



2026:AHC:159347

AFR

Reserved : 22-23/07/2026

Delivered : 31/07/2026

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - C No. - 50467 of 2016

Anil Verma

.....Petitioners(s)

Versus

State of U.P. and 3 others

.....Respondent(s)

Counsel for petitioners(s)	: Anurag Pathak, Arun Kumar Singh, Harshit Pathak, Ramesh Kumar Saxena
Counsel for Respondent(s)	: Bidhan Chandra Rai, C.S.C., T.a.siddiaqi

Along with :-

1. **Writ C No. 42207 of 2019**
Vipin Garg
Versus
State of U.P. and 2 others
2. **Writ C No. 27546 of 2025**
Vipin Garg
Versus
Presiding Officer and 4 others

Court No. - 36

HON'BLE SAURABH SHYAM SHAMSHERY, J.

1. Heard Sri Harshit Pathak along with Sri Abhijeet Chatterjee and

Sri Bidhan Chandra Rai, learned counsel for respondents in both writ petitions.

2. The issue for consideration in present matter is ‘whether a medical representative would be considered a ‘workman’ under the provisions of U.P. Industrial Disputes Act, 1947 (hereinafter referred as ‘Act of 1947’) r/w provisions of Sales Promotion Employees (Conditions of Services) Act, 1976 (hereinafter referred as ‘Act of 1976’).

3. Learned advocates for parties have placed reliance upon various judgments passed by the Supreme Court, this Court as well as other High Courts on above issue.

4. Learned advocates for petitioners have placed reliance upon judgment passed by a Co-ordinate Bench in **M/s Nicholas Piramal India Ltd. And others vs. Presiding Officer, Labour Court, Lko and others, (Writ C No. 1004529/2007 decided on 23.11.2023)** a judgment passed by Supreme Court in **H.R. Adyanthaya and others vs. Sandoz (India) Ltd. and others, (1994) 5 SCC 737** and a judgment passed by a Co-ordinate Bench in **M/S Pfizer Ltd. Vs. State of U.P. and Others (Writ C No. 68844 of 2009, decided on 26.03.2010)** relevant parts of above judgments are quoted below :-

Nicholas Piramal India Ltd. (supra) :-

“31. We are in agreement with the view taken by the Bombay High Court in the case of S.G. Pharmaceuticals (supra) and it is thus clear that as per section 6(2) of Sales Promotion Employees (Conditions of Service) Act, 1976, the medical representatives are “workman” under the Industrial disputes Act, 1947. Further in the case of H.R. Adyanthaya v. Sandoz (India) Ltd, 1994 SCC (5) 737 it was further made clear that the 1976 Act after its amendment in the year 1986 by the Amending Act No. 48 of 1986 which came into effect w.e.f.

32. Thus, after 06.05.1987 all the medical representatives were declared to be workmen without limitation on their wages thereafter and upon the capacity in which they were employed or engaged.

33. In light of the aforesaid discussion this Court is of the considered view that after coming into force of Sales Promotion Employees (conditions of service) Act, 1976 the medical representatives would be deemed to be workmen as per the provisions of Industrial Disputes act and accordingly the argument of the petitioners is rejected in this regard.”

H.R. Adhyanthaya (supra) :-

“31. It also appears that Parliament has amended the definition of ‘industry’ by the Amending Act 46 of 1982 to include, in the definition of industry in Section 2(*j*) of the ID Act, among others, any activity relating to the promotion of sales or business, or both carried on by any establishment. However, that amendment has not yet come into force. But the amendment made by the very same Amending Act of 1982 to the definition of ‘workman’ in Section 2(*s*) to include those employed to do ‘operational work’, and to the definition of ‘wages’ in Section 2(*rr*) to include “any commission payable on the promotion of sales or business or both” has come into force w.e.f. 21-8-1984.

39. We are, therefore, of the view that the contention raised on behalf of the management in this appeal, viz., since the medical representatives are not workmen within the meaning of the Maharashtra Act the complaint made to the Industrial Court under that Act was not maintainable, has to be accepted. Hence the complaint filed by the appellant-workmen under the Maharashtra Act in the present case was not maintainable and hence it was rightly dismissed by the Industrial Court.

40. Although we hold that the complaint filed by the workmen is not maintainable under the Maharashtra Act, we are of the view that taking into consideration the fact that a long time has lapsed since the filing of the complaint, it is necessary that we exercise our powers under Article 142 of the Constitution, which we do hereby and direct the State Government to treat the employee's said complaint as an industrial dispute under the ID Act and refer the same under Section 10(1)(*d*) of the said Act to the Industrial Tribunal, Bombay within four weeks from today. The Industrial

Admittedly, the respondent no. 3 was appointed as Area Sales Manager through the appointment letter dated 12-2-1997. The said appointment letter recites that he is being promoted to the post of 'Area Sales Manager in the Management Cadre of the Company'. It further recites that he is placed in 'Management Grade M-5'. Its clause 9(A) entitles him to join Parke-Davis (India) Ltd. Management (Staff) Superannuation Scheme, the Gratuity Scheme for the Employees in Management Cadre and Group Hospitalization and Surgical Insurance Policy, applicable to the Management Staff in accordance with the Rules of these Schemes. The appointment letter itself, in the absence of anything to the contrary, shows that the respondent no. 3 was appointed in managerial capacity. The said appointment letter has been accepted by the respondent no. 3 with his wide open eyes. Even if it is accepted that he had no right to grant leave to the Medical Service Representatives or to initiate disciplinary action against them, the fact remains that the disciplinary action, promotion etc. of them were dependant and subject to the recommendations made by him. The said capacity cannot be disputed and is fully established from various documents, referred to above, which are on the record. The explanation that these letters were written under pressure is only a defence for the sake of defence. The Tribunal has misdirected itself and has not taken into consideration the appointment letter of the respondent no. 3 coupled with the other documents written by him (Ex. 22 to 25), referred to above, in right earnest .

At this stage, the contention of the learned counsel for the respondent no. 3 is that the definition of 'workman' as given under the U.P. Industrial Disputes Act is not at all relevant and if the respondent no. 3 is treated as 'Sales Promotion Employee' within the meaning of 1976 Act read with Section 6(2) thereof, the award of the Tribunal, impugned in the present writ petition, treating him as a 'workman' is perfectly justified.

The question whether the Medical Representatives are 'workman' within the meaning of U.P. Industrial Disputes Act , 1947 has been subject matter of consideration before the Apex Court from time to time. The earliest one is May & Baker (India) Ltd. Vs. Their Workmen, AIR 1967 SC 678. The said case arose under un-amended definition of 'workman' as contained under Industrial Disputes Act. The Apex Court found on the basis of undisputed nature of duty of

result thereof, the persons engaged in sales promotion do not come within the purview of definition of 'workman' under the Industrial Disputes Act and as such, they had no protection regarding security of their employment and other benefits under that Act. A demand was raised by such Medical Representatives to make necessary amendment in the Industrial Disputes Act. The Central Government considered it fit and proper to enact another 'Act' namely Sales Promotion Employees (Conditions of Service) Act 1976, instead. The aforesaid Act has been enacted with a view and object to protect the interest of the Medical Representatives engaged in sales promotion.

The amended provision came up for consideration before the Supreme Court and it has been held in H.R. Adyanthaya etc. etc. Vs. Sandoz (India) Ltd. etc. etc. AIR 1994 Supreme Court 2608 that by the said amendment, among the other, the definition of 'sales promotion employees' was extended so as to include 'sales promotion employees' without a ceiling on their wages except those employed or engaged in a supervisory capacity drawing wages exceeding Rs.1,600/- per mensem and those employed or engaged mainly in managerial or administrative capacity. After taking into consideration Section 6(2) of 1976 Act, it observed that on and from 6-3-1976, the provisions of Industrial Disputes Act became applicable to the Medical Representatives depending upon their wages upto 6-5-1987 and without limitation of their wages thereafter and upon the capacity in which they were employed or engaged. In the said case, after making an analysis of various amendments made in the definition of 'workman' as contained in Industrial Disputes Act as also taking into consideration the provisions of 1976 Act, it has been held that Medical Representatives do not fall within the definition of 'workman' under the Industrial Disputes Act.”

5. Per contra, learned counsel for respondents have placed reliance upon **S.G. Pharmaceuticals Division of Ambala Sarabhai Enterprises Ltd. vs. U.P. Pademwar and others, 1992 Mh.L.J. 1333, Novartis India Ltd. vs. Vipin Srivastava and others, 2018 SCC Online MP 1931, Sh. Samrendra Das vs. M/s Win Medicare Pvt. Ltd., 2025:DHC:8918 and Jyoti Kumar vs. M/s Zydus Healthcare Ltd and others, 2026:MPHC-ND:1897** and relevant part thereof are quoted below :

"His main work is to do canvassing and obtain orders. In that connection, of course, he has to carry on some correspondence, but that correspondence is incidental to the main work of pushing sales of the Company. In connection with promotion of sales, he has to make recommendations for selection of agents and dealers, extension or curtailment of credit facilities to agents, dealers and customers, investments on capital and revenue in the shape of facilities at Agents' premises or retail outlets; and selection of suitable sites for retail outlets to maximise sales and negotiations for terms of new site".

After enumerating the other duties, it was pointed out:

"The case of District Sales Representative is clearly that of a person who cannot fall within any of the four classes, because his work cannot be held to be either manual, clerical, technical or supervisory. The work of canvassing and promoting sales cannot be included in any of these four classifications. He is, therefore, not a workman at all within the principal part of the definition".

13. We may refer to several other cases where the medical representative was held not to be a workman. They are D. S. Nagaraj vs. The Labour Officer, Kurnool, 1972 (II) Andhra Weekly Reporter 126; J. and J. Dechane Distributors vs. State of Kerala and others (supra); John Wyeth and Brother Ltd. vs. Industrial Tribunal, Alleppey, 177 L.I.C. 1997 and N. J. Josheph vs. Labour Court, 1987 (60) FLR 134. These are all cases in which it was found that the work of the Medical Representative was to do canvassing for promoting sales and therefore would not fall into any of the categories enumerated in the text of the definition 'workman' under section 2(s) of the Industrial Disputes Act. The same was the view taken in several other cases regarding salesman. In Premier Irrigation Equipment (Pvt.) Ltd. vs. Labour Court, Delhi, 1973 (Vol. I) L.L.N. 333 a sales representative giving technical demonstration and attending to after-sale service, was held not to be a workman within the meaning of section 2(s) of the Industrial Disputes Act. In Shalimar Paints Ltd. vs. Third Industrial Tribunal, 1974 L.I.C. 213 it was held that though a salesman is required to have some technical knowledge his principal duties will remain the promotion of sale; in absence of any supervisory or manual work, he must be held not to be a 'workman' under the Act. M/s. Kirloskar Brothers Ltd. vs. The Presiding Officer, Labour Court, 1976 L.I.C. 918 and Jugal Kishore

"Industrial Disputes Act, 1947

2. Definitions In this Act, unless there is anything repugnant in the subject or context, -

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(m) "wages" means all remuneration capable of being expressed in terms of money, which would, if the terms of employment, expressed or implied, were fulfilled, be payable to a workman in respect of his employment, or of work done in such employment, and includes-

(i) such allowances (including dearness allowance) as the workman is for the time being entitled to;

(ii) the value of any house accommodation, or of supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of food grains or other articles;

(iii) any travelling concession;

(iv) any commission payable on the promotion of sales or business or both;

but does not include-

(a) any bonus;

(b) any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the workman under any law for the time being in force;

(c) any gratuity payable on the termination of his service;

(s) "workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of,

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding *(one thousand six hundred rupees) per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature."

'Substituted to "ten thousand rupees" by Act 24 of 2010, S. 2 (w.e.f. 15.9.2010)

The Sales Promotion Employees (Conditions of Service) Act, 1976

2. Definitions. In this Act, unless the context otherwise requires,

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(d) "sales promotion employees" means 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.

Explanation. For the purpose 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 this 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;"

12. The test to decide who is a workman within the meaning of Section 2(s) of the Industrial Disputes Act, 1947, was explained by

Is his work in the main clerical or manual so that he falls within the definition of a "workman"; the question whether he is a supervisor or exercises directional or controlling power poses merely a negative test of a "workman" which cannot be conclusive. This is ultimately a question of fact, at best one of mixed fact and law, though what the true legal inference should be from the facts found or admitted will be a question of law. How far the circumstance that the employee has supervisory powers should be regarded as affecting the question will really depend upon the nature of the industry, the type of work in which he is engaged, the organisational set up of the particular unit of industry and like factors."

13. The Supreme Court in its judgment in All India Reserve Bank Employees' Association v. Reserve Bank of India, AIR 1966 SC 305 has taken note of the aforesaid decision in Ford Motor Company (supra) and held as under:-

"(25) It may be mentioned here that Mr. Chari attempted to save the employees in Class II from the operation of the exceptions in CI. (iv) by referring to their duties which he said were in no sense 'supervisory' but. only clerical or of checkers. He also cited a number of cases, illustrative of this point of view. Those are cases dealing with foremen, technologists, engineers, chemists, shift engineers, Asstt. Superintendents, Depot Superintendents, godown-keepers etc. We have looked into all of them but do not find it necessary to refer to any except one. In Ford Motor Co. of India Ltd. v. Ford Motors Staff Union, (1953) 2 LLJ 444 (LATI-Bom), the Labour Appellate Tribunal correctly pointed out that the question whether a particular workman is a supervisor within or without the definition of 'workman' is "ultimately a question of fact, at best one of mixed fact and law" and "will really depend upon the nature of the industry, the type of work in which he is engaged, the organisational set up of the particular unit of industry and like factor". The Labour Appellate Tribunal pertinently gave the example that "the nature of the work in the banking industry is in many respects obviously different from the nature and type of work in a workshop department of an engineering or automobile concern." We agree that we cannot use analogies to find out whether Class II workers here were supervisors or doing mere clerical work. No doubt, as Mr. Chari stated the work in a Bank involves layer upon layer of checkers and checking is hardly supervision but where there is a power of assigning duties and

that mere checking of the work of others is not enough because this checking is a part of accounting and not of supervision and the work done in the audit department of a bank is not supervision."

14. In view of the aforesaid judgment, the question as to whether a person is a workman within the meaning of S. 2(s) of the I.D. Act mainly depends upon the nature of the industry, type of work in which he is engaged, organizational set up of particular unit of industry and other factors. In the present case, the respondent was engaged as Sales Representative in a Pharmaceutical Company. His primary duty was to visit doctors, chemists as well as stockists. Meeting different professionals to promote sale of product of the appellant cannot be said to be manual or clerical work as it requires knowledge of product, its uses and also persuasive skills. The respondent may not be controlling any subordinate but he was master of the work assigned to him. The manner of performing the job was solely in the discretion of the respondent. The interest of the management was that the Medical Representative should achieve the sales target. The supervisory capacity necessarily has to be examined keeping in view the manual, unskilled, skilled, clerical work and the person performing such work is a workman. May be, he does not supervise any person but he is the master of his own affairs reporting to management only in respect of quantification of sales, therefore, a Medical Representative cannot be treated to be a workman within the meaning of Section 2(s) of the I.D. Act.

15. The judgment in H.R. Adyanthaya's case (supra) has come up for consideration before a Division Bench of this Court in Samat Kumar v. Parke Davis India Ltd., (1997) 2 JLJ 353 wherein the reference to Labour Court was subject matter of challenge on the part of the management. Though the workman was said to be working as Area Sales Manager in managerial capacity drawing salary of more than Rs. 1,600/-, therefore, he was not a workman but while examining the scope of Adhyanthaya's case (supra), the Court has held that 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 under Section 2(s) of the I.D. Act. The relevant extract of the Division Bench judgment reads as under

"10. As against it, learned counsel for the respondent No. 1 has placed reliance on a case as reported in 1988 (II) MPWN 116, (1988) 4 SCC 42; AIR, 1988 SC 1700 (Miss A. Sundarambal v. Govt. of

Representatives do not perform duties of 'skilled' or 'technical nature and therefore, they are not 'workmen'. The connotation of word 'skilled' in the context in which it is used, will not include work of a Sales Promotion Employees such as Medical Representative. 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."

After returning such finding it was held that the reference was not maintainable as Medical Representative would not fall within the definition of workman. We are not only bound by the aforesaid judgment but we find the same to be a correct enunciation of law.

16. Learned Single Bench of this Court in German Remedies Limited's case (supra) relying upon H.R. Adyanthaya's case (supra) held that the Medical Representative is a workman. The relevant extracts of the said decision in German Remedies Limited's case read as under:-

"14. With regard to meet out, the objections-the petitioners about the status of respondent No. 2, whether he would be a workman within the meaning of Section 2(s) of the Industrial Disputes. Act, 1947, has to be dealt with. The Apex Court had an occasion to consider a similar question in a judgment H.R. Adyanthaya v. Sandoz (India) Ltd., (1994) 2 CLR 552 (S.C.): [(1994) 5 SCC 737]. The Apex Court in the said case was considering the status of Medical Representatives and the Apex Court came to the conclusion that **since there had been an amendment in the provisions of the Industrial Disputes Act, 1947 and also by virtue of the provisions of Section 6 of the Sales Promotion Employees (Conditions of Service) Act, 1976 makes application to the provisions of the Industrial Disputes Act, 1947 as in force for the time being, therefore, the Apex Court held that a Medical Representative shall be a workman within the meaning of Section 2(s) of the Industrial Disputes Act, 1947.**

15. The aforesaid judgment passed by the Apex Court had also been considered by the Rajasthan High Court in Dolphin Laboratories Ltd. v. Judge, Labour Court, Udaipur, (2001) 2 LLJ 559 (Raj.) and also by Punjab & Haryana High Court in Ripu Daman Bhanot v.

judgment passed by the Apex Court in Sandoz's case (supra), this objection of the petitioners also cannot be accepted."

The Single Bench in German Remedies Limited's case (supra) has misread the judgment in H.R. Adyanthaya's case (supra) to hold that Medical Representatives are workmen within the meaning of Section 2 (s) of the I.D. Act. In fact, three categories were created by the Supreme Court. **In respect of the Medical Representatives engaged prior to. enactment of SPE Act w.e.f. 6.3.1976, they were held not governed either by I.D. Act or SPE Act. In respect of employees whose services were terminated after 6.3.1976, the appeals were dismissed for the reason that it is not the case of the employees that their wages were less than Rs. 750/- per month excluding commission, therefore, the SPE Act did not apply to them. The only dispute which was referred to Industrial Court under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practice Act, 1971 was in respect of transfer of the employees affected on 16.2.1988. The Supreme Court found that the definition of workman under I.D. Act will not cover the sales promotion employees within the meaning of SPE Act. The argument raised that the sales promotion employees are skilled or. operational employees was not accepted. Therefore, the order of the learned Single Bench is not the correct reading of H.R. Adyanthaya's case (supra) and is, thus, overruled."**

Sh. Samarendra Das (supra) (By a Single Bench):

"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**

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

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.*³, while relying on the *T.P. Srivastava v. M/s National Tobacco Co. of India Limited*⁴, 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]

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

“12. The question for consideration is whether a Medical Representative falls within the definition of "workman" in terms of Section 2(s) of the Industrial Disputes Act, 1947.

13. A three-Judge Bench of the Hon'ble Supreme Court in the case of May and Baker (India) Limited vs. Workmen', reported in AIR 1967 SC 678 had an occasion to directly deal with the question as to whether the Medical Representatives of the company, who are discharged from service, are the workman under the Industrial Disputes Act and the order of reinstatement passed by the Industrial Tribunal was, therefore, valid. The Hon'ble Supreme Court referred to the undisputed nature of the duties of the employees and found that his main work was of canvassing sales. Any clerical or manual work that he had to do was incidental to the said main work, and could not make more than a small fraction of time for which he had to work. In the circumstances, the Hon'ble Supreme Court held that the Tribunal's conclusion that the employee was a workman under the Industrial Disputes Act was incorrect.

14. A similar issue was considered by a three-Judge Bench judgment of the Hon'ble Supreme Court in the case of Western India Match Company Limited vs. Workman reported in AIR 1964 SC 472. The question before the Court was whether the sales office was entirely independent of the factory or was a department of the one and the same unit of production, and whether Inspectors, Salesman and Retail Salesman of the sales office were workmen within the meaning of U.P. Industrial Disputes Act. The matter was referred by the State Government for adjudication to the Industrial Tribunal on 18.08.1961. After a detailed analysis of the matter, the Bench following the earlier decision in the case of May and Baker's case (supra) has arrived at a similar finding that they cannot be termed as a workman in terms of the definition under the Act of 1947.

15. A similar issue was considered in the case of Burmah (Supra) and again the judgment passed in May and Baker's case (supra) was taken into consideration and the Court has given the verdict in the light of May and Baker's case. The three-Judge Bench in the case of May and Baker (supra) has taken a view that a person to be qualified to be a workman must be doing the work which falls in any of the four categories viz. manual, supervisory, technical or clerical. If a person does not fall within the four exceptions to the aforesaid definition, he is a workman within the definition as provided under Section 2(s) of the

"24. We thus have three three-Judge Bench decisions which have taken the view that a person to be qualified to be a workman must be doing the work which falls in any of the four categories, viz., manual, clerical, supervisory or technical and two two-Judge Bench decisions which have by referring to one or the other of the said three decisions have reiterated the said law. As against this, we have three three-Judge Bench decisions which have without referring to the decisions 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] and *Burmah Shell* [(1970) 3 SCC 378 : (1971) 2 SCR 758 : AIR 1971 SC 922 : (1970) 2 LLJ 590] cases have taken the other view which was expressly negatived, viz., if a person does not fall within the four exceptions to the said definition he is a workman within the meaning of the ID Act. These decisions are also based on the facts found in those cases. They have, therefore, to be confined to those facts. Hence the position in law as it obtains today is that a person to be a workman under the ID Act must be employed to do the work of any of the categories, viz., manual, unskilled, skilled, technical, operational, clerical or supervisory. It is not enough that he is not covered by either of the four exceptions to the definition. We reiterate the said interpretation.

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 subcontentions, 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 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. 39. We are, therefore, of the view that the contention raised on behalf of the management in this appeal, viz., since the medical representatives are not workmen within the meaning, of the Maharashtra Act the complaint made to the Industrial Court under that Act was not maintainable, has to be accepted. Hence the complaint filed by the appellantworkmen under the Maharashtra Act in the present case was not maintainable and hence it was rightly dismissed by the Industrial Court."

17. The judgment in H.R. Adyanthaya's case (*supra*) has come up for consideration before a Division Bench of this Court in *Samat Kumar (supra)*, wherein the reference to the Labour Court was subject matter of challenge on the part of the management. Though the workman was said to be working as 'Area Sales Manager' in managerial capacity drawing salary of more than Rs.1,600/-, therefore, he was not a workman but while examining the scope of Adhyanthaya's case (*supra*), the Court held that 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 under Section 2(s) of the ID Act. The relevant extract of the Division Bench judgment reads as under:-

"10. As against it, learned counsel for the respondent No.1 has placed reliance on a case as reported in 1988 (II) MPWN 116 = AIR 1988 SC 1700 (*Miss A. Sundarambal v. Govt. of Goa, Deman & Diu and others*) whereby it was held that teacher employed in a school is not a workman. But, now the dispute stands resolved with respect to the cases of Medical Representative as reported in AIR 1994 SC 2608 [*H.R. Adyanthya etc. v. Sandoz (India) Ltd. etc. etc.*] whereby it has been held that 'Workman' does not include all employees except those covered by four exceptions in said definition of section 2(s) of Industrial Disputes Act. Medical Representatives do not perform duties of 'skilled' or 'technical' nature and therefore, they are not 'workmen'. The connotation of word 'skilled' in the

services of the establishment is distinct from and independent of the types of work covered by the said definition.”

After returning such finding, it was held that the reference was not maintainable as Medical Representative would not fall within the definition of workman.

18. In German Remedies Limited’s case (supra) relying upon H.R. Adyanthaya’s case (supra) held that the Medical Representative is a workman. The relevant extracts of the said decision in German Remedies Limited’s case read as under:-

“14. With regard to meet out, the objections - the petitioner about the status of respondent No. 2, whether he would be a workman within the meaning of Section 2(s) of the Industrial Disputes Act, 1947, has to be dealt with. The Apex Court had an occasion to consider a similar question in a judgment H.R. Adyanthaya v. Sandoz (India) Ltd. and others [(1994) 5 SCC 737]. The Apex Court in the said case was considering the status of Medical Representatives and the Apex Court came to the conclusion that since there had been an amendment in the provisions of the Industrial Disputes Act, 1947 and also by virtue of the provisions of Section 6 of the Sales Promotion Employees (Conditions of Service) Act, 1976 makes application to the provisions of the Industrial Disputes Act, 1947 as in force for the time being, therefore, the Apex Court held that a Medical Representative shall be a workman within the meaning of Section 2(s) of the Industrial Disputes Act, 1947. 15. The aforesaid judgment passed by the Apex Court had also been considered by the Rajasthan High Court in Dolphin Laboratories Ltd. v. Judge, Labour Court, Udaipur and Another 2001-II-LLJ-559 (Raj.) and also by Punjab & Haryana High Court in Ripu Daman Bhanot v. Presiding Officer, Labour Court, Ludhiana and Ors. 1997-I-LLJ-557 (P&H). The aforesaid two High Courts have also dealt with the similar questions and relying upon the ratio of Sandoz's case (supra) held that Medical Representative is a workman for the purpose of Section 2(s) of the Industrial Disputes Act, 1947. 16. In view of the aforesaid law laid down by the two High Courts based upon the earlier judgment passed by the Apex Court in Sandoz's case (supra), this objection of the petitioner also cannot be accepted.”

06.03.1976, they were held not governed either by ID Act or SPE Act. In respect of employees whose services were terminated after 06.03.1976, the appeals were dismissed for the reason that it is not the case of the employees that their wages were less than Rs.750/- per month excluding commission, therefore, the SPE Act did not apply to them. The only dispute which was referred to Industrial Court under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practice Act, 1971 was in respect of transfer of the employees affected on 16.02.1988. The Supreme Court found that the definition of workman under ID Act will not cover the sales promotion employees within the meaning of SPE Act. The Division Bench found that the judgment in the caes of German Remedies (supra) was not correct.

20. A Division Bench of Patna High Court in Deepak Kumar v. State of Bihar (2016) 149 FLR 528, held as under:-

“9. The Sales Promotion Employee as defined under the SPE Act as reproduced above includes 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. The main provision is wide enough to include all categories of employees engaged for hire or reward to do any work relating to promotion of sale of business. The petitioner falls within such category. As admittedly, he was appointed as a person to promote sale of the pharmaceutical products, as is evident from Charge Sheet dated 13th December, 2002, which is to the effect that the appellant has failed to achieve the targets of sale of group of medicines. The notice (Annexure2 to the writ petition) itself recites the appellant as a Medical Representative. Therefore, he is a Sales Promotion Employee. But there is exclusion clause of Sales Promotion Employees and not all Sales Promotion Employees are the employees within the meaning of Section 2(d) of the SPE Act.”

21. In the case of Petcare Division of Tetragon Chemie Pvt. Ltd. vs. M.P. Medical and Sales Representatives Association and another (W.A.No.922 of 2006) decided on 21.12.2022, the Division Bench categorically held that 'Medical Representative' does not fall under the definition of "workman" as defined under Section 2(s) of the 4 Industrial Disputes Act, 1947. The relevant extract is as under:-

Government was given directions but the fact remains that the powers were exercised under Article 142 of the Constitution of India by the Hon'ble Supreme Court. But the law which has been settled in the aforesaid case by the Constitution Bench is clear that the Medical Representatives or the Sales Promotion Officer do not fall under the definition of workman. The learned Single Judge has followed the aforesaid judgment passed by the Hon'ble Supreme Court and has rightly set aside the order passed by the Labour Court. Under these circumstances, we do not have any hesitation to observe that no illegality is committed by the writ court in allowing the writ petition. In absence of any cogent material or a judgment to override the observations made by the writ court and the law settled by the Constitution Bench of the Hon'ble Supreme Court in H.R. Adyanthaya's (supra), no relief can be extended to the appellant."

22. Thus, it was held that the Medical Representative/Sales Promotion Office is not a workman in view of the decision of the Division Bench of this Court passed in Writ Appeal No.75/2017 parties being [Novartis India Limited Vs. Vipin Shrivastava & others], therefore, any dispute relating to a 'Medical Representative/Sales Promotion Officer' cannot be entertained by the Labour Court as they do not come within the definition of 'workman' under Section-2(s) of the Act.

23. In (2015) 7 SCC 263 parties being [Chauharya Tripathi & others Vs. Life Insurance Corporation of India & others] in which, the Apex Court had held that the Development Officer of the Life Insurance Corporation does not fall within the definition of workman. He further submits that the Apex Court has placed reliance on a case reported in 1994 (5) SCC 737 parties being [H.R. Adyanthaya Vs. Sandoz (India) Ltd.] and therefore, the order passed by the Division Bench in the case of Novartis India Limited (supra) also placing reliance in the case of Adyanthaya (supra) has held that the Medical Representative does not fall within the definition of workman.

24. Against the view taken by the co-ordinate bench in the case of Petcare (supra) that the Medical Representative or the Sales Promotion Employee do not fall under the definition of Workman under section 2(S) of ID Act, an SLP No.15250/2023 was preferred. The said SLP was dismissed by order dated 10.07.2023.

25. In view of the aforesaid discussion and law, it is held that the

representative would be deemed to be a workman is not based on correct reading of **H.R. Adhyanthaya (supra)**.

7. The Supreme Court has held that medical representatives are not workmen within the meaning of Maharashtra Act, however, in exercise of Article 142 of Constitution, a direction was passed that complaint of concerned employee be treated as industrial dispute, therefore, it does not hold that it would be treated as a precedence.

8. In aforesaid circumstances, Court finds that there are authoritative decisions by a Single Bench of Delhi High Court in **Sh. Samarendra Das (Supra)** and **Division Bench of other High Courts in S.G. Pharmaceuticals (Supra)** and **Jyoti Kumar (Supra)**, which have more persuasive value and as referred above, issue concerned was considered in detail and a categorical finding was returned that 'Medical Representative' would not be workmen under the Act of 1947 r/w Act of 1952.

9. In **Novartis India Ltd. (supra)**, Division Bench of Madhya Pradesh High Court has also taken note of **H.R. Adyanthaya (supra)** and incorrect reading of said judgment by a Single Bench of said High Court was overruled.

10. Another Division Bench of High Court of Patna in **Nalin Sinha Vs. The State of Bihar (L.P.A. No. 1430/2009, decided on 19.01.2011)** has also followed the same ratio, Relevant part thereof is mentioned hereinafter:-

“17. From the reading of the aforementioned extract of judgment, it would be clear that while most of the cases of the medical representatives before the Apex Court were of the period prior to the Act coming into force or on the basis of the limits of salary as it

Division Bench of the Rajasthan High Court in the case of Dolphin Laboratories (supra) in the following terms:—

“8. It may be noticed that the dispute which was before Hon'ble the Supreme Court in H.R. Adyanthaya's case ((1994) 5 SCC 737 : AIR 1994 SC 2608) (supra) related to the period of termination that has been affected on 26.4.1976 and 9.12.1977 respectively and the employees case was not that they were drawing salary less than the fixed in the Act as prevailing then. It is after explaining the law stood at the relevant time governing the matters relating to medical representatives under the Industrial Disputes Act that the Court found in those cases the appellants before them were not workmen as a medical representative not falling in that category.”

does not seem to be correct, inasmuch as, from a simultaneous reading of para graph-8 of the judgment of the Apex Court in the case of H.R. Adyanthaya (supra) it is manifest that the Division Bench of Rajasthan High Court in the case of Dolphin Laboratories Ltd. (supra) had failed to take into consideration paragraph-8 of the judgment of the Apex Court and went on to hold just contrary to the reasonings and findings of Apex Court. As a matter of fact, the Apex Court in the case of H.R. Adyanthaya (supra) did not lay down the law of medical representative being not a ‘workman’ only on the basis of limits of salary, rather had gone by the definition of the workman under the I.D. Act as also had closely examined the provisions of the Act before recording the following reasons for holding that the medical representative doing the work of pro motion of sales of the product or services of the establishment were not employee doing any skilled work or the technical nature of the work as would be apparent from the following portion of the same judgment of the Apex Court in the case of H.R. Adyanthaya (supra) :

“6. It was contended by Shri Sharma appearing for the workmen that the definition of workman under the I.D/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 (AIR 1967 SC 678) and Burmah Shell ((1970) 3 SCC 378 : AIR 1971 SC 922) cases (supra) 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

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 (supra). Hence that contention has also to be rejected.”

18. It has also to be taken into account, that the aforesaid view recorded in the judgment of the Apex Court in the case of H.R. Adyanthaya (supra) once again fell for consideration before the Apex Court in the case of Rhone-Poulenc (India) Ltd. v. The State of U.P. reported in (2000) 7 SCC 675 : AIR 2000 SC 3182, wherein it was held that:—

“5. The contention of the learned counsel is that assuming the aforesaid provision is applicable, it still does not extend to deeming fiction to any State enactment including the U.P. Industrial Disputes Act as it is apparent on reading of the section that Sales Promotion Employees, within the meaning of Central enactment of the Industrial Disputes Act, 1947 (14 of 1947) have been treated as ‘workman’. Reliance has been placed by the learned counsel on a Constitution Bench decision of this Court in H.R. Adyanthaya v. Sandoz India Ltd., (1994) 5 SCC 737 : (1994 AIR SCW 3678 : AIR 1994 SC 2608). The Bench has held that since the Medical representatives are not workmen within the meaning of the Maharashtra Act, the complaint made to the Industrial Court under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 was not maintainable.”

11. The Section 6(2) of Act of 1976 provides that Provisions of the Industrial Disputes Act, 1947 as in force time being shall apply to sales promotion employees as they apply to or in relation to workmen with its meaning of that Act, for reference Section 6(1)&(2) of Act of 1976 is reproduced hereinafter :-

“6(1) The provisions of the Workmen’s Compensation Act, 1923, as in force for the time being, shall apply to, or in relation to sales promotion employees as they apply to, or in relation to, workmen within the meaning of that Act.

6(2) The provisions of the Industrial Disputes Act, 1947 (14 of 1947) as in force for the time being shall apply to, or in relation

12. Subsequently the Industrial Disputes (Amendment) Act, 1982 (Act No. 46 of 1982) come into force but with a declaration that different provision of said Act will come into force on different dates as may be appointed. Section 2(j), Section 2(j)(rr) (iv) as amended are still not came into force, since no notification is issued till date. Similarly Section 24 also do not come into force till date. Said provisions are mentioned hereinafter:-

“2(C)(j) “Industry” means any systematic activity carried on by co-operation between an employer and his workmen (whether such workmen are employed by such employer directly or by or through any agency, including a contractor) for the production, supply or distribution of goods or services with a view to satisfy human wants or wishes (not being wants or wishes which are merely spiritual or religious in nature), whether or not

2(j) in clause (rr), after sub-clause (iii), the following sub-clause shall be inserted, namely:-

“(iv)any commission payable on the promotion of sales or business or both.

24. In Section 6 of the Sales Promotion Employees (Conditions of Service) Act, 1976, sub-section (2) shall be omitted.”

13. In aforesaid circumstances, Court finds that since there are directly authoritative decision on the issue concerned by three Division Benches of two other High Courts, which has more persuasive value, therefore, this Court has no reason to take any other view from a view that a ‘Medical Representative is not a workman’ or to follow a view taken by coordinate Bench of this Court in case of **Nicholas Piramal India (supra)** since findings therein were not based on correct reading of **H.R. Adyanthaya (supra)**.

14. Accordingly, all writ petitions are devoid of merit, hence, **dismissed**.