SUPREME COURT OF INDIA

Rhone-Poulenc (India) Ltd.

Versus

State of U.P.

(S. Rajendra Babu and Y.K. Sabharwal, JJ.)

Civil Appeal Nos. 1935-1936 of 1998.

26.09.2000

JUDGMENT

Y.K. Sabharwal, J. - Respondent No. 3 was working as a Medical Representative with the appellant. By an order dated 11th March, 1986 issued by the Regional Sales Manager of the appellant, respondent No. 3 was transferred from Aligarh to Kanpur. Respondent No. 3, however, didn't join the duties at Kanpur despite grant of various opportunities. Thus, a charge-sheet dated 13th October, 1986 was issued to respondent No. 3. An enquiry was held. Respondent No. 3 did not participate in the enquiry. The enquiry officer found the charges proved. By order dated 24th June, 1987 passed by the appellant, respondent No. 3 was dismissed from service.

2. An industrial dispute was raised by respondent No. 3. The State Government referred the dispute for adjudication of the Labour Court to determine whether the termination of respondent No. 3 was correct and legal and if not to what relief the workman was entitled to. The Labour Court by order dated 22nd September, 1993 came to the conclusion that respondent No. 3 was a Sales Promotion Employee as per the Sales Promotion Employees (Conditions of Service) Act, 1976 and as per Section 2(s) of the Industrial Disputes Act, 1947, he comes under the definition of workman and has a right to raise the industrial dispute. The said order also held that the enquiry conducted by the appellant against the workman was not according to the principles of natural justice. By award dated 18th December, 1995, the Labour Court held that the appellant has failed to prove the charge of misconduct against respondent No. 3 and termination of his services with effect from 24th June, 1987 is improper and illegal and he is entitled to reinstatement in service along with consequential benefits. The plea of respondent No. 3 that the transfer order had been issued by an incompetent authority and, therefore, the non-compliance thereof cannot be treated as misconduct was accepted. It was noticed in the award that the appellant didn't produce any material to prove that the Regional Sales Manager was competent to pass an order of transfer or that the powers to transfer the Medical Representatives had been delegated to the Regional Sales Manager. It was admitted that the Corporate Manager had the power to pass order of transfer of Medical Representatives.

3. Two writ petitions filed by the appellant, one challenging the order dated 22nd September, 1993 and the other the award dated 18th December, 1995, were dismissed by the High Court by a common judgment which is under challenge in these appeals.

4. Mr. V.R. Reddy, learned counsel for the appellant, contends that the Labour Court had no jurisdiction to deal with the matter since respondent No. 3, a Medical Representative, could not be held to be a `deemed workman' within the meaning of the U.P. Industrial Disputes Act by virtue of Section 6(2) of the Sales Promotion Employees (Conditions of Service) Act, 1976. The said section reads as under :

"6(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 the 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."

5. The contention of the learned counsel is that assuming the aforesaid provision is applicable, it still doesn't extend the deeming fiction to any State enactment including the U.P. Industrial Disputes Act as it is apparent on reading of the Section that Sales Promotion Employees, within the meaning of Central enactment of the Industrial Disputes Act, 1947 (14 of 1947) have been treated as `workman'. Reliance has been placed by the learned counsel on a Constitution Bench decision of this Court in ***H.R. Adyanthaya and others v. Sandoz (India) Ltd. and others, 1994(5) SCC 737 : 1995(1) SCT 278(SC)(FB).*** The Bench has held that since the Medical representatives are not workmen within the meaning of the Maharashtra Act, the complaint made to the Industrial Court under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 was not maintainable. The acceptance of the contention of Mr. Reddy that respondent No. 3 in view of Sandoz case is not a `workman' within the meaning of the U.P. Industrial Disputes Act, however, doesn't help the appellant in substance as in the present case we propose to adopt the same course as was adopted in Sandoz case by treating the complaint to be an industrial dispute under the Industrial Disputes Act, 1947 in exercise of the powers of this Court under Article 142 of the Constitution. More than 12 years have passed since the reference was made to the Industrial Court and in the facts and circumstances of the case, we think it appropriate to adopt the course as was adopted in Sandoz case. Thus, we treat the reference in question to be one under Section 10(1)(d) of the Industrial Disputes Act, 1947.

6. The appellant did not place any material before the Labour Court to prove the authority and competence of the Regional Sales Manager to order the transfer of respondent No. 3. The appellant has been unable to make out any case for disturbing the finding recorded by the Labour Court as affirmed by the High Court that the transfer order of respondent No. 3 had not been issued by a competent authority. The mere fact that after the order of transfer had been issued and when respondent No. 3 had failed to report for duty, he was also asked by the Corporate Manager, who was competent to order his transfer, to join the duties at Kanpur will not validate the order of transfer issued by an authority not competent to do so.

7. The High Court has also held that respondent No. 3 is entitled to the same amount of salary/arrears of salary after he was reinstated by the award of the Labour Court which his counterparts (Medical Representatives) in the appellant company were

receiving under the settlement dated 25th June, 1988 and has further held that the said settlement is applicable to the case of respondent No. 3 as well and the appellant is estopped from taking the plea of its non-applicability in case of respondent No. 3. Mr. Reddy contends that the aforesaid finding of the High Court deserves to be set aside. We agree. The question whether respondent No. 3 is entitled or not to the benefit of settlement dated 25th June, 1988 was not the subject matter of the award which directed the reinstatement of workman in service along with consequential benefits. What consequential benefits respondent No. 3 would be entitled to was not the subject matter of the writ petitions before the High Court. According to the appellant, respondent No. 3 is not entitled to the benefits under the settlement whereas respondent No. 3 claims such benefits. This question may have to be adjudicated by a competent authority at an appropriate stage when the question of grant of consequential relief is raised or it is contended that full consequential reliefs in terms of the award have been denied to respondent No. 3. The stage of implementation of the award had not come when the matter was pending before the High Court. The only question before the High Court was with regard to the legality of the award and the order dated 22nd September, 1993 whereby the two preliminary issues were decided by the Labour Court. In this view, we set aside the impugned judgment to the extent it directs that respondent No. 3 is entitled to the same amount of salary/arrears of salary which his counterparts are receiving under the settlement dated 25th June, 1988 as also the finding that the said settlement is applicable to respondent No. 3 and that the appellant is estopped from taking the plea of its non-applicability. We leave these questions open without expressing any opinion as to the applicability or otherwise of the settlement to the case of respondent No. 3 or the validity of other legal pleas including that of estoppel. It would be open to the appellant and respondent No. 3 to raise such pleas as may be available to them in law at the appropriate stage and it goes without saying that the said aspects will be decided on its own merits in accordance with law.

8. For the aforesaid reasons, we partly allow the appeals to the limited extent as above and in all other aspects we maintain the impugned judgment of the High Court. The parties are left to bear their own costs.

Appeals partly allowed.