CASE NO.:
Appeal (civil) 1935 of 1998
Appeal (civil) 1936 of 1998

PETITIONER:
RHONE-POINENC (INDIA) LTD. ...

Vs.

RESPONDENT:
STATE OF U.P. & ORS,

DATE OF JUDGMENT: 25/09/2000

BENCH:
S. RAJENDRA BABU, Y.K.SABHARWAL,

JUDGMENT:

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JUDGMENT

Y.K.SABHARWAL.J.

Respondent No.3 was working as a Medical Representative with the appellant. By an order dated 11^^ March, 1986 issued by the Regional Sales Manager of the appellant, respondent no.3 was transferred from Aligarh to Kanpur. Respondent No.3, however, did not join the duties at Kanpur despite grant of various opportunities. Thus, a charge-sheet dated 13^^ October, 1986 was issued to respondent no .3. An enquiry was held.

Respondent no .3 dies not part, "'ci pate -in the enquiry,)he enquiry officer found the charges proved. By order dated 24^^ June, 1987 passed by the appellant, respondent no.3 was dismissed from servics.

An industrial disputs 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, 1376 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 heTd 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 24^^ June, 1987 is improper and illegal and he i-s 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. Tt

was noticed in the award that the appellant

die) not 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.

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

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. IndustrlaT 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."

The contetion of the learned counsel is that assuming the aforesaid provsion Is applicable, it still does not extend the deeming fiction to any State enactment Including the U.P. Industrial Disputes Act as it 18 apparent on reading of the section that Sales Promotion Employees, within the meaning of Centra'1 enactment of the Industria1 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 & Ors. v. Sandoz (India) Ltd, & Ors. [(1394) 5 SCC 737]. 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 main'fc.^1n,ab^e. 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 D.disputes Act, however, does not 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 ana in the facts and circumsta.nces of the case, we

think it appropriate to adopt the course as was adopted in Sandoz case. Thus, we treat the reference -sn question to be one under Secticr '0(1)(d) of the Industrial Disputes; Act, 1947.

The appellant did not place any material before the Labour Court to prove the authority arid 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 affir.mod 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.

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 25^ June, 1988 and has further held that the said settlement is applicable to the case of respondent no.3 as well and the appellant 1s estopped from taxing the plea of its non-applicability in case of respondent no. 3. Mr. Reddy contents that the aforesaid finding of the High

Court deserves to be set aside. We agree. The question whether raepondent, no. 3 is entitled or not to the benefit of settlement dated 25h June, 1988 was not the subject matter of the awerd which directed the reinstatement of workman in service alons with consequential benefits. What consequential benefits respondent no. 3 would be entitled to was not- the subjact matter of the writ petitions, before the High Court. According to the appellant, respondeent no .3 i? not entitled to the benefits under the settierrient 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 22'""^ 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 25^^ 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 nc.3 or the validity of other legal pleas inc1uding that of estoppel. It would be open to the appellant and respondent no.3 to ra-ise 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 decoded on its own merits In accordance with law.

For the aforesaid reasons, we partly allow the appeals to the limited oxtent 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.