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T. P. SRIVASTAVA

v.

NATIONAL TOBACCO CO. OF INDIA LTD.

OCTOBER 11, 1991

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[KULDIP SINGH AND V. RAMASWAMI, JJ.]

Industrial Disputes Act, 1947—Section 2 (b)—"Workman"- Definition of— Section salesman having supervisory duties and such duties which require creative mind, not workman—Employee covered under the Sales Promotion Employees (Condition of Service) Act, 1976 not workman.

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Labour Law—Termination of services of a Section Salesman—Findings of Labour Court approved by Supreme Court—16 years old labour dispute—Direction to pay amount equivalent to three years salary.

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The appellant was in the service of the respondent-company as a Section Salesman. He was terminated from service on 12th July, 1973 on the ground that he was on an unauthorised absence since 13th January, 1973.

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At the instance of the appellant the Government referred to the Labour Court for adjudication the question whether the termination of the services of the appellant by the respondent-company was legal and justified and if not to what relief he was entitled to.

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The Labour Court held that the appellant was not a "workman" and that, therefore, the reference was incompetent but it answered the question whether the termination itself was illegal in favour of the appellant.

The appeal was filed in this Court against the order of the Labour Court.

Dismissing the appeal, this Court,

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HELD: 1. In order to come within the definition of "workman" under the Industrial Disputes Act as it stood in the year 1973 when the appellant's service was terminated, the employee has to be under the employment to do the work of one of the types of work i.e. manual, skilled and/or clerical in nature. [475-E]

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2. The appellant was employed to do canvassing and promoting sales for the company. The duties involve the suggesting of ways and means to improve the sales; a study of the type or status of the public to whom the product has to reach and a study of the market condition. He was also required to suggest about the publicity in markets and melas, advertisement including the need for posters, holders and cinema slides. These duties do require the imaginative and creative mind which could not be termed as either manual, skilled, unskilled or clerical in nature. The supervising work of the other local salesman was only incidental to his main work of canvassing and promotion in the areas of his operation. Such a person cannot be termed as a workman. [475 F-G]

3. The Sales Promotion Employees (Conditions of Service) Act, 1976, defines "sales promotion employees" as meaning a person employed or engaged in any establishment for hire or reward to do any work relating to promotion of sales or business or both. [476 A-B]

4. The object of the enactment and the employees covered by the enactment also go to show that persons who are employed for sales promotion normally would not come within the definition of workmen under the Industrial Disputes Act. [476 C-D]

5. In view of the fact that a long period of over 16 years had passed it would be unjust to leave the appellant without any remedy at this stage. To meet the ends of justice, the Company is to pay an amount equivalent to three years salary at the rate he was drawing when the appellant's services were terminated, in addition to whatever amount they were paying during the pendency of the appeal. [476 E,F]

Burmah Shell Oil Storage and Distribution Company v. Burmah Shell Management and Staff, AIR 1971 SC 922; *D.S. Nagraj v. Labour Officer, Karnal & Ors.*, 1973 (42) F.J.R. 400; *J.J. Dechane Distributor v. State of Kerala and Ors.*, 1974-II LLJ 9, referred to.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1681-A(L) of 1979.

From the award dated 2.8.1978 of the Additional Labour Court, Rajasthan in Reference Case No. ALC - 120 of 1974.

V.M. Tarkunde, P.H. Parekh and Sunil Dogra for the Appellant.

A J.D. Jain for the Respondent.

The Judgment of the Court was delivered by

B **V. RAMASWAMI, J.** The appellant who had been in the service of the respondent-company as a Section Salesman was terminated from service on 12th July, 1973 on the ground that he was on an unauthorised absence since 13th January, 1973 and shall be deemed to have left the company's service of his own account. At the instance of the appellant the Government of Rajasthan referred to the Labour Court for adjudication the question whether the termination of the services of the appellant by the respondent-company was legal and justified and if not to what relief he was entitled to. The Labour Court by its award dated 2.8.1978 held that the appellant was not a "workman" and that, therefore, the reference was incompetent. We may, however, state that the Labour Court has given findings in favour of the appellant on the question whether the termination itself was illegal.

D The facts as found by the Labour Court for coming to the conclusion that the appellant was not a "workman" are these. The head office of the company is at Calcutta in West Bengal. The appellant was appointed as a section salesman and his services were controlled by the head office through its territory office situated in Delhi. Section salesman are appointed for certain number of districts and in the area of each section salesman, a number of local salesmen and local travelling salesmen are appointed. The appellant was appointed as a section salesman for the districts of Bikaner, Ganganagar, Merta and Barmer in Rajasthan with his head quarters at Bikaner. There were seven other local salesmen and local travelling salesmen in his area. The various correspondence and other evidence produced before the Labour Court showed that the appellant was employed for canvassing and pushing and promoting the sales of the company's product in his area. The Tribunal also found and in fact it has referred to as an admitted case of both the parties that the respondent company sells its product i.e. cigarettes manufactured by it directly through their wholesalers who in their turn sell the product to the various dealers appointed by the company in the area. The section salesman neither sells nor collects any money from the wholesaler or retail dealers. The company controls this through the territory office at Delhi. Neither the section salesman nor the local salesmen or local travelling salesmen are employed in the shop of the wholesaler or any retail dealer to sell the products of the company and to collect the amount of sale. The section salesmen and the local salesmen and local travelling salesmen were employed by the company in order to canvass and promote the sales of the company. From

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perusal of the records produced before the Labour Court the Tribunal further observed "it was apparent that the appellant is required to send reports about the publicity and advertisement and of placing posters, holders, cinema slides and suggest means to canvass the sale in this area. Some of the document relate to matters of publicity in melas, some relate to the existing position of the stock of the goods of the company in the area and the action taken to ameliorate stocks". It was not the duty of the appellant to procure orders for the company. None of the salesmen were employed to sell the product of the company in any particular area or collecting the sale proceeds and depositing the same with the company. However, the Tribunal noted that the appellant was required to supervise the work of the local salesmen and local travelling salesmen appointed in the area of his operation as well but it was only incidental to his main function of canvassing and promoting the sale of the product of the company in the four districts allotted to him. On these facts found, the Tribunal came to the conclusion that the appellant cannot be held to be a workman employed for manual, skilled, unskilled and/or clerical nature and that the provisions of the Industrial Disputes Act was not applicable and the reference, therefore, was incompetent. It is against this order the appeal was filed.

In order to come within the definition of workman under the Industrial Disputes Act as it stood in the year 1973 when the appellant's service was terminated, the employee has to be under the employment to do the work of one of the types of work referred to in the Section i.e. manual, skilled and/or clerical in nature. The finding of the Tribunal on the nature of the work is a finding on a question of fact and it is also borne out by the document produced before the Labour Court. It is seen from the facts found that the appellant was employed to do canvassing and promoting sales for the company. The duties involve the suggesting of ways and means to improve the sales, a study of the type or status of the public to whom the product has to reach and a study of the market condition. He was also required to suggest about the publicity in markets and melas, advertisements including the need for posters, holders and cinema slides. These duties do require the imaginative and creative mind which could not be termed as either manual, skilled, unskilled or clerical in nature. The supervising work of the other local salesmen was part of his work considered by the Tribunal as only incidental to his main work of canvassing and promotion in the area of his operation. Such a person cannot be termed as a workman is also the ratio of the decision of this Court in *Burmah Shell Oil Storage and Distribution Company v. Burmah Shell Management and Staff*; AIR 1971 SC 922, *D.S.Nagraj v. Labour Officer, Kan.al and others*, 1973 F.J.R. (42) P. 440, *J.J. Dechane Distributor v. State*

A *of Kerala and others* (1974-II LLJ.9). We may also refer to the subsequent passing of the Sales Promotion Employees (Conditions of Service) Act, 1976. This Act defines "sales promotion employees" as meaning a person employed or engaged in any establishment for hire or reward to do any work relating to promotion of sales or business or both. This Act is to apply in the first instance to every establishment engaged in pharmaceuticals industry. It enables the Central Government by notification to apply the provisions to any other establishment engaged in any notified industry. If an industry is notified under this Act then the provisions of the Industrial Disputes Act, 1947 would also be attracted to these types of workmen. This is a subsequent enactment and it is not applicable to the termination in the instant case which was long prior to the enactment of this Act.

C Further no notification under this Act bringing the provisions to the employees like that of the company has been made under the provisions of this Act. The object of this enactment and the employees covered by the enactment also go to show that persons employed for sales promotion normally would not come within the definition of workmen under the Industrial Disputes Act.

D The Labour Court considered the merits in detail and ultimately held that the termination of the appellant from service was illegal but dismissed the application only on the ground that the Industrial Disputes Act was not applicable. We would not have interfered with that finding had we differed from the Labour Court on the question whether the appellant is a workman. In the light of our holding that the Industrial Disputes Act is not applicable to him and in view of the fact that a long period of over 16 years had passed it would be unjust to leave the appellant without any remedy at this stage. In the circumstances, we consider that a direction to the Management to pay some compensation is necessary to meet the ends of justice. We accordingly direct the Company to pay an amount equivalent to three years salary at the rate he was drawing when the appellant's services were terminated, in addition to whatever amount they were paying during the pendency of the appeal under orders of this Court. But this direction will not be treated as precedent.

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G For the foregoing reasons we are of the view that no interference is called for with the decisions of the Labour Court and this appeal accordingly fails and it is dismissed subject to the directions given above. However, there will be no order as to costs.