HIGH COURT OF MADHYA PRADESH : BENCH AT INDORE

D.B.: Hon'ble Shri P.K. Jaiswal
Hon'ble Shri Virender Singh, JJ.

Writ Petition No.5289/2016

Sun Pharmaceuticals (India) Limited
Versus
Ram Singh Nayak s/o Nannuram Nayak

Writ Petition No.5290/2016

Sun Pharmaceuticals (India) Limited
Versus
Devilal s/o Daryav Singh Parmar

Writ Petition No.5291/2016

Sun Pharmaceuticals (India) Limited
Versus
Heeralal s/o Cheda Lal Gaud

Writ Petition No.5292/2016

Sun Pharmaceuticals (India) Limited
Versus
Shiv Narayan s/o Ramlal Saurashtri

Writ Petition No.5293/2016

Sun Pharmaceuticals (India) Limited
Versus
Mohan Chouhan s/o Kanhaiyalal Chouhan

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Shri Girish Patwardhan, learned counsel for the petitioner.
Shri Braj Mohan Gehlod, learned counsel along with Shri Gopal Pawar, learned counsel for the respondent.

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O R D E R
(Passed on this 27th day of September, 2017)

Per P.K. Jaiswal, J.

As common question of law and facts are involved in these five writ petitions, therefore, the writ petitions were heard analogously and are being disposed of by this common order. For the sake of convenience, facts are taken from Writ Petition No.5289/2016.

2. By this writ petition under Article 227 of the Constitution of India, the petitioner is challenging order dated 02.02.2016 (Annexure P/12) passed by the Madhya Pradesh Industrial Court, Indore in five appeals [CA No.29/MPIR/2014 to CA No.33/MPIR/2014] filed by the respondent – employee under Section 65 of the Madhya Pradesh Industrial Relations Act, 1960 (herein after referred to as "the Act"), whereby the learned Industrial Court allowed all the appeals and gave a finding that the respondents / employees worked more than 240 days in preceding year of their termination, therefore, their termination by oral orders amounts to illegal retrenchment, as no retrenchment compensation was paid to them, and therefore, they are entitled to reinstatement in service and are also liable to be treated as permanent employee from the date of their termination and directed the petitioner to reinstate them in House Keeping Department as permanent employee with 50% back wages.

3. Facts of the case are that respondent (Ram Singh Nayak in Writ Petition No.5289/2016) had filed an application under Sections 31 (3), 61 and 62 of the Act, contending *inter alia* that he was working in House Keeping Department of the petitioner – Ranbaxy Laboratories Limited, Dewas since 01.09.1995. In this bunch of writ petitions, respondents are Devilal, Mohan Chouhan, Ram Singh, Heeralal and Shiv Narayan were working since 03.11.1997, 07.09.1995, 01.09.1995, 01.04.1995 and 01.04.1995 respectively i.e. from last 8-10 years. Their services were terminat-

ed by oral orders. During their employment, they Members of Employees' State Insurance Scheme and their provident fund contribution was regularly deducted from their salary by Ranbaxy Provident Fund Trust. It is also pleaded that they were working continuously from 1995 / 1997 to 16.06.2005 and thereby they have already completed more than 240 days in a calendar year and they are liable to be classified as "permanent employee". Their termination amounts to illegal retrenchment as they were not given any notice for one month or wages in lieu of that notice and they were also not paid any retrenchment compensation. They prayed that they be declared as "permanent employees" and be given all consequential benefits along with relief of back wages.

4. The case of the petitioner before the Labour Court was that the respondents were never appointed by them in Housing Keeping Department, therefore, they were never employees of the petitioner. They also denied that they were Members of Employees' State Insurance Scheme or Employees' Provident Fund Scheme. The petitioner came with specific case that the respondents were employees of Contractor Ishwar Singh Chawda and they were working in factory as employees of the contractor, and therefore, there was no relationship of Master and Servant between them. It is further pleaded that before filing these cases, they had filed an application under Section 31 (3) of the Act. During pendency of those cases, they themselves filed application to the effect that they are not interested in prosecuting cases further on

the basis of compromise and they have already got respective amount from their employer M/s. Shivagya Enterprises, Dewas. On the basis of the aforesaid, their earlier applications were rejected on 09.01.2006.

5. Labour Court had rejected applications on 22.09.2010 and 09.11.2010 respectively. Appeals against the aforesaid order were preferred before the learned Industrial Court. The learned Industrial Court remanded the matter to the Labour Court by order dated 28.02.2012, with a direction for providing further opportunity of being heard to both parties and for passing specific order on each issue framed in the cases.

6. Thereafter, Labour Court provided opportunity to both the parties of being heard and passed order dated 22.09.2010 dismissing the claim of the respondent.

7. The learned Industrial Court, after appreciating the oral and documentary evidence on record, came to the conclusion that in the earlier round of litigation, prayer for simple withdrawal of the case was made. In the previous litigation, the contractor was not a party nor contractor has entered into compromise with the employees. After considering the oral and documentary evidence, learned Industrial Court came to the conclusion that provident fund contribution was regularly deducted from salaries of the employees. The petitioner deliberately came with plea that it has no record. The learned Industrial Court has drawn an adverse inference against the petitioner in regard to service record of the respondents and held that the employees have dis-

charged their onus of proving the fact that they worked more than 240 days in Housing Keeping Department of petitioner factory in preceding year of their termination and the petitioner failed to discharge its onus to dis-entitle them to be classified or reinstated and tried to camouflage the facts by introducing contractor M/s. Shivagya Enterprises later on, after withdrawal of previous cases and gave following finding in paragraphs No.11,12, 13, 15, 16, 17 and 18 of order dated 02.02.2016 (Annexure P/12) which reads, as under: -

> "11. Ishwar Singh Chadwa, DW 1, witness produced on behalf of respondent in each case, deposed that previously appellants had filed applications before Labour Court for classification and they withdrew their cases by filing applications along with affidavits. He filed proceeding of Labour Court Ex.D-1 and application Ex.D-2 in regard to withdrawal of case in each case, which were submitted by applicants in their respective previous cases. In cross-examination, he specifically admitted that he was not a party in previous cases. He further admitted that there was no compromise entered into between him and appellants.
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> 12. Vinod Kumar Mishra, DW 2, Senior Manager, H.R., witness produced on behalf of respondent in each case, deposed that previous cases were terminated on the basis of compromise entered into between applicants and respondent Ranbaxy Laboratories Limited. He further deposed that appellants executed receipts wherein they specifically stated that they have received amounts of wages and they resolve their dispute in regard to reinstatement, back wages and re-employment. In cross-examination, he admitted that Contractor Ishwar Singh Chadwa was not a party in previous cases.
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> 13. On perusal of impugned orders passed by Labour Court, I find specially in para 46 that Labour Court has jumped into the conclusion, on the basis of admission of Devilal, that respondent has not issued any appointment letter in his

favour and on the basis of documents Ex.D-1 to Ex.D-3, which are muster rolls of Shivagya Enterprises, Labour Court has found that appellant was not employee of respondent but he was employees of Contractor. Same conclusion has been drawn regarding other applicants. Thereafter, while discussing issue No.6 in appellant Devilal's case and issue No.5 in other appellants' cases, in paras 61 to 64 of impugned order, Labour Court is of the opinion that on the basis of Ex.P-1C, copy of identity card issued by Employees' State Insurance Corporation regarding membership to each applicant, and Ex.P-2C to Ex.P-6C receipts / slips of provident fund contribution deposited in Ranbaxy Employees' Provident Fund Trust, Devilal and other appellants were employees of respondent Ranbaxy Laboratories Limited from the date of their appointments but since they did not produce appointment letters or any other legal document, therefore, it would be presumed that they were working under contractor and ultimately applications of appellants / applicants have been rejected.

15. In these cases also, appellants came with a plea that respondent never issued appointment orders in their favour. In aforesaid circumstances, Labour Court failed to appreciate the fact that how they could produce appointment order or termination order. In these circumstances, documents Exs. P-1C to P-7C produced before the Labour Court are valuable documentary evidence and thereby appellants / applicants have discharged their initial onus in regard to the fact that without rendering any service by them and without paying any wages to them how provident fund contribution from the date of their appointments till the year 2003 was deducted from their salaries by Ranbaxy Provident Fund Trust. As mentioned above, by producing documents, appellants / applicants discharged their initial onus and created a high degree of probability so as to shift the onus on respondent. Now it was for respondent employer to discharge its onus and explain circumstances that how Ranbaxy Provident Fund Trust issued receipts about provident fund contribution of appellants, but it did not discharge such burden. On the contrary, respondent tried to make a case that appellants were employees of contractor.

One more special aspect of these cases was that if appellants / applicants were not employees of respondent, then why Ranbaxy Laboratories Limited entered into compromise with each applicant. Obviously, respondent tried to camouflage the facts and introduce Ishwar Singh Chadwa, DW 1, Contractor, with a plea that he paid amount to each appellant. It is on record that muster rolls produced on behalf of contractor is of the year 2004 and onward, which shows that contractor was intentionally introduced later on. For the period 1995 / 1997 to 2003 not a single document of contractor has been produced by respondent. Further despite opportunity, respondent has not produced any compromise entered into between parties before Labour Court. Photocopy of agreement between respondent and contractor is on record of Devilal's case, which shows that contractor came into picture on 1st day of September, 2004. Further by applying the doctrine of lifting of veil in Industrial Jurisprudence and upon lifting of the veil appellants had succeeded to prove that they worked for more than 240 days and if any payment said to have been made by the contractor, same was mere camouflage which could be easily pierced on the basis of documentary evidence and relationship of employees and employer between appellants and respondent easily visualized.

16. Learned counsel appearing on behalf of respondent has made strong emphasis on the fact of compromise which was entered into between appellants and respondent. He invited my attention to some documents exhibited on record as Ex.D-1 to Ex.D-4 (as per appellant Heeralal's case). Mere perusal of Ex.D-1, which is an order-sheet written by Labour Court, it shows that applicant had made a prayer for simple withdrawal of case. In affidavit Ex.D-3, it is stated that there is no dispute remained regarding reinstatement or any amount between the parties and applicant does not want to proceed with case. Ex.D-4 is receipt of amount received by applicant. On minutely examining this receipt said to have been executed by respective appellant, I find that intentionally words "मेरे ठेकेदार शिवाज्ञा इंटरप्राइजेस" have been added. It is admitted on record that Contractor Shivagya Enterprises was not a party to previous

litigations, therefore, it cannot be said that contractor entered into compromise with appellants. It shows that amount paid to each appellant / applicant on account of wages was meager, that is for few months. It is also written in this receipt that after receiving amount by applicant there remains no dispute regarding classification, reinstatement etc. to applicant with respondent. Normally in receipt such type of words are not written, but it appears that intentionally such type of words have been written in the aforesaid document. Further how could it be expected from appellants labourers that they entered into compromise with respondent for such a meager amount ranging from Rs.29,000/- to Rs.53,000/- for full payment of whole file. Such circumstance shows that receipts were prepared to camouflage real fact of relationship of employer and employees between them. Further respondent failed to produce any compromise before Labour Court despite opportunity. It is admitted on record that cases were remanded back to the Labour Court by this Court after making observations that because defendant came with plea that there is compromise between parties but none has produced compromise. After remand respondent failed to produce any such compromise before the Labour Court. In these circumstances, it is not a case based on written compromise but it appears that on making some understanding with appellants / applicants that they would be continued in their service, they agreed to withdraw their previous cases. In this circumstance, principle of estoppal is not applicable to the facts of these cases.

17. As mentioned in beginning that plea of respondent in regard to documentary evidence was that there is no relationship of master and servant between respondent and applicants and it has no record regarding their service. In these circumstances, if appellants did not try to compel respondent to produce service record, it could not be said that appellants failed to prove their cases. On the contrary, considering the aforesaid pleading of respondent and evidence available on record that provident fund contribution was regularly deducted from salaries of appellants, it shows that respondent mischievously and deliberately came with plea that it has no record. In

these circumstances Court can draw adverse inference against respondent in regard to service record of appellants / applicants. As discussed herein above, appellants have discharged their onus of proving the fact that they worked more than 240 days in House Keeping Department of respondent factory in preceding year of their termination and respondent failed to discharge its onus to dis-entitle appellants to be classified or reinstated and tried to camouflage the facts by introducing Contractor Shivagya Enterprises later on after withdrawal of previous cases. This Court is of the view that Labour Court has committed illegality in dismissing applications of applicants / appellants.

18. Resultantly, these appeals are allowed. Impugned orders passed by Labour Court are set aside. It is proved on record that appellants / applicants worked more than 240 days in preceding year of their termination, therefore, their termination by oral orders amount to illegal retrenchment. Respondent has not paid any retrenchment compensation to them. In these circumstances, they are entitled to reinstatement in service and are liable to be treated as permanent employee from the date of their termination. Respondent is, therefore, directed to reinstate appellants / applicants in House Keeping Department as permanent employees from the date of their termination. So far as back wages is concerned, applicant Devilal has fairly admitted that after termination of his service, he was working some where else for his livelihood, which shows that he was not unemployed. So far as employment of other appellants / applicants after their termination from respondent is concerned, it is a matter of common experience that if they were not working in respondent factory, obviously they would have been working some where else for their livelihood. No one can remain sitting idle for such a long time. In the facts and circumstances of the case, they are entitled to 50 per cent back wages from respondent from the date of their termination. It is made clear that amount, if any, paid by respondent to each appellant / applicant, will be adjusted at the time of payment of back wages to them. Parties shall bear their own costs."

8. Shri G.S. Patwardhan, learned counsel for the petitioner has submitted that the petitioner had never stated that the respondents were its regular employees; hence, there was no reason to have any appointment letter. Petitioner's regular or on role employee / workmen are required to punch / record his / her attendance by way of electronic system whereas the respondents' attendance was maintained by the contractor of the petitioner. In fact, the respondents were the employees of the contractor and once compromise was arrived at in earlier proceeding filed by the respondent in which order dated 09.01.2006 was passed, second proceeding for their reinstatement was not maintainable. Learned Industrial Court, without considering the aforesaid, passed the impugned order on the ground of deduction of Provident Fund and / or ESI being deposited in the principal employer's account. They cannot be treated as regular employee of the principal employer.

9. He further submitted that merely depositing contribution amounts under Employees Provident Fund Act, 1952 in the trust cannot be treated as an evidence of direct employee of the principal employer. The respondents were employees of the contractor and also in provident fund there was distinction in number series for the sake of distinguishing a contract employee from a regular employee. The respondent (s) has also admitted in cross-examination that the petitioner never issued any appointment letter nor he applied for job to the petitioner. He prays for setting aside of the impugned order passed by the learned Industrial Court.

10. Per contra, Shri B.M. Behlod, learned counsel appearing along with Shri Gopal Pawar, learned counsel for the respondent (s) has submitted that first application before the labour Court was filed for regularization, whereas application under Section 31 (3) of the Act is for reinstatement. The order of termination was passed on 26.06.2005, and therefore, they filed petition for reinstatement. In respect of P/3, he submitted that it was not filed before both the Courts and now in this petition under Article 227 of the Constitution of India, the same cannot be a ground of setting aside of the well reasoned order passed by the learned Industrial Court; and prays for dismissal of the writ petitions.

11. He has also submitted that no document or agreement was filed to prove that the respondent was employee of M/s. Shivgya Enterprises or there was any contract between the petitioner and contractor M/s. Shivgya Enterprises. The respondent (s) had worked for a period of a number of years with the petitioner / company. The learned Industrial Court, after appreciating the evidence on record, gave a specific finding that the respondent (s) / employee (s) had completed more than 240 days in preceding year of their termination and allowed the appeals; and prayed for dismissal of the writ petitions.

12. It is well settled that workmen can be employed on contract labour basis only through licensed contractor. The principal employer should obtain a certificate of registration and the workmen can be employed through contract labour

basis under the provisions of Contract Labour (Registration and Abolition) Act, 1970.

13. In the case in hand, no document was filed before the Labour Court or before the Industrial Court to prove that the contractor was licensed contractor nor filed certificate of registration to prove that both the conditions were satisfied. In absence of the aforesaid, the position would be that a workman employed by an intermediary would be deemed to have been employed by the principal employer i.e. the petitioner.

14. Here also, during the course of arguments, learned counsel for the petitioner failed to satisfy us that during the period when the two conditions of obtaining registration under Section 7 of the Contract Labour (Regulation & Abolition) Act, 1970 by the principal employer and holding of license by the contractor to prove that the workmen are employees by the contractor and thus, we are of the view that the learned Industrial Court has rightly held that the respondent was not the employee of contractor M/s. Shivgya Enterprises.

15. In respect of relationship of master and servant between the petitioner and respondent, no service record was produced before the Labour Court. On the other hand, it has been duly proved that provident fund contribution was regularly deducted from the salaries of the respondent (s). It shows that the petitioner deliberately come with a plea that he has no record. The respondents discharged their onus of proving the fact that they worked more than 240

days in Housing Keeping Department of petitioner factory in preceding year of their termination and the petitioner failed to discharge its onus to dis-entitle them to be classified or reinstated and tried to camouflage the facts by introducing contractor M/s. Shivagya Enterprises later on, after withdrawal of previous cases.

16. Considering these facts, we are of the view that the learned Industrial Court, after appreciating the oral and documentary evidence, gave finding that the employees have completed 240 days in preceding year of their termination. The power of superintendence under Article 227 of the Constitution of India has to be exercised sparingly when there is patent error of gross injustice in the finding recorded by the learned Industrial Court.

17. Accordingly, Writ Petition No.5289/2016, Writ Petition No.5290/2016, Writ Petition No.5291/2016, Writ Petition No.5292/2016 and Writ Petition No.5293/2016 filed by the petitioner / employer have no merit and are dismissed. No costs. Original order be retained in Writ Petition No.5289/2016 and a copy thereof be retained in connected cases.

(P.K. Jaiswal)
Judge

(Virender Singh)
Judge

Pithawe RC