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CHAUHARYA TRIPATHI & ORS.

v.

L.I.C. OF INDIA & ORS.

B

Civil Appeal Nos. 5690-5691 of 2010

MARCH 11, 2015

**[DIPAK MISRA AND PRAFULLA C. PANT, JJ.]**

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*Industrial Disputes Act, 1947 – ss. 10(1), 2(s), 2(a) – Reference made under – Persons aggrieved working as Development Officers in LIC – Adjudicability by the tribunal – Held: Development Officers working in LIC are not workmen u/s. 2(s) of the Act – Thus, the labour court has no jurisdiction to deal with the lis in question.*

D

*Life Insurance Corporation of India vs. R. Suresh* **2008 (5) SCR 208: (2008) 11 SCC 319 – per incuriam.**

E

*Mukesh K. Tripathi vs. Senior Divisional Manager, LIC & Ors.* **2004 (4) Suppl. SCR 127: (2004) 8 SCC 387; S.K. Verma vs. Mahesh Chandra & Anr.** **1983 (3) SCR 799: (1983) 4 SCC 214; Workmen vs. Indian Standards Institution** **1976 (2) SCR 138: (1975) 2 SCC 847; H.R. Adhyanthya & Ors. Vs. Sandoz (India) Ltd. & Ors.** **(1995) 5 SCC 737; May & Baker (India) Ltd. vs. Workmen** **AIR 1967 SC 678; Western India Match Co. Ltd. vs. Workmen** **1964 SCR 560: AIR 1964 SC 472; Burmah Shell Oil Storage and Distribution Co. of India Ltd. vs. Burmah Shell Management Staff Association** **1971 (2) SCR 758 : (1970) 3 SCC 378; M. Venugopal vs. LIC of India** **1994 (1) SCR 433: (1994) 2 SCC 323; Ambica Quarryh Works etc. v. State of Gujarat** **AIR 1987 SC**

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**1073: 1987 (1) SCR562; A.R. Antulay v. R.S. Nayak** A  
**1988 (1) Suppl. SCR 1 : (1988) 2 SCC 602; Punjab**  
*Land Development & Reclamation Corpn. Ltd. v.*  
*Labour Court 1990 (3) SCR 111: (1990) 3 SCC 682;*  
*State of U.P. v. Synthetics and Chemicals Ltd. (1991) 4* B  
**SCC 139; Siddharam Satlingappa Mhetre v. State of**  
*Maharashtra (2011) 1 SCC 694: 2010 (15) SCR 201 –*  
**referred to.**

**Case Law Reference**

<b>2004 (4) Suppl. SCR 127</b>	<b>referred to</b>	<b>Para 5</b>	C
<b>2008 (5) SCR 208</b>	<b>referred to</b>	<b>Para 5</b>	
<b>1983 (3) SCR 799</b>	<b>referred to</b>	<b>Para 7</b>	D
<b>1976 (2) SCR 138</b>	<b>referred to</b>	<b>Para 7</b>	
<b>(1995) 5 SCC 737</b>	<b>referred to</b>	<b>Para 8</b>	
<b>AIR 1967 SC 678</b>	<b>referred to</b>	<b>Para 8</b>	E
<b>1964 SCR 560</b>	<b>referred to</b>	<b>Para 8</b>	
<b>1971 (2) SCR758</b>	<b>referred to</b>	<b>Para 8</b>	
<b>1994 (1) SCR 433</b>	<b>referred to</b>	<b>Para 12</b>	F
<b>1987 (1) SCR 562</b>	<b>referred to</b>	<b>Para 15</b>	
<b>1988 (1) Suppl. SCR 1</b>	<b>referred to</b>	<b>Para 16</b>	
<b>1990 (3) SCR 111</b>	<b>referred to</b>	<b>Para 16</b>	G
<b>(1991) 4 SCC 139</b>	<b>per incuriam</b>	<b>Para 16</b>	
<b>2010 (15) SCR 201</b>	<b>referred to</b>	<b>Para 16</b>	H

A CIVILAPPELLATE JURISDICTION : Civil Appeal Nos. 5690-5691 of 2010.

From the Judgment and Order dated 18.04.2007 of the High Court of Judicature at Allahabad in Civil Misc. W. P. No. 21164 of 1998 and dated 23.09.2008 in Civil Misc. Review Application No. 12736 of 2007 in Civil Misc. W. P. No. 21164 of 1998

WITH

C C. A. Nos. 6547-6549 of 2010

S. P. Singh, Keshav Choudhary, Vimal Chandra S. Dave, G. Prakash, Beena Prakash, Priyanka Prakash for the Appellants.

D Kailash Vasdev, Shreyans Singhvi, Umrao Singh R., S. Rajappa for the Respondents.

The Judgment of the Court was delivered by

E **DIPAK MISRA, J.** 1. 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 F Central Government Industrial Tribunal-cum-Labour Court, Kanpur (for short, 'the Tribunal') on the 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 2 tribunal, G 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.

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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 negated 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

A find, relying on the decision in **Mukesh K. Tripathi vs. Senior Divisional Manager, LIC & Ors.**<sup>1</sup> expressed the 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**<sup>2</sup>. The High Court declined to entertain the application for review. Hence, the present appeal by special leave.

D 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.

E 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 Bench of this Court in **S.K. Verma vs. Mahesh Chandra & Anr.**<sup>3</sup>, 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**<sup>4</sup> 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

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H 1. (2004) 8 SCC 387  
2. (2008) 11 SCC 319  
3. (1983) 4 SCC 214  
4. (1975) 2 SCC 847

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 '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. Adhyantha & Ors. vs. Sandoz (India) Ltd. & Ors.*<sup>5</sup>, 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

5. (1995) 5 SCC 737

A ascribed to workmen and further taking note of the authorities  
in *May & Baker (India) Ltd. vs. Workmen*<sup>6</sup>; *Western India*  
*Match Co. Ltd. vs. Workmen*<sup>7</sup>; and *Burmah Shell Oil*  
*Storage and Distribution Co. of India Ltd. vs. Burmah*  
*Shell Management Staff Association*<sup>8</sup> and analysing the  
B 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  
C 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  
D 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 & Baker*<sup>1</sup>,  
E *WIMCO* and *Burmah Shell* cases. The Bench only  
referred to the decision of this Court in *Workmen v. Indian*  
*Standards Institution*<sup>5</sup> where while considering whether  
ISI was an ‘industry’ or not, it was held that since the ID  
F 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  
G approach should be adopted to determine whether a  
particular concern was an 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  
H the line the workman fell, viz., labour or management,

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6. AIR 1967 SC 678

7. AIR 1954 SC 472

8. (1970) 3 SCC 378

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

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A 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  
B 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.  
C As has been pointed out above, this decision did not  
refer to the earlier three decisions in *May & Baker*1,  
*WIMCO2* and *Burmah Shell*3 cases. and obviously  
proceeded on the basis that if an employee did not come  
within the four exceptions to the definition, he should be  
D 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  
E 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  
F 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.**  
G **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  
H 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)."

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.

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:

A “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  
B arises out of a judgment and order dated 3.2.2006  
passed by a Division Bench of the Kerala High Court at  
Ernakulam.”

C 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  
D 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  
E Court in the writ petition. Before the High Court, the decision  
in ***M. Venugopal vs. LIC of India***<sup>9</sup> 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 the  
Court referred to the jurisdiction of the industrial tribunal in  
F 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 :

G “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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9. (1994) 2 SCC 323

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.”

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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.

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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.

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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

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A the position, we may quote few lines from ***Ambica Quarry Works etc. v. State of Gujarat***<sup>10</sup>:

B “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. Leatham*, 1901 AC 495).”

C 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.

D 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***<sup>11</sup>, ***Punjab Land Development & Reclamation Corpn. Ltd. v. Labour Court***<sup>12</sup>, ***State of U.P. v. Synthetics and Chemicals Ltd.***<sup>13</sup> and ***Siddharam Satlingappa Mhetre v. state of Maharashtra***<sup>14</sup>.

F 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.

G 18. *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.

Nidhi Jain

Appeals dismissed.

H 10. AIR 1987 SC 1073  
11. (1988) 2 SCC 602  
12. (1990) 3 SCC 682  
13. (1991) 4 SCC 139