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Test to determine supervisory nature of duties depends upon the nature of work attached to the job



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The Bombay High Court by its judgment in the case of Jobi Joseph Versus Cadbury India Ltd. and Another; passed in Writ Petition No.2579 of 2017 held, *“the real test for determining supervisory nature of duties is not whether persons on whom supervision is exercised are employees of establishment or not, **but the nature of duties attached to the job.**”*

Brief Facts of the case:

A Writ Petition was filed under Article 227 of the Constitution of India challenging the order passed by Labour Court, Mumbai in Complaint (ULP) No. 225 of 2012 (Complaint). By the Impugned Order, the Labour Court held that the Petitioner is not an ‘employee’ within the meaning of Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971 (MRTU & PULP Act) and that therefore the Complaint filed by Petitioner challenging his termination is not maintainable. The order passed by the Labour Court has been upheld by the Industrial Court by dismissing the Revision Application (ULP) No.96 of 2014 as filed by the Petitioner.

The Petitioner joined Cadbury on 17 June 2004 on the post of Sales Officer and was confirmed on 1 April 2005. On 1 November 2011, the Petitioner was promoted to Senior Sales Executive and was drawing a salary of Rs.58,891/- per month.

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In 2012, certain irregularities were observed in opening of new outlets, which irregularities was informed to the Petitioner. Post this, the Petitioner was assigned the work of door-to-door services and was assigned to perform miscellaneous jobs such as visiting shops in slum areas for booking of orders and by a letter dated 1 October 2012, the Petitioner's service was terminated.

The Petitioner filed a Complaint inter alia challenging the termination letter dated 1 October 2012 and prayed for reinstatement with continuity, back wages and all consequential benefits w.e.f. 1 October 2012. The Petitioner also sought compensation of Rs.1,00,000. Cadbury raised a preliminary objection about maintainability of the Complaint contending that the Petitioner is not an 'employee' within the meaning of Section 3(5) of the MRTU & PULP Act.

Pursuant to the preliminary objection raised by Cadbury, the Labour Court framed a preliminary issue and parties led evidence on the preliminary issue. On 1 April 2014, the Labour Court held that the Petitioner's Complaint is not maintainable as the Petitioner is not an 'employee' within the meaning of MRTU & PULP Act. On 1 March 2016, the Industrial Court dismissed the Revision filed by the Petitioner. The Petitioner then filed the present Writ Petition. The Hon'ble Bombay High Court by an order dated 18 June 2018 issued Rule.

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Before the Labour Court and the Industrial Court, the Petitioner claimed that though he was designated as Senior Sales Executive, the Petitioner performed various field jobs relating to selling and marketing of products of Cadbury in the retail and wholesale outlets, through Cadbury's Regional Distributors. The Petitioner was not involved in supervisory, administrative or managerial nature of work. No employee of Cadbury was employed under the Petitioner and that he independently worked and reported to his superior officers, hence, the Petitioner claimed that he is a 'workman' as defined under Section 2(s) of the Industrial Disputes Act, 1947 (ID Act) and consequently an 'employee' as defined under Section 3(5) of the MRTU & PULP Act.

In the Writ Petition, the Petitioner's main argument was about his status as a 'Sales Promotion Employee' within the meaning of Section 2(d) of the Sales Promotion Employees (Conditions of Service) Act, 1976 (SPE Act).

Section 2(d) of SPE Act is defined as to mean any person by whatever name called (including an apprentice) employed or engaged in any establishment for hire or reward to do any work relating to promotion of sales or business, or both, but does not include any such person—

- (i) who, being employed or engaged in a supervisory **capacity**, draws wages exceeding sixteen hundred rupees per mensem; or*
- (ii) who is employed or engaged mainly in a managerial or administrative capacity.*

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Explanation— For the purposes of this clause, the wages per mensem of a person shall be deemed to be the amount equal to thirty times his total wages (whether or not including, or comprising only of, commission) in respect of the continuous period of his service falling within the period of twelve months immediately preceding the date with reference to which the calculation is to be made, divided by the number of days comprising that period of service.

Held:

a. There is no pleading in the Complaint lodged before the Labour Court that the Petitioner is a 'Sales Promotion Employee' under Section 2(d) of SPE Act. On the contrary, the pleading before the Labour Court was that the Petitioner is a 'workman' under Section 2(s) of the ID Act and therefore an 'employee' under Section 3(5) of the MRTU & PULP Act.

b. MRTU & PULP Act came to be amended by Maharashtra Act w.e.f. 20 April 1999 by adding 'Sales Promotion Employee', in the definition of the term employee. Hence, as on the date of filing of the complaint by the Petitioner, every 'Sales Promotion Employee' as defined under SPE Act automatically became an 'employee' within the meaning of Section 3(5) of the MRTU & PULP Act. The combination of provisions of SPE Act and MRTU & PULP Act grant twin benefits of protection under the ID Act as well as under the MRTU & PULP Act to Sales Promotion Employees.

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c. For taking activities of a person outside the scope of supervisory capacity, it is necessary to prove that such person is engaged in direct activities of canvassing the products or business to the customers or retailers. In the instant case, the Labour Court and the Industrial Court, after considering the evidence, came to the conclusion that the Petitioner himself was not selling or canvassing the sale of products of Cadbury. Cadbury had employed the concept of appointing distributors who used to employ their own employees for the purpose of promoting sales of products of Cadbury. Thus, the Purple Champions/ salesmen of distributors were actually responsible for promotion of sale of Cadbury's products at retail and wholesale outlets. The Petitioner essentially supervised the activities of salesmen/ Purple Champions of these distributors.

d. Section 2(d) of the SPE Act states that a person should not be 'employed or engaged in supervisory capacity'. What is important is 'employment/engagement in supervisory **capacity**'. The words used in Section 2(d) are not 'employment/engagement as a supervisor', what is relevant is the '**capacity**' in which the engagement is made. The nature of duties performed by a person would determine whether his employment is in supervisory capacity and not to determine whom he supervises, which is irrelevant. The Court concluded that even though the Petitioner was supervising salesmen employed by distributor, the same would not mean that his role was not that of supervisory capacity. Merely because a person supervises activities of

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persons who are not direct employees of an establishment, it does not and cannot mean that he ceases to be employed in supervisory capacity. Therefore, the real test for determining supervisory nature of duties is not whether persons on whom supervision is exercised are employees of the establishment or not, but the nature of duties attached to the job.

Conclusion:

This judgment throws light on the interpretation and usage of the word, 'capacity' as provided for in Section 2(d) of the SPE Act thereby ensuring that the focus is on the nature of activity performed by the employee during his services with the employer.