SUPREME COURT OF INDIA

E.S.I.C. Medical Officer’s Association

Vs.

E.S.I.C.

S.L.P.(Civil.)No.35821of 2013

(K.S. Radhakrishnan and A.K. Sikri, JJ.)

21.11.2013

JUDGMENT

K.S. Radhakrishnan, J.

1. Delay condoned.

2. We are, in this case, concerned with the question whether medical doctors discharging functions of medical officers i.e. treating patients in Employees’ State Insurance Corporation’s dispensaries/hospitals are “workmen” within the meaning of expression contained in Section 2(s) of the Industrial Disputes Act, 1947 (for short “ID Act”).

3. Petitioner is an Association of medical officers employed in the ESCI after the year 1974. The Association raised a claim for ESIC allowance of Rs.200/- per month on the ground that they were performing the same duties as those by doctors who are getting the said allowance and, therefore, could not be discriminated against. The Central Government referred the above dispute on 19.11.1992 for adjudication by the Central Government Industrial Tribunal, New Delhi (CGIT). CGIT in I.D. No.104 of 1992 answered the reference in favour of the Petitioner Association holding that the medical doctors discharging functions of medical officers are “workmen” within the meaning of Section 2(s) of the ID Act. The Tribunal also held that there was no material to show that the said medical doctors were employed in managerial or administrative capacity or in a professional capacity. Consequently, it was held that the officers could be defined as

skilled workmen doing job of a skilled nature. Further, it was also observed that engagement of the medical doctors in intellectual activities of treating patients cannot take them out of the definition of the expression “workmen”.

4. Aggrieved by the above-mentioned Award, the Corporation approached the Delhi High Court by filing Writ Petition No.6760 of 2010. The learned Single Judge of the Delhi High Court allowed the Writ Petition holding that the Tribunal was in error in holding that medical doctors fell within the expression “workmen” within the meaning of Section 2(s) of the ID Act.

5. Mr. Atul Kumar, learned counsel appearing for the Petitioner, submitted that the High Court was in error in holding that the members of the Petitioner Association are performing any managerial or supervisory functions. Further, it was pointed out that their job is of a skilled nature and hence they are workmen entitled to protection of ID Act. Further, it was also pointed out that non-grant of medical allowance to the medical doctors is discriminatory and violative or Article 14 of the Constitution of India. Learned counsel also submitted that the High Court has committed error in placing reliance on the judgment of this Court in *Muir Mills Unit of NTC (UP) Ltd. vs. Swayam Prakash Srivastava* [1], since it was hit by principle of casus missus and there was no discussion in the judgment about the nature of the duties of the medical officers.

6. We notice, after the formation of the ESIC in the year 1956, the Corporation was drawing services of medical doctors from other organizations on deputation and was making payment of deputation allowance at the rate of Rs.200/- per month to such deputationists. The Corporation in the year 1974 set up its own ESIC Medical Centre and under its regulations, the medical doctors recruited in the said medical centre were entitled to the same pay and allowances as admissible to medical doctors in the Central Government Health Services. Petitioner Association consists of medical officers employed by the ESIC after 1974. Members of Association also claimed allowance at the rate of Rs.200/- per month on the ground that they were performing the same duties as those doctors who were getting the said allowance and, therefore, could not be discriminated against. On merits, the claim was opposed by the Corporation stating that ESIC allowance was payable only to deputationists as it was a deputation allowance, whereas members of the Association have been directly recruited in the medical category of the Corporation.

7. We are in agreement with the views of the High Court that the members of the Association being not deputationists are not entitled to such allowance, but we are in this case concerned with a larger question as to whether medical doctors discharging functions in ESIC dispensaries/hospitals are workmen within the meaning of Section 2(s) of the ID Act.

8. We notice, the medical officers appointed in the various dispensaries/hospitals are entrusted with the task of examining and diagnosing patients and prescribing medicines to them and they are basically and mainly engaged in professional and intellectual activities to treat patients. This Court in *Heavy Engineering Corporation Ltd. vs. Presiding Officer, Labour Court & Ors*[2], examined the question as to whether General Duty Medical Officers Grade II were performing supervisory functions. In that case, the medical officer was appointed as General Duty Medical Officer Grade II by the Corporation and was posted in the First-Aid post for providing emergency medical services in case of accidents, etc. during the shifts. On termination of the services, an industrial dispute was raised by the medical officer that his services have been terminated in breach of Section 25-F of the Act. The Court observed that the duties of a doctor required that he performs supervisory functions in addition to treating the patients would mean that he had been employed in a supervisory capacity. Paragraph 12 of the judgment has some relevance and is extracted herein below:-

> "12. The aforesaid facts, in our opinion, clearly go to show that Respondent 2 could not be regarded as a workman under Section 2(s) of the Act as he was working in a supervisory capacity. While it is no doubt true that Respondent 2, along with the other doctors, used to work in shifts nevertheless during the time when he was in the shift he was the sole person in-charge of the first-aid post. He had, under him male nurse, nursing attendant, sweeper and ambulance driver who would naturally be taking directions and orders from the in-charge of the first-aid post. These persons obviously could not act on their own and had to function in the manner as directed by Respondent 2, whenever he was on duty. They were, in other words, under the control and supervision of the respondent. When a doctor, like the respondent, discharges his duties of attending to the patients and, in addition thereto supervises the work of the persons subordinate to him, the only possible conclusion which can be arrived at is that the respondent cannot be held to be regarded as a workman under Section 2(s) of the Act."

9. Later, this Court in Muir Mills (supra) had occasion to consider whether a legal Assistant falls within the definition of "workman" under the U.P. Industrial Disputes Act, 1947. In that judgment in paras 38 to 40, this Court held as follows:-

> "38. Furthermore, if we draw a distinction between occupation and profession we can see that an occupation is a principal activity (job, work or calling) that earns money (regular wage or salary) for a person and a profession is an occupation that requires extensive training and the study and mastery of specialised knowledge and usually has a professional association, ethical code and process of certification or licensing. Classically, there were only three professions: ministry, medicine and law. These three professions each hold to a specific code of ethics and members are almost universally required to swear to some form of oath to uphold those ethics, therefore "professing" to a higher standard of accountability. Each of these professions also provides and requires extensive training in the meaning, value and importance of its particular oath in the practice of that profession.

> 39. A member of a profession is termed a professional. However, professional is also used for the acceptance of payment for an activity. Also a profession can also refer to any activity from which one earns one's living, so in that sense sport is a profession.
> 40. Therefore, it is clear that Respondent 1 herein is a professional and never can a professional be termed as a workman under any law."

10. We may, in this respect, also refer to an earlier judgment of this Court in *A. Sundarambal vs. Govt. of Goa, Daman & Diu* [3], wherein this Court held that a teacher employed by an educational institution, who imparts education (whether at primary, secondary, graduate or post-graduate level) cannot be called as a "workman" since imparting education which is the main function of a teacher, is in the nature of a noble mission or a noble vocation, which cannot be considered as skilled or unskilled manual work or supervisory, technical or clerical work.

11. We are of the view that a medical professional treating patients and diagnosing diseases cannot be held to be a "workmen" within the meaning of Section 2(s) of the ID Act. Doctors' profession is a noble profession and is mainly dedicated to serve the society, which demands professionalism and accountability. Distinction between occupation and profession is of paramount importance. An occupation is a principal activity related to job, work or calling that earns regular wages for a person and a profession, on the other hand, requires extensive training, study and mastery of the subject, whether it is teaching students, providing legal advice or treating patients or diagnosing diseases. Persons performing such functions cannot be seen as a workman within the meaning of Section 2(s) of the ID Act. We are of the view that the principle laid down by this Court in A. Sundarambal's case (supra) and in Muir Mills's case (supra) squarely applies to such professionals. That being the factual and legal position, we find no reasons to interfere with the judgment of the High Court. The SLP lacks merit and is dismissed accordingly.

Judgment referred

[1] *(2007) 1 SCC 0491*

[2] *(1996) 11 SCC 0236*

[3] *(1988) 4 SCC 0042*