M.M. Wadia Charitable Hospital Vs Dr. Umakant Ramchandra Warerkar

Court: Bombay High Court

Date of Decision: Aug. 4, 1996

Acts Referred: Industrial Disputes Act, 1947 â€" Section 10, 2, 25

Citation: (1997) 75 FLR 814 : (1997) 2 LLJ 549

Hon'ble Judges: S.H. Kapadia, J

Bench: Single Bench

Advocate: G.S. Godbole and D.J. Deshmukh, for the Appellant; S.C. Gupte, instructed by Warerkar and Warerkar, for the Respondent

Judgement

1. All the above Writ Petitions raise common question of law and fact. All the above Writ Petitions seek to challenge the validity of cannon a

Judgment and Order passed by the Labour Court, Solapur in Reference u/s 10 of the Industrial Disputes Act, 1947.

2. The central point which arises for determination in all the above Writ Petitions is: tl Whether eminent doctors who have done their M.D.s/M.S.

are entitled to seek a protection as a workman u/s 2(s) of the industrial Disputes Act, 1947. It is not in dispute that the respondent-doctors in die

above writ petitions are having their private practices by way of consultancy. It is not in dispute that even their private patients are permitted to be

admitted in the petitioner-hospital on their recommendations, subject to sharing of profits between the Management and these doctors. Basically, in

all the above writ petitions, the only point is 10 whether the said doctors are entitled to claim the status of'' workman ''as defined wider Section

2(s) of the said Act, 1947. The said respondent-doctors have done their course in super specialities in various disciplines like Dermatology

,Paediatrics etc.

3. To understand the controversy involved in the present case, we have to see the facts of the above Writ Petitions briefly, and for that purpose the

facts in Writ Petition No. 3730 of 1993, the first Writ Petition are required to be stated.

4. Petitioner is a Charitable Trust, running a Charitable Hospital at Solapur in Mahuashtra. Dr. Umakant Ramchandra Warerkar was appointed as

a fulltime Paediatric Physician. He was allowed private practice. He was appointed on October 6, 1980 (sic). Services of Dr. Warerkar were

terminated vide Notice dated February 27, 1982 offering him salary in lieu of one month''s notice. At this stage, it may he mentioned that the

termination was a result of the strike resorted to by the doctors. Initially, there was one day''s token strike. Prior to the said strike, it may be

mentioned, that members of the Medical staff formed an Association known as M. M. Wadia Charitable Hospital Doctors Association. This was

sometime in August 1980. On September 17, 1981 the Association passed a Resolution urging better facilities. It seems that disputes started on

the said issue. The Association claimed that facilities were not good. In the above circumstances the strike was resorted to. The staff proceeded on

one day''s taken strike on February 17, 1982. On February 23, 1982, the Management issued show-cause Notice to several doctors for going on

token strike. In reply, the doctors pointed out the background and the reason for resorting to token strike. On February 26, 1982 the

Management issued a Circular which was received by go the doctors on February 27, 1982. By the said Circular the Management informed the

doctors that they would take strict disciplinary action for resorting to strike. On February 28, 1982, services of the respondent-doctors in the

above Writ petitions came to be terminated. On learning of the said termination Order, the Medical staff held a meeting after midnight and they

resolved to go on an indefinite strike to protest against termination Orders issued. Out of 22 so doctors, 20 doctors in the said hospital went on

strike from March 1, 1982. Ultimately. the Management terminated the services of all respondent-doctors on March 1, 1982. Against the said

termination Orders, the said respondent, 5 doctors sought Reference u/s 10 of the Industrial Disputes Act and by reason of the impugned

Judgment and Order given by the Labour Court, all the References were allowed and the Labour Court declared that all the respondent-doctors

were workman'' u/s 2(s) of the Industrial Disputes Act and since retrenchment compensation as contemplated by Section 25(F) of the Industrial

Disputes Act and procedure laid down prior to retrenchment was not followed, the doctors were entitled to be reinstated. However, since the said

respondent-doctors were allowed to have private practice, both in the course of the employment and even after their termination, fifty per cent of

the back wages came to be awarded to the doctors. Even continuity of service was granted by the Labour Court, Solapur in the above

References. Being aggrieved by the said Award of the Labour Court, the present Writ Petitions came to be filed.

5. In large number of matters, this Court has now come across disputes of the above nature. There is no judgment of this Court on the point as to

whether the said doctors, who are employed in hospitals and who are allowed private practice, are entitled to seek protection u/s 2(s) of the

Industrial Disputes Act, 1947. In this case, several judgments were cited before me of various High Courts and the Supreme Court to contend that

the said doctor, even if were allowed to have private practice were certainly entitled to be treated as "workman" u/s 2(s) of the Industrial Disputes

Act, 1947. This discussion is warranted because at the outset, I wish to make clear that in the present case, I am confining this judgment to the

facts of the above Writ Petitions.

6. Before coming to the discussion on the various provisions of the Industrial Disputes Act 1947, and the nature of the duties which the

respondent-doctors were performing in the above hospital, an important position in law is so required to be mentioned. When the matter was

argued before the Labour Court in the present case, the Judgment of the Supreme Court in the case of H.R. Adyanthaya Vs. Sandoz (India) Ltd.,

etc. etc., was not there. The said judgment was delivered on August 11, 1994 in Civil Appeal No. 225/1983. The Supreme Court has now settled

the law with regard to interpretation of the word "workman" as defined u/s 2(s) of the Industrial Disputes Act to say that a person can acquire the

status of a workman u/s 2(s) only if he falls within the first part of Section 2(s) of the Industrial Disputes Act, 1947. He must be employed to do

manual, unskilled ,skilled, technical, operational, clerical or supervisory work for hire or reward. If he fails in any of the above categories in the first

part of Section 2(s), then the Court has to ascertain as to whether he stands excluded by the four exceptions carved out in the latter half of Section

2(s). This position is now settled by the judgment of the Supreme Court in the above case of Sandoz (i) Ltd. Since the present matter was argued

before the Labour Court prior to 1995, the Labour Court has proceeded on the judgments of the Supreme Court as they then prevailed. This fact

is required to be mentioned at the outset because before the Labour Court, the entire emphasis of the Management was that these doctors came

within the category of Head of Department or that they were doing the work of a supervisory nature. On evidence, the Labour Court found that

they did not come within the excepted category and applying the law, as it then stood, the Labour Court rejected the contention of the

Management and declared that the said doctors were "workman" as defined u/s 2(s) of the Industrial Disputes Act, 1947. Both the learned

Advocates have realised the above change in the legal position and the entire argument, therefore, has now come to a very short point, viz whether

respondent-doctors in the above case were doing the work and whether the nature of their duties that they were performing in the above hospital

could be said to be technical in nature as defined u/s 2(s) of the Industrial Disputes Act, 1947.

7. In the present case, at the very outset, therefore, we have to note the following facts which, more or less, apply to all the above respondent-

doctors.

8. Firstly, it may be mentioned that except Dr. Warerkar, who is respondent-doctor in the first Writ Petition No. 3730/1993, the remaining

doctors are part-time doctors in the above hospital. Most of the respondent doctors are MDs in Paediatrics except one respondent-doctor who is

MD in Dermatology. One of the respondent-doctors is appointed as a Psychiatrist. Although Dr. Warerkar is appointed as a full-time doctor in the

hospital, it is not disputed that he is allowed private practice in consultancy. Dr. Kelkar is appointed as a part-time ENT Surgeon. His duty hours

are between 10.00-12.00 a.m. and 4.30-5.30p.m. He is also allowed private practice after duty hours. His salary is Rs. 150/- per month plus

percentage on operation case private paying blocks of the hospital. In all above matters, beds are to be assigned exclusively by the Management.

The said doctor has got private practice. It is not necessary to give the entire data of each of the doctors who are having private practice and who

are attached to various Institutions and hospitals in Solapur, but broadly it may be mentioned that all the respondent-doctors are having their own

private practice and as stated hereinabove, in respect of the patients which the said doctors recommend to the said hospital and for certain type of

treatment, there is profit sharing between Management and the said Doctors. Dr. Warerkar, is of course, a full time doctor and in the

circumstances, he is required to attend fixed duty hours, but even in the case of part time doctors, the duty hours are fixed. The letter of

appointment itself clearly indicates that they have to work for fixed duty hours. The letter of appointment also indicates the above arrangement and

also that the respondent-doctors are free to have their own practice in consultancy. As stated hereinabove ,before the Labour Court, the

Management submitted that these doctors are performing the work of a supervisory nature and the Labour Court found that since they were not

doing the work of supervisory nature, they ispo facto, became workmen u/s 2(s) of the Industrial Disputes Act. Whereas, now as the position

emerges, the law to this extent has changed and the entire effort made by the learned Advocate appearing on behalf of the respondent-doctors was

to show that the said respondent-doctors were performing the work of a technical nature. In this matter, Mr. Gupte, the learned Advocate

appearing on behalf of the respondent-doctors submitted that all the respondent-doctors were doing the work of a technical nature. For this

purpose, he relied upon certain broad features regarding the duties performed by the above doctors. According to Mr. Gupte, learned Advocate

appearing on behalf of the respondent doctors, since the doctors were required to devote full time work 10 during fixed hours, it was one of the

main features which indicated that the were "workman" "@ of the Industrial as defined u/s 2(s) of the Industrial Disputes Act, 1947. Mr. Gupte

contended vehemently that each of the said respondent-doctors were highly qualified and holding degrees in super-specialities.

They were MDs/M.S. and as highly qualified doctors, they had acquired knowledge and skill which skill, they were required to use in performance

of their duties as respondent-doctors. Mr. Gupte strongly urged that the duties which the doctors performed were based on technical skill. Mr.

Gupte contended that in the above circumstances, the work which they performed was of a technical nature. Mr. Gupte contended that acquisition

of a technical skill which was required to be used in the present case was of such a nature that the treatment which the doctors prescribed and the

nursing and the nature of the duties which they perform based on the technical skill and knowledge which they acquired during the course of their

training and in the circumstances, their work was of technical nature as defined u/s 2(s) of the Industrial Disputes Act, 1947. Mr. Gupte further

contended that work of examining and treating patients was of a technical nature. He further contended that once the Court is satisfied that a

doctor performs work of a technical nature during fixed duty hours and as per the directions given by the Management, then the the relationship of

employer and employee is established. Mr. Gupte further contended that under the above circumstances, each of the respondent-doctor was doing

the work of a technical nature and, therefore each of the respondent doctor constituted "workman" as defined u/s 2(s) of the Industrial Disputes

Act, 1947. Mr. Gupte relied upon various judgments of the High Courts to show that each of the respondent-doctors have been declared, under

identical situations, as "workman". In this connection, it may be mentioned that Mr. Gupte relied upon the judgment of the Assam High Court in the

case of Bengal United Tea Company Ltd. Vs. Ram Labhaya and Others, . This was a case of a person being employed as an Assistant Medical

Officer. He was employed in the establishment which had a Tea Estate. His primary duty was to look after the workmen who worked in the

Industry/Tea Estate. At this stage it may be mentioned that in this connection the Assam High Court took the view that a doctor has to possess

knowledge of Human anatomy; that a doctor is required to spend large number of years acquiring this knowledge; that his function includes

diagnosis and prognosis and, therefore ,his work is of a highly technical nature which a layman cannot perform and since a doctor is required to

possess knowledge of a specialised character, it cannot be said that a Medical Officer does not come within the meaning of the word "technical"

as defined u/s 2(s) of the said Act and it cannot he said that his work is not of a technical nature. Under the above circumstances, the High Court

declared that an Assistant Medical Officer of a Tea Estate would be a "workman" as defined u/s 2(s) of the Industrial Disputes Act, 1947. A

similar view was also taken by the Judgment of the Gujarat High Court in the case of Arun MilLY v. Dr. Trivedi reported in 1976 (32) FLR 323.

In this matter, a doctor was employed once again by an Industrial establishment. He claimed dearness allowance which was rejected. One of the

points which arose before the Gujarat High Court was whether the Settlement between the employer and employee stood attracted, particularly

because Dr. Trivedi had moved the Labour Court u/s 3(c)(2) of the Industrial Disputes Act, 1947, making a claim for certain benefits under the

Settlement which was a Settlement under the Industrial Disputes Act, 1947.

One of the points which arose for determination before the Gujarat High Court was whether the said Dr. Trivedi was doing the work of a technical

nature. As regards the work in general, the Gujarat High Court observed that Medical College required specialised knowledge with regard to

Human anatomy and physiology. It also required knowledge of Chemistry. A Medical Practitioner is expected to diagnose a disease and he is also

expected to know the chemical reaction inside the human body and all this knowledge was of a specialised nature which requires great deal of

study and experience and under the circumstances, the acknowledge of the doctor can purely be considered as technical knowledge and,

therefore, if a Medical Doctor is an employee in an industry to discharge his duties then he can certainly seek protection of the Industrial Disputes

Act and he can claim the status of a "workman" as defined u/s 2(s) of the Industrial Disputes Act, 1947. At this stage it may be mentioned once

again that both the above judgments of the Assam High Court in the case of Bengal United Tea Company and Gujarat High Court in the case of

Dr. Trivedi are based on the footing that the person was employed as a Medical Officer in an Industry. That is not the only point. Essentially when

a doctor is employed as a workman in an industry, his area of operation is very narrow and restricted. A doctor employed in a Tea Estate, as in

the case before the Assam High Court, is required to treat the employee employed in the Industry/Undertaking. In other words, he was rendering

service to the Industry/Undertaking. He was required to look after the Estate and treat the employees who were working in the Industry. In the

present case, that is not so and that makes very big difference and it is for this reason that at the very outset, I clarified that I would like to confine

the decision in this matter to the facts of the present case. When patients are allowed to come to the hospital, as in our case, it cannot be said that

the doctor is rendering services only to an employer who owns an industry or an Undertaking. In fact, he renders service to the Society at large. It

is for this reason that the judgments cited by Mr. Gupte, referred to hereinabove, in the case of Bengal United Tea Co. and Arun Mills have no

application to the point which arises for consideration in this matter. Fundamentally, it may be noted that at this stage itself, a doctor who is

working in a Public Hospital (keeping aside the concept of charity, or otherwise) has a special relationship with the patients. It is a matter of mutual

confidence between the patient and the doctor. The doctor also, in the process, acquires certain status. It is in this context that the Court has to see

whether the relationship between the doctor and the hospital can be said to be a relationship of employer and employee, as defined under the

provisions of the Industrial Disputes Act, 1947. It is not necessary for this Court to go into the dispute purported to be of an Industrial Nature, but

the consequence is required to be noted. In this case itself, the Labour Court has found that the respondent-doctors are workmen and the next

step follows viz : that since there is breach of Section 25F of the Act, reinstatement should be given.

This is further followed by the step as to whether the doctors could be said to be gainfully employed during the pendency of the dispute. These are

only broad features indicated by me to show that it cannot be said that in several matters, no sooner a doctor is employed, he automatically

becomes, per se, a workman as defined u/s 2(s) of the Industrial Disputes Act, 1947. This fact is lost sight of by the Labour Court in this case. In

this case, the Labour Court has relied heavily upon some of the judgments which are also cited by Mr. Gupte before me, but all these judgments

are on the footing that the Medical Officer has been appointed for treating the workmen employed in Industries. They were essentially doing the

work of the Industry for which they were paid salary and such a situation cannot be equated to the facts of the present case. A doctor, who is

allowed private practice; a doctor who is required to work for specified number of hours in the 40 hospital; a Management which assigns certain

number of beds to certain doctors are facts which, of course the Court is required to take into account, but we have to see the facts of the case in

its entirety and the basic touchstone i 45 which is required to be seen is whether the Act 1 was intended to give protection to doctors, who

dementedly have acquired Degrees in super-specialities, can be permitted to seek protection as "workman" as defined u/s 2(s) of the Industrial

Disputes Act, 1947. The various so judgments cited by Mr. Gupte are not on the point which arises for consideration before this Court. At this

stage, I may clarify that a doctor, employed in Government service may also stand on a different footing and I do not wish to say anything about

such cases and that question is required to be decided on the facts of a given case. We are specifically concerned, as stated hereinabove, with the

respondent-doctors in the Public Hospital whose services are terminated, as to whether they can claim reinstatement on the ground that they are

workmen. In this connection, at this stage, it may be mentioned that under the Industrial Disputes Act, the nature of the work alone is not the sole

test. Even in the case of a Medical Sales Representative, a person is required to acquire Educational qualification and technical experience which

he is required to use in the course of his duty as a Medical Sales Representative. However the primary duty of a Medical Sales Representative is

to sell the pharmaceutical products. It is for this reason that the Apex Court has held in the case of Sandoz (India) Ltd. (supra) and also in the case

of Burmah Shell Oil Storage and Distribution Company of India Ltd. Vs. The Burma Shell Management Staff Association and Others, , that the

work of a Medical Representative is not of a technical nature. This is one of the important tests which also applies to the facts of the present case.

Every work of a technical nature which involves technical skill does not give rise to the relationship of employer and employee. In fact, it is the

other way round. It is first required to be proved as to whether there is a relationship of employer and employee and whether in the course of the

work incidental to that relationship, the work done by the employee is of a skilled nature, unskilled nature, technical nature etc. which is required to

be decided.

In the above circumstances, I do not see the relevancy of the judgments of the Assam and Gujarat High Courts to the facts of the present case.

There are other judgments also which Mr. 4, Gupte has relied upon, but none of these judgments expressly touch the point which arises in this case

because those judgments proceed on the basis that the services of the doctor were required for the working of an Industrial employment for the

Industrial Establishments which is not the case in the present matter. As stated hereinabove, a patient, who is an outdoor patient, may consult the

respondent-doctor in his private consultancy Dispensary. The doctor may suggest that the patient should get himself admitted in the hospital. In the

petitioner hospital, the patient may be admitted. The profit sharing may also be there, but that situation has arisen because that outdoor patient has

faith in this particular doctor and because this respondent-doctor has suggested his name and has prescribed a particular treatment which warrants

the patient to be admitted in a particular ward of this hospital that the patient seeks admission. This test, to my mind, is very important in the facts

of our case also. There cannot be a strait jacket test or formula in these matters. It will ultimately depend on the fact of each case.

9. On the other hand, Mr. Godbole, learned counsel appearing on behalf of the petitioner, with equal vehemence, has rightly submitted that the law

has progressed over the years in this country. Mr. Godbole further submitted that the Industrial Disputes Act was never enacted with the idea of

giving a status of "workman" to eminent doctors, physicians, architects or lawyers unless they have been specifically employed for wages to do the

work in the course of employment. Mr. Godbole is right in his submission by way of analogy that these doctors, chartered accountants and other

professionals, who render part time service and who render services in various Institutions at a given point of time and who are not exclusively

employed by a firm for salary also come within the ambit of the rules of membership framed by Institutions like Medical Council of India,

Chartered Accountants Institutions etc. As members of the said Institutions, the said professionals are required to maintain discipline and ethics,

enshrined in the Regulations framed by the Medical Council of India, the Chartered Accountants Institutions etc. They are subjected to disciplinary

jurisdiction of the various Committees/Councils within the ambit of the statutory profession and if, as a general rule, all these professionals are

subjected to jurisdiction of the Labour Court or Industrial Court as "Workman" under the Act, then the Institutions like Medical Council of India,

Chartered Accountants Institution etc. will not be able to exercise disciplinary control over these professionals. I find merit in this submission of Mr.

Godbole. It is not only an argument of fear, but these are the arguments which indicate that, as a general rule, it can never be laid down per se that

all doctors and Medical Officers, no sooner they are employed by Institutions, they become "workman" because they are required to do work for

fixed hours or because they are doing work of a skilled nature.

In the present case, as stated hereinabove, respondents are eminent doctors. They have rendered service to the society which cannot be disputed.

I do not wish to go into the merits of the matter because principally, in this matter, I am not inclined to accept the view of the Labour Court that the

said respondents are "workman" as defined u/s 2(s) of the Industrial Disputes Act, 1947 and if that be the case, then doctors were not entitled to

raise a dispute u/s 10 of the Industrial Disputes Act. In this connection , Mr. Godbole also relied upon the dictionary meaning of the word

professionals"". He als relied upon catena of judgments of the Supreme Court. In the case of Indian Medical Association v. V. P. Shantha & Ors.

reported in , one of the questions which arose before the Apex Court was as to the exact meaning of the words "contract of service" and "contract

for service". It was a matter under the Consumer Protection Act. Another point which arose for determination was whether u/s 2(1)(o), of the said

Act which defines the word "service", whether it excludes service rendered by the doctors. Section 2(1)(o), which is a definition Section, excludes

personal service. A further point which arose before the Supreme Court was the exact meaning of the expression "contract of service" and the

exact meaning of the expression "contract for service." The Supreme court held that rendering services free of charge to all patients would not fall

within the ambit of "service" u/s 2(1)(o) of the Act. Hospitals and Nursing Homes rendering free of charge service, whether Government or non-

Government to everybody availing the service would also not fall within the ambit of "service" u/s 2(1) only because Medical Officers received

emoluments by way of salary from these Sf Hospitals. This is principally on the footing that there is no direct nexus between the payment of salary

to the Medical Officers by the Hospital Administration and the person to whom service is rendered. Before the Supreme Court, it was contended,

interaila, by the doctors that in law, there was a distinction between a profession and occupation and that while a person engaged in an occupation

renders service which falls within lathe ambit of Section 2(1)(o), the service rendered by a person belonging to a profession does not fall within the

ambit of the said Section and, therefore, Medical Practitioners, who belong to Medical profession are not covered by the provision of the

Consumer Protection Act. It was also urged that Medical Practitioners are governed by the provisions of the Indian Medical Council Act. In

Paragraph 20 of the said Judgment, while dealing with the above contention, the Supreme Court has observed, after quoting some English

Judgment and the observation of Scruttom, J. that profession involves idea of an occupation requiring intellectual skill or of manual skill controlled,

as in painting and 25 sculpture or surgery, by the intellectual skill of an operator as distinguished from an occupation which involves production or

sale or arrangement for production or sale of commodities. The line of demarcation may vary from time to 30time, but some of the tests which

demarcate profession from occupation show that they have certain characteristics viz., nature of work which is skilled and specialised and which

intrinsically involves mental faculties more than 35 the manual faculties, distinguish profession from occupation. Similarly, commitment to moral

principals which go beyond honesty are also involved in the case of profession.

Service to the community may even transcend duty to a particular client or patient. Similarly, professional association regulating admission and

upholding of standard of profession through professional conduct also indicate 45 an important characteristic which distinguishes occupation from

profession and last, but not the least, a professional has certain status in the community which, relatively speaking, brings about the distinction

between a profession and so an occupation. Certain obligations are also cast on a professional, as compared to a workman employed in an

Industry or an occupation. In paragraph 22 of the said judgment, the Supreme C has extensively stated, after quoting various authorities and

treatise, that during twentieth century, an increasing number of occupations are seeking and achieving professional status which has fed to blurring

of the features distinguishing professions from other occupations. In the context of law relating to Professional Negligence, some of the authors 10

have accorded professional status to specific occupations like architects. engineers, surveyors, accountants, solicitors, medical practitioners and

insurance brokers. The said judgment also refers to definitions of the word ''profession'' and ''professionals''. It is not necessary to go into in detail.

My endeavour is only to show that it cannot be stated that whenever a doctor is employed in an institution, he becomes a workman u/s 2(s) of the

Industrial Disputes Act 2(only on the ground that he has acquired technical skill over the years which he is utilising in the course of his duty as

doctor in the Institution. This is the error which the Labour Court has committed in the facts and circumstances of this case. These broad features

which distinguish a professional from a person employed in an Industry are also spelt out in detail by the Judgment of the Madras High Court

which, of course, is under the Consumer Protection Act 3(and which brings out a distinction between a person employed in a Hospital and also a

distinction between contract, of personal service and a contract for personal service (See 86 Comp Cas 747 Dr. Subranwnian 3, v. Kumarasamy)

and also the Judgment of the Madras High Court in the case of Dr. Indira India & Ors. re-.740. In the latter stated the various characteristics wh

are not required to he stated, which lay down that a professional service is not a personal service. In view of the above judgments, I find merit in

the contention advanced by Mr. Godbole on behalf of the petitioner-hospital that the respondent-doctors, who were highly qualified doctors and

who performed responsible work, cannot be treated as 4workman'' as defined u/s 2(s) of the Industrial Disputes Act, 1947.

10. Mr. Godbole further pointed out one more relevant aspect of this case. One of the points which arose before the Supreme Court in the case of

Sandoz (I) (supra) was whether Medical Sales Representatives are ''workman'' as defined u/s 2(s) of the Act, 1947. One of the points which

arose for consideration before the Apex Court was whether a Medical Sales Representative is a workman because he is io performing the work of

a technical nature. The Supreme Court placed heavy reliance on the earlier judgment of the Apex Court in Burmah Shell"s case and applying the

said ratio of Burmah Shell"s case (supra) the Supreme Court held that even Medical Representatives are not workmen as defined u/s 2(s) of the

Industrial Disputes Act, 1947 and that they were not doing the work of a technical nature. In the present case, before I go into the ratio of the

judgment of the Supreme Court in Burmah Shell"s case (supra), it may also be mentioned that even a Medical Sales Representative acquires

Degree for qualification. He studies pharmacology. Most of these Medical Sales Representatives are Graduates in Science. They are also required

to sell the drugs by informing the retail sellers as to the composition of the new drug in the market and is work also requires technical skill and

knowledge and still, the Supreme Court has applied the ratio of the judgment in the Burmah Shell"s case and has come to the conclusion that this

work does attract Section 2(s) of the Act, 1947. This analogy also applies to the facts of our case because it was argued vehemently on behalf of

the respondent-doctors that once the work is of a skilled nature which a doctor performs then automatically, he is a "workman". Taking into

account other features of this case, the argument was that because he has acquired skill in his training and that skill is required to be applied while

performing his duty, he automatically becomes a workman as defined u/s 2(s) of the Act, 1947. A Medical Representative also, as stated

hereinabove, acquires skill and knowledge of pharmacology, chemistry etc. He is also required to apply the skill in the course of his duty and yet,

in the judgment of the Supreme Court in the case of Burmah Shell Company v. Management Association (supra) the Supreme Court, while

discussing the above aspect has observed that for an employee in an industry, to be a workman, he must be employed to do skilled or unskilled

work, supervisory work, technical work or clerical work and if the work done by an employee is not of such a nature, he would not he a

workman. One of the categories of workman before the Supreme Court in Burmah Shell"s case (supra) was Sales Representatives. After %

considering the evidence on record and after considering the above tests, the Supreme Court lot has observed that these Sales Representatives

cannot be said to be employed to do clerical work. That they were employed to promote sales of the Company. That their work is to canvass and

obtain orders and in that connection, with the promotion of sales, they make recommendations and selection of agents and dealers and for telling

the customers as to whether they should buy the goods or not. The Supreme Court, after considering the broad tests, came to the conclusion that

the 20 t ing sales cannot be included any the said four classifications.

11. As stated hereinabove, it is not possible to put any particular case in a strait jacket standard. Ultimately, it will depend on the facts of each

case. Applying the above ratio of the judgments Of 30 a the Supreme Court in various matters from time to time, I am of the view that the

respondent-doctors are rendering only professional service to various c institutions, in Solapur including the petitioner hospital . If that is the

touchstone of the matter, then there is no relationship between the parties which attracts and winch entitles the respondent-doctors in the present

case to claim the status of a ''workman'' as defined in Section 2(s) of the Industrial Disputes Act, 1947. As stated above, the object of the Act was

quite different. The object of the Act is to set up a machinery under which industrial disputes could he resolved. It is the object of the said Act to

protect poor sections of the Society. It is to see that employment, which is scarce in 45 our country, is duly protected and it was never thought that

highly qualified medical doctors, esteemed surgeons or paediatricians would he entitled to claim the protection of a welfare a legislation. There are

serious anomalies which I have discussed hereinabove .I wish to make it clear, once again, that this judgment is confined only to the facts of this

case and I do not wish to express any opinion with regard to doctors employed by Government or in respect of doctors employed by private and

industrial Undertakings to render services to their employees. As stated hereinabove, with the progress in our day to day life, the concept of

profession stands extended to large number of occupations which earlier may not be, the case, but that does not mean that conceptually or

otherwise, a professional who renders service to the society in various forms becomes a ''workman'' u/s 2(s) of the Industrial Disputes Act, 1947.

At the cost of repetition, I once again state that in the present case, the relationship between the patient and doctor is not created at the instance of

the hospital. The patient has immense faith and confidence in a particular doctor. The patient has trust and to certain extent, the doctor has a

fiduciary duty towards the patient which concept will be totally obliterated if these doctors are treated as ''workman'' as defined u/s 2(s) of the

Industrial Disputes Act, 1947.

12. Taking into account all the above facts and circumstances of the case, I find merit in all the above Writ Petitions.

13. Accordingly, Rule is made absolute in each of the above Writ Petitions bearing Nos. 3730 of 1993, 3731 of 1993, 3732 of 1993, 3733 of

1993 and 3734 of 1993 in terms of prayer clauses (a) and (b). However, looking to the facts and circumstances of the case, and without

expressing any view on the merits of the matter, only on the question of law, I once again declare that none of the respondent-doctors in the above

Writ Petitions can claim the status of a ''workman'' as defined u/s 2(s) of the Industrial Disputes Act, 1947.

14. However, in the facts and circumstances of the case, there will be no order as to costs.

15. Issuance of certified copy of this Judgment and Order is expedited.