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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Date of Decision: 01.08.2025***

+ **W.P.(C) 10312/2019**

M/S PC JAIN TEXTILES PVT. LTD

.....Petitioner

Through: Mr. Kunal Madan, Ms. Simran Khan  
& Mr. Ayush Srivastava, Advocates.

versus

HEMANT GAUR

.....Respondent

Through: Mr. Hari Kishan & Mr. Akarsh  
Sharma, Advocates with Respondent  
in person.

**CORAM:**

**HON'BLE MS. JUSTICE TARA VITASTA GANJU**

**TARA VITASTA GANJU, J.: (Oral)**

1. The present Petition has been filed by the Petitioner seeking to challenge an order dated 01.06.2018 passed by learned Presiding Officer, Labour Court No. XVI, South West District, Dwarka Courts, New Delhi [hereinafter referred to as 'Impugned Order']. By the Impugned Order, the claim petition that has been filed by the Respondent/Workman was allowed by the learned Labour Court directing that a lumpsum compensation in the sum of Rs.1.65 lacs to be paid to the Respondent along with interest at the rate of 9% per annum.

2. It is the undisputed case of the parties that the Respondent was working as a sales executive for textile products in the Petitioner-Company and was drawing a salary of Rs.17,000/- per month in the year 2012.



2.1 While it is the contention of the Respondent that the Respondent was removed from services, it is the contention of the Petitioner that the Respondent left the job on his own will after staying absent from the services without giving any reason.

3. The learned Labour Court has found that since the Respondent was carrying out the work of a salesman, the said work is manual work, and thus, the Respondent is a workman as defined under Section 2 of the Industrial Disputes Act, 1947 [hereinafter referred to as the “ID Act”].

4. Learned Counsel for the Petitioner, while relying on the judgment of the Supreme Court in *T.P. Srivastava v. M/s National Tobacco Co. of India Limited*<sup>1</sup>, has contended that the persons who are employed for sales promotion would not come within the definition of the ID Act, and thus, the Impugned Order suffers from an infirmity.

5. Learned Counsel for the Respondent, on the other hand, seeks to rely upon the judgment of the Supreme Court in *Workmen & Ors. v. Hindustan Lever Ltd.*<sup>2</sup> to submit that since this aspect was not raised by the Petitioner or examined by the learned Labour Court, the Petitioner is estopped from raising it before this Court.

6. A review of the Impugned Order shows that there is no dispute about the factum of employment nor about the fact of the work being carrying out by the Respondent/Workman. The learned Labour Court has found that the Respondent/Workman has admitted that his job was of a counter salesman and thus held that this job is manual in nature.

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<sup>1</sup> (1992) 1 SCC 281

<sup>2</sup> (1984) 1 SCC 728



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7. The issue of whether or not sales personnel are workman is no longer *res integra*. The Supreme Court in *H.R. Adyanthaya & Ors. v. Sandoz (India) Ltd. & Ors.*<sup>3</sup> has held that the sales representatives who are involved in pharmaceuticals are not workmen and that to treat such persons as workmen would be contrary to the law, as a person to be qualified as a workman, must be doing the work which falls in a category, manual, clerical, supervisory or technical, and since the medical representatives were not workmen within the ID Act, the Impugned Order could not be sustained. It is apposite to set out the relevant extract below:

*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 first contention was expressly negated by two three-Judge Benches in *May & Baker [(1961) 2 LLJ 94 : AIR 1967 SC 678 : (1961) 2 FLR 594]* and *Burmah Shell [(1970) 3 SCC 378 : (1971) 2 SCR 758 : AIR 1971 SC 922 : (1970) 2 LLJ 590]* cases as has been pointed out in detail above. As regards the second contention, it really consists of two sub-contentions, viz., that the medical representatives are engaged in 'skilled' and 'technical' work. **As regards the word 'skilled', we are of the view that the connotation of the said word in the context in which it is used, will not include the work of a sales promotion employee such as the medical representative in the present case. 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. 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 [(1970) 3 SCC 378 : (1971) 2 SCR 758 : AIR 1971 SC 922 : (1970) 2****

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<sup>3</sup> (1994) 5 SCC 737



**LLJ 590]. Hence that contention has also to be rejected.**

**37. We are afraid that these contentions are not 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. To hold that everyone who is connected with any operation of manufacturing or sales is a workman would render the categorisation of the different types of work mentioned in the main part of the definition meaningless and redundant. The interpretation suggested would in effect mean that all employees of the establishment other than those expressly excepted in the definition are workmen within the meaning of the said definition. The interpretation was specifically rejected by this Court in *May & Baker* [(1961) 2 LLJ 94 : AIR 1967 SC 678 : (1961) 2 FLR 594] , *WIMCO* [(1964) 3 SCR 560 : AIR 1964 SC 472 : (1963) 2 LLJ 459] , *Burmah Shell* [(1970) 3 SCC 378 : (1971) 2 SCR 758 : AIR 1971 SC 922 : (1970) 2 LLJ 590] and *A. Sundarambal* [(1988) 4 SCC 42 : 1988 SCC (L&S) 892] cases. Although such an interpretation was given in *S.K. Verma* [(1983) 4 SCC 214 : 1983 SCC (L&S) 510 : (1983) 3 SCR 799] , *Delton Cable* [(1984) 2 SCC 569 : 1984 SCC (L&S) 281 : (1984) 3 SCR 169] and *Ciba Geigy* [(1985) 3 SCC 371 : 1985 SCC (L&S) 808 : 1985 Supp (1) SCR 282] cases the legislature impliedly did not accept the said interpretation as is evident from the fact that instead of amending the definition of 'workman' on the lines interpreted in the said latter cases, the legislature added three specific categories, viz., unskilled, skilled and operational. The 'unskilled' and 'skilled' were divorced from 'manual' and were made independent categories. If the interpretation suggested was accepted by the legislature, nothing would have been easier than to amend the definition of 'workman' by stating that any person employed in connection with any operation of the establishment other than those specifically excepted is a workman. It must further be remembered that the independent categories of 'unskilled', 'skilled' and 'operational' were added to the main part of the definition after the SPE Act was placed on the statute book.**

[Emphasis Supplied]

7.1 In addition, the Supreme Court in *Bharat Bhawan Trust v. Bharat Bhawan Artists' Association & Anr.*<sup>4</sup>, while relying on the *T.P. Srivastava* case, it has been held that salesmen employed in canvassing for promotion

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<sup>4</sup> (2001) 7 SCC 630



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of sales could not be put in the category of a workman.

8. A perusal of the record shows that the aspect as to whether the Respondent/Workman was a workman as is defined under Section 2(s) of the ID Act has not been considered by the learned Labour Court. A perusal of the Statement of Claim as filed by the Respondent/Workman as well as his Affidavit in Evidence filed by the Respondent/Workman shows that the only issue that has been raised by him is that he was a sales executive and his last earned wages were Rs.17,000/- per month. The Affidavit in Evidence also reflects that other than Employee State Insurance Coverage (ESIC), no other statutory facilities were provided to the Respondent. Neither the Statement of Claim nor the Evidence elaborates in detail as to the actual work that was carried out by the Respondent/Workman. The relevant extract of the Statement of Claim dated 08.10.2013 and the Affidavit by way of Evidence filed on 05.12.2014 of Respondent/Workman is set out below:

*“STATEMENT OF CLAIM U/S 10 (4-A) I.D. ACT*

...

*1. That the workman was in the continuous and uninterrupted employment of the above noted management since March, 2006 at the post of Sales Executive and his last drawn wages were @ Rs. 17000/- per month.*

.....

*4. That during the employment of the management, on 10.03.2012 when the workman was returning to his house after finishing his duty, he met with an accident whereby he sustained serious and grievous injuries on his head and backbone. The workman was immediately removed to a private hospital and on 12.03.2012 he was shifted to ESI Hospital. Due to grievous injuries sustained by the workman, the workman was totally confined to bed. However, although the workman had not recovered fully from his injuries but the management asked the workman to resume his duties. Under these circumstances the workman resumed his duties with the management*



w.e.f. 27.05.2012 and worked till 09.09.2012. However, since the workman was having unbearable pain in the backbone, he again went on medical leave. During the aforesaid entire period the workman remained under the treatment and observation of ESI hospital.”

**“WORKMAN’S EVIDENCE BY WAY OF AFFIDAVIT**

...

2. That the deponent was in the continuous and uninterrupted employment of the above noted management since March, 2006 at the post of Sales Executive and his last drawn wages were @ Rs.17,000/- per month.

...

4. That the management did not provide the various legal facilities to the deponent i.e. appointment letter, attendance register, leave book, wages slip, bonus, etc. which were orally demanded by the deponent from the management various times but the management did not provide the same. On the persistent demand of the deponent the management only provided ESI coverage to the deponent in the year 2007 wherein the date of appointment of the deponent has been wrongly recorded as 04.12.2007.

ESI card is exhibited as Ext. WW1/1.

...

6. That on 11.12.2012, the deponent was declared fit to resume duty. Fitness certificate issued by ESIC is exhibited as Ext. WW1/2.”

[Emphasis Supplied]

9. The Written Statement that was filed before the learned Labour Court by the Respondent also does not set out this issue. It merely sets out that the Respondent/Workman left the job on his own will and stayed absent from the services without giving any reason and that the Respondent/Workman has taken ESIC benefits and an advance in the sum of Rs.1.05 lacs. The relevant extract of the Written Statement is set out below:

*“WRITTEN STATEMENT TO THE CLAIM FILED BY WORKMAN ON BEHALF OF THE MANAGEMENT.*

...

*PRELIMINARY OBJECTIONS*



...

**3. That the claimant had left the job on his own will and stayed absent from the services without giving any reason, on this ground alone that claim deserves outright dismissal. It is submitted that the claimant has himself resigned from the job.**

...

**5. That the present petition is not maintainable and deserves outright dismissal for the reason that the claimant had already been given ESI benefits and apart from that a sum of Rs. 1,05,000/- as advance and was offered to rejoin the job which he himself refused to join as evident from various letters.**

...

6... That the true facts of the case are as follows:

c. That thereafter, in the month of June, 2012, the claimant approached the management and rejoined his job. It is submitted that after joining the job, the claimant started staying absent from the job for 10 to 12 days in a month without informing the management.

d. That thereafter, from October 2012, the claimant stopped coming to the job without informing the management and without giving any explanation and also took the mobile phone and motor bike of the company with him. It is submitted that on 30.10.2012, the Management issued a notice to the claimant to give explanation as to why he is staying absent from the job, but to no avail.

...”

[Emphasis Supplied]

10. In view of the fact that the aspect as to whether the duties that are performed by the Respondent/Workman are in such nature that would not qualify as workman under Section 2(s) of the ID Act, has not been examined by the learned Labour Court. Since there is also no evidence on record for purposes of this examination either, this Court deems it apposite to remand the matter to the learned Labour Court for the limited examination as to whether, given the admitted fact that the Respondent was a salesman, he would qualify as a workman under Section 2(s) of the ID Act.



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11. Accordingly, the matter is remanded to the learned Labour Court. The parties shall appear before the learned Labour Court on 28.08.2025.
12. The learned Labour Court, on this limited aspect, is requested to deal with the issue as expeditiously as possible given the time that has been elapsed.
- 13.1 Learned Counsel for the parties submit that they will not take any unnecessary adjournments before the learned Labour Court.
- 13.2 The parties are bound down by the statement made by their counsel today.
14. The Petition is disposed of in the foregoing terms. All pending Applications stand closed.
15. The parties shall act based on a digitally signed copy of the order.

**TARA VITASTA GANJU, J**

**AUGUST 1, 2025/ ha/pa**