

(2023) 11 OHC CK 0073

Orissa High Court

Case No: Writ Petition (C) No. 11908 Of 2016

Novartis India Limited

APPELLANT

Vs

Shri Bichimaya Mishra And
Another

RESPONDENT

Date of Decision: Nov. 10, 2023

Acts Referred:

- Industrial Disputes Act, 1947 - Section 2(s), 10(4), 17B

Hon'ble Judges: Arindam Sinha, J; S.S. Mishra, J

Bench: Division Bench

Advocate: Sourya Sundar Das, S. Das, A.K. Sharma, Durga Prasad Nanda, B.P. Panda

Final Decision: Disposed Of

Judgement

1. Mr. Das, learned senior advocate appears on behalf of petitioner-management. He submits, impugned is award dated 8th April, 2016 made by the labour Court directing reinstatement with 50% back wages. The labour Court directed reinstatement on purportedly finding retrenchment without dealing with objection raised by his client and recorded in impugned order that opposite party no.1 is not workman within meaning of section 2(s) in Industrial Disputes Act, 1947. He demonstrates from impugned award, at the end of paragraph-3 there is clear record of the contention of his client that opposite party no.1 is not a workman.

2. Without prejudice Mr. Das submits, in event on behalf of the workman there is contention to support finding of retrenchment in impugned award then the award is a nullity as passed by the labour Court because retrenchment is a matter that must be dealt with by the tribunal under entry-10 in the

third schedule.

3. He relies on judgment of the Supreme Court in H.R. Adyanthaya v. Sandoz (India) Ltd., inter alia, paragraphs 29, 33 and 34. He submits, the

Supreme Court made an analysis on interpreting applicability of Industrial Disputes Act, 1947 to sales promotion employees after enactment of Sales

Promotion Employees (Conditions of Service) Act, 1976 and particularly after amendment thereto in year, 1987. Declaration of law in the judgment

was that it is only the weaker section of sales promotion employees, who were covered by the Act of 1947. Opposite party no.1 was a medical

representative getting remuneration of more than Rs.10,000/- per month. In the circumstances, he was offered ex-gratia package as suggested by the

Union. Opposite party did not accept it and raised purported industrial dispute. It culminated in impugned award dated 8th April, 2016. His client

presented the writ petition on 12th July, 2016, after which it remained pending for adjudication. Opposite party no.1 made successive applications

under section 17-B and has thereby obtained substantial amount of money of his client.

4. Mr. Panda, learned advocate appears on behalf of opposite party no.1 and prays for adjournment to rely on authorities regarding first point raised by

Mr. Das, of his client not being a workman. At this stage he submits, the plea could not have been raised as beyond scope of sub-section (4) in section

10.

5. Mr. A.K. Sharma, learned advocate, Additional Government Advocate appears on behalf of opposite party no.2.

6. List on 17th November, 2023.

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