

CASE NO.:
Appeal (civil) 766 of 2004

PETITIONER:
SPIC Pharmaceuticals Division

RESPONDENT:
Authority Under Sec. 48(1) of A.P. & Anr

DATE OF JUDGMENT: 28/02/2007

BENCH:
Dr. ARIJIT PASAYAT & TARUN CHATTERJEE

JUDGMENT:
J U D G M E N T
With
(Civil Appeal Nos. 768 of 2004, 767 of 2004 and 1498 of 2004))

Dr. ARIJIT PASAYAT, J.

Challenge in these appeals is to the legality of the judgment rendered by a Division Bench of the Andhra Pradesh High Court. By the impugned judgment several writ appeals and writ petitions, filed by the appellants, were dismissed. The core question that arose for consideration in the cases before the High Court was whether the provisions of Sales Promotion Employees (Conditions of Service) Act, 1976 (in short the 'Act') oust the jurisdiction of the authorities constituted under the Andhra Pradesh Shops and Establishment Act, 1988 (in short the 'Shops Act') and consequently the Authorities under the Shops Act are excluded from entertaining appeals preferred by the aggrieved sales promotion employees challenging the termination of their services. The further question was whether the Authorities constituted under the Shops Act have no jurisdiction to entertain any appeal preferred by the sales promotion employees challenging action of the employees in terminating their services. Several writ petitions filed were dismissed by learned Single Judge of the High Court and therefore, writ appeals were filed. The orders of the Authorities under the Shops Act directing the reinstatement of the employees into service together with back wages which were challenged in the writ petitions came to be dismissed by learned Single Judge. The appellant in each case is involved in the manufacture of pharmaceutical products. It has engaged the services of employees for the purpose of marketing its manufactured products. In common parlance the employees appointed by the pharmaceuticals companies are known as medical representatives. Charge sheets were issued against the concerned employees and after holding inquiries, services of the employees were terminated. The employees invoked the jurisdiction of the Labour Court challenging the orders of termination but later on they withdrew them and moved the authority under the Act along with, in some cases, condonation for delay in approaching the Authorities concerned. Notwithstanding serious objections raised by the employer, the concerned Authority condoned the delay. Writ Petitions filed and writ appeals preferred were rejected.

In the present appeals the stand of the appellants was that the authority under the Shops Act had no jurisdiction to

entertain the so called appeals preferred by the employees as the service conditions of the employer were governed and regulated by the provisions of the Act which is a special enactment. The competent authority rejected the objections raised by the employer. As regards the jurisdiction it was held that the cause of action arose within the territorial jurisdiction of the concerned appellate authority could not be entertained. Both the learned Single Judge and the Division Bench in the writ appeal held that the appellate authorities' orders were in order. It did not accept the stand that the forum created under the Industrial Disputes Act, 1947 (in short the 'ID Act') was the only forum and the disputes cannot be raised in any other forum.

In support of the learned counsel appearing for the appellant submitted that the Parliament enacted the Act as it thought that it would be more appropriate to have a separate legislation for governing service conditions of the Sales Promotion Employees and accordingly made the provisions of the ID Act applicable conferring rights on the Sales Promotion Employees to challenge the orders of dismissal, discharge or retrenchment in the forum created and constituted under the provisions of the ID Act. The Parliament specified application of certain Acts to Sales Promotion Employees which include Workmen's Compensation Act, 1923, Minimum Wages Act, 1948, Maternity Benefit Act, 1961, Payment of Bonus Act, 1965 and Payment of Gratuity Act, 1972. Except these Acts no other Act including the Shops Act shall be applicable.

In response learned counsel for the respondent-employees submitted that two forums are available to the employees i.e. under the provisions of ID Act and the Shops Act. It is for the employee to choose the remedy available to him in law either by approaching the forums created i.e. one constituted under the ID Act or the Authorities constituted under the Shops Act.

The High Court accepted that the Act which makes the provisions of the ID Act applicable providing remedy to Sales Promotion Employees is a special enactment dealing with service conditions of sales promotion employees employed in the establishment engaged in pharmaceutical industries. The Shops Act deals with specific rights created under that Act and it has been indicated that these provisions provided for some more measures for protecting interest of the employees. They are beneficial in nature. The High Court held that the jurisdiction conferred under the Shops Act cannot be said to have been taken away in respect to enforcement of rights conferred under the Act. We think it is unnecessary to go into these broader issues. We find that the forums created under the ID Act, on the facts of the case can more effectively deal with the issues raised. It is not to be understood that we have said that the Appellate authorities under the Act do not have jurisdiction. We are not really deciding that issue as to whether there was exclusion of the jurisdiction of authorities made the Shops Act because it specifically provided that the forum under the ID Act can be approached. In the peculiar circumstances, therefore, we direct that the concerned State Governments i.e. Karnataka, Tamil Nadu and Maharashtra shall make reference to the appropriate forum under the ID Act within a month from today. The concerned forum shall make an effort to dispose of the reference to be made within three months from the date of receipt of the reference. If the respondent employees are entitled to any payment because of the pendency of the disputes, the same shall be paid within

two months from today. We make it clear that we have not expressed any opinion on the merits of the case and the order for reference by the State Government is being made in view of the special features involved. Normally it is for the State Government to decide whether reference is to be made but in view of the conceded position by the learned counsel for the parties that the industrial disputes do exist, we direct the concerned State Governments to refer the dispute to the forum under the ID Act for adjudication as directed above.

Appeals are accordingly disposed of with no orders as to costs.

JUDIS