HIGH COURT FOR THE STATE OF TELANGANA

WRIT PETITION No.4020 OF 2004

M/s.ITW Signode India Ltd.,
Rep. by its Group Head (HR)
3rd Floor, Merchant Towers, 5,
Road No.4, Banjara Hills,
Hyderabad.

....Petitioner

VERSUS

P.Lakshminarayanan, S/o.S.Pardhasaradhi Reddy,
Aged: about 36 years,
R/o.H.No.5029, Plot No.87,
Road No.1-E, Krishna Nagar Colony,
Near Phase-I, Housing Board,
Moulali, Hyderabad – 40 and another

... Respondents

DATE OF JUDGMENT PRONOUNCED:25.07.2023

THE HONOURABLE SRI JUSTICE J. SREENIVAS RAO

1.	Whether Reporters of Local newspapers may be allowed to see the Judgments?	Yes/No
2.	Whether the copies of judgment may be marked to Law Reporters/Journals?	Yes/No
3.	Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment?	Yes/No

J. SREENIVAS RAO, J

THE HONOURABLE SRI JUSTICE J. SREENIVAS RAO

+ WRIT PETITION No.4020 OF 2004

% Dated 25.07.2023

M/s.ITW Signode India Ltd.,
Rep. by its Group Head (HR)
3rd Floor, Merchant Towers, 5,
Road No.4, Banjara Hills,
Hyderabad.

....Petitioner

VERSUS

$ P.Lakshminarayanan, S/o.S.Pardhasaradhi Reddy,
Aged: about 36 years,
R/o.H.No.5029, Plot No.87,
Road No.1-E, Krishna Nagar Colony,
Near Phase-I, Housing Board,
Moulali, Hyderabad – 40 and another

... Respondents

! Counsel for Petitioner : Mr.Vivek Jain

^ Counsel for Respondent No.1 : Mr.B.G.Ravinder Reddy

< GIST:

> HEAD NOTE:

? CITATIONS:

1. (1994) 5 SCC 737
2. AIR 2004 SC 4179
3. (2015) 7 SCC 263
4. (1983) 4 SCC 214
5. 1999 LLR 729

HON'BLE SRI JUSTICE J. SREENIVAS RAO

WRIT PETITION No.4020 OF 2004

ORDER:

This writ petition is filed for seeking writ of mandamus declaring the Award passed by Industrial Tribunal – II at Hyderabad – respondent No.2 in I.D.No.70 of 2002 dated 03.12.2003 as illegal, arbitrary and unenforceable under law.

2. Heard Sri Koka Satyanarayana Rao, learned counsel, representing Sri Vivek Jain, learned counsel for the petitioner, and Sri B.Srinivasulu, learned counsel, representing Sri B.G.Ravinder Reddy, learned counsel appearing for respondent No.1.

3. **The brief facts of the case are that:**

3.1. The petitioner is a public limited company and dealing with packing of consumables. Respondent No.1 was appointed in the petitioner company as Production Executive on 16.08.1995 on a monthly wage of Rs.4,950/-. On 10.04.1999, the petitioner company terminated the services of respondent No.1. Respondent No.1 has addressed a letter to the petitioner company permitting him to enter into factory and also to do his

work, but the petitioner company has not considered his request. On 24.07.1999, the General Manager of the petitioner company directed respondent No.1 to report at Pashamylaram on 26.07.1999 and accordingly he reported for duty on 26.07.1999, 27.07.1999 and 28.07.1999, but the petitioner company not allowed him to discharge his duties on the ground that his services were already terminated in the month of April, 1999. On 02.08.1999, respondent No.1 made an appeal to the Managing Director of the petitioner company. On 05.08.1999 respondent No.1 received a letter from the General Manager of the petitioner company, wherein it was mentioned that he was already terminated on 10.04.1999 itself and his request cannot be considered. On 10.12.1999 respondent No.1 received a letter along with cheque for Rs.38,783/- towards terminal benefits. Thereafter respondent No.1 submitted several representations to the petitioner company requesting them to consider his case and permit him to continue the services. When petitioner company failed to consider his request, respondent No.1 raised a dispute by invoking the provisions of Section 2-A(2) of the Industrial Disputes Act, 1947 (for short, 'the Act') *vide* I.D.No.105 of 2000 on the file of the Industrial Tribunal-cum-Labour Court-I at

Hyderabad. Subsequently, the said case was transferred to Industrial Tribunal-II, Hyderabad and the same was re-numbered as I.D.No.70 of 2002, wherein respondent No.1 sought relief of declaring the action of the petitioner company in terminating him from the services through oral termination order dated 10.04.1999 as illegal and to set aside the same and consequently direct the petitioner company to reinstate him into service with continuity of service, with back wages and with all other attendant benefits.

3.2. In the said I.D., the petitioner company filed counter contending that respondent No.1 is not a workman, as such the Industrial Tribunal is not having jurisdiction to entertain the dispute raised by him. It is further stated that the petitioner company rightly terminated the services of respondent No.1 and he is not entitled the relief as sought in the I.D.

3.3. The Industrial Tribunal taking into consideration of oral and documentary evidence on record and after hearing both the parties passed the impugned Award dated 03.12.2003 directing the petitioner company to reinstate respondent No.1 into service with continuity of service and pay 50% back wages.

3.4. Aggrieved by the same, the petitioner company filed the present writ petition.

4. Learned counsel for the petitioner company contended that respondent No.1 is not a workman as defined under Section 2(s) of the Act, as such he is not entitled to raise a dispute before the Industrial Tribunal invoking the provisions of Section 2-A(2) of the Act. He further contended that respondent No.1 was discharged his services as Production Executive under the capacity of supervisory and managerial powers and he does not fall within the meaning of workman. Hence, the dispute raised by respondent No.1 before the Industrial Tribunal is not maintainable under law and respondent No.2 Industrial Tribunal is not having jurisdiction to entertain the said dispute. He further contended that respondent No.1 has not produced any iota of evidence that he comes within the definition of workman, on the other hand the Industrial Tribunal shifted the burden against the petitioner and the same is contrary to law.

4.1. During the course of hearing, learned counsel for the petitioner company also submits that pursuant to the interim order granted by this Court dated 05.03.2004 in

W.P.M.P.No.5289 of 2004, the petitioner company is paid an amount of Rs.11,24,540/- as on March, 2016 towards wages under Section 17-B of the Act to respondent No.1.

4.2. In support of his contention, he relied upon the following judgment:

1. **H.R. Adyanthaya and others vs. Sandoz (India) Ltd. And others**[1].
2. **Mukesh K. Tripathi v. Sr. Divisional Manager, L.I.C. and others**[2]**.**

5. Per contra, learned counsel appearing for respondent No.1 submits that the Industrial Tribunal after considering the contentions of both the parties and oral and documentary evidence on record and also after hearing the parties passed impugned Award by giving specific findings holding that the dispute raised by respondent No.1 under Section 2-A (2) of the Act is maintainable, and oral termination order dated 10.04.1999 passed by the petitioner company is contrary to law, and directed the petitioner company to reinstate respondent No.1 into service with continuity of service and 50% back wages.

[1] (1994) 5 SCC 737
[2] AIR 2004 SC 4179

There is no illegality or irregularity in the impugned Award passed by the Industrial Tribunal.

6. Having considered the rival submissions made by the respective parties and upon perusal of the material available on record, the following issues arise for consideration:

1. Whether the dispute raised by respondent No.1 invoking the provision of Section 2-A(2) of the Act, 1947 is maintainable under law?

2. Whether the petitioner is entitled to the relief as sought in the present writ petition?

POINT NOs.1 AND 2 :

7. As per the pleadings and the material evidence on record, it reveals fact that respondent No.1 was appointed in the petitioner's company as 'Executive Production' on 16.08.1995 on a monthly wage of Rs.4,950/- and the petitioner company terminated his services on 10.04.1999 orally. Thereafter respondent No.1 raised a dispute invoking the provisions of Section 2-A(2) of the Act before the Industrial Tribunal. It further reveals from the record that respondent No.1 was examined as WW.1 and on his behalf Exs.W.1 to W.21

documents were marked. On behalf of the petitioner company, MWs.1 and 2 were examined and Exs.M.1 to M.9 and Exs.W.10 to 12 documents were marked.

8. The specific contention of the learned counsel for the petitioner is that the Industrial Tribunal without properly considering the documentary evidence on record and pleadings of the petitioner company and the principle laid down by the Hon'ble Apex Court in ***H.R. Adyanthaya*** (*supra*), passed the impugned Award.

9. The **core** issue involved in the present writ petition is that whether respondent No.1 comes within the definition of *"workman"* as defined under Section 2(s) of the Act, and the dispute raised by him invoking the provisions of the Act, is maintainable before the Industrial Tribunal. According to the documentary evidence adduced by the parties, it clearly reveals that respondent No.1 was appointed in the petitioner company as 'Executive Production' on 16.08.1995 on monthly wage of Rs.4,950/- and he discharged his services in the capacity of supervisory and managerial powers. It is very much relevant to extract the provision of Section 2(s) of the Act, which reads as follows:

"workman" means any person (including an apprentice)employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, dischasrge or retrenchment has led to that dispute, but does not include any such person

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

10. In the instant case, respondent No.1 himself admitted before Industrial Tribunal that he was appointed in the petitioner company as 'Executive Production' on monthly wages of Rs.4,950/- and as on the date of his termination his wages were Rs.8,894/-. The petitioner company also specifically pleaded in

the counter before the Industrial Tribunal that respondent No.1 was appointed in the cadre of Executive Production and he was entrusted the duties as supervisory, administrative, managerial and financial powers from the date of appointment i.e., 16.08.1995. In view of the same as per provisions of section 2(s) of the Act, respondent No.1 will not fall within the definition of the "workmen".

11. In ***H.R. Adyanthaya*** (*supra*), the Hon'ble Apex Court (F.B.) held that:

> 23.However, the decisions in the later cases, viz., S.K. Verma, Delton Cable, and Ciba Geigy cases did not notice the earlier decisions in May & Baker, WIMC0 and Burmah Shell cases and the very same contention, viz., if a person did not fall within any of the categories of manual, clerical, supervisory or technical, he would qualify to be workman merely because he is not covered by either of the four exceptions to the definition, was canvassed and though negatived in earlier decisions, was accepted. Further, in those cases the Development Officer of the LIC, the Security Inspector at the gate of the factory and Stenographer-cum- Accountant respectively, were held to be workmen on the facts of those cases. It is the decision of this Court in A. Sundarambal case which pointed out that the law laid down in May and Baker case 1 was still good and was not in terms disowned.

12. In ***Mukesh K.Tripathi*** (*supra*), the Hon'ble Apex Court held

that:

16. A Division Bench of this Court, however, without noticing the aforementioned binding precedent, in S.K. Verma (supra) held that the duties and obligations of a Development Officer of Life Insurance Corporation of India being neither managerial nor supervisory in nature, he must be held to be a workman. Correctness of S.K. Verma (supra) came up for consideration before a Constitution Bench of this Court in H.R. Adyanthaya (supra). Referring to this Court's earlier decisions in May and Baker (supra), Western India Match Co. (supra) and Burmah Shell Oil Storage (supra), it was observed that as in S.K. Verma (supra) the binding precedents were not noticed and furthermore in view of the fact that no finding was given by the court as to whether the Development Officer was doing clerical or technical work and admittedly not doing any manual work, the same had been rendered per incuriam.

17. Considering the decisions in May and Baker (supra), Western India Match Co. (supra), Burmah Shell Oil Storage (supra) as also S.K. Verma (supra) and other decisions following the same, this Court in H.R. Adyanthaya (supra) observed that "However, the decisions in the later cases, viz., S. K. Verma , Delton cable, and Ciba Geigy cases did not notice the earlier decisions in May & Baker WIMCO , and Burmah Shell cases and the very same contention, viz., if a person did not fall within any of the categories of manual, clerical, supervisory or technical, he would qualify to be workman merely because he is not covered by either of the four exceptions to the definition, was canvassed and though negatived in earlier decisions, was accepted. Further, in those cases the Development Officer of the LIC, the Security Inspector at the gate of the factory and Stenographer-cum-Accountant respectively, were held to be workmen on the facts of those cases. It is the decision of this Court in A. Sundarambal case which pointed out that the law laid down in May and Baker case was still good and was not in terms disowned."

18. The Constitution Bench although noticed the distinct cleavage of opinion in two lines of cases but held: "_x0005_These decisions are also based on the facts found in those cases. They have, therefore, to be confined to those facts. Hence the position in law as it obtains today is that a person to be a workman under the ID Act must be employed to do the work of any of the categories, viz., manual, unskilled, skilled, technical, operational, clerical or

> supervisory. It is not enough that he is not covered by either of the four exceptions to the definition. We reiterate the said interpretation.
>
> 19. The said reasoning's are, therefore, supplemental to the ones recorded earlier viz.: (i) They were rendered per incurium; and (ii) May and Baker (supra) is still a good law.
>
> 20. Once the ratio of May and Baker (supra) and other decisions following the same had been reiterated despite observations made to the effect that S.K. Verma (supra) and other decisions following the same were rendered on the facts of that case, we are of the opinion that this Court had approved the reasoning's of May and Baker (supra) and subsequent decisions in preference to S.K. Verma (supra).
>
> 24. From a perusal of the award dated 28.5.1996 of the Tribunal, it does not appear that the Appellant herein had adduced any evidence whatsoever as regard the nature of his duties so as to establish that he had performed any skilled, unskilled, manual, technical or operational duties. The offer of appointment dated 16.7.1987 read with the Scheme clearly proved that he was appointed as an apprentice and not to do any skilled, unskilled, manual, technical or operational job. The onus was on the Appellant to prove that he is a workman. He failed to prove the same. Furthermore, the duties and obligations of a Development Officer of the Corporation by no stretch of imagination can be held to be performed by an apprentice.

13. It is very much relevant to mention here that in **CHAUHARYA TRIPATHI & ORS. VERSUS L.I.C.OF INDIA & ORS.**[3], the Hon'ble Apex Court relying upon the above said judgments held that:

> 8. It is submitted by Mr. Kailash Vasdev, learned senior counsel, that the said decision was considered by the Constitution Bench in H.R. Adhyanthya & Ors. vs. Sandoz (India) Ltd. & Ors.5, as the larger Bench was addressing the controversy, whether the medical 5(1995) 5 SCC 737 representatives as they are commonly known would be workmen according to the definition of workman under Section 2(s) of the Act. The larger Bench analyzing the

[3](2015)7SCC263

purport of the said dictionary clause and various other aspects wherein the meaning has been attributed and ascribed to workmen and further taking note of the authorities in May & Baker (India) Ltd. vs. Workmen6; Western India Match Co. Ltd. vs. Workmen7; and Burmah Shell Oil Storage and Distribution Co. of India Ltd. vs. Burmah Shell Management Staff Association8 and analysing the scheme of the Act ruled thus in S.K verma case as stated in para 13 of the case.

13.“ In S.K. Verma v. Mahesh Chandra, the was whether Development Officers of the Life Insurance Corporation of India (LIC) were workmen. The dispute arose on account of the dismissal of the appellant Development Officer w.e.f. 8-2-1969. The Court noticed that the change in the definition of workman brought about by the Amending Act 36 of 1956 which, as stated above, added to the originally enacted definition, two more categories of employees, viz., those doing 'supervisory' and 'technical' work. The three-Judge Bench of this Court did not refer to the earlier decisions in May & Baker1, WIMCO and Burmah Shell cases. The Bench only referred to the decision of this Court in Workmen v. Indian Standards Institution5 where while considering whether ISI was an 'industry' or not, it was held that since the ID Act was a legislation intended to bring about peace and harmony between management and labour in an 'industry', the test must be so applied as to give the 6 AIR 1967 SC 678 7 AIR 1964 SC 472 8(1970) 3 SCC 378 widest possible connotation to the term 'industry' and, therefore, a broad and liberal and not a rigid and doctrinaire approach should be adopted to determine whether a particular concern was an industry or not. The Court, therefore, held that to decide the question whether the Development Officers in the LIC were workmen or not, it should adopt a pragmatic and not a pedantic approach and consider the broad question as to on which side of the line the workman fell, viz., labour or management, and then to consider whether there were any good reasons for moving them over from one side to the other. The Court then noticed that the LIC Staff Regulations classified the staff into four categories, viz., (i) Officers, (ii) Development Officers, (iii) Supervisors and Clerical Staff, and (iv) Subordinate Staff. The Court pointed out that Development Officers were classified separately both from Officers on the one hand and Supervisors and Clerical Staff on the other and that they as well as Class III and Class IV staff other than Superintendents were placed on par inasmuch as their appointing and disciplinary authority was the Divisional Manager whereas

that of Officers was Zonal Manager. The Court also referred to their scales of pay and pointed out that the appellation 'Development Officer' was no more than a glorified designation. The Court then referred to the nature of duties of the Development Officers and pointed out that a Development Officer was to be a whole-time employee and that his operations were to be restricted to a defined area and that he was liable to be transferred. He had no authority whatsoever to bind the Corporation in any way. His principal duty appeared to be to organise and develop the business of the Corporation in the area allotted to him, and for that purpose, to recruit active and reliable agents, to train them, to canvass new business and to render post- sale services to policyholders. He was expected to assist and inspire the agents. Even so, he had not the authority either to appoint them or to take disciplinary action against them. He did not even supervise the work of the agents though he was required to train them and assist them. He was to be a friend, philosopher and guide of the agents working within his jurisdiction and no more. He was expected to "stimulate and excite" the agents to work while exercising no administrative control over them. The agents were not his subordinates. He had no subordinate staff working under him. The Court, therefore, held that it was clear that the Development Officer could not by any stretch of imagination be said to be engaged in any administrative or managerial work and, therefore, he was a workman within the meaning of the ID Act. Accordingly, the order of the Industrial Tribunal and the judgment of the High Court holding that he was not a workman were set aside. As has been pointed out above, this decision did not refer to the earlier three decisions in May & Bakerl, WIMCO2 and Burmah Shell3 cases. and obviously proceeded on the basis that if an employee did not come within the four exceptions to the definition, he should be held to be a workman. This basis was in terms considered and rejected in Buramah Shell case3 by a Coordinate Bench of three Judges. Further no finding is given by the Court whether the Development Officer was doing clerical or technical work. He was admittedly not doing manual work. We may have, therefore, to treat this decision as per incuriam."

9. We have quoted in extenso as the Constitution Bench has declared the pronouncement in S.K. Verma's case as per incuriam. At this juncture, it is condign to note the position in Mukesh K. Tripathi (supra) which has been rendered by the three-Judge Bench

that has been placed reliance upon by the High Court while deciding the writ petition. In Mukesh K. Tripathi's case, the question arose whether the appellant, who was appointed as Apprentice Development Officer, could be treated as a workman. While dealing with the said question, the three-Judge Bench referred to earlier decisions and the Constitution Bench decision in H.R. Adhyanthya (supra) and opined that:-

> "21. Once the ratio of May and Baker (supra) and other decisions following the same had been reiterated despite observations made to the effect that S.K. Verma (supra) and other decisions following the same were rendered on the facts of that case, we are of the opinion that this Court had approved the reasonings of May and Baker (supra) and subsequent decisions in preference to S.K. Verma (supra).
>
> 22. The Constitution Bench further took notice of the subsequent amendment in the definition of 'workman' and held that even the Legislature impliedly did not accept the said interpretation of this Court in S.K. Verma (supra) and other decisions.
>
> 23. It may be true, as has been submitted by Ms. Jaisingh, that S.K. Verma (supra) has not been expressly overruled in H.R. Adyanthaya (supra) but once the said decision has been held to have been rendered per incuriam, it cannot be said to have laid down a good law. This Court is bound by the decision of the Constitution Bench."

16. As we find, the said judgment has been rendered in ignorance of the ratio laid down by the Constitution Bench in H.R. Adhyanthya (supra) and also the principle stated by the three-Judge Bench in Mukesh K. Tripathi (supra) that the decision in S.K. Verma (supra) is not a precedent, and hence, we are compelled to hold that the pronouncement in R. Suresh (supra) is per incuriam. We say so on the basis of the decisions rendered in A.R. Antulay v. R.S. Nayak11, Punjab Land Development & Reclamation Corpn. Ltd. v. Labour Court12, State of U.P. v. Synthetics and Chemicals Ltd. and Siddharam Satlingappa Mhetre v. state of Maharashtra

17. In view of the aforesaid analysis, we conclude and hold that the development officers working in the LIC are not 'workmen' under Section 2(s) of the Act and accordingly we do not find any flaw in the judgment rendered by the High Court.

14. Hon'ble Apex Court in the above said judgements specifically held that the persons who are discharging the duties at the level of the executive or supervisory cadre and technical or managerial powers will not come within the definition of workman as defined under section 2(s) of the Act and also held that the principle laid down in **S.K.Verma vs Mahesh Chandra And Another**[4] is not a precedent and per incuriam. Whereas in case on hand the Industrial tribunal passed the impunged award relying upon the ***S.K.Verma*** (supra) and **Sunita B. Vatsaraj vs. Karnataka Bank Ltd., and another**[5] especially the principle laid down in said judgments were declared as a per incuriam by the constitutional bench in ***H.R. Adyanthaya and others*** (supra).

15. It is very much relevant to mention here that as per the provisions of sub-section 4 of section 2 of the Act, who, being employed in a supervisory capacity, draws wages upto 1,600/- per mensem or exercises either by the nature of the duties attached to the office or by reasons of the powers vested in him, functions mainly of a managerial nature, will come within the definition of workmen. In the present case, respondent No.1 was appointed as a executive production and

[4] (1983) 4 SCC 214
[5] 1999 LLR 729

discharging the functions of an executive and supervisory nature and as on the date of his termination, he was drawing wages an amount of Rs.8,892/- per month. Therefore, respondent No.1 does not fall within the definition of "workman" as mentioned in the provisions of section 2 (s) (iv) of the Act. It is also relevant to mention that the amendment provisions of section 2(s) of the Act came into force w.e.f 15.09.2010 which reads as follows: "a person who is in supervisory capacity draws wages exceeding upto Rs.10,000/- per month comes within the definition of workmen" the said amendment is not applicable to the present case on the sole ground that the petitioner company terminated the services on 10.04.1999 of the respondent No.1 and he raised a dispute before the Labour Court vide ID No. 70/2002 prior to the amended act came into the force.

16. In view of the forgoing reasons as well as the law laid down by the Hon'ble Apex Court and as per the provisions of the Act, 1947, respondent No.1 does not come within the definition of "workman" as defined under section 2(s) of the Act. Having regard to above analysis of facts and law the impugned Award passed by the Industrial Tribunal dated 03.12.2003 in I.D.No.70 of 2002 is liable to be set aside, accordingly, set aside.

17. In the result, the writ petition is allowed, accordingly. No order as to costs.

Miscellaneous applications, if any pending, shall stand closed.

J. SREENIVAS RAO, J

Date : 25.07.2023

mar
L.R. Copy to be marked – Yes.