REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.5690-5691 OF 2010

CHAUHARYA TRIPATHI & ORS. Appellants

VERSUS

L.I.C.OF INDIA & ORS. Respondents

WITH

CIVIL APPEAL NOS.6547-6549 OF 2010

J U D G M E N T

Dipak Misra, J.

In these appeals, the seminal question that emerges for consideration is whether the High Court of Allahabad in Miscellaneous Writ Petition No.21164 of 1998 has justifiably overturned the award passed by the Central Government Industrial Tribunal-cum-Labour Court, Kanpur (for short, 'the Tribunal') on the singular foundation that the aggrieved persons, at whose instance a reference was made under

Sections 10(1) and 2(a) of the Industrial Disputes Act, 1947 (for brevity, 'the Act'), was not adjudicable by the tribunal, for the aggrieved persons were working as Development Officers in the Life Insurance Corporation (LIC) and hence, they could be treated as workmen under the schematic context of the Act and, therefore, the Labour Court had no jurisdiction to deal with the *lis* in question.

2. Regard being had to the aforesaid issue, we are not required to state the facts in detail. Suffice it to state that the Central Government had made a reference, vide notification MO E-17012/35/89-iB(B) dated 4.12.1989, of the following dispute for adjudication :

> "Whether the action of the management of LIC of India in imposing penalty of reduction of salary of Shri R.C. Dubey, C. Tripathi, Nankoo Singh, D.K. Shukla and N.K. Misra, Development Offices by three steps in their time scale of pay is justified? If not, to what relief the workman concerned are entitled?"

3. Be it noted, such a reference was made as the concerned development officers were visited with the punishment of reduction of salary by three steps after

conducting an enquiry in a disciplinary proceeding in respect of certain charges levelled against them and finding them guilty of the charges. It is apt to note here that the principal charge that was levelled against the officers was that they had claimed inflated incentive bonus to which they were not entitled to.

4. Before the tribunal, a plea was advanced by the LIC that the proceeding before it was not maintainable as the Development Officers could not be put in the compartment of workmen under the Act. Apart from the said issue of maintainability, justification was given as regards the punishment imposed by the LIC. The tribunal negatived the plea of maintainability and answered the other issues in favour of the Development Officers and resultantly, it directed restitution of pay-scale and payment of the arrears that was due to them.

5. The aforesaid award compelled the LIC to file the writ petition before the High Court and the High Court, as we find, relying on the decision in ***Mukesh K. Tripathi vs. Senior Divisional Manager, LIC & Ors.***[1] expressed the

1 (2004) 8 SCC 387

view that the development officers were not workmen and, therefore, the tribunal had no jurisdiction to entertain the *lis* and consequently, it unsettled the award passed by the tribunal. At this juncture, it is seemly to note, after the said decision was rendered on 18.04.2007, an application for review, being Civil Miscellaneous Review Application No.12736 of 2007, was filed stating, inter alia, that the order warranted a review in view of the subsequent pronouncement of this Court in ***Life Insurance Corporation of India*** **vs.** ***R. Suresh***[2]. The High Court declined to entertain the application for review. Hence, the present appeal by special leave.

6. We have heard Mr. S.P. Singh, learned senior counsel and Mr. G. Prakash, learned counsel for the appellants and Mr. Kailash Vasdev, learned senior counsel, assisted by Mr. S. Rajappa, learned counsel for the respondents.

7. Keeping in view the question posed at the beginning, we are obligated to make a survey of the authorities that have been pronounced by this Court specifically pertaining to the Development Officers working in LIC. A three-Judge

2 (2008) 11 SCC 319

Bench of this Court in ***S.K. Verma* vs. *Mahesh Chandra & Anr.***[3], adverted to the definition of 'workman' as originally defined under Section 2(s) of the Act and the substantial amendment that was brought in 1956 in respect of the definition of 'workman' and referred to the decision in ***Workmen* vs. *Indian Standards Institution***[4] and dwelled upon the hierarchy of officers working in LIC, the duties performed by such officers and eventually held thus :

> "A perusal of the above extracted terms and conditions of appointment shows that a development officer is to be a whole time employee of the Life Insurance Corporation of India. that his operations are to be restricted to a defined area and that he is liable to be transferred. He has no authority whatsoever to bind the Corporation in anyway. His principal duty appears to be to organise and develop the business of the Corporation in the area allotted to him and for that purpose to recruit active and reliable agents, to train them to canvass new business and to render post-sale services to policy-holders. He is expected to assist and inspire the agents. Even so he has not the authority to appoint agents or to take disciplinary action against them. He does not even supervise the work of the agents though he is required to train them and assist them. He is to be the

3 **(1983) 4 SCC 214**
4 **(1975) 2 SCC 847**

> 'friend, philosopher and guide' of the agents working within his jurisdiction and no more. He is expected to stimulate and excite the agents to work, while exercising no administrative control over them. The agents are not his subordinates. In fact, it is admitted that he has no subordinate staff working under him. It is thus clear that the development officer cannot by any stretch of imagination be said to be engaged in any administrative or managerial work. He is a workman within the meaning of s.2(s) of the Industrial, Disputes Act."

8. It is submitted by Mr. Kailash Vasdev, learned senior counsel, that the said decision was considered by the Constitution Bench in ***H.R. Adhyanthya & Ors.*** **vs.** ***Sandoz (India) Ltd. & Ors.***[5], as the larger Bench was addressing the controversy, whether the medical representatives as they are commonly known would be workmen according to the definition of workman under Section 2(s) of the Act. The larger Bench analyzing the purport of the said dictionary clause and various other aspects wherein the meaning has been attributed and ascribed to workmen and further taking note of the authorities in ***May & Baker (India) Ltd.*** **vs.** ***Workmen***[6];

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5 **(1995) 5 SCC 737**
6 **AIR 1967 SC 678**

Western India Match Co. Ltd. **vs.** ***Workmen***[7]; and ***Burmah Shell Oil Storage and Distribution Co. of India Ltd.*** **vs.** ***Burmah Shell Management Staff Association***[8] and analysing the scheme of the Act ruled thus :

> "13. In S.K. Verma v. Mahesh Chandra, the was whether Development Officers of the Life Insurance Corporation of India (LIC) were workmen. The dispute arose on account of the dismissal of the appellant Development Officer w.e.f. 8-2-1969. The Court noticed that the change in the definition of workman brought about by the Amending Act 36 of 1956 which, as stated above, added to the originally enacted definition, two more categories of employees, viz., those doing 'supervisory' and 'technical' work. The three-Judge Bench of this Court did not refer to the earlier decisions in May & Baker1, WIMCO and Burmah Shell cases. The Bench only referred to the decision of this Court in Workmen v. Indian Standards Institution5 where while considering whether ISI was an 'industry' or not, it was held that since the ID Act was a legislation intended to bring about peace and harmony between management and labour in an 'industry', the test must be so applied as to give the widest possible connotation to the term 'industry' and, therefore, a broad and liberal and not a rigid and doctrinaire approach should be adopted to determine whether a particular concern was an

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7 **AIR 1964 SC 472**

8 **(1970) 3 SCC 378**

industry or not. The Court, therefore, held that to decide the question whether the Development Officers in the LIC were workmen or not, it should adopt a pragmatic and not a pedantic approach and consider the broad question as to on which side of the line the workman fell, viz., labour or management, and then to consider whether there were any good reasons for moving them over from one side to the other. The Court then noticed that the LIC Staff Regulations classified the staff into four categories, viz., (i) Officers, (ii) Development Officers, (iii) Supervisors and Clerical Staff, and (iv) Subordinate Staff. The Court pointed out that Development Officers were classified separately both from Officers on the one hand and Supervisors and Clerical Staff on the other and that they as well as Class III and Class IV staff other than Superintendents were placed on par inasmuch as their appointing and disciplinary authority was the Divisional Manager whereas that of Officers was Zonal Manager. The Court also referred to their scales of pay and pointed out that the appellation 'Development Officer' was no more than a glorified designation. The Court then referred to the nature of duties of the Development Officers and pointed out that a Development Officer was to be a whole-time employee and that his operations were to be restricted to a defined area and that he was liable to be transferred. He had no authority whatsoever to bind the Corporation in any way. His principal duty appeared to be to organise and develop the business of the Corporation in the area allotted to him, and for that purpose, to recruit

active and reliable agents, to train them, to canvass new business and to render post- sale services to policyholders. He was expected to assist and inspire the agents. Even so, he had not the authority either to appoint them or to take disciplinary action against them. He did not even supervise the work of the agents though he was required to train them and assist them. He was to be a friend, philosopher and guide of the agents working within his jurisdiction and no more. He was expected to "stimulate and excite" the agents to work while exercising no administrative control over them. The agents were not his subordinates. He had no subordinate staff working under him. The Court, therefore, held that it was clear that the Development Officer could not by any stretch of imagination be said to be engaged in any administrative or managerial work and, therefore, he was a workman within the meaning of the ID Act. Accordingly, the order of the Industrial Tribunal and the judgment of the High Court holding that he was not a workman were set aside. As has been pointed out above, this decision did not refer to the earlier three decisions in May & Bakerl, WIMCO2 and Burmah Shell3 cases. and obviously proceeded on the basis that if an employee did not come within the four exceptions to the definition, he should be held to be a workman. This basis was in terms considered and rejected in Buramah Shell case3 by a Coordinate Bench of three Judges. Further no finding is given by the Court whether the Development Officer was doing clerical or technical

> work. He was admittedly not doing manual work. We may have, therefore, to treat this decision as per incuriam."

9. We have quoted *in extenso* as the Constitution Bench has declared the pronouncement in ***S.K. Verma's*** case as *per incuriam*. At this juncture, it is condign to note the position in ***Mukesh K. Tripathi*** (supra) which has been rendered by the three-Judge Bench that has been placed reliance upon by the High Court while deciding the writ petition. In ***Mukesh K. Tripathi's*** case, the question arose whether the appellant, who was appointed as Apprentice Development Officer, could be treated as a workman. While dealing with the said question, the three-Judge Bench referred to earlier decisions and the Constitution Bench decision in ***H.R. Adhyanthya*** (supra) and opined that:-

> "21. Once the ratio of May and Baker (supra) and other decisions following the same had been reiterated despite observations made to the effect that S.K. Verma (supra) and other decisions following the same were rendered on the facts of that case, we are of the opinion that this Court had approved the reasonings of May and Baker (supra) and subsequent decisions in preference to S.K. Verma (supra).
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> 22. The Constitution Bench further took

> notice of the subsequent amendment in the definition of 'workman' and held that even the Legislature impliedly did not accept the said interpretation of this Court in S.K. Verma (supra) and other decisions.
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> 23. It may be true, as has been submitted by Ms. Jaisingh, that S.K. Verma (supra) has not been expressly overruled in H.R. Adyanthaya (supra) but once the said decision has been held to have been rendered per incuriam, it cannot be said to have laid down a good law. This Court is bound by the decision of the Constitution Bench."

10. We respectfully agree with the aforesaid exposition of law. There can be no cavil over the proposition that once a judgment has been declared per incuriam, it does not have the precedential value.

11. After so stating, the three-Judge Bench did not accept the stand of the appellant therein that he was a workman and accordingly declined to interfere.

12. As has been stated earlier, the decision that was pressed into service in the application filed for review is the judgment in *R. Suresh*. In the said case, the question that was posed in the beginning of the judgment reads thus:

> "2. Whether jurisdiction of the

> Industrial Courts are ousted in regard to an order of dismissal passed by Life Insurance Corporation of India, a corporation constituted and incorporated under the Life Insurance Corporation Act, 1956, is the question involved in this appeal which arises out of a judgment and order dated 3.2.2006 passed by a Division Bench of the Kerala High Court at Ernakulam."

The facts that were the subject matter of the *lis* in the said case were that the respondent was appointed as a Development Officer of the LIC and a departmental proceeding was initiated against him and eventually he was found guilty in respect of certain charges and was dismissed from service by the disciplinary authority. As an industrial dispute was raised by him, the appropriate Government referred the dispute for adjudication by the industrial tribunal. The tribunal passed an award on 06.02.1993 and reduced the punishment imposed by the employer. The said order was assailed before the High Court in the writ petition. Before the High Court, the decision in ***M. Venugopal* vs. *LIC of India***[9] was cited. The High Court opined that the said decision was not applicable and placed reliance on the authority in ***S.K. Verma*** (supra). Thereafter

9 **(1994) 2 SCC 323**

the Court referred to the jurisdiction of the industrial tribunal in interfering with the quantum of punishment and after referring to various provisions of the Life Insurance Corporation Act, 1956, opined that it is a State and on that basis ruled, thus :

> "35. The jurisdiction of the Industrial Court being wide and it having been conferred with the power to interfere with the quantum of punishment, it could go into the nature of charges, so as to arrive at a conclusion as to whether the respondent had misused his position or his acts are in breach of trust conferred upon him by his employer.
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> 36. It may be true that quantum of loss may not be of much relevance as has been held in Suresh Pathrella Vs. Oriental Bank of Commerce [(2006) 10 SCC 572], but there again a question arose as to whether he was in the position of a trust or not."

13. At this juncture, we are obliged to state that the two-Judge Bench referred to the decision in ***S.K. Verma*** (supra) and also stated that they were not unmindful of the principle stated in ***Mukesh K. Tripathi*** (supra). Dealing with the decision in ***Mukesh K. Tripathi*** (supra), the Court said that there the question was whether the Apprentice Development Officer would be a 'workman' within the

meaning of the provisions of Section 2(s) of the Act and observed that it was not dealing with the case that pertains to an apprentice.

14. Mr. Singh, learned senior counsel appearing for the appellant built the plinth of his argument on the basis of the aforesaid authority with the hope that an enormous structure would come into existence but as we find on a studied and anxious reading of the judgment, we notice that there is no reference to the Constitution Bench decision in ***H.R. Adhyanthya*** *(supra)* and the two-Judge Bench, though has referred to ***S.K. Verma*** and ***Mukesh K. Tripathi*** (supra) but has not taken note of what the three-Judge Bench has said in ***Mukesh K. Tripathi*** (supra) with regard to the precedent and how ***S.K. Verma's*** case is no more a binding precedent.

15. In our considered opinion, the decision in ***R. Suresh*** (supra) cannot be regarded as the precedent for the proposition that a Development Officer in LIC is a 'workman'. In fact, the judgment does not say so but Mr. Vasdev, learned senior counsel would submit that inferring

such a ratio, cases are being decided by the High Courts and other authorities. Though such an apprehension should not be there, yet to clarify the position, we may quote few lines from ***Ambica Quarry Works etc. v. State of Gujarat***[10]:

> "It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it. (See Lord Halsbury in Quinn v. Leathem, 1901 AC 495)."

In view of the aforesaid, any kind of interference is not permissible but, a pregnant one, it has dealt with the cases of Development Officers of LIC.

16. As we find, the said judgment has been rendered in ignorance of the ratio laid down by the Constitution Bench in ***H.R. Adhyanthya*** (supra) and also the principle stated by the three-Judge Bench in ***Mukesh K. Tripathi*** (supra) that the decision in ***S.K. Verma*** (supra) is not a precedent, and hence, we are compelled to hold that the pronouncement in ***R. Suresh*** (supra) is *per incuriam*. We say so on the basis of the decisions rendered in ***A.R. Antulay v. R.S. Nayak***[11], ***Punjab Land Development &***

10 AIR 1987 SC 1073
11 (1988) 2 SCC 602

Reclamation Corpn. Ltd. v. Labour Court[12], ***State of U.P. v. Synthetics and Chemicals Ltd.***[13] and ***Siddharam Satlingappa Mhetre v. state of Maharashtra***[14].

17. In view of the aforesaid analysis, we conclude and hold that the development officers working in the LIC are not 'workmen' under Section 2(s) of the Act and accordingly we do not find any flaw in the judgment rendered by the High Court.

16. *Ex consequenti*, the appeals, being sans merit, stand dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.

.....J.
(Dipak Misra)

.....J.
(Prafulla C. Pant)

New Delhi;
March 11, 2015.

12 (1990) 3 SCC 682
13 (1991) 4 SCC 139
14 (2011) 1 SCC 694