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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Date of Decision: 06.10.2025***

+ **W.P.(C) 7484/2019**

SH. SAMARENDRA DAS

.....Petitioner

Through: Mr. Gautam Kumar Laha, Adv. with  
Petitioner in person.

versus

M/S WIN MEDICARE PVT. LTD.

.....Respondent

Through: Mr. Jitesh Pandey, Mr. Hrishabh  
Tiwari, Ms. Pooja Sood, Mr. Aniket  
Singh & Mr. Naman Arora, Advs.

**CORAM:**

**HON'BLE MS. JUSTICE TARA VITASTA GANJU**

**TARA VITASTA GANJU, J.: (Oral)**

**CM APPL. 7894/2025 /Restoration/**

1. This is an Application filed on behalf of the Petitioner seeking restoration of the Petition, which was dismissed in default on 22.01.2025.
2. Learned Counsel for the Respondent/non-Applicant submits that this is second such Application that was filed since the Petition has already previously been dismissed on 04.10.2023. Learned Counsel however submits that in any event the issue that has been raised by the Petitioner is no longer res integra and hence, in the interest of expediency, he has no objection if the Petition is restored.
3. Accordingly, the Petition is restored.
4. The Application stands disposed of.



2025:DHC:8918



**W.P.(C) 7484/2019**

5. The present Petition has been filed on behalf of the Petitioner under Article 226 of the Constitution of India against the order dated 05.09.2018 passed by learned Presiding Officer Labour Court, Dwarka Courts, Delhi [hereinafter referred to as “Impugned Order”]. By the Impugned Order, the claim petition of the Petitioner has been dismissed with a finding that since the Petitioner is a medical sales representative, he cannot be categorized as a workman in view of the judgment of the Supreme Court in ***H.R. Adyanthaya & Ors. v. Sandoz (India) Ltd. & Ors***<sup>1</sup>.

6. It is the undisputed case of the parties that the Petitioner was working as a sales executive for the Respondent Company, which is a medicare company.

7. Learned Counsel for the Petitioner submits that the judgment of the Supreme Court in ***H.R. Adyanthaya*** case will not be applicable in the facts of the present case, however, he does not deny that the Petitioner was working as a sales representative.

8. Learned Counsel for the Respondent submits that in paragraph 1 of the Statement of Claim itself, the Petitioner has admitted to being a professional sales representative for the period from 1996 onwards. Learned Counsel further seeks to rely upon the Statement of Claim filed by the Petitioner in this behalf.

9. Learned Counsel for the Respondent also seeks to rely upon the judgments of the Supreme Court ***H.R. Adyanthaya*** case and the Division

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<sup>1</sup> (1994) 5 SCC 737



2025:DHC:8918



Bench of the Madhya Pradesh High Court in *Petcare, Division of Tetragon Chemie Pvt. Ltd. Bangalore v. M.P. Medical and Sales Representatives Association Bhopal*<sup>2</sup> in this behalf to submit that the medical sales representatives do not fall within the definition of Section 2(s) of the Industrial Disputes Act, 1947 [hereinafter referred to as the “ID Act”].

10. A review of the Impugned Order shows that there is no dispute about the factum of employment or about the fact of the work being carried out by the Petitioner. The Impugned Order discusses this aspect of the matter in detail. The Impugned Order also framed an issue as to whether the Petitioner is covered under the definition of Workman under Section 2(s) of the ID Act. The Impugned Order found that it was the averment of the Petitioner that he was a professional sales representative or a medical representative and that he is covered within the definition of Section 2(s) of the ID Act read with Section 6(2) of the Sales Promotion Employees (Conditions of Service) Act, 1976 as amended by Act of 1986 [hereinafter referred to as the “Sales Promotion Employees Act”], while the Respondent sought to rely upon the law which stated otherwise.

10.1 The learned Labour Court examined the law in this behalf and came to a conclusion that, in terms of the judgment of the Supreme Court in *H.R. Adyanthaya* case, which discusses Section 2(s) of the ID Act and Section 6(2) of the Sales Promotion Employees Act, the medical representatives are not non-skilled workers but are technical or operational workers and thus cannot be defined as a ‘workman’. Thus, a finding was given that the

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<sup>2</sup> 2006 SCC OnLine MP 23



Petitioner is not a workman under Section 2(s) of the ID Act. It is apposite to extract the relevant portion of the Impugned Order, as below:

*“10. This issue comprises as to whether the claimant is 'workman' as defined u/s 2 (s) of the Industrial Dispute Act 1947 onus of which was conferred by the Ld. Predecessor of this court upon the workman.*

**Here it be noted that as per the averment of the claimant, he being professional sale representative / medical representative is covered within the definition of Sections 2 (s) of the Industrial Dispute Act 1947 read with section 6 (2) of the Sales Promotion Employees (Conditions of Service) Act, 1976 as amended by the Act of 1986.**

*Per contra it is the contention of the management that the claimant is not covered under the definition of the workman as defined u/s 2(s) of the Act.*

*Ld. AR for the claimant has relied upon 2 (Two) Division Bench Judgments of the Hon'ble Rajasthan High Court, namely (1) Rajasthan Medical and Sales Representatives Union and Ors. Vs. Industrial Research Institute Pvt. Ltd. And Ors. 2000 (87) FLR 563 and (2) 'M/s Dolphin Laboratories Ltd. Vs. Judge, Labour Court Udaipur & another' decided on 17<sup>th</sup> January, [2001 (2001 (90) FLSR 257, (2001) IILLJ 559 Raj, 2001 (2) WLC 220, 2001 (2) WLN468].*

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*13. Here, it would be appropriate to refer to the celebrated judgment of **the Hon'ble Supreme Court titled as H. R. Adyanthaya Vs. Sandoz (India) Ltd. -1995-I-LLJ-303SC wherein after discussing section 2(s) of the Industrial Dispute Act and Section 6(2) of The Sales Promotion Employees (Conditions of Service) Act, 1976 the five Judges of the Hon'ble Supreme Court observed as under:***

*'Workman' - Medical representatives if covered – In order to fall within, the definition, a person must be employed to do any of the categories of work mentioned in the main body of the definition (Viz. Manual, unskilled, skilled, technical, operational etc.) and it is not enough that he is not merely covered by any of the four exceptions of the definition. **Word 'skilled' to be read as ejusdem generis to mean skilled whether manual or non-manual and as such medical representatives are not skilled workers nor are they 'technical' or 'operational' workers.** Thus, their work is not covered by any type of works mentioned in the main body of the definition.*

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*18. Now coming to the factual matrix of the present case, it be seen that*



*in the present case it is not in dispute that claimant was working as a 'Medical Representative'. This fact has also been admitted by the MW2 in his cross-examination wherein he deposed that workman was working as 'Medical Representative' and was posted at Mirzapur.*

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*Now since the claimant was a sales/medical representative, in the light of the law laid down by the Hon'ble Supreme Court in **Adyanthaya's case (supra)**, it is held that he is not a 'workman' as defined in Section 2 (s) of the I. D. Act because his work does not come within any of the categories of manual, skilled, unskilled, technical, operational, clerical or supervisory work for hire or reward.*

*19 Thus, it is held that the claimant is not 'workman' as defined u/s 2(s) of the I. D. Act. Hence, this issue is decided in favour of the management and against the workman. Issue disposed of accordingly."*

[Emphasis Supplied]

11. The contentions raised by the learned Counsel for the Petitioner have thus already previously been raised before the learned Labour Court and have been adjudicated upon.

12. The issue of whether or not sales personnel are workman is no longer *res integra*. The Supreme Court in **H.R. Adyanthaya** case has held that the sales representatives who are involved in pharmaceuticals are not workmen and that to treat such persons as workmen would be contrary to the law, as a person to be qualified as a workman, must be doing the work which falls in a category, manual, clerical, supervisory or technical. It is apposite to set out the relevant extract below:

*"33. It was contended by Shri Sharma, appearing for the workmen that the definition of workman under the ID Act includes all employees except those covered by the four exceptions to the said definition. His second contention was that in any case, the medical representatives perform duties of skilled and technical nature and, therefore, they are workmen within the meaning of the said definition. We are afraid that both these contentions are untenable in the light of the position of law discussed above. The first contention was expressly negatived by two three-Judge Benches in May &*



*Baker [(1961) 2 LLJ 94 : AIR 1967 SC 678 : (1961) 2 FLR 594] and Burmah Shell [(1970) 3 SCC 378 : (1971) 2 SCR 758 : AIR 1971 SC 922 : (1970) 2 LLJ 590] cases as has been pointed out in detail above. As regards the second contention, it really consists of two sub-contentions, viz., that the medical representatives are engaged in 'skilled' and 'technical' work. As regards the word 'skilled', we are of the view that the connotation of the said word in the context in which it is used, will not include the work of a sales promotion employee such as the medical representative in the present case. That word has to be construed ejusdem generis and thus construed, would mean skilled work whether manual or non-manual, which is of a genre of the other types of work mentioned in the definition. The work of promotion of sales of the product or services of the establishment is distinct from and independent of the types of work covered by the said definition. Hence the contention that the medical representatives were employed to do skilled work within the meaning of the said definition, has to be rejected. As regards the 'technical' nature of their work, it has been expressly rejected by this Court in Burmah Shell case [(1970) 3 SCC 378 : (1971) 2 SCR 758 : AIR 1971 SC 922 : (1970) 2 LLJ 590]. Hence that contention has also to be rejected.*

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37. We are afraid that these contentions are not well placed. We have already pointed out as to why the word 'skilled' would not include the kind of work done by the sales promotion employees. For the very same reason, the word 'operational' would also not include the said work. To hold that everyone who is connected with any operation of manufacturing or sales is a workman would render the categorisation of the different types of work mentioned in the main part of the definition meaningless and redundant. The interpretation suggested would in effect mean that all employees of the establishment other than those expressly excepted in the definition are workmen within the meaning of the said definition. The interpretation was specifically rejected by this Court in *May & Baker [(1961) 2 LLJ 94 : AIR 1967 SC 678 : (1961) 2 FLR 594]*, *WIMCO [(1964) 3 SCR 560 : AIR 1964 SC 472 : (1963) 2 LLJ 459]*, *Burmah Shell [(1970) 3 SCC 378 : (1971) 2 SCR 758 : AIR 1971 SC 922 : (1970) 2 LLJ 590]* and *A. Sundarambal [(1988) 4 SCC 42 : 1988 SCC (L&S) 892]* cases. Although such an interpretation was given in *S.K. Verma [(1983) 4 SCC 214 : 1983 SCC (L&S) 510 : (1983) 3 SCR 799]*, *Delton Cable [(1984) 2 SCC 569 : 1984 SCC (L&S) 281 : (1984) 3 SCR 169]* and *Ciba Geigy [(1985) 3 SCC 371 : 1985 SCC (L&S) 808 : 1985 Supp (1) SCR 282]* cases the legislature impliedly did not accept the said interpretation as is evident from the fact that instead of amending the definition of 'workman' on the lines interpreted in the said latter cases, the legislature added three specific categories, viz., unskilled, skilled and



operational. The ‘unskilled’ and ‘skilled’ were divorced from ‘manual’ and were made independent categories. If the interpretation suggested was accepted by the legislature, nothing would have been easier than to amend the definition of ‘workman’ by stating that any person employed in connection with any operation of the establishment other than those specifically excepted is a workman. It must further be remembered that the independent categories of ‘unskilled’, ‘skilled’ and ‘operational’ were added to the main part of the definition after the SPE Act was placed on the statute book.”

[Emphasis Supplied]

12.1 In addition, the Supreme Court in *Bharat Bhawan Trust v. Bharat Bhawan Artists’ Association & Anr.*<sup>3</sup>, while relying on the *T.P. Srivastava v. M/s National Tobacco Co. of India Limited*<sup>4</sup>, has held that sales persons employed in canvassing for promotion of sales could not be held in the category of a workman. It is apposite to set out the relevant extract of the *Bharat Bhawan Trust* case below:

“4. Dr L.M. Singhvi, learned Senior Advocate appearing for the appellant, submitted that the appellant is a unique institute of its kind in the country set up by the Government of Madhya Pradesh where all forms of arts such as performing arts, fine arts, music, drama, poetry and tribal arts are preserved, promoted and developed. He submitted that although this Court in *Bangalore Water Supply & Sewerage Board v. A. Rajappa* [(1978) 2 SCC 213 : 1978 SCC (L&S) 215] has given a very wide meaning to both the expressions of “industry” and “workman”, by no stretch of imagination the appellant could be characterised as an industry, which is engaged in an aesthetic activity. He also drew our attention to the decisions in *Advertising Corpn. of India v. Barendra Chandra Nag* [(1958) 2 LLJ 448 (LAT)] ; *A. Sundarambal v. Govt. of Goa, Daman & Diu* [(1988) 4 SCC 42 : 1988 SCC (L&S) 892] (in which teachers were held not to be workmen although the educational institutions where they served may be “industry”) and *T.P. Srivastava v. National Tobacco Co. of India Ltd.* [(1992) 1 SCC 281 : 1992 SCC (L&S) 263] wherein this Court held that duties of a salesman employed for canvassing and promoting sales of company’s

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<sup>3</sup> (2001) 7 SCC 630

<sup>4</sup> (1992) 1 SCC 281



product in an area involves suggesting of ways and means to improve sales, study of type or status of the public to whom the product has to reach, study of market condition and supervising work of other local salesmen, cannot be termed to be either manual, skilled, unskilled or clerical in nature but requires an imaginative and creative mind and such a person cannot be termed as “workman”. He also submitted that the incidental activity entrusted to the respondent artists are all connected with the production of drama and theatre management and, therefore, cannot be taken to be a separate activity to class them as workmen. He submitted that the view taken by the Labour Court needs to be corrected at our hands.

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11. The work that the respondents perform is in the nature of a creative art and their work is neither subject to an order required from the Art Director nor from any of the artists. In performing their work, they have to bring to their work, their artistic ability, talent and a sense of perception for the purpose of production of drama involving in the course of such work, the application of the correct technique and the selection of the cast, the play, the manner of presentation, the light-and-shade effects and so on. In effect, the work they do is creative art which only a person with an artistic talent and requisite technique can manage. To call such a person, a skilled or a manual worker is altogether inappropriate. An artist must be distinguished from a skilled, manual worker by the inherent qualities, which are necessary in an artist, allied to training and technique. We derive support for this proposition from T.P. Srivastava v. National Tobacco Co. of India Ltd. case [(1992) 1 SCC 281 : 1992 SCC (L&S) 263] wherein section salesman employed for canvassing and promoting sales of company's products in an area could not be put under the category of a “workman”. There is no question of any work being given to them because the work of an artist is essentially creative, and freedom of expression is an integral part of it. In Hussainbhai v. Alath Factory Thezhilali Union [(1978) 4 SCC 257 : 1978 SCC (L&S) 506 : 1978 Lab IC 1264] this Court held as under: (SCC p. 259, para 5)

“Where a worker or group of workers labours to produce goods or services and these goods or services are for the business of another, that other is, in fact, the employer.”

In this case, firstly, no goods and services are being produced, secondly, the acting that is done is not for the business of another. There is a mere expression of creative talent, which is part of freedom of expression.”

[Emphasis Supplied]





13. The record shows that the Statement of Claim itself sets out that the Petitioner was working as a professional sales representative with the Respondent Company. The relevant extract of the Statement of Claim is below:

*“1. That the workman stated, his service with the Management in, the, year 1996 as a trainee in the sales department. On such appointment the workman underwent six month's training followed by probation for a period of six months. After completion of the probation, period the management being satisfied with the workman confirmed him in the post of Professional Sales Representative (PSR) w.e.f. 1.1.1997 and was posted at Jamshedpur.*

*2. That in four years of service of the workman in Jamshedpur his performance was very much satisfactory. There was scope for his promotion to the next higher post but the management whimsically transferred to the workman to Mirzapur (U.P) in August 2000...”*

[Emphasis Supplied]

13.1 A similar averment has been made by the Petitioner in his evidence before the learned Labour Court. The relevant extract of the Affidavit in Evidence is below:

*“2. That I started my service with the Management in the year 1996 as a trainee in the sales department. On such appointment I underwent six month's training followed by probation for a period of six months after completion of the probation period the management being satisfied with my work confirmed me in the post of Professional Sales Representative (PSR) w.e.f. 1.1.1997 and was posted at Jamshedpur. Copies of appointment letter and conformation are filed herewith and marked as Ext.W/1 & W/2 respectively.”*

[Emphasis Supplied]

13.2 The Petitioner, in his cross-examination, has set out that he is a graduate with specialization in botany honours and that he has received training about the products of the Respondent Company. He further affirmed



that during the course of his employment, it was his job to meet doctors, inform them about all the new medicines and products launched by the Respondent Company. The Petitioner further affirmed that only a qualified person having specialized knowledge about the medical products can recommend medicines to the doctors, which is part of his job. He further has volunteered that his job was to meet doctors and send reports and has affirmed that he received training in this behalf. The relevant extract of the cross-examination of the Petitioner is below:

“22.09.2016:

*WW1) Statement of Sh. Samarendra Das (recalled for cross examination in continuation of his testimony recorded on 11.07.2016). ON SA.*

*XXXX by Sh. Jitesh Pandey, AR for the management.*

**I am graduate with specialization in Botany Honors.** *It is correct that initially I joined the management. It is correct that after one year I was confirmed that Professional Service Representative (PSR). **It is correct that during the course of the training and employment PSR has been given training about the products of the company. It is correct that during the course of [sic: of] the employment PSR job is to meet the doctors to inform them about the new/ all products medicines launched by the company.** It is correct that on the basis of our information doctors prescribed the medicines to the. patients. It is correct that PSR is not required directly to sell the products in the market. **It is correct that only a highly qualified person having specialized knowledge about the medicines can recommend the medicines to the doctors. It is correct that if any doctors requires any information about the medicines,** I used to provide the same if I was having knowledge of the same and trained by the company in that regard and if I am not having knowledge and not trained on that aspect, then I used to inform the management and the management used to depute the manager who used to provide the information to the concerned doctor...”*

[Emphasis Supplied]

14. From a review of the evidence, thus, it can clearly be seen that the Petitioner was not a person doing clerical or menial jobs but was a qualified



graduate with a specialization and had also received specialized training for his field of work. There thus can be no doubt that the work that was being done by the Petitioner was of a specialized skill which he received after training that was imparted by the Respondent Company. In any event, as stated above, this aspect has not been denied by the Petitioner.

15. It is settled law that while examining the petitions filed challenging orders of the Labour Court, this Court does not sit as an Appellate Court. All that the Court is required to do is to see whether the jurisdiction has been exercised in accordance with law by the Labour Court. The Supreme Court in the case of *Syed Yakoob v. K.S. Radhakrishnan & Ors.*<sup>5</sup> held that the Court exercises supervisory jurisdiction and the High Court is not to reappreciate all the facts and evidence as an appellate court. The relevant extract is set out below:

*“7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. **A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals : these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction.** A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or properly, as for instance, it decides a question without giving an opportunity, be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. **There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on***

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<sup>5</sup> 1963 SCC OnLine SC 24



the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised (vide *Hari Vishnu Kamath v. Syed Ahmad Ishaque* [(1955) 1 SCR 1104] *Nagandra Nath Bora v. Commissioner of Hills Division and Appeals Assam* [(1958) SCR 1240] and *Kaushalya Devi v. Bachittar Singh* [AIR 1960 SC 1168])”

[Emphasis Supplied]

16. In view of the foregoing discussions, this Court finds no infirmity with the Impugned Order that would merit interference by this Court in the exercise of its supervisory jurisdiction.
17. The Petition is accordingly dismissed. All pending Applications stand closed.
18. The parties shall act based on the digitally signed copy of the order.

**TARA VITASTA GANJU, J**

**OCTOBER 6, 2025/ ha**