the enquiry report to which he responded and finally he was dismissed from service by means of order dated 12th March, 1999 and was paid compensation of Rs.1,64,346/- and one month salary. Against his termination, the workman-respondent no. 2 preferred an appeal which was also rejected by the competent authority.

6. The respondent no. 2 raised industrial dispute under Section 4K of the U.P. Industrial Disputes Act and subsequently a reference was made on 08.09.1999 requiring the Labour Court to adjudicate the dispute raised by respondent no. 2 against the petitioner. In the said proceedings the petitioner put in appearance and filed written statement and opposed the claim set forth by the workman-respondent no. 2.

7. After completion of the pleadings Labour Court framed preliminary issue with regard to the facts as to whether domestic enquiry was fair and proper opportunity was given to the workman during the said proceedings. The Labour Court after perusing entire proceedings of

the domestic enquiry and the procedure followed therein, returned a finding that respondent no. 2 – workman was Medical Representative and he had stated that he had visited various Doctors on 05.10.1996 and 18/10/1996 and informed the Doctors and pharmacists about various drugs being sold by the petitioner company. It was noticed by the petitioner that on 05.10.1996 there was meeting of Union in which respondent no. 2 participated and it was not possible to visit Doctors and pharmacists in his capacity as Medical Representative and charged the workman for submitting false call reports.

8. It was noticed that the statements of said Doctors were not recorded, and merely by considering the fact that on that date meeting the workman would not have visited or called on the Doctors and consequently had submitted a false report in this regard. Similar allegations were levelled against him for not visiting Doctors on 18.10.1996. It was further stated that in his defense respondent no. 2 – workman had produced certificates issued by various Doctors, wherein it was stated that he had visited them on the said dates and once such certificates were produced before the enquiry officer then there was no reason for taking a contrary view and disbelieve the said certificates. It was also considered that repeated requests were made for taking statements of Doctors but despite the requests the statements were not recorded.

9. The Labour Court further considered that the workman had worked for a very long time with the petitioner Company and during his tenure he had extremely good track record and through his efforts the petitioner had profited and had sold huge amount of medicines and consequently it was held that from the material on record that charge no.1 with regard to working dishonestly was not proved. Further, it was found that once the Doctors have given their certificates to the effect that respondent no. 2 – workman had visited them on the dates in question then it cannot be concluded that the workman had not

visited them on the said dates, and accordingly the charge on this count was also not proved, contrary to the findings recorded in the order of dismissal. It was observed that certificates issued by the Doctors could not have been disbelieved, without any material to the contrary, and accordingly held that the findings recorded by the domestic enquiry were, illegal and arbitrary and consequently the order of dismissal was set aside.

10. We have considered the arguments of the petitioner as well as perused the record. The respondent workman was alleged to be involved in certain acts of misconduct for submitting false and fabricated daily call reports of 5/10/1996 and 18/10/1996 of having visited Doctors and chemists to whom in fact he had not visited. At the time the respondent was working as a Medical Representative. For the aforesaid misconduct he was required to submit his explanation, and subsequently a chargesheet was issued to him. The enquiry proceedings were held in New Delhi. In the enquiry the charges were found to be proved as per the report of the enquiry officer. The reply of the workman was duly considered, and the disciplinary authority concurred with the findings of the enquiry officer, and a penalty of dismissal was imposed. Compensation of ₹ 1,64,346/- and one month salary was paid to him.

11. There was a meeting of the Workers Union of which the workman (respondent No. 2) was a member on 05/10/1996 and 18/10/1996 in which he participated. He further submitted a certificate that he had met 5 Doctors and pharmacists on the said dates to promote the medicines sold by the petitioner. The allegations levelled against him was that on the date of the meeting it was not possible for him to meet the Doctors and pharmacists, and therefore the said certificates are false which was a misconduct, and the said basis disciplinary proceedings were initiated against him.

12. The domestic enquiry proceedings were conducted in Delhi, while the alleged misconduct happened in Lucknow where respondent no. 2 had met the doctors concerned. In his defense, the workman had produced certificate of 5 Doctors certifying that he had met them on the said dates. On behalf of the petitioner statement of the supervisor namely Mr P.K Shukla was also recorded. From his statement, it was found that it was possible for the respondent/workman to have met the Doctors either before the meeting or after 3 PM when the meeting got over, as he had three-hour period between the end of the meeting till attending the dinner in the hotel. There were repeated requests made by the workman for having the enquiry be conducted at Lucknow where all the witnesses i.e the doctors were present and could have testified about his presence on the said dates. Neither the enquiry proceedings were conducted at Lucknow, nor were the certificates of the doctors relied upon by the prosecution, and consequently the Labour Court has rightly concluded that the charges have been proved by the petitioner on the basis of conjecture and surmises without there being any material in support of the same. The Tribunal has rightly concluded that charge number one was not proved as no material was adduced which may indicate that he had worked dishonestly in connection with the employers business. The workman was able to prove that he had worked satisfactorily for last 24 years and due to his efforts the company has profited which was reflected in the sales figures. He was also given a gold medal by the petitioner for his services.

13. To prove the charge of habitual negligence or neglect of work, no evidence was led by the petitioner. Mr P.K Shukla the witness for the petitioner, on the contrary stated that there was no allegation against the petitioner prior to the said act of misconduct and accordingly on the basis of the said statement, and also in absence of any other material, the said charge was also not proved. Regarding the charge of submitting false call reports, the Labour Court held that relying upon

the statement of the witness for the petitioner it was clear that on the date of the meeting there was sufficient time to petitioner to have called on the Doctors and pharmacists, and consequently it cannot be said that the call reports filed by the workman were false. This was not contradicted and is also borne out from the evidence adduced on behalf of the petitioners. The certificates of the Doctors were produced during the domestic enquiry and there was no reason for disbelieving them, and for the aforesaid reason the charge against the petitioner was also not proved. This court also does not find any infirmity with the findings recorded by the Labour Court, and no other material or argument was raised by the petitioner which could persuade us to take a contrary view. Accordingly, the argument in this regard submitted by the petitioner is rejected.

14. The petitioner submitted that they should have been given a chance to prove the charges before the Labour Court. It was stated that in the written statement they had reserved the right of adducing evidence, and in case the Labour Court was of the opinion that there was any infirmity in the domestic enquiry then opportunity should have been given to the petitioner to adduce further evidence. In support of their submissions they relied upon the judgement of the Supreme Court in the case of **Karnataka State Road Transport Corporation vs Smt Lakshmidevamma and another (2001) 5 SCC 433**.

15. To avail of the benefit of leading evidence before the Labour Court in support of the charges levelled in domestic enquiry, the first condition is that the option in this regard should be exercised by the employer at the time of filing of written statement. In the present case undoubtedly, the petitioner had stated that after the decision of primary issues, the circumstances require that the petitioner should be allowed to lead evidence on facts in order to prove its case before the Labour Court.

16. In cases where the termination of a workman is preceded by domestic enquiry, and such termination is challenged, the Supreme Court has held that in case the Labour Court is of the view that the domestic enquiry is initiated on account of violation of principles of natural justice, or that the workman was not afforded proper opportunity, then the employer can be permitted to lead evidence to prove the charges before the Labour Court itself. It is the contention of the petitioner that the order of dismissal has been set aside and despite their seeking permission to lead evidence, the Labour Court declined to give such opportunity.

17. The Hon'ble Supreme Court in the case of **Karnataka SRTC v. Lakshmidevamma, (2001) 5 SCC 433** has held as under:-

"***45.*** *It is consistently held and accepted that strict rules of evidence are not applicable to the proceedings before the Labour Court/Tribunal but essentially the rules of natural justice are to be observed in such proceedings. Labour Courts/Tribunals have the power to call for any evidence at any stage of the proceedings if the facts and circumstances of the case demand the same to meet the ends of justice in a given situation. We reiterate that in order to avoid unnecessary delay and multiplicity of proceedings, the management has to seek leave of the court/tribunal in the written statement itself to lead additional evidence to support its action in the alternative and without prejudice to its rights and contentions. But this should not be understood as placing fetters on the powers of the court/tribunal requiring or directing parties to lead additional evidence including production of documents at any stage of the proceedings before they are concluded if on facts and circumstances of the case it is deemed just and necessary in the interest of justice.*"

18. Considering the submissions of counsel for the petitioner, it is noticed that the Labour Court on the request of the petitioner framed a preliminary issue with regard to the fairness of the domestic enquiry.

It subsequently dealt with the entire evidence which was led by the prosecution including the statement of Sri PK Shukla who appeared on behalf of the petitioner, as well as the evidence filed by the workman, and analysed the entire material. After a detailed discussion and analysis, the Labour Court came to the conclusion that the case for dismissal is not made out and none of the charges are proved. This Court has also looked into the aforesaid material and is of the opinion that there is no infirmity with the findings recorded by the Labour Court.

19. The Labour Court has declined to give opportunity to the petitioner to lead evidence on the ground that all the material pertaining to the charges relating to workman attending the meeting with the doctors and pharmacists was already on record, from which the charges are not proved. Despite the specific application having been given by the workman to record the evidence of the Doctors at Lucknow no orders were passed by the enquiry officer and on the other hand certificates given by the Doctor certifying that in fact he visited on the said dates, were available on record from which it was clearly borne out that he had met the Doctors on the two dates. It is in the aforesaid facts that the Court held that the charges are not proved and no other material was placed before the Labour Court in support of the charge.

20. In the present writ petition only vain attempt has been made assailing the order of the Labour Court on the ground that it had not granted them opportunity to lead evidence. It was incumbent upon the petitioner to place material/evidence indicating that fresh/other material was in fact available which could have been placed on record to prove the charges. Matters can be remitted to the Prescribed Authority/Labour Court when it is found, on examination, that there has been violation of principles of natural justice and the workman was not given proper opportunity to defend himself. In the present

case the merits of the charges have been examined by the Labour Court itself, and finding has been returned that the charges are not proved from the material available on record. Therefore, it was necessary for the petitioner to demonstrate that there was other evidence which was available but could not be produced during the domestic enquiry, and that evidence was relevant and necessary to bring home the charges. In the absence of any such material or assertion made before this Court, remanding the matter to the Labour Court would be futile and an empty formality, and is unjustified in the facts of the present case. Accordingly, no ground for interference in this regard is made out, and the argument of the petitioner is rejected.

21. Learned counsel for the petitioner has lastly argued that the award passed by the impugned award dated 24.01.2007 is illegal and arbitrary and without jurisdiction. It was submitted that respondent no. 2 was working on the post of Medical Representative and he is not a “workman” as per Section 2 of the U.P. Industrial Disputes Act and accordingly the Labour Court did not had jurisdiction to decide the said dispute.

22. It was argued on behalf of the respondent no. 2 that the said plea was not taken before the Labour Court and has been raised for the first time in the present writ petition. It has been urged on behalf of the petitioner that Medical Representatives are not 'workman' and therefore, the present dispute cannot be termed as Industrial dispute and the Labour Court is not competent to hear and decide the said case.

23. In the entire writ petition there is no averment has been made as to the nature of work performed by respondent no. 2 nor the wages received by him have been mentioned, but, it has been vehemently submitted that this being question of law it goes to the root of the matter and hence same can be taken for the first time in the writ

petition. Considering the above arguments it would be appropriate to consider the said plea in the interest of justice.

24. It has been submitted before this court that Medical Representatives are not 'workmen', as defined in the Industrial Disputes Act. In support of their submissions, they relied upon the case of **May and Baker (India) Ltd. v. Their Workmen, AIR 1967 SC 678** where the Apex Court held that medical representatives shall not be included in the definition of 'workman', since they do not meet the criterion specified in the Act.

25. According to the said case, it was held that for being a workman, certain condition should be satisfied, namely:

1. he should be a person employed in an industry for hire or reward;

2. he should be engaged in skilled or unskilled manual, supervisory, technical or clerical work; and

3. he should not be a person falling under any of the four clauses, i.e. (i) to (iv) mentioned in the definition of ‘workman’ in section 2(s) of the Act, 1976.

26. The Supreme Court in **May and Baker (India) Ltd. (supra)** accordingly held that:-

*"**9.** The next contention on behalf of the company is with respect to the order of reinstatement of Mukerjee. The company's case is that Mukerjee was discharged with effect from April 1, 1954. At that time the definition of the word “workman” under Section 2(s) of the Industrial Disputes Act did not include employees like Mukerjee who was a representative. A “workman” was then defined as any, person employed in any industry to do any skilled or unskilled manual or clerical work for hire or reward. Therefore doing manual or clerical work was necessary before a person could be called a workman. This definition came for consideration before Industrial Tribunals and it was consistently held that the designation of the employee was not of*

great moment and what was of importance was the nature of his duties. If the nature of the duties is manual or clerical then the person must be held to be a workman. On the other hand if manual or clerical work is only a small part of the duties of the person concerned and incidental to his main work which is not manual or clerical, then such a person would not be a workman. It has therefore to be seen in each case from the nature of the duties whether a person employed is a workman or not, under the definition of that word as it existed before the amendment of 1956. The nature of the duties of Mukerjee is not in dispute in this case and the only question therefore is whether looking to the nature of the duties it can be said that Mukerjee was a workman within the meaning of Section 2(s) as it stood at the relevant time. We find from the nature of the duties assigned to Mukerjee that his main work was that of canvassing and any clerical or manual work that he had to do was incidental to his main work of canvassing and could not take more than a small fraction of the time for which he had to work. In the circumstances the tribunal's conclusion that Mukerjee was a workman is incorrect. The tribunal seems to have been led away by the fact that Mukherjee had no supervisory duties and had to work under the directions of his superior officers. That, however, would not necessarily mean that Mukerjee's duties were mainly manual or clerical. From what the tribunal itself has found it is clear that Mukerjee's duties were mainly neither clerical nor manual. Therefore as Mukerjee was not a workman his case would not be covered by the Industrial Disputes Act and the tribunal would have no jurisdiction to order his reinstatement. We therefore set aside the order of the tribunal directing reinstatement of Mukerjee along with other reliefs."

27. After the judgement of the Supreme Court in the case of **May and Baker (India) Ltd. v. Their Workmen (supra)** the Parliament enacted **Sales Promotion Employees (Conditions Of Service) Act, 1976** *(hereinafter referred to as "the Act of 1976"*). The said act

specifically applied to an establishment engaged in pharmaceutical industry or in any notified industry as per section 2(a) of the Act, 1976, and as per section 2(d) of the Act, 1976 the “sales promotion employee” was defined as 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.

28. By the Act of 1976, the Medical Representatives who were defined as sales promotion employees were held to be 'workman' under section 6(1) & (2) of the Act, 1976. Provisions of section 6 of Act of 1976 are as under:-

6. Application of certain Acts to sales promotion employees is detailed herein below :-

(1) The provisions of the Workmen’s Compensation Act, 1923 (8 of 1923), as in force for the time being, shall apply to, or in relation to, sales promotion employees as they apply to, or in relation to, workmen within the meaning of that Act.

(2) The provisions of the Industrial Disputes Act, 1947 (14 of 1947), as in force for the time being, shall apply 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.

29. The dispute in the present case admittedly pertains to period subsequent to enactment of Sales Promotion Employees (conditions of service) Act, 1976, and consequently the judgement of the Supreme Court in the case of **May and Baker (India) Ltd. v. Their Workmen, AIR 1967 SC 678** would not be good law with regard to

the fact that as to whether the medical representatives are 'workman' as per Section 2(d) of the Industrial Disputes Act, 1976.

30. Supreme Court had decided the said issue when the *Sales Promotion Employees* (*conditions of service*) *Act, 1976*, was not in existence. The Act of 1976 had amended the definition of "sales promotion employee" which includes Medical Representatives and held them to be 'workman' as per the Industrial Disputes Act. Bombay High Court in the case of ***S.G. Pharmaceuticals Division of Ambala Sarabhai Enterprises Ltd. v. U.D. Pademwar, Letters patent appeal no. 515 of 1984 (decided on 7 August 1989)*** has elaborated the issue, in this case, in the following manner :-

"*statement of objects and reasons published in the Gazette of India on May 14, 1975, Part II, Section 2, it was clear that as a result of the Supreme Court judgment in the case of May and Baker (India) Limited and Their Workmen (supra) the persons engaged in sales promotion do not come within the purview of the definition of "workman" under the Industrial Disputes Act, 1947 and as such they have no protection regarding security of employment and other benefits under that Act. These persons particularly the medical representatives in the pharmaceutical industry had been demanding from time to time that they should be covered by Industrial Disputes Act. On a petition made by the Federation of Medical Representatives' Associations of India, the Committee on Petitions (Rajya Sabha) in its thirteenth report submitted on March 14, 1972, came to the conclusion that the ends of social justice to this class of people will not be met only by suitably amending the definition of the term "workman" in the Industrial Disputes Act, 1947 in a manner that the medical representatives are also covered by the definition of "workman" in the said Act. Our attention was drawn particularly to sub-section (2) of section 6 of the Sales Promotion Employees (Conditions of Service) Act, 1976 which provides that the provisions of the Industrial Disputes Act, 1947, as in force for the time being, shall apply to, or in relation to, sales promotion employees as they apply to, or in relation to, workmen within the meaning of the Act and for the purposes of any proceeding under that Act in relation to an industrial dispute. From this deeming provision, it is apparent that the Parliament recognised that the class for the benefit of which the legislation was being undertaken, was not covered by the definition of "workman" under section 2(s) of the Industrial Disputes Act and that was the reason to include that category by the deeming provision which was incorporated. To say, therefore, that a person who did the*

job of sales promotion did not belong to an identifiable category which would not be correct."

31. We are in agreement with the view taken by the Bombay High Court in the case of ***S.G. Pharmaceuticals (supra)*** and it is thus clear that as per section 6(2) of Sales Promotion Employees (Conditions of Service) Act, 1976, the medical representatives are "workman" under the Industrial disputes Act, 1947. Further in the case of **H.R. Adyanthaya v. Sandoz (India) Ltd, 1994 SCC (5) 737** it was further made clear that the 1976 Act after its amendment in the year 1986 by the Amending Act No. 48 of 1986 which came into effect w.e.f. 06.05.1987 expanded the definition of sales promotion employee to include all sales promotion employees without any ceiling on their wages, except those employed in supervisory capacity drawing wages exceeding Rs 1600 per mensem and those employed or engaged mainly in managerial or administrative capacity.

32. Thus, after 06.05.1987 all the medical representatives were declared to be workmen without limitation on their wages thereafter and upon the capacity in which they were employed or engaged.

33. In light of the aforesaid discussion this Court is of the considered view that after coming into force of *Sales Promotion Employees* (*conditions of service*) *Act, 1976* the medical representatives would be deemed to be workmen as per the provisions of Industrial Disputes act and accordingly the argument of the petitioner is rejected in this regard.

34. In light of the aforesaid discussion this Court does not find any infirmity in the impugned order dated 24.01.2007. The writ petition is accordingly **dismissed**.

Order Date :- 23.11.2023
A. Verma

(Alok Mathur, J.)