Before Rajiv Narain Raina, J.

HARPREET SINGH—*Petitioner*

versus

PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, JALANDHAR AND OTHERS—*Respondents*

CWP No. 3623 of 2012

17TH May, 2012

Constitution of India, 1950 - Art. 226 - Industrial Disputes Act, 1947 - Ss. 2 (s) & 25-F - Petitioners were engaged by JCT Mills to play Hockey under the brand name JCT Hockey Team to promote its brand name and the sale of its products - Hockey Team was disbanded on account of low performance - Petitioners were disengaged - Industrial Dispute raised - Labour Court held that hockey players were not workmen and they had no industrial rights - Writ petitions dismissed, holding that they were not engaged to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work in the industry not part of the workforce engaged for the production of goods or services at Phagwara.

Held, That the petitioners were not engaged to do any work directly relating to promotion of sales or business or both but were engaged to promote the brand name of the respondent-company as an emblem and enhance the prestige of the employer. We cannot read promise of permanent employment. At any rate no evidence was led in this behalf. In fact they were not engaged to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work in the industry at all. They specialized employment was beyond the pale of industrial employment stricto sensu. They were definitely not part of the workforce engaged for the production of goods or services at Phagwara. Their remedy, if any, would not truly lie within the adjudicatory machinery established under the industrial disputes or related labour laws. I, therefore, do not find any legal factual or jurisdictional infirmity in the award dated 13.10.2011 passed by the Presiding Officer, Industrial Tribunal, Jalandhar which is upheld.

(Para 7)

B.D. Sharma, Advocate, *for the petitioner.*

RAJIV NARAIN RAINA, J.

(1) This order will dispose of this petition as well as five connected petitions* as common questions of law and facts arise in these cases.

(2) For brevity, facts are being taken from CWP No. 3623 of 2012 (reference No. 762 of 2003 instituted on 16.9.2002).

(3) The present case is a bunch of six cases out of 19 individual references made by the Punjab Government to the Industrial Tribunal, Jalandhar. All the 19 references were consolidated vide order dated 28.8.2003 as common questions of law and fact has arose in all those references. All the references including the present six references were disposed of by a single award.

(4) Vide the impugned award dated 13.10.2011 the references of the petitioners have been answered against the claimants and in favour of M/S Jagjit Cotton Textiles Mills Ltd., Phagwara (for short 'JCT'), whereas the reference in respect of nine others have been answered as settled.

(5) The short and interesting issue which arises in the present case is that the petitioner and his colleagues were sportsmen and appear to have excelled at one time in the game of hockey. On account of their excellence they were engaged by the JCT Mills to play hockey for them at the state level as well as national level under the brand name JCT Hockey Team. They were essentially engaged to bring goodwill to the company and promote its brand name with a view to promote the sale of its products. The petitioner was a member of the Hockey Team. After some time the hockey team was disbanded on account of low performance perceived in the eyes of the respondent and due to complaints received against the players regarding nonperformance. They were given the wholesome designation of Officers and Assistant Officers. The only issue canvassed before the Tribunal was whether the petitioner and his team mates would qualify as 'workmen' within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 (for short 'the Act'). On the team being disbanded the petitioner in this petition and the petitioners in the connected petitions, were disengaged. They, however, raised an Industrial dispute which was referred for adjudication to the Labour Court, Patiala. Some of the hockey players including Mewa Singh, Ajaib Singh, Manjit Singh, Roshan Lal, Ranjit Singh, Phool Chand, Sukhdev Raj, Charanjit Singh and Jagmohan Singh (since

deceased) settled the matter by accepting different amounts as compensation. The petitioner herein did not follow suit and claimed reference for adjudication of the dispute. The Labour Court held the hockey players engaged by the management were not workmen and, therefore, had no industrial rights. Their disengagement without complying with the provisions of Section 25-F of the Act was in order.

(6) Mr. Bhiru Dutt Sharma, learned counsel for the petitioners contends on the strength of the provisions of Sales Promotion Employees (Conditions of Service) Act, 1976, that sales promotion employees are workmen. Sales promotion employees are engaged for promoting sales of products of employers directly with the use of their sales promotion skills. This Act was passed following a series of decisions of different Courts of the country holding that sales promotion employees were not workmen as they exercise personal skills to promote products of the company which require special expertise without any direct control or supervision of the employer. In order to protect the employment conditions of this sector of sales promotion employees from exploitation, the Act was brought to bring them within the fold of workmen under the Act. The facts of the present case are entirely different. It would be re-writing the law to suggest that sportsmen engaged by Companies to promote their brand name would fall within the definition of workmen without their having to do anything directly with promoting its products. The petitioners are obviously well known hockey players of the region which is the reason they were engaged to start with. If the management feels that its investment is misplaced in these hockey players then it would be free to disengage their services and thus would not fall within the meaning of retrenchment. They were to be governed by contracts. Though, the contract between the parties has not been placed on record, although, this Court asked the learned counsel for the petitioner to read one such document but nothing was forthcoming. I would reasonably assume that this is one classic case which falls in exception (bb) of Section 2 (oo) of the Act. Without any further evidence on record suggesting that the petitioner was engaged to do nothing other than playing hockey full time it would be hard to digest that such a person would qualify as a workman under Section 2(s) of the Act. Mr. Sharma's reliance on the Constitution Bench decision of the Supreme Court in **H.R.Adyanthaya *versus* Sandoz (India) Ltd. (1),** is not apposite. In this case the Supreme Court was dealing

(1) 1995(1) S.C.T. 278

with the medical representatives. Their service of conditions had no special protection and were brought under the preview of Sales Promotion Employees (Conditions of Service) Act, 1976 by the 1986 amendment to Section 2(d) of the said act. Section 2(d) defines sales promotion employees thus:-

> *"(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."*

(7) In my considered opinion the petitioners were not engaged to do any work directly relating to promotion of sales or business or both but were engaged to promote the brand name of the respondent company as an emblem and enhance the prestige of the employer. We cannot read promise of permanent employment. At any rate no evidence was led in this behalf. In fact they were not engaged to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work in the industry at all. They specialized employment was beyond the pale of industrial employment *stricto sensu*. They were definitely not part of the workforce engaged for the production of goods or services at Phagwara. Their remedy, if any, would not truly lie within the adjudicatory machinery established under the industrial disputes or related labour laws. I, therefore, do not find any legal, factual or jurisdictional infirmity in the award dated 13.10.2011 passed by the Presiding Officer, Industrial Tribunal, Jalandhar which is upheld. The present and the connected writ petitions are consequently dismissed in limini finding no merit in them.

(8) A copy of this order be placed on the file of each connected case.

A. Jain