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IDA Appln. No.1/2018
Judgment.

Filed on : 19.3.2018
Registered on : 19.3.2018
Decided on : 5/8/2019.
Duration : 1 Yr. 4 Mths. 17 Days

BEFORE THE JUDGE, LABOUR COURT, GONDIA.

(Presided over by : A. A. Khan)

IDA APPLICATION No. 1/2018.

(CNR No : MHLC35-00032-2018)

Exh.O-3.

APPLICANT : Manishkumar Deoshankarbhai Mehta,
Aged about 48 years, Occu. Nil,
R/o. Near Brahmkumari's Ashram,
New Laxmi Nagar, Gondia 441614

Versus

NON-APPLICANTS : 1) Advent Life Sciences Pvt. Ltd.,
Director, Mr. Praveen Kokate.
2) Advent Life Sciences Pvt. Ltd.,
Mr. Prashant Tare, Zonal Sales Manager,
Both H-1, High Rise Apartment,
New Sneha Nagar, Wardha Road,
Nagpur.

APPEARANCES : Adv. N.S. Popat for applicant.
Adv. S.E. Raghorde for non-applicants.

JUDGMENT

(Delivered on 05/08/2019)

This is an application under section 33-C(2) of the Industrial Dispute Act for recovery of Rs.58,207/- with interest @ 15% per annum.

2] Curtailing the details, the case of applicant is as follows.

The applicant has worked with the non-applicants till 18-12-2017 as Medical Representative. The head quarter of applicant was Gondia. The non-applicants want to remove applicant from job,

they abolished it and transferred the applicant to Nagpur. The applicant decided to resign and sent his resignation dated 18-12-2017 to the non-applicants. The applicant demanded salary, gratuity and other expenses. The resignation was accepted and applicant was told to handover the property in his possession to the non-applicant and settle his account, vide letter received by applicant on 17-1-2018. Prior to it, the applicant issued notice on 6-1-2018 through his Advocate, demanded salary, gratuity, expenses and other amount. It was replied on 18-1-2018.

3] On 5-2-2018, applicant went to non-applicant for settlement of account. The non-applicant deliberately deducted 1 month salary for notice period. The Non-applicant asked him to sign a letter but the applicant refused. Finally, the non-applicant paid Rs.11,289/- to the applicant. The deduction of 1 month salary is illegal, it is not provided in the appointment order. The applicant claimed that he is entitled for Rs.11,500/- towards salary of November, Rs.6,900/- towards salary till 18-12-2017 and gratuity of Rs.39,807/-. According to applicant, the amount of Rs.58,207/- is due and outstanding on the non-applicant and payable to him. The non-applicants be directed to pay it with interest @15% per annum from 18-12-2017 till realization of the amount.

4] On being served, the non-applicants contested the application vide their reply Exh.C-4. The non-applicants have denied all the adverse pleadings. The non-applicants submitted that this application is not maintainable as the salary for the month of November 2017 and December 2017 is disputed. The applicant was absent from his duty from 8-12-2017, he submitted resignation on 18-12-2017 which was accepted with immediate effect. As per the

terms of appointment, it was necessary for the applicant to give 1 month notice before leaving the job. The claimed gratuity is not computed as per the provisions of Payment of Gratuity Act. The claim of gratuity is not maintainable in this application. The applicant was appointed at Nagpur on 18-12-2017. As Gondia headquarter was closed, the applicant was asked to join at Nagpur on or before 18-12-2017 but on 18-12-2017, the applicant has submitted his resignation at Nagpur office. Cause of action arose at Nagpur, therefore, this Court lacks jurisdiction to decide the application. The non-applicants specifically contended that the applicant is entitled for gratuity of Rs.17,308/- and they are ready to pay it. Finally, the non-applicants requested that the applicant is not entitled for any relief. Application be dismissed.

5] On the basis of rival pleadings, issues were framed on 28-12-2018. Applicant submitted his evidence affidavit Exh.U-6 on 9-1-2019. Applicant and non-applicants have submitted pursis Exh. U-17 and Exh.C-11 closing their evidence. The Non-applicants have submitted written notes of argument Exh.18 on 15-02-2019. The matter was kept for arguments of applicant on 18-2-2019, 27-2-2019, 15-3-2019, 29-3-2019, 8-4-2019, 20-4-2019, 10-5-2019, 24-5-2019, 11-6-2019, 2-7-2019, 20-7-2019 and today. Meanwhile, on behalf of applicant, pursis Exh.U-21 was filed along with photocopy of judgment of this Court in Application IDA No.1/2014. The matter is pending since 19-03-2018. Hence, it is taken up for decision on merits on the basis of material available on record. Perused written notes of argument Exh.18 and the material available on record. The issues with my findings to them for the reasons stated thereunder are :

ISSUES**FINDINGS.**

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|---|--------------------|
| 1) Whether this Court has jurisdiction to try and decide the application ? | Yes |
| 2) Whether the applicant proves of having existing right to receive monetary benefits, as claimed ? | Yes
Rs.17,308/- |
| 3) Whether the applicant is entitled for interest on the claimed amount ? | Yes |
| 4) What order ? | Partly Allowed |

REASONS**As to Issues No.(1) :**

6] The issue No.1 is regarding jurisdiction of this Court to entertain this application. The Non-applicants have assailed the jurisdiction of this Court on two counts. Firstly, the cause of action arose at Nagpur, therefore, Court at Gondia lacks jurisdiction to entertain this application. Secondly, the applicant is a Sales Promotion Employee, not a workman as defined under the Industrial Disputes Act. It is fisible to consider both the aspects separately. As far as the question of territorial jurisdiction on the point of cause of action is concern, it is worth to note here that the appointment order Exh.U-7 was addressed to applicant at his address of Gondia. Similarly, the Clause No.7 of appointment order Exh.U-7 depicts, 'Any dipsute arising of this employment will be Gondia Jurisdiction'. Apart from this, it is above any dispute that the applicant has served the non-applicant during his entire engagement at Gondia. These three aspects require to hold that the cause of action arose within territorial jurisdiction of this Court. The parties have opted this Court as a form for adjudication of dispute arising out of employment of applicant with the non-

applicants. Admittedly, this dispute is a result of the employment of applicant with the non-applicants. It can be concluded that this Court has jurisdiction to decide this application. The contentions of Non-applicants on this aspects are required to be repelled being misconceived.

7] Let us consider second aspect regarding the objection that the applicant is not a workman as defined under the provisions of Industrial Disputes Act. On this aspect, the non-applicants have relied upon two authorities of Hon'ble Apex Court in the case of Adyantheya HR Vs. Sandows India Ltd [1994(2) CLR 552(SC). The Hon'ble Apex Court has provided for two fora for redressal of grievances of sales promotion employees. The foras included Industrial and Labour Courts apart from the authorities under the Shops & Establishments Act. In T.P. Srivastava Vs. National Tobacco Co. Ltd [1991(63) FLR 672], the Hon'ble Apex Court has upheld the decision of Labour Court refusing to entertain a reference referred by Government of Rajasthan, appropriate Government in respect of employee whose job of supervising, salesmen was terminated by the respondent employer. In Novartis India Ltd Vs. Vipin Srivastava & Ors [2019 (I) CLR 145], Hon'ble Madhya Pradesh High Court has categorically laid down that, workman does not include Medical Representative, who does not perform duties of skilled or technical nature. In the contest of law laid down in the aforesaid authorities, it is beneficial to consider the definition of workman under section 2(s) of the Industrial Disputes Act in contest of definition of sales promotion employee under section 2(d) of the sales promotion employees (Conditions of Service) Act, 1976. It is provided that any person by whatever name called employed or engaged in any establishment for hire or reward to do any work to

sales and business is sales promotion employee. It is further provided that if such employee is engaged in supervisor category, drawing salary of more than Rs.1,600/- or is appointing mainly in managerial or administrative capacity is not a sales promotion employee. In this case, the salary of applicant is more than Rs.1,600/-, therefore, his nature of employment will transgress the definition of sales promotion employee. As stated above, the Hon'ble Apex Court in *Adyantheya* case has provided two foras for redressal of grievances of sales promotion employees including Industrial and Labour Courts and authorities under the Shops and Establishments Act. It is not a matter of express ouster of jurisdiction of the Labour Court. Therefore, it can be concluded that this Court has jurisdiction to entertain this application. Accordingly, issue No.1 is replied in affirmative.

As to Issues No.(2) & (3) :

8] The applicant has claimed Rs.11,500/- towards salary for the month of November, Rs.6,900/- towards salary upto 18th December and gratuity of Rs.39,807/-. According to non-applicants, the applicant has received an amount of Rs.11,289/- vide Exh.C-9 against full and final settlement from the non-applicants. In cross-examination, applicant Manishkumar has volunteered that the amount received under receipt Exh.C-9 is in respect of expenses, not his salary. Similarly, the statement Exh.C-10 is regarding expenses. The perusal of receipt Exh.C-9 reveals that it is against full and final settlement from the non-applicants on 5-2-2018. It is not the case of applicant that he has received the said amount under protest. When the applicant himself has voluntarily received Rs.11,289/- vide Exh.C-9, he cannot assail it and it will come to rest.

9] Now remains the question of gratuity. The applicant has

claimed gratuity to the tune of Rs.39,807/- computing it on the basis of his salary of Rs.11,500/-. As per the provisions of Section 2(s), wages do not include bonus, commission, house rent allowance, overtime wages and any other allowance. In the case at hand, as per appointment order Exh.U-7, the gross salary of applicant was Rs.10,500/- . Rs.5,000/- was basic salary and the remaining amount was towards H.R.A., medical allowance, education allowance, kit allowance, conveyance allowance. The applicant has miscalculated his gratuity assuming his salary of Rs.11,500/-. As per law, it ought to be Rs.5,000/-, division of Rs.5,000/- by 26 and multiplying it with 15, comes to Rs.2,884.61. Again multiplying it by six for years of rendered service, the amount of gratuity shall be Rs.17,307/- and some paise. Rounding it off, the gratuity shall be Rs.17,308/-.

10] The non-applicants have shown readiness to pay the amount of gratuity. Mere showing readiness is not sufficient. The non-applicants ought to have paid it to the applicant within one month when it became due. Non payment of gratuity within the period specified in sub-section 3, requires to award interest @ 10% per annum. Period of 30 days is provided to pay the amount of gratuity from the date it becomes payable to the employee. In the case at hand, the gratuity ought to have been paid on or before expiry of one month of acceptance of resignation. The resignation was accepted w.e.f. 18-12-2017 as per Exh.U-11. The gratuity ought to have been paid on or before 18-1-2018. Therefore, interest @ 10% per annum is required to be award as per Section 7(3) of Payment of Gratuity Act. The aforesaid details require to conclude that the applicant has existing right to receive Rs.17,308/- from the non-applicants and interest on it @ 10% per annum after one month of acceptance of his

resignation. Accordingly, issue No.2 and 3 are replied. Finally, the Issue No.4 adjudicating this application is replied in following order.

ORDER

- 1] The application is partly allowed.
- 2] The non-applicants shall pay Rs.17,308/- to the applicant.
- 3] The amount shall carry interest @ 10% per annum from 18-01-2018 till its actual realization.
- 4] This decision be forwarded to the appropriate Government as per Section 33 (C)(4) for necessary action.
- 5] Parties to bear their respective costs.

Place : Gondia.
DATE : 05/08/2019.

(A. A. Khan),
Judge,
Labour Court, Gondia.

Argued on : ---
Judgment dictated on : 05/08/2019.
Judgment transcribed on : 05/08/2019.
Judgment checked & signed on : 06/08/2019.