A MR. C. GUPTA

v.

GLAXOSMITHKLIN PHARMACEUTICAL LIMITED

MAY 25, 2007

B [DR. ARIJIT PASAYAT AND LOKESHWAR SINGH PANTA, JJ.]

Industrial Disputes Act, 1947—Section 2(s):

Industrial Relations Executive—Performing functions of advising
C *management preparing draft enquiry report, conducting domestic enquiries, tendering of, legal advise, holding conferences with employer's advocates and having conditions of service different than those provided for workers of employer—Held: He was not a workman as duties undertaken by him were not technical in nature but overwhelmingly fell in managerial cadre.*

D *(Amendment) Act, 1984 introducing 'operational' work and making 'skilled' and 'unskilled' independent categories, unlinked to 'manual'— Effect of—Held, it did not have retrospective effect as (i) there was neither express provision regarding that nor any necessary implication or intendment thereto either in amending Act or in amendment itself (ii) it did not pertain*
E *to procedure but substantially changed scope of definition of "workman" which could not be said to be merely declaratory or clarificatory (iii) though (Amendment) Act was enacted on 31.8.1982, but notification bringing it into effect was issued only subsequently on 21.8.1984 (iv) if employee dismissed before amendment came into effect later comes within ambit of amended definition of 'workman' and if amendment is given retrospective effect,*
F *employer becomes punishable for offence under Section 25 N and Q of 1947 Act, amounting to his being punishable for an offence which he could not have envisaged on date of dismissal; this would be violative of Article 20(1) of Constitution of India, 1950.*

G *Interpretation of statutes—Amendment—Effect of—Held—It would be prospective if it is deemed to have come with effect from a particular day or provides for it becoming operative in future.*

Respondent advertised for recruitment to the post of "Industrial Relations Executive". The advertisement indicated duties required to be
H

performed by the selected candidates. Appellant was appointed to the said post. The letter offering the appointment mentioned that the appellant would be a member of the Management Staff in Grade II-A. Clause17 of the said letter provided for termination of the appointment by respondent at any time and without assigning any reason upon giving not less than three months notice in writing or salary in lieu thereof. In accordance with this clause, the services of the appellant came to be terminated on 15.9.1982 on the ground that they were no longer required.

Being aggrieved by termination of his services, the appellant attempted to get redressal though Conciliation. On failure therein, the Deputy Commissioner of Labour (Conciliation) referred the matter for adjudication. Consequently, in 1985, the appellant filed his statement of claim in the Labour Court claiming that he was a workman within the meaning of Section 2(s) of the Industrial Disputes Act, 1947. He claimed that termination of his services was illegal, invalid and void on account of non-compliance of the provisions of Section 25N of the Act in as much as no notice or retrenchment compensation had been paid to him. He sought the prayer of reinstatement in service with full back wages with continuity of service and all other attendant benefits.

The respondent contested claims of appellant. The Labour Court allowed the claim of the appellant and he was directed to be reinstated in service with continuity in service. It was, however, held that the appellant would be entitled neither for any back wages nor future reinstatement from the date of the award, though he would be entitled for compensation in lieu thereof. This was primarily on the ground that the appellant had given false information at the time of appointment. The appellant as well as the respondent filed writ petitions before the High Court against the aforesaid award of Labour Court. Both were disposed of quashing the award. Hence the present appeal.

Appellant contended that (i) the amendment of the expression 'workman' under Section 2(5) by amendment thereto dated 21.8.1984 brought him within the ambit of the said expression; (ii) in the alternative also he was still within that ambit as nature of his work was not manual but technical.

Respondent contended that (i) the amendment is clearly prospective; (ii) if appellants' claim is accepted, the penal consequences flowing from Section 25N & Q of the Act will be applicable; (iii) it has been found factually that there was no technical work done; (iv) the salary received by the appellant was much higher than received by a workman (v) the advertisement spelt out the requirements and responsibilities.

A **Dismissing the appeals, the Court**

HELD 1.1. The nomenclature is really not of any consequence. Whether a particular employee comes within the definition of workman has to be decided factually. In fact, it has been found as a matter with reference to various factual aspects that the duties undertaken by the appellant overwhelmingly fall in
B **the managerial cadre. [Para 20] [809-C; D]**

1.2. The High Court has referred to the evidence of the appellant. He had admitted in his evidence that apart from the advice to the management from time to time, he had other independent functions such as preparation of draft enquiry report and conducting domestic enquiries. In his cross-
C **examination he had further admitted that he had tendered legal advise in all the four branches and factory of the company at Worli. He also admitted that on many occasions he had drafted management enquiry and it was his duty to hold conferences with the advocates in relation to the company's acts. He also admitted that as an employee in the category of management staff, his conditions of service were different than those provided for the workers of**
D **the Company. He also admitted that leave given to him were not applicable under the settlement. He also admitted that he was covered under the Pension Scheme which did not apply under the settlement with employees.**

[Para 27] [813-F, G, H; 814-A]

1.3. In view of the aforesaid factual position, the impugned judgment
E **does not suffer from any infirmity to warrant interference. [Para 28] [814-B]**

Hussain Mithu Mhasvadkar **v.** *Bombay Iron & Steel Labour Board and Anr.,* **[2001] 7 SCC 394, relied on.**

Ruston & Hornsby (I) Ltd. **v.** *T. B. Kadam,* **[1976] 3 SCC 71;** *Muir Mills*
F *Unit of NTC (U.P.) Ltd.* **v.** *Swayam Prakash Srivastava and Anr.,* **[2007] 1 SCC 491 and** *Burmah Shell Oil Storage and Distribution Company of India Ltd.* **v.** *The Burma Shell Management Staff Association and Ors.,* **[1970] 3 SCC, referred to.**

2.1. For determining the nature of amendment, the question is whether
G **it affects the legal rights of individual workers in the context that if they fall within the definition then they would be entitled to claim several benefits conferred by the Act. The amendment should be also one which would touch upon their substantive rights. Unless there is a clear provision to the effect that it is retrospective or such retrospectivity can be implied by necessary implication or intendment, it must be held to be prospective.**
H

[Para 23] [810-H; 811-A]

2.2. There is no such clear provision or anything to suggest by necessary implication or intendment either in the amending Act or in the amendment itself. The amendment cannot be said to be one which affects procedure. In so far as the amendment substantially changes the scope of the definition of the term "workman" it cannot be said to be merely declaratory or clarificatory. Entirely new category of persons who are doing "operational" work was introduced first time in the definition and the words "skilled" and "unskilled" were made independent categories unlinked to the word "manual". [Para 23] [811-A, B; C]

2.3. The Industrial Disputes (Amendment) Act, 1984 was enacted by Parliament on 31.8.1982. However, the amendment itself was not brought into force immediately and in sub-section (1) of Section 1 of the Amending Act, it was provided that it would come into force on such day as the Central Government may be Notification in the official Gazette, appoint. Ultimately, by a Notification the said amendment was brought into force on 21.8.1984. [Para 23] [811-C; D]

2.4. Although the amendment would be prospective if it is deemed to have come into effect on a particular day, a provision in the amendment Act to the effect that amendment would become operative in the future, would have similar effect. [Para 23] [811-D]

2.5. By the application of the tests mentioned above, it is clear that the definition of workman as amended must, therefore, presumed to be prospective. [Para 24] [811-E]

State of Madhya Pradesh and Ors. v. *Rameshwar Rahod,* AIR (1990) SC 1849, referred to.

3. There is a further reason as to why the definition of workman as prevailing on the date of dismissal should be taken into account. When the workman is dismissed, it is usually contended (as has been done in the present case) that the relevant conditions precedent for retrenchment under Section 25-N having not been followed and that, therefore, the termination is illegal. Section 25-Q of the Industrial Disputes Act, 1947 lays down the contravention of the provision of Section 25-N shall be punishable with imprisonment for a term which may extend to one month or with fine which may extend to Rs. 1000/- or with both. It is, therefore, clear that on the date of dismissal, the employer must act according to the then prevailing provision of law. It is only

in respect of a workman who is then within the definition of Section 2(s) of the Act that the employer is required to follow the condition mentioned in Section 25-N, failing which, he will commit an offence. If the employee so dismissed, later becomes a person who is a workman within an expanded definition brought about by a subsequent amendment held to be of retrospective nature, the employer will be rendered punishable for an offence under Section 25 N and Q as this would amount to the employer being punishable for an offence, which he could not have envisaged on the date of dismissal. This would be violative of Article 20(1) of the Constitution.

[Para 25] [811-G; F; H; 812-A-B]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 6543-6544 of 2004.

From the Final Judgment and Order dated 17.10.2003 of the High Court of Judicature at Bombay in Appeal Nos. 1379 of 1999 and 170 of 2000.

Vijay Hansaria, Sr. Adv., Gaurav Jain, Abha Jain and Sneha Kalita for the Appellant.

P.K. Rele, Sr. Adv., S.V. Deshpande and Pramit Saxena for the Respondent.

The Judgment of the Court was delivered by

Dr. ARIJIT PASAYAT, J. 1. Appellant calls in question legality of the judgment rendered by a Division Bench of the Bombay High Court dismissing the writ appeals filed by the appellant. Both the appeals were filed to set aside the common judgment and order passed in Writ Petition nos.462/95 and 695/96 by a learned Single Judge on 13.4.1999.

2. The background facts in a nutshell are as follows:

3. On 4.8.1976 Glaxo Laboratories (India) Ltd., (hereinafter referred to as the "said Company") which has now been taken over by the present respondent no.1 (Glaxo-SmithKline Pharmaceuticals Ltd.) indicated their intention to advertise the post of "Industrial Relations Executive". Since members of the staff who fell in the category of "Management Staff Grade-III" were also entitled to apply for the vacant post which fell in "Management Staff Grade-II", an advance staff notice was also taken out by the Company. The same incorporated the text of the advertisement which was to follow. The

relevant part from the advertisement which pertains to the duties required to be performed by the selected candidates was as follows:-

> "The selected candidate will advise the Corporate personal Department and through it various establishments of the Company on all matters relating to Labour Laws; operate various applications and claims and appear selectively before Labour authorities such as Conciliation Officers, Labour Courts and Industrial Tribunals.
>
> An important aspect of the job will be to assist the I.R. Manager in developing the framework for settlements and in dealing with Unions.
>
> This is a challenging job with a span of advice extending to three factories, four branches and fifteen u-country depots. The prospects for a results-oriented man are excellent.
>
> Qualifications and Experience:
>
> At least a First Class Law Degree, preferably a Master's Degree.
>
> Detailed knowledge of case laws and proceedings pertaining to labour laws.
>
> Three to five years experience of litigation before Labour Courts, Industrial Tribunals and other authorities.
>
> Ability to get on with people.
>
> Age: Around 30 years".

4. On 17.3.1977 the Company issued a letter offering an appointment to the appellant as "Industrial Relations Executive". This letter mentioned that the appellant would be a member of the Management Staff in Grade II-A and that the appointment would take effect from the date of the appellant joining the company, which was required to be earlier than 18.6.1977. Though the terms and conditions of appointment were contained in this appointment letter, the exact nature of duties and functions to be performed were not laid down therein.

5. Clause17 of the appointment letter provided for termination of the appointment and was in the following terms:-

> "The Company may, at any time and without assigning any reason, terminate this appointment upon giving not less than three months

notice in writing or salary in lieu thereof."

6. In pursuance of the appointment letter, the appellant joined services of the Company on 13.7.1977. On 15.9.1982, vide a termination letter dated 15.9.1982, the services of the appellant came to be terminated from the close of business on that day. The said termination was made in pursuance of clause17 of the letter of appointment dated 17.8.1977 on the ground that the services of the petitioner were no longer required.

7. Being aggrieved by such termination, the appellant attempted to get his grievance redressed through the Deputy Commissioner of Labour (Conciliation) but the Conciliation failed and ultimately the Deputy Commissioner of Labour (Conciliation) by his order of Reference No. CL/IDE/AJD/2A/G-772(84) referred the matter for adjudication.

8. Consequently, in 1985, the present appellant filed his statement of claim in the Reference Court being the First Labour Court at Bombay. In his statement of claim for the reasons mentioned therein, the appellant claimed to be a workman within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 (in short the 'Act') as his work was of "skilled, technical and clerical nature, apart from it being operational". He claimed that termination of his services were illegal, invalid and void on account of non-compliance of the provisions of Section 25N of the Act in as much as no notice or retrenchment compensation had been paid to him. He also contended that clause17 of the letter of appointment dated 17.3.1977 was illegal in as much as it was against the provisions of Articles 14 and 21 of the Constitution of India, 1950 (in short the 'Constitution') and was void as ultra vires Section 23 of the Indian Contract Act, 1872 (in short the 'Contract Act'). He sought the prayer of reinstatement in service with full back wages with continuity of service and all other attendant benefits. Reference was made under Section 10(1) of the Act.

9. In the reference, the respondent-Company filed its written statement on 8.8.1985. In the written statement the Company disputed the stand that the appellant was a workman within the meaning of Section 2(s) of the Act. It was denied that the termination of his services was illegal for alleged non-compliance of provisions of Section 25N of the Industrial Disputes Act, 1947 or that it violated any provisions of Constitution or of Section 23 of the Contract Act.

10. Both parties led evidence in the reference before the Labour Court.

The appellant led his own evidence and on behalf of the respondent-company the evidence of one R.P. Bharucha who was then the Director of the Family Products Division of the Company, who had been the Central Personal Manager of the Company at the time when the appellant had been appointed and had been the Chief Personnel Manager of the Company on the date of the Appellant's termination was led. Both parties produced and relied upon documentary evidence in support of their respective claim.

11. Ultimately, by an award passed by the Presiding Officer, First Labour Court, Bombay on 31.10.1994, the claim of the appellant was allowed and he was directed to be reinstated in service with continuity in service w.e.f. 11.12.1982 to 30.11.1989 with all consequential benefits including pay revision if any. It was, however, held that the appellant would not be entitled for any back wages from 30.11.1989 till the date of the award and would not be entitled for any relief of future reinstatement from the date of the award though he would be entitled for compensation of Rs.50,000/- in lieu thereof. This was primarily on the ground that appellant had given false information at the time of appointment.

12. Both the appellant as well as the Company filed writ petitions before the Bombay High Court against the aforesaid award dated 31.10.1994 passed by the Presiding Officer, First Labour Court, Bombay. The Company filed Writ Petition No.462 of 1995 and the appellant filed Writ Petition No.695 of 1996. Since both the writ petitions impugned the same award, they were heard and disposed of by a common judgment and order delivered by the learned Single Judge of the High Court on 13.4.1999. By this judgment and order the learned Single Judge held that the appellant could not be said to be a workman within the meaning of Section 2(s) of the Act. Notwithstanding his conclusion that the appellant was not a workman, and that the Industrial Court would not have any jurisdiction to decide the dispute, the learned Single Judge further dealt with the merits of the matter and arrived at the conclusion that the Company had ample reason to resort clause-17 of the appointment letter and terminate the appellant. Ultimately the learned Single Judge made rule absolute in Writ Petition No.462 of 1995 filed by the Company and dismissed Writ Petition No.695 of 1996 filed by the present appellant, thus quashing the award of the Labour Court dated 31.10.1994.

13. It is against this judgment and order passed by the learned Single Judge, the Civil Appeal No.1879 of 1999 came to be filed by the appellant. The appellant subsequently filed Civil Appeal No.170 of 2000 which also impugned

A the same judgment and order passed by the learned Single Judge.

14. The appellant's main contention before the High Court was that he was a qualified legal person and the nature of his duties, work and functions were to advise the management of the company which required knowledge of law and the matters arising out of the affairs of the company. It was submitted B that the petitioner must be said to be employed to do technical work within the meaning of Part 1 of Section 2(s) of the Act. It was further the stand that the Act was amended in 1984 de-linking the words "skilled" and "unskilled" from the word "manual" and by adding the word "operational". It was, therefore, pleaded that the finding that the appellant was doing managerial or C administrative work is not correct. Learned Single Judge did not accept the contention and the Division Bench also did not accept the contention.

15. In support of the appeal learned counsel for the appellant submitted as follows:

D 16. The amendment of the expression 'workman' under Section 2(s) clearly brought the appellant within the ambit of the said expression. The amendment was made on 21.8.1984 and reference on 29.9.1995. According to him, the date of reference is material, even if it is conceded for the sake of argument but not accepted that the un-amended provisions apply, yet considering the nature of the work which is technical in nature the appellant E was a workman. Further, it was not manual as has been held by the High Court. Finally, it was submitted that while exercising jurisdiction under Article 142 of the Constitution, the forum is really of no consequence, if the termination is held to be bad. The relief could be moulded under Article 142 of the Constitution.

F 17. Strong reliance was placed on a decision of this Court in *Ruston & Hornsby (I) Ltd.* v. *T.B. Kadam,* [1976] 3 SCC 71 to contend that the amended definition applies. It was further submitted that the High Court was not justified in placing reliance on the last line of paragraph 15 of *Burmah Shell Oil Storage and Distribution Company of India Ltd.* v. *The Burma Shell* G *Management Staff Association and Ors.,* [1970] 3 SCC 378 at p.389.

18. Learned counsel for the respondent on the other hand submitted that the amendment is clearly prospective. The question of creation of new rights is really not relevant. The question is one of status. Only a new forum is created. If appellants' claim is accepted, the penal consequences flowing H from Section 25N & Q of the Act will be applicable. It has been found

factually that there was no technical work done. The salary received by the appellant was much higher than received by a workman. The advertisement spelt out the requirements and responsibilities. The Labour Court had relied on a decision of Punjab & Haryana High Court which was set aside by this Court in *Sonepat Cooperative Sugar Mills Ltd.* v. *Ajit Singh,* [2005] 3 SCC 232 in which it was held that Legal Assistant is not workman.

19. Learned counsel for the appellant submitted that the said decision is not applicable because in that case the Legal Assistant had a license to practice.

20. It is not in dispute that the nomenclature is really not of any consequence. Whether a particular employee comes within the definition of workman has to be decided factually. In fact, it has been found as a matter with reference to various factual aspects that the duties undertaken by the appellant overwhelmingly fall in the managerial cadre. So far as the nature of work is concerned, the Division Bench of the High Court took note of several aspects as reflected in para 29 of the judgment. The same reads as follows:

> "In the evidence adduced on behalf of the Company, its Director Shri Rustam Padam Bharucha deposed that the duties of the appellant were to represent the Company in Conciliation proceedings, before Government authorities under the Factories Act. E.S.I. Act, P.F. Act, Contract Labour (Regulation & Abolition) Act, to represent the management as an Enquiry officer or as the management's Representative in domestic enquiries, to guide and advise the management's representative in domestic enquiries, to advise him about the line of cross-examination in such enquiries, advise about the quantum of punishment to be inflicted in disciplinary proceedings. To give advise on queries raised by the management pertaining to the interpretation of statutes or settlement with the Unions or regarding enquiries raised by Government authorities to brief witnesses, to prepare drafts for the perusal of Counsel to brief Counsel on facts as well as law to be present in Court when the arguments were taking place in judicial matters related to the Company, to keep in touch with the latest case laws and amendments to the labour legislations, to ensure that the management fulfilled its obligations under the Labour legislations and to advise the management on provisions of settlement."

21. It has been pleaded that the amendment to the definition of workman brings the appellant within the amended definition.

22. In *State of Madhya Pradesh and Ors.* v. *Rameshwar Rahod,* AIR (1990) SC 1849 it has been held as follows:

> "It was next contended by the respondent before the High Court that the Criminal Court was empowered under Section 7 of the Act to confiscate the vehicle after due and proper inquiry and therefore the proceedings by the District Collector under Section 6A and Section 68 of the Act should be quashed. Reliance was placed on several decisions and authorities. Our attention was drawn to the decision of the Mysore High Court in the case of *The State* v. *Abdul Rasheed,* AIR (1967) Mysore 231, *Sri Bharat Mahey* v. *State of U.P.,* (1975) Crl. LJ 890 (All) as well as the decision of the learned single Judge in *State of M.P.* v. *Basant Kumar,* (1972) Jab LJ Short Note No.99. On a consideration of the relevant authorities, the High Court came to the conclusion that the criminal Court had jurisdiction to deal with the matter. Mr. Deshpande sought to argue that in view of the enactment of the provisions of Section 6A as well as Section 7 of the Act, it cannot be held that the criminal Court continued to retain jurisdiction. He submitted that in view of the enactment of these provisions, it would be useless to hold that the criminal Court continued to retain jurisdiction, otherwise the very purpose of enacting Section 6A read with Section 7 would be defeated. We are, however, unable to accept this contention because normally under the Criminal Procedure Code, the Criminal Courts of the country have the jurisdiction and the ouster of the ordinary criminal Court in respect of a crime can only be inferred if that is the irresistible conclusion flowing from necessary implication of the new Act. In view of the language used and in the context in which this language has been used, we are of the opinion that the High Court was right in coming to the conclusion that the Criminal Court retained jurisdiction and was not completely ousted of the jurisdiction. In that view of the matter, the High Court was therefore right in passing the order under consideration and in the facts and circumstances of the case to return the vehicle to the respondent on furnishing the security. In the premise the appeal must fail and is dismissed. There will, however, be no order as to costs."

23. In the present case, we find that for determining the nature of amendment, the question is whether it affects the legal rights of individual workers in the context that if they fall within the definition then they would be entitled to claim several benefits conferred by the Act. The amendment

should be also one which would touch upon their substantive rights. Unless there is a clear provision to the effect that it is retrospective or such retrospectivity can be implied by necessary implication or intendment, it must be held to be prospective. We find no such clear provision or anything to suggest by necessary implication or intendment either in the amending Act or in the amendment itself. The amendment cannot be said to be one which affects procedure. In so far as the amendment substantially changes the scope of the definition of the term "workman" it cannot be said to be merely declaratory or clarificatory. In this regard we find that entirely new category of persons who are doing "operational" work was introduced first time in the definition and the words "skilled" and "unskilled" were made independent categories unlinked to the word "manual". It can be seen that the Industrial Disputes (Amendment) Act, 1984 was enacted by Parliament on 31.8.1982. However, the amendment itself was not brought into force immediately and in sub-section (1) of Section 1 of the Amending Act, it was pr- -ded that it would come into force on such day as the Central Government may be Notification in the official Gazette, appoint. Ultimately, by a Notification the said amendment was brought into force on 21.8.1984. Although this Court has held that the amendment would be prospective if it is deemed to have come with effect on a particular day, a provision in the amendment Act to the effect that amendment would become operative in the future, would have similar effect.

24. Therefore, by the application of the tests mentioned above, it is clear that the definition of workman as amended must, therefore, presumed to be prospective.

25. In this regard we would like to give one further reason as to why the definition of workman as prevailing on the date of dismissal should be taken into account. When the workman is dismissed, it is usually contended (as has been done in the present case) that the relevant conditions precedent for retrenchment under Section 25-N having not been followed and that, therefore, the termination is illegal. Section 25-Q of the Industrial Disputes Act, 1947 lays down that contravention of the provision of Section 25-N shall be punishable with imprisonment for a term which may extend to one month or with fine which may extend to Rs.1000/- or with both. It is, therefore, clear that on the date of dismissal, the employer must act according to the then prevailing provision of law. It is only in respect of a workman who is then within the definition of Section 2(s) of the Act that the employer is required to follow the condition mentioned in Section 25-N, failing which, he will

A commit an offence. If the employee so dismissed, later becomes a person who is a workman within an expanded definition brought about by a subsequent amendment held to be of retrospective nature, the employer will be rendered punishable for an offence under Section 25 N and Q as this would amount to the employer being punishable for an offence, which he could not have envisaged on the date of dismissal. This would be violative of Article 20(1) B of the Constitution.

26. In *Burmah Shell's* case (supra) it was held as follows:

> In this connection, we may take notice of the argument advanced by Mr. Chari on behalf of the Association that, whenever a technical C man is employed in an industry, it must be held that he is employed to do technical work irrespective of the manner in which and the occasions on which the technical knowledge of that person is actually brought into use. The general proposition put forward by him was that, if a technical employee even gives advice or guides other workmen, D it must be held that he is doing technical work and not supervisory work. He elaborated this submission by urging that, if we hold the supervisory work done by a technician as not amounting to his being employed to do technical work, the result would be that only those persons would be held to be employed on technical work who actually do manual work themselves. According to him this would result in E making the word "technical" redundans in the definition of 'workman' even though it was later introduced to amplify the scope of the definition. We are unable to accept these submissions. The argument that, if we hold that supervisory work done by a technical man is not employment to do technical work, it would result in only manual work F being held to be technical work, is not at all conect. There is a clear distinction between technical work and manual work. Similarly there is a distinction between employments which 'are substantially for manual duties, and employments where the principal duties are supervisory or other type, though incidentally involving some manual work. Even though the law in India is different from that in England, G the views expressed by Branson, J., in Appeal of Gardner : In re Maschek : In re Tyrrell [1938] 1 All E.R. 20 are helpful, because, there also, the nature of the work had to be examined to see whether it was manual work. As examples of duties different from manual labour, though incidentally involving manual work, he mentioned cases where H a worker (a) is mainly occupied in clerical or accounting work, or (b)

is mainly occupied in supervising the work of others, or (c) is mainly occupied in managing a business or a department, or (d) is mainly engaged in salesmanship, or (e) if the successful execution of his work depends mainly upon the display of taste or imagination or the exercise of some special mental or artistic faculty or the application of scientific knowledge as distinguished from manual dexterity. Another helpful illustration given by him of the contrast between the two types of cases was in the following words :-

> "If one finds a man employed because he has the artistic faculties which will enable him to produce something wanted in the shape of a creation of his own, then obviously, although it involves a good deal of manual labour, he is employed in order that the employer may get the benefit of his creative faculty."

The example (e), given above, very appropriately applies to the case of a person employed to do technical work. His work depends upon special mental training or scientific or technical knowledge. If the man is employed because he possesses such faculties and they enable him to produce something as a creation of his own, he will have to be held to be employed on technical work, even though, in carrying out that work, he may have to go through a lot of manual labour. If, on the other hand, he is merely employed in supervising the work of others, the fact that, for the purpose of proper supervision, he is required to have technical knowledge will not convert his supervisory work into technical work. The work of giving advice and guidance cannot be held to be an employment to do technical work."

27. In *Hussain Mithu Mhasvadkar* v. *Bombay Iron & Steel Labour Board and Anr.*, [2001] 7 SCC 394 it was held that while deciding the status of the person, nature of work is really relevant. The High Court has referred to the evidence of the appellant. He had admitted in his evidence that apart from the advice to the management from time to time, he had other independent functions such as preparation of draft enquiry report and conducting domestic enquiries. In his cross-examination he had further admitted that he had tendered legal advise in all the four branches and factory of the company at Worli. He also admitted that on many occasions he had drafted management enquiry and it was his duty to hold conferences with the advocates in relation to the company's acts. He also admitted that as an employee in the category of management staff, his conditions of service were different than those provided

A for the workers of the Company. He also admitted that leave given to him were not applicable under the settlement. He also admitted that he was covered under the Pension Scheme which did not apply under the settlement with employees.

28. In view of the aforesaid factual position, the order of the learned B Single Judge and the impugned judgment of the Division Bench do not suffer from any infirmity to warrant interference. Learned counsel for the appellant tried to distinguish the judgment in the *Ruston & Hornsby (I) Ltd.* case (supra) on the ground that there legal assistant had licence to practice. As rightly submitted by learned counsel for the respondent no distinction was C made by this Court on the only ground that licence and in paragraph 16 the distinction was made on the basis of duties. In a recent case in *Muir Mills Unit of NTC (U.P.) Ltd.* v. *Swayam Prakash Srivastava and Anr.* [2007] 1 SCC 491 question of legal assistant was also considered. In that case the definition between occupation and profession was highlighted.

D 29. The appeals are sans merit, deserve dismissal which we direct.

V.S. Appeals dismissed.