



IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 09.12.2024

ORDERS PRONOUNCED ON : 22.01.2025

CORAM

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.8470 of 2010

M.Venkatasubramaniam

... Petitioner

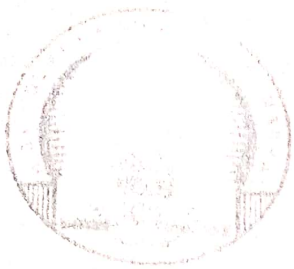
Vs.

1.The Presiding Officer
Labour Court
Vellore.

2.RPG Life Science Limited
RPG House, 463, Dr.Annie Besant Road
WORLI, Mumbai-400 030.
(R2 amended as per the order of this Court
dated 22.12.2023 in W.M.P.No.33724 of 2023
in W.P.No.8470 of 2010)

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the award dated 11.03.2004 made in I.D.No.150/2000 passed by the 1st respondent and quash the same, consequently direct the 2nd respondent herein to reinstate the petitioner with continuity of service, back wages and all other attendant benefits.



W.P.No.8470 of 2010

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For the Petitioner : Mr.K.Elango
For the respondents : Mr.A.Thiyagarajan for R2
For R1 – Labour Court
Mr.K.Ramanamoorthy, CGSC

ORDER

This Writ Petition is filed challenging the award of the Labour Court, Vellore, dated 11.03.2004 made in I.D.No.150 of 2000. By the said award, the claim petition filed by the petitioner has been rejected by holding that he is not a Workman, within the meaning of Section 2 (s) of the *Industrial Disputes Act, 1947* (In short referred to as 'the Act').

A.Case of the Workman:

2. The Workman's case is that he worked under the Management as a Sales Representative for 12 years. In the year 1999, he was receiving a monthly salary of Rs.6,955/-. On 15.07.1999, he was issued a notice of termination and one month's wages through a demand draft. The Workman appealed to the Management on 30.07.1999, for which there was no response. Therefore, he raised a dispute. Conciliation failed. Thereafter, he filed the present Claim Petition under Section 2(A) (2) of the Act, which was taken on file as I.D.No.150



of 2000.

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B.Case of the Management:

3. The case of the Management is that the petitioner joined the service on 07.07.1986 as a Trainee Medical Representative and thereafter, with effect from 01.08.1987, he was confirmed as Junior Sales Representative. However, the petitioner's service was not up to the satisfaction of his superiors. The petitioner claiming as an office bearer of the respondent - Management went to the residence of one *S.Venkatesan*, who was working for another Company – M/s FDC Limited, along with the other members of Tamil Nadu Medical Representatives Association, gheraoed, threatened and abused him with filthy language, for which a police complaint was also lodged by the said individual. The petitioner being a Medical Representative is also representing the Management. Therefore, considering the above charge and considering the reputation of the Management, the petitioner's services were terminated on 15.07.1999. Even after termination, the petitioner was called by the Management that they would consider employing him as a fresh candidate if he gave an undertaking that he would not indulge in acts that would lower the dignity of the

profession and the reputation of the Management. The petitioner did not come

forward, to give such an undertaking.

3.1. It is the specific case of the Management that the petition filed was not maintainable as the petitioner will not come within the purview of the Act. He is a Medical Representative and was paid a salary of Rs.6955/- per month. He will not come within the purview of the definition of the Workman under Section 2 (s) of the Act. The petitioner cannot approach the Labour Court as per the Constitution Bench Judgment of the Supreme Court of India in *H.R. Adyanthaya etc., Vs. Sandoz (India) Ltd. Etc.*,¹.

C.Findings of the Labour Court:

4. With the above pleadings, the Labour Court took up the enquiry. There was no oral evidence on behalf of both sides. On behalf of the Workman Exhibits.W.1 to W.3 were marked. On behalf of the Management, Exhibits.M.1 to M.9 were marked.

¹ (1995) 1 LLJ 303

4.1. Thereafter, the Labour Court considered the case and by adverting to certain paragraphs of the Supreme Court of India in *H.R.Adyanthaya's case* (cited supra) and certain other Judgments came to the conclusion that the Medical Representatives being the sales promotion employees, are not a Workman within the definition of Section 2 (s) of the Act and as such, rejected the claim petition. Aggrieved by which, the present Writ Petition was filed by the Workman.

D.The Submissions:

5. Heard, *Mr.K.Elango*, the learned counsel appearing on behalf of the petitioner; *Mr.A.Thiyagarajan*, the learned counsel appearing on behalf of the Management and *Mr.K.Ramanamoorthy*, learned Central Government Standing Counsel.

5.1. In view of certain doubts being expressed, this Court requested some information from the Central Government through the learned Central Government Standing Counsel, which was also furnished and this Court also heard the *Mr K. Ramanamoorthy, CGSC*.



WEB COPY 5.2. Mr.K. Elango, the learned counsel appearing on behalf of the Workman would submit that in view of the provisions of the *Sales Promotion Employees (Conditions of Service) Act, 1976, the Industrial Disputes Act, 1947* is made applicable by treating the sales promotion employees on par with the Workman and hence the Labour Court ought to have held that the petition was maintainable. The petitioner has put in more than 12 years of service. For the allegations made by the Management, no domestic enquiry was conducted, if there was any misconduct. Neither the provisions of Section 25 (F) of the Act were followed nor compensation was paid, even if it were to be considered as retrenchment. Therefore, the Labour Court ought to have allowed the claim of the Workman.

5.3. He would submit that the Labour Court has not properly applied the ratio laid down by the Hon'ble Supreme Court of India in *SPIC Pharmaceuticals Division Vs. Authority under Sec.48 (1) of A.P.Shops and Establishments Act, 1988 and Another*² and also the Judgment of the Supreme

² (2007) 2 SCC 616

Court of India in *Sharad Kumar Vs. Government of NCT of Delhi & Ors.*³. He would contend that a perusal of these Judgments would show that there was no such proposition that the sales promotion employees / Medical Representatives would not come within the purview of the *Industrial Disputes Act* at all.

5.4. *Per contra*, Mr.A.Thiyagarajan, the learned counsel appearing on behalf of the Management would submit that the Constitution Bench in *H.R.Adyanthaya's case* (cited supra) has categorically held that the Sales Promotion Employees/Medical Representatives will not come within the definition of Workman as per Section 2(s) of the Act. The Division Bench of this Court in *the Manager, the Scientific Fertilizer Company Pvt. Limited Vs. The Presiding Officer, Labour Court, Coimbatore and Another*⁴ had considered all the Judgments, including the Sales Promotion Employees (Conditions of Service) Act, 1976 and has held that the Sale Promotion Employees / Medical Representatives will not come within the purview of the Act and that they are not at all a Workman within the definition contained under Section 2 (s) of the Act. Therefore, the Labour Court has rightly decided the issue and the present Writ

3. AIR 2002 SC 1724

4. (2007) 6 MLJ 1723



Petition should be dismissed.

E.The Questions:

6. Upon considering the rival submissions and perusing the material records of the case, the following questions arise for consideration,

(i) Whether the petitioner being a Sales Promotion Employee / Medical Representative is entitled to approach the Labour Court by way of a claim petition under Section 2 (A) (2) of the ID Act and whether he can claim that the other provisions of the Act apply to him?

(ii) If the petitioner is entitled to maintain a petition and claim the benefits of the provisions, then whether the non-employment of the petitioner is justified?

(iii) To what relief the Workman is entitled to?

Question No.(i):

7. The question of whether the Sales Promotion Employees / Medical Representatives are Workman within the meaning of Section 2 (s) of the Act and whether they can approach the Labour Court for redressal of their grievances, was the subject matter of several decisions. Since the pronouncements were not

uniform, the question was referred to a Constitution Bench which has dealt with the same and authoritatively answered the issue in *H.R.Adyanthaya's case* (cited supra).

7.1. Firstly, the Constitution Bench framed the questions as follows:-

“The question that falls for consideration in these matters is whether the ‘medical-representatives’, as they are commonly known, are workmen according to the definition of “work- man” under Section 2 [s] of the Industrial Disputes Act, 1947 [the ‘ID Act’]”

7.2. Thereafter, the Constitution Bench took notice of the original definition of the term 'Workman' contained in the Act and the subsequent amendments in the year 1956 and thereafter, in the year 1982 and the said portion of the Judgment can be beneficially extracted as hereunder:-

“The definition under this section has undergone changes since its first enactment. It is necessary to keep in mind the said changes since the decisions of this court delivered on the point from time to time are based on the definition, as it stood at the relevant time. The definition, as it stood originally when the ID Act came into force, w.e.f. April 1, 1947, read as follows:

“[s] “workman” means any person employed [including an apprentice] in any industry or unskilled manual or clerical work for hire or reward and includes, for the purposes of any proceeding under this Act in relation to an industrial dispute, a workman is charged during that dispute, but does not include any person employed in the naval,



military, or air service of the Crown”.

2. It was amended by Amending Act 36 of 1956 which came into force from August 29, 1956 to read as follows:

“[s] “workman” means any person [including an apprentice] employed in any industry to do any skilled or unskilled manual, supervisory, technical or clerical 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 Army Act, 1950, or the Air Force Act, 1950 or the Navy [Discipline] Act, 1934; 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 five 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.”

3. The change brought about by this Amendment was that the persons employed to do “supervisory” and “technical” work were also included in the definition for the first time by this Amendment, although those who were employed in a supervisory capacity were so included in the definition provided their monthly wage did not exceed Rs. 500/-. The definition of ‘workman’ was further amended by Amending Act 46 of 1982 which was brought into force w.e. f.



August 21, 1984. It read as:-

“[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 exercise, 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.”

4. The first change brought about by this amendment was that whereas earlier only those who were doing unskilled or skilled manual work were included in the said definition, now those who did any unskilled or skilled work, whether manual or not, came to be included in it. The second and the most important change that was brought about was that those persons who were employed to do "operational" work were also brought within the fold of the said definition.”

7.3. Subsequently, the Constitution Bench considered the three Judges

Bench decision in *May & Baker (India) Ltd, Vs. Their Workmen*⁵, and held that

in the pre-amended scenario, an employee whose duties were predominantly clerical in nature and manual alone will come within the definition of the Workman. Thereafter, the Constitution Bench noted an amendment in the definition and after considering all the Judgments had laid down the legal position that any person to claim himself to be a Workman within the definition of Section 2 (s) of the Act, it is not enough that he does not fall within the exceptions mentioned in the Section, but he should also fall under any of the categories which are expressly mentioned viz., manual, unskilled, skilled, technical, operational, clerical or supervisory. The relevant portion of the Judgment in paragraph No.24 is extracted hereunder:-

“24.....Hence the position in law as it obtains today is that a person to be a workman under the ID Act must be employed to do the work of any of the categories, viz., manual, unskilled, skilled, technical, operational, clerical or supervisory. It is not enough that he is not covered by either of the four exceptions to the definition. We reiterate the said interpretation.”

7.4. The Constitution Bench held that even after the amended Section 2(s) of the Act, the type of work performed by the Sales Promotion Employees / Medical Representatives cannot be regarded as ‘technical’ or ‘skilled’. The

⁵ (1961) II LLJ 94

relevant portion of the Judgment of the Constitution Bench in paragraph No.34 is extracted hereunder:-

“34. 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 [supra]. Hence that contention has also to be rejected.”

7.5. Again, the Constitution Bench had held that on an interpretation of the terms based on the principle of *ejusdem generis*, the type of work performed by these Medical Representatives cannot be held as 'operational' also. The relevant portion of the Judgment in paragraph No.38 is extracted hereunder:-

“38. We are afraid that these contentions are 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.”

7.6. Therefore, it held that the Medical Representatives are Sales Promotion Employees by the nature of their work, being promotion/pitching of sales, do not fall within any of the types of work enumerated under Section 2 (s) of the Act and therefore, they cannot be a Workman, within the meaning of Section 2(s) of the Act.

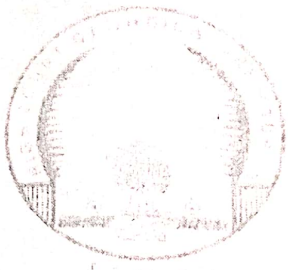
7.7. The particular case which was dealt with by the Hon'ble Supreme Court of India in the above matter arose under the *Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971* (in short referred to as 'the Maharashtra Act') which adopted the definition under the *Industrial Disputes Act* and therefore, the Hon'ble Supreme Court of India held that the complaint filed by the Workman was not maintainable under the *Maharashtra Act* as if they were only a Workmen within the definition as per Section 2 (s) of the Act.

7.8. While so, deciding the reference incidentally, in paragraphs Nos.26 to 31, the Hon'ble Constitution Bench also took note of the *Sales Promotion Employees (Conditions of Service) Act 1976* and the amending Acts. The Hon'ble Supreme Court of India considered Section 6 (2) of the said Act and the fact that before the amendment, those of the Sales Promotion Employees who were receiving wages less than Rs.1600/- were entitled to the protection under the Act and thereafter, by the Act 48 of 1986, when the Sales Promotion Employees (Conditions of Service) Act, 1976 was amended with effect from 06.05.1987, the

definition was expanded irrespective of the quantum of wages. After the discussion about the amendment in paragraph No.28 and after considering Section 6 (2) of the Act in paragraph No.29, the Constitution Bench has also categorically found that the provisions of the Act became applicable to the Medical Representatives with effect from 06.03.1976, depending on their wages and after 06.05.1987, without limitation on their wages and upon the capacity in which they are employed or engaged, the provisions of the Act became applicable to them. It is essential to extract paragraphs No.28 to 30, which reads as follows:-

"28. The SPE act was amended by the Amending Act 48 of 1986 which came into force w.e.f. May 6, 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.

29. Section 6 of that Act made the Workmen's Compensation Act, 1923, Industrial Disputes Act, 1947, [the ID Act], Minimum Wages Act, 1948, Maternity Benefit Act, 1961, Payment of Bonus Act, 1965 and Payment of Gratuity Act, 1972, applicable forthwith to the medical representatives. Sub-section [2] of the said section while making the provisions of the ID Act, as in force for the time being, applicable to the medical representatives stated as follows "[2] The provisions of the Industrial Disputes Act, 1947 [14 of 1947], as in force for the time being, shall 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



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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.”

30. In other words, on and from March 6, 1976 the provisions of the ID Act became applicable to the medical representatives depending upon their wages upto May 6, 1987 and without the limitation on their wages thereafter and upon the capacity in which they were employed or engaged.”

7.9. Thus, a reading of the Constitution Bench Judgment, leaves no doubt whatsoever that the Sales Promotion Employees / Medical Representatives *per se* do not fall within the definition of Section 2 (s) of the Act, however, by Section 6 (2) of the *Sales Promotion Employees (Conditions of Service) Act, 1976*, the Act is made applicable to them by treating them on par with the Workman. Section 6 (2) of the *Sales Promotion Employees (Conditions of Service) Act, 1976*, extracted supra in the Judgment of the Constitution Bench itself. A reading of Section 6(2) leaves no doubt that if a person comes within the definition of the term 'Sales Promotion Employee' then the *Industrial Disputes Act* as in force for the time being shall apply to Sales Promotion Employees as if there are Workmen within the meaning of the ID Act. The *Sales Promotion Employees (Conditions of Service) Act, 1976* also further specifies that an employee who was dismissed, discharged or retrenched shall also be deemed to



be a Sales Promotion Employee to raise a dispute.

7.10. Section 2(d) of the *Sales Promotion Employees (Conditions of Service) Act, 1976* is extracted hereunder for ready reference:-

“2[(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 purposes 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 his 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;]”

7.11. On a reading of the same, it would be clear that the petitioner who was employed as a Junior Medical Representative would fall within the definition of a Sales Promotion Employee. It is not the case of the Management that he was engaged in any supervisory or managerial capacity. There was neither any pleading nor any evidence to that effect. Therefore, the petitioner is entitled to invoke the provisions of the ID Act for the redressal of his grievances.

7.12. As far as the Division Bench Judgment of this Court in *the Scientific Fertilizer Company Pvt. Limited's case* (cited supra) it is to be seen that in paragraph No.10, the Division Bench has noted that the above provisions contained under the Act in Section 6 (2) of *the Sales Promotion Employees (Conditions of Service) Act, 1976*, has been omitted by an Act 46 of 1982. The said paragraph No.10 of the Judgment is extracted hereunder for ready reference:-

“10.As a matter of fact, Section 6(2) of the Sales Promotion Employees (Conditions of Service) Act, 1976, which runs as follows:-

(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 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 of retrenchment had led to that dispute.

On the enforcement of Section 24 of the Act 46 of 1982, Section 6(2) has been omitted.”

7.13. However, since there were Judgments of several other High Courts holding that the Sales Promotion Employees / Medical Representatives can approach the Labour Court as per Section 6 (2) of *the Sales Promotion*



Employees (Conditions of Service) Act, 1976, including the Judgment of the learned Single Judge of the Allahabad High Court in *Nicholas Piramal India Ltd. v. Presiding Officer Labour Court*⁶ and also certain other Judgments of this Court, this Court ordered notice to the Central Government through the office of the Additional Solicitor General of India to clarify the position.

7.14. The learned Central Government Standing Counsel had produced a communication dated 19.12.2024 sent by the Deputy Director, Ministry of Labour and Employment, Government of India whereunder, it is stated that it is true that the *Industrial Disputes (Amendment Act) 1982 (Act 46 of 1982)* sought to amend the *Sales Promotion Employees (Conditions of Service) Act, 1976* whereby, under Section 24 of the amending Act, it was proposed that Section 6 (2) of the *Sales Promotion Employees (Conditions of Service) Act, 1976* be omitted. However, when the said amended Act viz., *Act 46 of 1982* was notified in the Gazette of India: extraordinary (Part – II Section 3 (ii)), vide S.O.No.606 (E) dated 21.08.1984, Section 24 of the amending Act was not enforced and as such Section 24 has not come into force. The entire notification is reproduced

Industrial Disputes (Amendment Act) 1982 (Act 46 of 1982) sought to amend the *Sales Promotion Employees (Conditions of Service) Act, 1976* whereby, under Section 24 of the amending Act, it was proposed that Section 6 (2) of the *Sales Promotion Employees (Conditions of Service) Act, 1976* be omitted. However, when the said amended Act viz., *Act 46 of 1982* was notified in the Gazette of India: extraordinary (Part – II Section 3 (ii)), vide S.O.No.606 (E) dated 21.08.1984, Section 24 of the amending Act was not enforced and as such Section 24 has not come into force. The entire notification is reproduced

6 (2023) SCC OnLine All 4247

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hereunder for ready reference:-

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“MINISTRY OF LABOUR AND REHABILITATION

(Department of Labour)

NOTIFICATION

New Delhi, the 21st August, 1984

S.O. 606(E). In exercise of powers conferred by sub-section (2) of section I of the Industrial Disputes Amendment) Act, 1982 (46 of 1982), the Central Government hereby appoints the 21st day of August, 1984 as the date on which clauses (a), (b) and (d) to (k) of section 2 and sections 3, 4, 5, 6, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 20, 21, and 23 of the said Act shall come into force

[F. No. S-11013/2/84-D.I.(A)] KARNAIL SINGH, St. secy.”

7.15. Thus, the Division Bench of this Court in the *the Scientific Fertilizer Company Pvt. Limited's case* (cited supra) considered the issue on a factual error as if Section 24 of the Act 46 of 1982 had come into force. In view thereof, the law laid down thereunder does not reflect the correct factual position and hence the said Judgment need not be followed by this Court, when Section 6 (2) of the *Sales Promotion Employees (Conditions of Service) Act, 1976*, was very much in force. Then the provisions of the Act apply to the petitioner and the provisions have to be applied as if he is a Workman. Accordingly, I answer the question that the petitioner is very much entitled to approach the Labour Court under Section 2 (A) (2) of the Act for redressal of his grievances relating to his



discharge from service.

Question No.(ii):

8. Once the claim petition of the Workman is maintainable under Section 2 (A) (2) of the Act, then it is the categorical pleading of the respondent – Management in paragraph No.5 of the counter that the Workman was terminated on charges. The relevant portion of the pleading in paragraph No.5 is extracted hereunder:-

“5.....This Respondent submits that this petitioner had gone to the residence of Mr.S.Venkatesan who was working for M/s FDC Ltd., along with the other members of Tamil Nadu Medical Representatives Association gheroad, threatened him with dire consequences and abused him with filthy language for the reasons best known to the petitioner. This Respondent submits that a Police Complaint to that effect was lodged to the Inspector of Police, Sathuvachari, Vellore by Mr.S.Venkatesan. Based on the aforesaid charge and considering the reputation of the Respondent Company his services were terminated with effect from 15th July, 1999, by the letter of this Respondent dated 12th July 1999 and requested the petitioner to hand over the charge of Company's properties to the petitioner's District Manager.....”

8.1. Thus, when it is the pleading of the Management that the Workman was terminated for misconduct, admittedly, no opportunity was given to the Workman. No domestic enquiry was conducted. No evidence was also let in



before the Labour Court to prove the misconduct. Neither there is a pleading of any retrenchment nor any payment of compensation regarding each completed year of service. Therefore, the non-employment of the Workman is not justified.

Question No.(iii):

9. The non-employment is illegal. The charge alleged by the Management, which alleges that the workman was involved in association activities, that is, the workman went along with the members of the association to a third-party employer for the redressal of their grievances. It can be seen that the Managements ganged up and sought to teach the Workman a lesson by termination. The further averments made in paragraph No.5 itself would show that the Management was again willing to re-employ the workman provided that he would not lower the dignity of the profession or image and reputation of the respondent – Management. Therefore, the Workman is entitled to reinstatement. Since the Workman has attained the age of superannuation, as he was aged 49 years in the year 2010 when the Writ Petition was filed, he has to be treated as reinstated into service and being retired from service of the Management as on the date of his superannuation in the year 2019. As far as the back wages are



concerned, the nature of the charges against the Workman was extracted supra. It did not even relate to any official duty of the respondent or management but seems to be a collective action of the Managements against the collective bargaining of the Medical Representatives through their association.

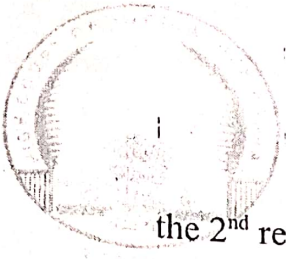
9.1. In that view of the matter, the facts of this case would warrant the grant of entire back wages, but this Court has also taken into account all the attendant circumstances. The period of service of the petitioner was 12 years and the period of litigation started in 1999. The date of superannuation is in the year 2019. In view of the consideration of the overall facts and circumstances of the case, the interests of justice would be best served, if the Workman is awarded 75 % of the back wages. Accordingly, I answer the question No. (iii).

F.The Result:

10. In view thereof, the Writ Petition is allowed on the following terms:-

(i) The award of the Labour Court dated 11.03.2004 in I.D.No.150 of 2000 shall stand set aside;

(ii) The non-employment of the petitioner – *M.Venkatasubramaniam* by



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the 2nd respondent – Management is held to be illegal and unjustified;

WEB COPY (iii) The Workman shall be deemed to be reinstated into service until the date of superannuation with all continuity of service and all service benefits viz., gratuity and all benefits as per law;

(iv) The Workman would also be entitled to 75 % of the back wages from 15.07.1999 till the date of superannuation;

(v) All the above-mentioned amounts, viz., retiral benefits, gratuity and back wages shall be paid within twelve weeks from the date of receipt of the website uploaded copy of this order, without waiting for the certified copy of this order;

(vi) If the amounts are not paid within the aforesaid time limit, thereafter, the same shall carry further interest at the rate of 9% per annum from today till the date of disbursement;

(vii) No costs.

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Neutral citation : Yes

22.01.2025



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To

The Presiding Officer,
Labour Court, Vellore.





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D.BHARATHA CHAKRAVARTHY, J.,
Jer

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