

Government of West Bengal
Labour Department, I, R. Branch
N.S. Buildings, 12th Floor
1, K.S. Roy Road, Kolkata - 700001

No. Labr/348/(LC-IR)/IR/11L-78/13

Date : 03/04/2019

ORDER

WHEREAS under the Government of West Bengal, Labour Department Order No. 755 – IR/11L-78/13 dated 01.08.2013 the Industrial Dispute between M/s IPCA Laboratories, 5, Kustia Road, 3rd Floor, Kolkata – 700 039 and its workman represented by West Bengal Medical and Sales Representatives' Union, 5, Sarat Ghosh Street, Kolkata – 700 014 regarding the issue mentioned in the said order, being a matter specified in the Third Schedule to the Industrial Dispute Act, 1947 (14 of 1947), was referred for adjudication to the Judge, Second Industrial Tribunal, West Bengal.

AND WHEREAS the Judge of the said Second Industrial Tribunal, West Bengal, has submitted to the State Government its award on the said Industrial Dispute.

NOW, THEREFORE, in pursuance of the provisions of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Governor is pleased hereby to publish the said award as shown in the Annexure hereto.

ANNEXURE

(Attached herewith)

By order of the Governor,

sd/-

Deputy Secretary
to the Government of West Bengal

No. Labr/348/1(5)/(LC-IR)

Date : 03/04/2019

Copy, with a copy of the Award, forwarded for information and necessary action to :

1. M/s IPCA Laboratories, 5, Kustia Road, 3rd Floor, Kolkata – 700 039.
2. The Secretary, West Bengal Medical and Sales Representatives' Union, 5, Sarat Ghosh Street, Kolkata – 700 014.
3. The Assistant Labour Commissioner, W.B. In-Charge, Labour Gazette.
4. The Labour Commissioner, W.B. New Secretariate Buildings, 1, K. S. Roy Road, 11th Floor, Kolkata- 700001.
5. The O.S.D., IT Cell, Labour Department, with the request to cast the Award in the Department's website.

Deputy Secretary

No. Labr/348/2(2)/(LC-IR)

Date : 03/04/2019

Copy forwarded for information to :

1. The Judge, Second Industrial Tribunal, West Bengal with reference to his Memo No. 305 – L.T. dated 06.03.2019.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata - 700001.

Deputy Secretary

In the matter of an industrial dispute between M/s. IPCA Laboratories, 5, Kustia Road, 3rd floor, Kolkata – 700039, (having its registered office at 48, Kandivali Co-operative Industrial Estate, West Mumbai, 67) and its workman represented by West Bengal Medical and sales representatives' union, 5, Sarat Ghosh Street, Kolkata-14. (Case No. VIII-43/2013).

BEFORE THE SECOND INDUSTRIAL TRIBUNAL: WEST BENGAL

PRESENT: SHRI SRIBASH CHANDRA DAS, JUDGE,

SECOND INDUSTRIAL TRIBUNAL, KOLKATA

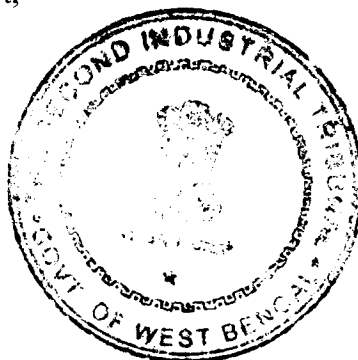
Date of passing award – 31.01.2019

A W A R D

This case originated from the order of reference dt. 01.08.2013 having annexures mentioned as annexure-X and annexure-Y and its subsequent corrigendum, one dt. 20.03.2014 and another dt. 20.03.2014.

The order of reference having No. 755-I.R./I.R/11L-78/13 dt. 01.08.2013 signed on behalf of Governor by Deputy Secretary to the Government of West Bengal, Labour Department, I.R. Branch, Writers' Buildings, Kolkata-1 states that as an industrial dispute exists between IPCA Laboratories, 5, Kustia Road, 3rd floor, Kolkata – 700039, having its registered office at 48, Kandivali Co-operative Industrial Estate, West Mumbai, 67 and its workman represented by West Bengal Medical and Sales Representative Union, 5, Sarat Ghosh Street, Kolkata – 14 relating to the issues as mentioned in the order of reference stated to be matters specified in the 3rd schedule to the Industrial Disputes Act, 1947, with addition that it became expedient that the said dispute should be referred to an Industrial Tribunal constituted U/s. 7A of the Industrial Disputes Act, 1947, with further addition that accordingly in exercise of power conferred by Section 10 read with Section 2A of the Industrial Disputes Act, 1947, the Governor being pleased to refer this dispute to this Industrial Tribunal stated to be constituted by Notification No. 803-I.R./IR/3A-2/57 dt. 11.03.1957 for adjudication requiring this Tribunal to submit its award to the State Government within a period of three months as specified in this order of reference from the date of its receipt in terms of sub-Section (2A) of Section 10 of the Industrial Disputes Act, 1947, subject to other provisions of this Act. The issues that are mentioned in the order of reference as mentioned above are,

A(i) Whether the decision of the management of M/s. IPCA Laboratories for non-granting annual increment to the wages of Sri Sukhendu Mukherjee and six others as per annexure-X for the year 2011-2012 is justified or not,



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A(ii) If not, what relief, if any, are the workmen entitled to.

B (i) Whether management of M/s. IPCA Laboratories has made any discrimination by granting annual increment to the wages of Sri Parmartha Gupta and 9 others at unequal rates for the year 2011-2012 as per annexure-Y or not, and

B(ii) If so, what relief, if any, are the workmen entitled to.

As per annexure-X to the order of reference, it is a list of Sales Promotion Employees as given by West Bengal Medical and Sales Representatives' Union containing names of 7 Sales Promotion Employees starting from Sukhendu Mukherjee and six others for the financial year 2011-2012 showing amount of increment as nil for each of them, and as per annexure-Y to the order of reference, list of Sales Promotion Employees as submitted by West Bengal Medical and Sales Representatives' Union, the names of Sales Promotion Employees namely Parmartha Gupta and 9 others for the financial year 2011-2012 showing amount of increment as Rs. 290/-, Rs. 1100/-, Rs. 600/-, Rs. 1500/-, Rs. 600/-, Rs. 1454/-, Rs. 1200/-, Rs. 350/- and Rs. 600/- respectively. As per corrigendum No. 342-I.R./I.R./11L-78/13 dt. 20.03.2014, the words 'read with section 2A' as mentioned in 3rd paragraph of the original order of reference shall be omitted and as per corrigendum No. 342-I.R./IR/11L-78/13 dt. 20.03.2014, the words 'read with Section 2A' in 3rd paragraph of the original order of reference will be omitted.

The case record shows that after receiving of the order of reference and the subsequent corrigendum as mentioned earlier, case proceeding was started by issuing summons to both parties, who then appeared engaging the Ld. Lawyers by each of them and also filed their respective written statements and then as per the West Bengal Industrial Disputes Rules, 1958 the case was fixed for hearing on merit.

As per written statement filed by their workman represented by West Bengal Medical & Sales Representatives' Union, the company M/s. IPCA Laboratories is a pharmaceutical company having its registered office at 48, Kandivali Industrial Estate in Mumbai and also having its office at 5, Kustia Road, 3rd floor, Kolkata – 700039 in West Bengal and this company has employed a good number of workman in the company to promote its pharmaceutical products. It is next stated in the written statement that the union as in the order of reference is a registered trade union having its registration under Trade Union Act, its registration no. being 17866, and this union is affiliated to CITU and FMRAI, and this union, as mentioned in the written statement, fights for workman in the State of West Bengal to promote sales product including medicines of different companies. It is next stated that there are about 430 workman under the company working within the territorial limit of West Bengal and they all are appointed by company under reference and as many as 300 sales promotion workman are the members of the union under reference. It is next mentioned in the written statement by union that it is a



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matter of regret that for years together the management of the company under reference has been resorting to discrimination in giving increment in wages to Sales Promotion Employees / workman working in different head quarters in West Bengal without assigning any reason and at the same time also denying increment in wages to a section of Sales Promotion Employees / workman in arbitrary, unreasonable and unjustified way. The union has also mentioned in its written statement that there is no codified order / rules / regulations in the company and even in the appointment letter, nothing has been indicated in respect of policy of fixation of increment if any, and as a result the union has given a number of representations to the management of the company requiring it to show transparency in granting increment to Sales Promotion Employees / workman basing upon any written policy so that the employees can have knowledge as to in which manner the increment is being granted but the management of the company did not give any importance to any of the representations submitted by the union. The union has also mentioned in the written statement that before coming to the Labour Commissioner, the union submitted various representations to the management of the company including one with forwarding letter dt. 12.07.12 with resolution thereto taken on 10.06.2012 in the meeting of the state council of the union under reference, by which it was unanimously resolved that the management of the company has adopted discriminatory method of giving yearly increment to Sales Promotion Employees / workman by resorting to whims and fancies on the part of the management of the company. The union has further mentioned in the written statement categorically that 7 Sales Promotion Employees / workman have been denied their early increments illegally without showing any reason and though in case of one sales promotion employee, increment was given by the management of the company, yet the same was withdrawn and the entire amount of increment given to that employee was deducted and the union also raised other issues in that representation before the management of the company but the management of the company did not give any heed. The union has also mentioned in the written statement that from records it is found that management of the company has adopted policy unilaterally to transfer Sales Promotion Employees / workman who are leading functionaries of the union under reference to any other divisions with mala fide intention to harass them, with a further issue in the way that the management of the company has not been granting leave on the day of elections in Assembly / Parliament or Municipality as per Representation of People Act, 1951. The union has further mentioned that this matter was raised before Labour Commissioner, Government of West Bengal by a letter dt. 03.07.2012 and after that the Labour Commissioner initiated conciliation proceeding and in that conciliation proceeding the management of the company participated and opposed the case of the union and the union also filed submissions against the objection of the company before the conciliation officer on 22.08.2012 for espousing the cause of the workman, the union under reference being a registered body under the Act for taking up all such causes for the workman. The union has further stated in the written statement that it by a letter dt. 22.08.2012 clearly stated that granting

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increment to Sales Promotion Employees / workman should always be transparent supported by well declared policy and the management of the company cannot discriminate in granting increment to some categorized employees on the plea of exercising discretionary power and the union has described such activities on the part of the management of the company as an instance of unfair labour practice as specified in 5th schedule of the Industrial Disputes Act, 1947 mentioning that it is also barred under provisions of Section 25T of the Industrial Disputes Act, 1947. The union has also mentioned that by its letter dt. 27.08.2012, it has shown some examples of Sales Promotion Employees who have been denied increment in 2011-2012 and also highlighted the exercise of discrimination by the management of the company in granting increment in the same year even though all of them have been working in same category. The union has also mentioned that in its letter dt. 26.11.2012 it also pointed out to the conciliation officer as to how the management of the company can take decision in regard to granting increment on the basis of unilateral appraisals without extending any opportunity to any of the employees to make submissions and the union also by a letter dt. 27.12.2012 tried to raise before conciliation officer that they i.e. Sales Promotion Employees of the company are workman being covered by Section 2(s) of the Industrial Disputes Act, 1947. The union has further asserted in the written statement that such discriminatory granting of increment by the management of the company to the Sales Promotion Employees is violative of the laws of the land and it is also against equality as mentioned in article-14 of the Constitution of India and thus the union has taken up the cause in a peaceful manner, adding that management of the company though designated the Sales Promotion Employees as business executive or business officer, yet all these designations are mainly ornamental and without of any power by the management of the company. The union has also mentioned that the product-wise growth or de-growth is not dependent on the performance of Sales Promotion Employees alone because other factors such as demand of the product in the market, competitiveness in the area of the work, procurement of order, supply of products in time to the distributors and retailers and acceptability of the product by the doctors are also involved, and for that reason the consideration of performance in granting increment in isolation shall amount to nothing but mockery. Further asserting that the Sales Promotion Employees, as the workmen are, covered under Section 2(s) of the Industrial Disputes Act, 1947 in West Bengal and they are entrusted only to promote the sales product of the company without any power to take any decision independently in the area of the work remaining subordinate to all without any power to recruit anyone, to take disciplinary action against anyone etc., it has been concluded that the conciliation proceeding did not become successful due to adamant attitude on the part of the management of the company and it is the prayer of the union for passing any award holding the decision of the management of the company under reference for non-granting annual increment to wages to workman Sri Sukhendu Mukherjee and six others as per list in annexure-X for the year 2011-2012 is totally unjustified and unlawful and also to hold that similarly the management of the company under

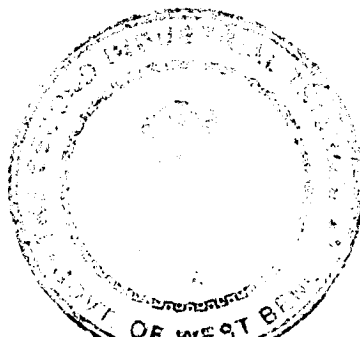
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reference has made fully unlawful and unreasonable discrimination by granting annual increment to the wages of Sri Parmartha Gupta and 9 other at unequal rates for the year 2011-2012 as per list in annexure-Y and also for granting relief to all concerned workmen directing the management of the company to relies entire amount of incremental benefit for that time to workman as per list in annexure-X with interest and also to relies balance amount of incremental benefit at per with incremental benefit one of the concerned workman Sri Jyoti Prakash Bhattacharjee to other concerned workman as per list in annexure-Y with interest on the ground of delay and also for other relief for suffering due to unlawful and unjustified act of the company.

The management of the company has also filed written statement to contest the case. It has been raised in the written statement by the company that the instant reference by the government is bad in law and it is not covered by provisions of Industrial Disputes Act, 1947 on the ground that the applicants / workmen are Sales Promotion Employees / medical representatives and they are not covered under the definition of workman as per Industrial Disputes Act, 1947 as also held by Hon'ble Supreme Court of India that medical representatives / Sales Promotion Employees are not workmen as per Industrial Disputes Act, 1947 or within the meaning of Sales Promotion Employees (Conditions Of Service) Act, 1976, with addition that the sales representatives' union has sought to govern themselves by Sales Promotion Employees (Conditions of Service) Act, 1976 , with further addition that the primary job of the Sales Promotion Employees is to canvass and promote the sale of the product of the company cannot come under definition of workman under Section 2(s) of the Industrial Disputes Act, 1947 even if they do not have any power to make any appointment, discharge anyone etc. Admitting that the applicant / workmen are medical representatives / Sales Promotion Employees and further admitting that they are drawing salary @ Rs. 1600/- per month with mentioning that their nature of job and scope of work does not include any skilled, technical or operational work but only to canvassing and promoting sale of products of the company by means of demonstration and representation of the merits of the product depending upon consumer requirements and market condition, the company has stated that they cannot be held to be workman either by definition U/s. 2(d) of the Sales Promotion Employees(Conditions of Service) Act, 1976 or under the provisions of Industrial Disputes Act, 1947 as affirmed in various judicial decisions. In respect of contentions of paragraph-1 to paragraph-3 of the written statement filed by the union, the company has mentioned in its written statement that these are matters of records and also denied by the company with the addition that the applicants admitted indisputably that nature of work as Sales Promotion Employees is to sell the product of the company which are medicines / medical products. In respect of contention in paragraph-4 of the written statement filed by union, the company has raised that the company denied and disputes the same mentioning that the company allows increment in wages that has otherwise become due as per law and policy of the company.

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in respect of contention in paragraph-5 of the written statement by union, the company has denied the same and also raises disputes over the matter excepting what transpires from the records with the addition that the company also denied that it has no governing policy guidelines or rules concerning service condition and increment policy for its employees with further addition that company has transparent and well-defined appraisal system / policy / guideline for increment and it is in force and applicable to its employees and increment policy and appraisal process include self-appraisal and self-assessment by the employees with further filters of assessment by the management hierarchy and claimed that the allegations of the union over the matter are unfounded and baseless. Regarding allegations of the union in the same paragraph of the written statement that seven Sales Promotion Employees have been illegally denied increment without any reason, the company has raised that grant / non-grant of increment to the employees is decided on the basis of clearly defined policies and guidelines including self-assessment which is further assessed by management and then the system ultimately culminates into intelligible credit score having categories such as very good, good and average and also a further category as 'needs improvement', with the addition that the categories under 'needs improvement' are not entitled to get any increment, and added that the union has deliberately suppressed this defined appraisal system in granting increment. Regarding allegations about holidays as raised by union in its written statement, the company has stated that it is not an issue in the present reference. Regarding allegations in regard to extending increment to one particular sales promotion employee, the company has stated that this allegation is erroneous, misconceived and vague and added that that particular employee Sri Sukhendu Mukherjee was given promotion with revision of salary to a higher slab but he refused promotion and for that reason his promotional benefits with revision of salary were withdrawn and he was reverted back to his original post, yet the company gave him incremental benefit to his salary as per his position prior to promotion as was mentioned in company's letter dt. 14.01.2009 addressed to Mr. Sukhendu Mukherjee. Denying and disputing the contention of paragraph-6 of written statement filed by union the company has stated that these are matters of record, with the addition that the union of the applicants has failed to make out a case of any kind of discrimination and has further stated that it backs to rely upon a letter of appointment of representative or letters of appointment of other employees, the terms and conditions of service including increment policy, guidelines and annual performance appraisal are well defined therein and the company has not discriminated in any way or resorted to any unfair labour practices as per law and service conditions and their protection are not fundamental rights to any employee as held by Court in various decisions. In respect of allegations as per paragraph-7 of the written statement of union the company has stated that it has denied all the same excepting the matters of record and added that grant or non-grant of increment is done on the basis of annual performance appraisal as per form as part of the appraisal system which is in built mechanism or self-assessment and further filtration through assessment of company at various levels and the company does not give any

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increment to an employee who come under the category 'needs improvement' and the company also denied that no opportunity is extended to any employee to make their submissions, mentioning further that the employee contributes to his own appraisal and question of depriving any employee from giving his inputs and views never arise. In respect of contention in paragraph-8 of written statement filed by union, the company has stated that the same is denied and disputed by the company mentioning that annual performance appraisal of its employees is a well-defined policy and guidelines without violating any law of the land and the matter of equality as given in Article-14 of the Constitution of India, with the addition that the Hon'ble Supreme Court of India has held that service conditions and their protection are not fundamental rights and also mentioned a principle that if the classification is reasonable and intelligible, it does not amount to violation of Article-14 of the Constitution of India and in the present case grant / non-grant of increment is based on well-defined policy of the company based on performance and appraisal system under management of the company and accordingly it is possible on the part of the company to distinguish between performing and non-performing employees. Mentioning that the job of the employees as medical representatives / Sales Promotion Employees is to canvass, demonstrate and to promote sell of the products to various companies, institutions, entities etc. depending upon market condition, supply co-ordination and competition and the concerned employee in this case are not workman and the workman have to rely more on their instant imaginative power to become successful. In regard to contention of paragraph-9 of the written statement filed by union the company has stated that the scope and nature of work as mentioned therein is partly correct and the process of granting increment by the company is not isolated but clear and transparent and at the same time well-defined and non-discriminatory, with the addition that the employees of the company cannot seek increment as a matter of right without linking it to performance, and added that the union has not raised any question and assailed any of the features of appraisal system governing granting of increment policy and for that reason case is not maintainable. Regarding contention of paragraph-10 of the written statement filed by union, the company has stated that it is denied asserting that Sales Promotion Employees are not workman as per law in Industrial Disputes Act, 1947 and regarding paragraph-11 of the written statement of union, the company has stated in its written statement that the prayers of the union is not allowable and the company did not adopt any adamant attitude during conciliation as the Sales Promotion Employees are not workman and cannot come within the jurisdiction of this Tribunal and the case is not maintainable as the order of reference is bad in law and the case is not maintainable for want of jurisdiction.

Both sides have adduced evidences, both oral and documentary in support of their respective cases. The union under reference has examined one Sri Jyotirmoy Chakraborty as

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P.W.-1 who has deposed that he is an employee in the company (O.P.) and has also adduced documentary evidences which are,

- 1) One letter dt. 12.06.2012 by Sumahan Chakraborty, a general secretary of the union i.e. W.B. Medical & Sales Representatives Union to the company M/s. IPCA Laboratories with resolution as enclosure (Ext. 1),
- 2) One letter dt. 03.07.2012 addressed to Labour Commissioner, Government of West Bengal, N.S. Buildings, Kolkata – 700001 by general secretary of the union i.e. W.B. Medical & Sales Representatives Union (Ext.2),
- 3) One letter addressed to Mr. P.P. Das, Assistant Labour Commissioner, Government of West Bengal, N.S. Buildings, Kolkata – 700001 dt. 22.08.2012 by general secretary of the union i.e. W.B. Medical & Sales Representatives Union (Ext. 3),
- 4) One letter addressed to Mr. P.P. Das, Assistant Labour Commissioner, Government of West Bengal, N.S. Buildings, Kolkata – 700001 dt. 27.08.2012 by general secretary of the union i.e. W.B. Medical & Sales Representatives Union (Ext. 3/1),
- 5) One letter addressed to Mr. P.P. Das, Assistant Labour Commissioner, Government of West Bengal, N.S. Buildings, Kolkata – 700001 dt. 26.11.2012 by secretary, secretary Sasanka Mouli Roy of the union i.e. W.B. Medical & Sales Representatives Union (Ext.3/2),
- 6) One letter addressed to Mr. P.P. Das, Assistant Labour Commissioner, Government of West Bengal, N.S. Buildings, Kolkata – 700001 dt. 27.12.2012 by secretary, secretary Sasanka Mouli Roy of the union i.e. W.B. Medical & Sales Representatives Union (Ext. 3/3),
- 7) Copy of annual performance appraisal form-BE, assessment period 01.04.2011 to 31.03.2012 (Ext. 4).

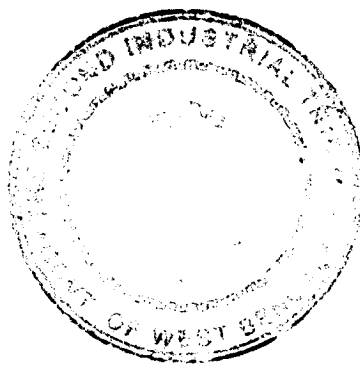
The company M/s. IPCA Laboratories examined its zonal business manager Mr. Suman Sarkar as O.P.W.-1 and also adduced documentary evidences which are:-

- 1) One letter addressed to Mr. Jyotirmoy Chakraborty of Anara in district-Purulia dt. 16.03.2005 having subject as letter of offer with one enclosure as Annexure-A (Ext. A),
- 2) One letter addressed to Jyotirmoy Chakraborty, C/o. Mr. Parthosarathi Chakraborty of Anara in Dist. Purulia, dt. 01.09.2005 having references as – appointment as professional service representative in form – A with one enclosure as Annexure-A (Ext.-B),
- 3) One letter addressed to P.P. Das, Assistant Labour Commissioner, Kolkata dt. 20.05.2012 by the company M/s. IPCA Laboratories Ltd. (Ext. C),



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- 4) One letter addressed to M/s. IPCA Laboratories Ltd. having memo No. S/583/62/11/LC dt. 26.05.2011 (Ext. C/1),
- 5) One letter addressed to P.P. Das, Assistant Labour Commissioner, Government of West Bengal, N.S. Buildings, Kolkata -1 dt. 22.05.2011 by general secretary of the union, West Bengal Medical & sales representatives' union (Ext. C/2),
- 6) One letter addressed to M/s. IPCA Laboratories Ltd. dt. 15.03.2011 by general secretary of the West Bengal Medical & sales representatives' union (Ext. D),
- 7) One letter addressed to P.P. Das, Assistant Labour Commissioner, Kolkata dt. 16.06.2011 by general manager of the company M/s. IPCA Laboratories Ltd. (Ext. E),
- 8) One letter addressed to Mr. Sukhendu Mukherjee dt. 01.02.2008 by National Sales Manager (Ext. F),
- 9) One letter addressed to Mr. Sukhendu Mukherjee by general manager of the company HR department (Ext. G),
- 10) One letter addressed to Sukhendu Mukherjee by general manager, Marketing Service & Field HR dt. 28.02.2009 (Ext. H),
- 11) One letter addressed to Sukhendu Mukherjee by general manager, Sales & Marketing dt. 14.01.2009 (Ext. I),
- 12) One letter addressed to Mr. Sujay Biswas dt. 20.07.2009 by general manager, Sales & Marketing (Ext. J),
- 13) One letter addressed to Aritra Roy of chatroa, Hooghly having dates as 06.04.2009 by sales & marketing manager (Ext. K),
- 14) One letter addressed to Mr. Aritra Roy of Srirampore, Hooghly dt. 13.04.2009 having reference as appointment as profession service representative (as per form – A) by vice-president of the company, sales & marketing of the company having annexure as annexure-B and statement of gross remuneration along-with annexure-A therewith (Ext. L),
- 15) One letter addressed to Sudip Pal dt. 26.12.2002 with heading- letter of offer (Ext. M),
- 16) One letter addressed to Mr. Sudip Pal of Bolepur having date 01.06.2003 having reference as appointment as professional service representative in form – A along with statement of remuneration and field expenses under heading annexure-A (Ext. N),
- 17) One letter addressed to Mr. Sumanta Chowdhury of Itachuna, Hooghly dt. 01.11.2009 having reference as appointment as professional service representative as per form-A along with having field expenses reimbursement limit under head annexure-A with working norms under head annexure-C (Ext. O),



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- 18) One letter addressed to Rup Kumar Debnath of Fatakgora, chandernagar in Hooghly dt. 10.04.2018 with other particulars under annexure-B with particulars of salary break and field expenses reimbursement limit under head annexure-A with working norms as per annexure-C (Ext. P),
- 19) One letter addressed to Mr. Sudipta Halder of Roypara, Kolkata dt. 01.04.2006 (Ext. Q),
- 20) One letter addressed to Sukhendu Mukherjee dt. 22.11.2000 having reference as appointment letter as profession service representative as per form-A with annual performance appraisal – BE for period 01.04.2011 to 31.03.2012 (Ext. R),
- 21) Annual performance appraisal in respect of employees namely Parmartha Gupta, Abdul Firoj etc. (Ext. S) and
- 22) Annual performance appraisal of BE/BO/PSRS for the period April,2011 to March, 2012 (Ext. T).

Decision with reasons thereto

Issue No. A has two parts, first part is as to whether the decision of the management of M/s. IPCA Laboratories for non-granting of annual increment to the wages of Sri Sukhendu Mukerjee and six others as per list in annexure-X for the year 2011-2012 is justified or not and the second part relates to if not, what relief, if any, are the workman entitled to.

The specific cases raised by both parties have already been seen, and for a recapitulation of the case raised by union, it is that there is no codified order / rules / regulations in matters relating to granting increment to wages to Sales Promotion Employees / workmen working in different hear quarters in the State of West Bengal and the management of the company has been exercising discrimination in granting increment in wages and in the appointment letter to the employees / workman / Sales Promotion Employees nothing has been mentioned regarding the policy of fixation of increment. The union has further raised that it has given a number of representations to the management of the company requesting it to show transparency in granting increment to the Sales Promotion Employees urging to base the same upon any written policy so that the employees can have knowledge as to in which manner, increment is granted. But the management of the company did not pay any importance to such representation of the union. The union has further stated that after raising this matter of dispute and for this purpose before going to the office of the Labour Commissioner, the union under reference, sent various representation of the management of the company including one having forwarding letter dt. 12.06.2012 enclosing resolution taken on 10.06.2012 in a meeting of the state council of the union under reference and the union under reference by that resolution dt. 12.06.2012 taken unanimously resolving that the management has adopted method of giving yearly increments to the Sales Promotion Employees as per whims and fancies of the management of the company and seven

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Sales Promotion Employees were thus illegally denied yearly increment without any reason, and even though annual increment was extended to one sales promotion employee but surprisingly it was withdrawn and the entire amount given arising out of such increment to him was deducted in no time. The union further stated that it also raised other issues in its representation but the management of the company did nothing. The union has further alleged that the management of the company adopted policy unilaterally to transfer Sales Promotion Employees who happen to be the leading functionaries of the union under reference to other division with malafide intention to harass them and the management is not approving vote-casting days of Assembly / Parliament / Municipal elections as paid holidays as required by Representation of People Act, 1951. Against all these the management of the company has also mainly raised that, as already seen, the applicants being Sales Promotion Employees / medical representatives are not covered under the definition of workman under the Industrial Disputes Act, 1947 and Ld. Lawyer for the company has supported such assertion on the part of the company by mentioning that Hon'ble Supreme Court of India in a number of judgements in similar cases was very much pleased to observe that such employees are not workmen as per Industrial Disputes Act, 1947/ Sales Promotion Employees(Conditions of Service) Act, 1976, raising further that the works of Sales Promotion Employees is primarily canvas and promote sales of the products of the company even if they do not have any power to make any appointment or to discharge anyone with addition that the Sales Promotion Employees / workman also do incidental work of clerical, manual or technical nature, and mentioning that such employees draw salary @ Rs. 1600/- per month and their nature of work does not include anything which may be called skilled, technical etc. but merely canvassing and promoting of the product of the company by means of demonstration, representation of the product on merit of the same depending upon consumer requirements and market conditions and therefore they also do not come within the definition of workman as mentioned in Section 2(d) of the Sales Promotion Employees(Conditions of Service) Act, 1976 or under the Industrial Disputes Act, 1947. The management of the company has further raised denial and at the same time disputed that it resorts to any sorts of discrimination regarding granting increment in wages to Sales Promotion Employees / workman and it has also denied or denying any increment in wages to any employee that has otherwise become due under law or as per policy and rules of the company and the management of the company never did anything arbitrary or unreasonable or unjustified in this regard, with further denial that the company has no governing policy or guidelines or rules concerning the service condition and the increment policy in respect of its employees with assertion that the management of the company has transparent and well-defined appraisal system and policy guideline for granting of increment and the same has been in force and applicable to its employees and this appraisal system includes self-appraisal and assessment by the employees concern with further assessment by the management of the company at different stages. The management of the company has further raised that grant or non-grant of any increment to its employees is based on its appraisal

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system that culminates into intelligible credit score which is categorised as very good, good, average and also as needs improvement and only those categories of employees who come under the category as needs improvement are not considered for any increment and thus its policy regarding grant of increment is clear and added that the applicants have not mentioned this assessment of granting increment through such appraisal system and it has been suppressed by applicants / union in the written statement. The company also raised that it is the erroneous, incorrect and completely misconceived that one particular sales promotion employee whose increment was granted but later withdrawn and the management of the company has specifically raised that the employee Mr. Sukhendu Mukherjee was given promotion with revision of salary granting higher salary slab to him but Mr. Mukherjee refused to accept that such promotion and the management of the company did not have any option but had to withdraw all promotional benefits from the employee Mr. Sukhendu Mukherjee and he was reverted back to his original position, with addition that notwithstanding withdrawal of all such promotional benefits from Mr. Sukhendu Mukherjee the management of the company gave him incremental benefit to his salary. The management of the company has also raised that the union has failed completely to make out a case in support of their allegation in the written statement and thus the company never exercised any sort of discrimination in granting increment to its employees and added that in all cases of granting of increment to its employees the company decides and considers granting of increment on the basis of credit score of the employee as per annual performance appraisal as adopted by the management of the company. The company has also raised that the principles of Article 14 of the Constitution of India regarding doctrine of equality cannot be applied in this case as the service condition of the Sales Promotion Employees / workman and the protection of the same are not fundamental rights with the assertion that so long as the classification by the management of the company is intelligible and reasonable, the requirement of Article 14 of the Constitution of India cannot be attracted and the management of the company has further categorically raised that accordingly it is possible on the part of the company to distinguish between performing and non-performing employees and such classification by the management of the company cannot be described as unreasonable or discriminatory and also raised that the union cannot claim increment as a matter of right without linking it with performance. The management of the company has also raised that the management of the company never adopted any adamant attitude during the time of conciliation but clearly stated that Sales Promotion Employees / workman are not workman and the management of the company has tried to raise such status of the employees before the conciliation authority and thus the union / its employees are not entitled to get any relief as per their prayer.

During argument Ld. lawyer for the company, as mentioned in the written argument filed by Ld. Lawyer on behalf of the company, has raised that the applicants in this case are



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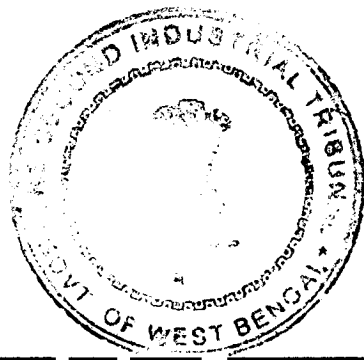
employees of the company, engaged for sales promotion of the various products manufactured by the company and this products are mainly pharmaceuticals and Ld. Lawyer for the company has pointed out that it has been alleged by this applicant that the management of the company is reluctant in granting annual increments in wages to its employee Mr. Sukhendu Mukherjee and six others for the year 2011-2012 with the addition that the employees have further raised that by granting annual increment to wages to one employee Sri Paramartha Gupta and 9 others at unequal rates during that period the company has discriminated amongst similarly situated employees and the same is against law and redressal of the same is necessary. Ld. Lawyer for the company has attacked the case of the union by raising a provision of law mentioning that the applicants are not workman as defined in Section 2(s) of the Industrial Disputes Act, 1947 and at the same time this is not an industrial dispute as defined U/s. 2(k) of the Industrial Disputes Act, 1947 and the union under reference has no locus standi at the same time to represent the applicants and the Tribunal has also no jurisdiction to entertain this case which is described by Ld. Lawyer as pretended industrial dispute. Elaborating the definition of workman, Ld. Lawyer for the company has stated that the applicants are at all not workman as per Section 2(s) of the Industrial Disputes Act, 1947 and it is the further submission by Ld. Lawyer for the company that the applicants being Sales Promotion Employees / workman, and at the same time medical representatives, are not covered under the definition of workman as per Industrial Disputes Act, 1947. Ld. Lawyer has further stated that the Sales Promotion Employees (Conditions of Service) Act, 1976 and the provisions relating thereto cannot be read into the provisions of Industrial Disputes Act, 1947 so as to support the contention of the applicants that they are workman and accordingly the union has no lag in the eye of law to stand with such contention. Ld. Lawyer has further argued that in case of Mayanil Baker (India) Ltd. vs. workman reported in 1961-II-LLJ, Page-94, it was observed by Hon'ble Supreme Court of India that persons engaged in sales promotion do not come within the purview of the definition of workman under the Industrial Disputes Act, 1947 and consequently they do not have any protection regarding security of employment and other benefits under the Act and in this connection Ld. Lawyer for the company added that for that reason Sales Promotion Employees (Conditions of Service) Act, 1976 was promulgated to provide certain relief to Sales Promotion Employees. Ld. Lawyer for the company has further raised that Section 6 of the Sales Promotion Employees(Conditions of Service) Act, 1976 states that the provisions of Industrial Disputes Act, 1947, as in force for the time being, shall apply to Sales Promotion Employees as they apply to, or in relation to, workman within the meaning of that act and for the purpose of any proceeding under that act in relation to an industrial dispute, as Sales Promotion Employees / workman shall be deemed to include as sales promotion employee who has been dismissed, discharged or retrenched in connection with or on a consequence of, that dispute or whose dismissal, discharge or retrenchment let to that dispute, and in this connection Ld. Lawyer for the company has further mentioned in the argument that this Section 6 of the Sales Promotion Employees (Conditions of



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Service) Act, 1976 has been omitted by amending Act 11 of 1976 and the applicants cannot get any benefit of the same. Referring the definition of the workman as defined in Section 2(s) of the Industrial Disputes Act, 1947, Ld. Lawyer for the company submitted that by virtue of amending Act 46 of 1982 Section 6(2) of the Sales Promotion Employees(Conditions of Service) Act, 1976 has been omitted and accordingly Sales Promotion Employees as the applicants do not come within the definition of workman under the Industrial Disputes Act, 1947, and in support of this contention, Ld. Lawyer for the company has cited judgement in Ramashish Kumar Vs. Chairman, Lupin Ltd. and Others, 216-LLR-185 of Hon'ble Patna High Court, Ripu Daman Bhanat Vs. The Presiding Officer, Labour, (1997)-I-LLJ-557PH of Punjab &Haryana High Court, TP Srivasatava Vs. National Tobacco Company of India Ltd., 1992 SCC(I) 281 of Hon'ble Supreme Court of India, Subir Guha Thakurta vs. Johnson and Johnson Ltd. and others, 1992, 2006 (4)-CHN-459 of Hon'ble Calcutta High Court, M/s. Birla Jute Industries Vs. Rajeswar Mahato and Others, 1998-(80)-FLR-985 of Calcutta High Court and Om Carrying Corporation Vs. Tilak Narang and Another, 2016-LLR-130 mentioning that in all the above referred cases it was held that Sales Promotion Employees / medical representatives are not covered within the definition of workman within the meaning of Section 2(s) of the Industrial Disputes Act, 1947. Ld. Lawyer for the company has further submitted that the applicants in this case have claimed themselves to be medical representatives or Sales Promotion Employees and accordingly they claimed to be workman under the company and for that reason the burden of proof is on the applicants themselves to prove that they are workmen U/s. 2(s) of the Industrial Disputes Act, 1947, with the addition that the applicants have not explained their nature of work and have also not filed any documentary evidence in support of their nature of work and they are also not doing in any work which can be stated as skilled, technical or operational but they have to sale the products of the company by means of demonstration, explanation and comparative advantage of the product over other similar products in the market and under such circumstances the court should hold that the applicants have failed in discharging their duty to prove that their workman U/s. 2(s) of the Industrial Disputes Act, 1947. In this connection Ld. Lawyer for the company has also added that the present dispute in the case is not an industrial dispute as defined U/s. 2(k) of the Industrial Disputes Act, 1947 and referring the definition of Industrial dispute in Section 2(k) of the Industrial Disputes Act, 1947, Ld. Lawyer has further raised that U/s. 7A of the Industrial Disputes Act, 1947, this Tribunal has been constituted by appropriate government for adjudication of industrial dispute relating to matters specified in second schedule or third schedule of the act and Ld. Lawyer explained that second schedule, part-B, item No. 14 includes Sales Promotion Employees(Conditions of Service) Act, 1976 but such inclusion of that act will have no effect as it is clearly stated in Section 7A of the Industrial Disputes Act, 1947 the Tribunals have jurisdiction to adjudication only industrial disputes and as per Section 2(k) of the Industrial Disputes Act, 1947 it means a dispute between employers and workman but the

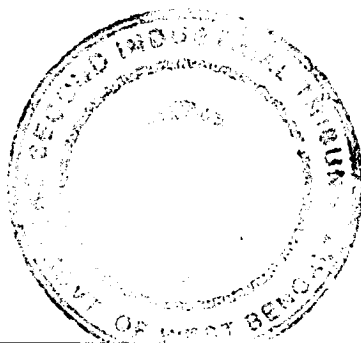
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applicants do not qualify to be workman in any way and the invocation of industrial dispute under the provisions of Industrial Disputes Act, 1947 as in this case cannot be made and for this reason alone, this case is misconceived in law and the same time beyond the jurisdiction of this Tribunal to adjudicate the same. Ld. Lawyer further submitted that mere inclusion of any statute such as Sales Promotion Employees(Conditions of Service) Act, 1976 in the schedule of the Act cannot strengthen on based the Tribunal with a jurisdiction which it otherwise does not have in law and as per Section 7A of the Industrial Disputes Act, 1947, there is no scope on the part of the Tribunal to read into the meaning of the said section to include Sales Promotion Employees within the scope an ambit of the word workman as defined in Section 2(s) of the Industrial Disputes Act, 1947.

All these aspects as raised by Ld. Lawyer for the company as mentioned above i.e. whether the Sales Promotion Employees as the applicants admittedly are workman or not within the definition of Section 2(s) of the Industrial Disputes Act, 1947 and whether the dispute as in the present case between the applicants / Sales Promotion Employees and the company / employer is an industrial dispute or not are required to be decided as it is found that Ld. Lawyer for the company in his argument has raised strong challenged by mentioning that Sales Promotion Employees are not workman within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 and their dispute between the applicants / Sales Promotion Employees and the employer / company does not come within the definition of industrial dispute as defined in Section 2(k) of the Industrial Disputes Act, 1947. And against all such contentions in the argument by Ld. Lawyer for the company, the Ld. Lawyer for the union has argued as also mentioned in the written notes of argument that Sales Promotion Employees are covered by Sales Promotion Employees (Conditions of Service) Act, 1976 and the dispute in this case is confined to Sales Promotion Employees who have been working in the State of West Bengal. In this connection Ld. Lawyer for the union has raised that the sponsoring union has been operating within the territorial limit of West Bengal. Ld. Lawyer for the union has also mentioned in the argument that as per Section 5 of the Sales Promotion Employees (Conditions of Service) Act, 1976, Sales Promotion Employees(Conditions of Service) Act, 1976 is a special statute for exclusively Sales Promotion Employees and according to that act, the company / employer is required to follow some mandatory guidelines in respect of preparing and issuing appointment letters including mentioning of scale of wages, rates of increment in wages etc. Countering the argument made by Ld. Lawyer for the company that Sales Promotion Employees are not workmen within the definition of workman as per Section 2(s) of the Industrial Disputes Act, 1947, Ld. Lawyer for the union has mentioned in the argument that Sales Promotion Employees / workmen are very much covered by Section 2(s) of the Industrial Disputes Act, 1947 as was inserted by West Bengal Act 57 of 1980 and Ld. Lawyer further explained that by virtue of this state amendment, Sales Promotion Employees are workmen within the definition of Section 2(s)

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of the Industrial Disputes Act, 1947. Ld. Lawyer for the union has further submitted that the case law reported in 1994(II)-LLN as has been relied by Ld. Lawyer for the company is not applicable in the present case and as a reason Ld. Lawyer for the union has stated that that case law relates to the matters arising in Maharashtra upon complaint filed by the workman at Maharashtra Act which is not maintainable as in the definition under the Industrial Disputes Act, 1947, the word does not include any kind of work done by Sales Promotion Employees / medical representatives, and Ld. Lawyer has specially raised in the argument that in case of State of West Bengal, there is an amendment and by that amendment Sales Promotion Employees have been given recognition to be workman in the State of West Bengal. Ld. Lawyer for the union also raised in his argument that the case law in 2016-LLR-185 as has been cited by Ld. Lawyer for the company is also not applicable in this case and as a reason Ld. Lawyer has explained that this case law specially mentioned that it is the observation of Hon'ble Supreme Court of India that this case law arise out of matters arising in Maharashtra and the State of Maharashtra does not recognize Sales Promotion Employees as workmen as per Section 2(s) of the Industrial Disputes Act, 1947. Ld. Lawyer for the union has further argued that the rest case laws including the one from Hon'ble Patna High Court are not applicable in the present case and as a reason Ld. Lawyer for the union has categorically stated that in Bihar Sales Promotion Employees are not recognized as workmen and similarly in other states in which the other case arose before Hon'ble Courts did not recognized Sales Promotion Employees as workman and those case laws were based on the position of law where Sales Promotion Employees are not covered by definition of workman U/s. 2(s) of the Industrial Disputes Act, 1947. Further Ld. Lawyer for the union has also raised that the case law reported in 2016-LLR-130 of Hon'ble Delhi High Court as has been cited by Ld. Lawyer for the company in support of his argument relates to service condition of an employee doing marketing works and on that ground Hon'ble Court decided in that case that Sales Promotion Employees (Conditions of Service) Act, 1976 are applicable and not by application of Industrial Disputes Act, 1947 and Ld. Lawyer for the union raised that this ruling of Hon'ble Delhi High Court cannot be applied in this case and raised that it is a matter of State of West Bengal and in West Bengal there is a state amendment and according to that amendment, the State of West Bengal recognizes Sales Promotion Employees as workmen in the State of West Bengal, and Ld. Lawyer for the union has further mentioned in his argument that Ld. Lawyer for the company has cited one case law in AIR-1991-SC-2294 and this case law of Hon'ble Supreme Court of India is also not applicable in this case and as a reason Ld. Lawyer for the union has argued that this judgement in this case originated from Rajasthan Tribunal arising out of dispute in the State of Rajasthan and accordingly Hon'ble Supreme Court of India was very much pleased to hold that salesman having supervisory duties have to perform their duties applying creative mind and therefore they are not workman under the Sales Promotion Employees (Conditions of Service) Act, 1976 and Ld. Lawyer for the union has emphasised that this case law cannot be applied in the present case because of state amendment by the State of

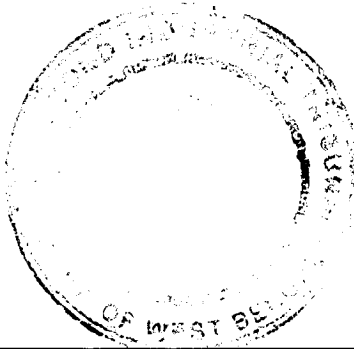
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West Bengal and this amendment has recognized Sales Promotion Employees as workmen within the definition of workman U/s. 2(s) of the Industrial Disputes Act, 1947.

Now the controversy as has come into existence from the submissions / argument of Ld. Lawyers of both sides as mentioned above is required to be determined and it is to be decided as to whether the sales promotion employees comes within the definition of workman U/s. 2(s) of the Industrial Disputes Act, 1947 and at the same time if the dispute as in the present case is an industrial dispute within the meaning of Section 2(k) of the Industrial Disputes Act, 1947 or not. In the written statement filed Ld. Lawyer for the union it has been mentioned that the company M/s. IPCA Laboratories is a pharmaceutical company having its registered office at 48, Kandivally Industrial Estate in Mumbai and the office of the company in West Bengal is located at 5, Kustia Road, 3rd floor, Kolkata-39 and a good number of workmen are employed in the company to promote the pharmaceutical products of this company. It has further been stated in the written statement of the union that the union under reference is a registered union under the Trade Union Act having its registration No. 17866 and it is stated that this registered union is affiliated to CITU and FMRAI and the main work of this union is to fight for workman working through out of the State of West Bengal and at the same time to promote sales product including medicine of different companies, with further addition that about 430 workmen are working under this company in the territorial limit of West Bengal and they all are employed by the management of the company to promote their sales products and about 300 sales promotion workmen are the members of this union. Therefore, as per written statement filed by Ld. Lawyer for the union the applicants have claimed themselves to be sales promotion employees of the company and they are working in the State of West Bengal doing sales promotion works of the products of the company under the company located in the State of West Bengal and they i.e. the applicants have been doing sales promotion of the medicinal products of the company within the territory of West Bengal only. The union has examined one of its member Sri Jyotirmoy Chakraborty as P.W.-1 and he has deposed that he has been working in the Opposite Party Company since 2004 and the O.P. Company deals in pharmaceutical products – business and the company's office in Calcutta be situated at Kustia Road, Kolkata – 700039 and this office in West Bengal is the regional office of the company. This P.W.-1 Mr. Chakraborty also deposed that he is the member of West Bengal Medical & Sales Representative's union being an employee of the company and this union represent the employees of pharmaceutical other than pharmaceutical of the company and the employees are related with sales matters. P.W.-1 Sri Chakraborty also deposed that presently there are as many as 400 medical representatives working in the company and out of them 285 medical representatives are attached with the union of the P.W.-1. P.W.-1 also deposed that he is also a medical representative of the company under reference and his name is in serial No. 2 of annexure-X of the order of reference. P.W.-1 also deposed that the names of the persons appearing in annexure-X and also appearing in annexure-

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Y attached with the order of reference are medical representatives of the O.P. Company. P.W.- 1 also deposed that his present designation in the company is business executive and being holding the post of business executive and the company, his work is to promote sales and he does not discharge any work of managerial, administrative or supervisory nature and there is no subordinate staff under his control and he does not enjoy any power to sanction leave of any employee or to assess the performance of any employee or to take any disciplinary action against any employee and he also does not any power for recruitment for any staff of the company. P.W.-1 also deposed that all the employees whose names appear in annexure-X and also in annexure-Y of the order of reference are the members of his union under reference and they are all sales promotion employees and their nature of job are same and their designations of all these employees appearing in annexure-X and annexure-Y of the order of reference are medical representatives, professional sales representatives. These are the evidences of P.W.-1 Sri Jyotirmoy Chakraborty in terms of contention of the written statement filed by the union that all the persons named in the annexure-X and annexure-Y as attached with the order of reference of this case are medical representatives of the company and they sell medical products of the company and also promote the same, and such evidences as given by P.W.-1 as mentioned above in his examination-in-chief are also supporting the contention of the union that all these persons whose name appear in the annexure-X and annexure-Y of the order of reference are medical representatives working under the company and they have already formed the union under name and style of West Bengal Medical and Sales Representatives' Union which is stated to be registered union having majority of the total number of 400 medical representatives working under the company. This P.W.-1 has been cross-examined by Ld. Lawyer for the company and in cross-examination it has come out from the P.W.-1 that total No. of medical representatives working throughout India of the company under reference is about 2500 approximately and in West Bengal the total number of medical representatives working under the company is about 400 and his union represents 300 out of 400 total medical representatives working in West Bengal under the company. Going through the cross-examination of P.W.-1 I find that on the matter that the persons whose names appear in annexure-X and also in annexure-Y the order of reference are medical representatives working under the company, nothing more has been raised by Ld. Lawyer for the company and it appears that Ld. Lawyer for the company has also not given any suggestion to the P.W.-1 that he or others whose name appear in annexure-X and also annexure-Y of the order of reference are not workmen having their designations uniformly as medical representatives and their work is to mainly sell medical products of the company and also to promote the same in West Bengal. I also find that Ld. Lawyer for the company examined one Mr. Suman Sarkar as O.P.W.-1 and this O.P.W.- 1 deposed that he is the business manager of the company under reference and he has been working in the company in that capacity for about 20 years last, and going through his examination-in-chief, I find that he has not raised anything by deposing that the persons whose name appear in annexure-X and also in annexure-Y

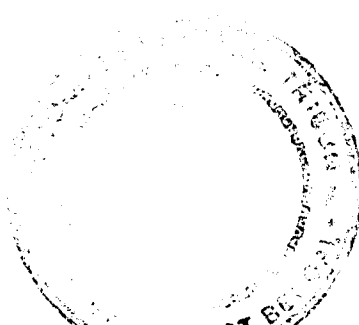
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of the order of reference are not workmen having their designations as medical representatives working in West Bengal under the company and their main work is to sell the product of the company under reference which are mainly medical products and he has also raised nothing against the stance of the union that the union of the P.W.-1 is anyway illegal, and I further find this O.P.W.- 1 Mr. Sarkar with his position as business manager of the company under reference has admitted that the names of the persons appearing in annexure-X and also appearing in annexure-Y attached with the order of reference are employees of the company and they are sales promotion employees of the company and a few of them are also known to this O.P.W.- 1 Mr. Sarkar. O.P.W.-1 Mr. Sarkar also admitted that first four number of employees as per annexure-X attached with the order of reference are known to him and they are all sales promotion employees under the company but rest are not known to him. Identifying the appointment letter (Ext. L) the O.P.W.- 1 Mr. Sarkar further admitted that one Mr. Aritra Roy is also a sales promotion employee under the company and identifying the document (Ext. O) O.P.W.- 1 Mr. Sarkar further admitted that Sri Sumanta Chowdhury is a sales promotion employee under the company and also identifying the document (Ext. P), the O.P.W.- 1 Mr. Sarkar again admitted that as per Ext. P Sri Rup Kumar Debnath is also a sales promotion employee. I also find that O.P.W.- 1 Mr. Sarkar has further admitted that all the persons having their names in annexure-Y with the order of reference are sales promotion employees working under the company and O.P.W.- 1 also admitted that out of the names of employees as per annexure-Y of the order of reference, Mr. Abdul Firoj, Tarun Das, Anirudh Gupta, Mr. Biswanath Dasgupta are known to him as sales promotion employees working under the company.

Thus, it is coming out that the assertion by the union under reference that names of the persons appearing in the annexure-X and also appearing in the annexure-Y in the order of reference are medical representatives as mentioned in the written statement filed by the union and this medical representatives have been working under the company in West Bengal by selling medical products of the company in West Bengal and they are also promoting the products of the company, and though Ld. Lawyer for the company has raised in his argument that by nature of their work they cannot be called workman in any way but from the evidences of P.W.-1 Mr. Chakraborty, it has come that they are all medical representatives working under the company in West Bengal and in cross-examination of P.W.-1 there is nothing to challenge such evidences given by P.W.-1 and at the same time such stance of the union has also been admitted by the witness of the company, O.P.W.- 1 Mr. Sarkar who deposed that he is the business manager of the company and all the persons whose name appear in annexure-X and also in annexure-Y in the order of reference are medical representatives of the company working in West Bengal. Ld. Lawyer for the workman has argued that the union under reference is a

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registered union and all the persons whose name appear in the annexure-X and also in the annexure-Y of the order of reference are medical representatives of the company and they sell medical products of the company in West Bengal and also promote the products of the company in West Bengal and though Ld. Lawyer for the company has argued that the medical representatives of the company cannot be called workman but the Ld. Lawyer for the workman has raised that their nature of work as has been asserted by the union in written statement has also been admitted by the company in the written statement and the same should be accepted as evidence on admission by the management of the company through its written statement. Going through the written statement filed by Ld. Lawyer for the company it is found that the persons whose name appear in annexure-X and also in annexure-Y as attached with the order of reference are not workman as per law U/s. 2(s) of the Industrial Disputes Act, 1947. In the written statement filed by the company, it has been stated that the order of reference is bad in law and is not covered by the provisions of the Industrial Disputes Act, 1947 and it has been explained by the company in its written statement that the applicants being sales promotion employees / medical representatives are not covered by the definition of workman under the Industrial Disputes Act, 1947 and the company has also asserted that there numbers of judgements from Hon'ble Court holding that sales promotion employees are not workman under the Industrial Disputes Act, 1947 and they are also not covered under the Sales Promotion Employees (Conditions of Service) Act, 1976, and as further ground the company has mentioned that sales promotion employees are required to primarily canvass and promote the sale of products of the company and for that reason they cannot be held to be workman under the provisions of Section 2(s) of the Industrial Disputes Act, 1947 even if such employees do not have any power of appointment or discharge anyone and even though their works include works of clerical, manual and technical nature, and in para-3 of the written statement filed by the company, the company has categorically stated that the applicants -workman are medical representatives and sales promotion employees, with further mentioning that it is also undisputed that all such applicants under the company get salary of Rs. 1600/- per month and explained that all such sales promotion employees have their same nature of job but the same does not include skilled, technical or operational work excepting canvassing and promoting sell of the products of the company through demonstration and representation on the merit of the product depending upon consumer requirements and they cannot be held to be workman either under any provision of the Industrial Disputes Act, 1947 or under Sales Promotion Employees (Condition of Service) Act 1976 and going through the written statement filed by the company it is found that the company repeatedly in the written statement has asserted this ground that the applicants being sales promotion employees of the company are required to primarily sell the product of the company and also to promote the product.

I have already mentioned the submissions of Ld. Lawyers of both sides during the stage of argument and also mentioned the matters of written argument filed by Ld. Lawyers of both

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sides. As also mentioned earlier, Ld. Lawyer for the company in the written argument has mentioned the language of definition of workman as defined in Section 2(s) of Industrial Disputes Act, 1947 and has mentioned that the sales promotion employees as the applicants in this case are not covered by definition of workman as mentioned in Section 2(s) of Industrial Disputes Act, 1947 and has also mentioned that in that Act Section 6(2) of the Sales Promotion Employees (Conditions of Service) Act, 1976 has been omitted and due to that omission sales promotion employees are not workmen under the Industrial Disputes Act, 1947 and cited the case laws as mentioned earlier. Ld. Lawyer for the company has also argued that the present dispute is not an industrial dispute U/s. 2(k) of the Industrial Disputes Act, 1947 and mentioning the definition of industrial dispute in Section 2(k) of the Industrial Disputes Act, 1947 Ld. Lawyer for the company has mentioned that this Tribunal was constituted by the appropriate government by exercise of power U/s. 7A of the Industrial Disputes Act, 1947 and the main purpose of this Tribunal is adjudication of industrial disputes relating to any matter whether in the second schedule or the third schedule of the Act and Ld. Lawyer has further stated that on simple reading, the second schedule of the Act, part-B, item No. 14 includes Sales Promotion Employees (Conditions of Service) Act, 1976 but, the Ld. Lawyer raised, such inclusion will have no effect at all as it is clearly stated in Section 7A of the Industrial Disputes Act, 1947 the Tribunals have jurisdiction to adjudicate only industrial dispute but according to definition of industrial dispute U/s. 2(k) of the Industrial Disputes Act, 1947, it is clearly stated that a dispute between employees and employer only are adjudicate-able but the applicants do not qualify to be workman and as such the invocation of Industrial Disputes Act, 1947 to such dispute is not permitted by law and asserted that such assertion of the applicants being salesman employees to be workman is misconceived and at the same time beyond the jurisdiction of this Tribunal. I have already mentioned the case laws submitted by Ld. Lawyer for the company in support of his submission and written argument.

Raising a challenge against the argument by Ld. Lawyer for the company as mentioned above and also raising objection against the case laws cited by Ld. Lawyer for the company, Ld. Lawyer for the union has argued that the sales promotion employees are very much covered by the Sales Promotion Employees (Conditions of Service) Act, 1976 and the dispute by the present order of reference is confined to sales promotion employees working in the State of West Bengal and in this connection, the Ld. Lawyer further added, it is relevant to mention that the sponsoring union is operating within the territorial limit of the State of West Bengal, with the addition that the applicants in this case being sales promotion employees are very much covered by Section 2(s) of the Industrial Disputes Act, 1947, and in this connection Ld. Lawyer for the union cited the definition of workman as mentioned in Section 2(s) of the Industrial Disputes Act, 1947 and stated that according to it, workman means any person (including an apprentice) employed in

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any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be expressed or implied, and for the purpose 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, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person- who is subject to Air Force Act, 1950 or Army Act, 1950 or Navy act, 1957, or who is employed in the police service or as an officer or other employee of a prison, or who is employed mainly in a managerial or administrative capacity, or who, being employed in supervisory capacity, draws wages exceeding Rs. 10,000/- per men sum or exercises, either by nature of duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature, and then Ld. Lawyer for the union mentioned the West Bengal Amendment as per West Bengal Act, 57 of 1980, Section 3 and also West Bengal Act 33 of 1986, which is found to be as under,

‘in its application to the State of West Bengal, -

- (1) In Clause-(s), after the word technical, insert the words ‘sales promotion’ – vide West Bengal Act 57 of 1980, S-3,
- (2) In clause-(s), after the words ‘or supervisory work’ insert the words ‘or any work for promotion of sales -----.’

With all these Ld. Lawyer for the union has raised that Ld. Lawyer for the company has prepared the written statement for the company without considering the present position of law as mentioned above and thus Ld. Lawyer for the company has illegally mentioned in the written statement that sales promotion employees are not workman in the State of West Bengal, and explained that by the above mentioned amendment the State of West Bengal included the sales promotion employees to be workman within the State of West Bengal. As I mentioned earlier Ld. Lawyer for the company cited one ruling in 2016-LLR-185 and in this connection it is the submission of the Ld. Lawyer for the company that it is the judgement of Hon’ble Supreme Court of India that sales promotion employees / medical representatives are not workman within the definition of Section 2(s), but Ld. Lawyer for the union has submitted that this ruling cited by Ld. Lawyer for the company cannot be applied in this case because this judgement arose relying upon 1994 (II) LLN at page-1017/ 1994 and that judgement arose from dispute in the state of Maharashtra but in the State of Maharashtra there is no state amendment including the sales promotion employees to be a workman and Ld. Lawyer further raised that in case of West Bengal the matter is totally different and by way of state amendment, State of West Bengal has included the sales promotion employees to be a workman in this state, with the addition that Patna High Court also passed judgement similarly arising upon a matter of dispute as was in the judgement of Bihar Tribunal and State of Bihar does not recognize sales promotion employees as workman and there is no such state legislation in Bihar to include sales promotion employees as



workman in that state and Ld. Lawyer for the union has raised that in the State of West Bengal the amendment has been done to include sales promotion employees as workman. Ld. Lawyer for the company cited one case law in 2016-LLR-130 of Delhi High Court and submitted that in that judgement also Hon'ble High Court, Delhi was very much pleased to hold that service condition of employee doing marketing work are governed by Sales Promotion Employees (Condition of Service) Act, 1976 and not by Industrial Disputes Act, 1947 but Ld. Lawyer for the union has submitted that this ruling also cannot be applied in the present case as in the State of West Bengal, by way of state amendment sales promotion employees have been included as workman and the State of West Bengal / appropriate government thus recognizes sales promotion employees as workman in this state and accordingly the ruling cited by Ld. Lawyer for the company cannot be made applicable in the present case. By citing one case law in AIR-1991-SC-2294, Ld. Lawyer for the company submitted that by this judgement also Hon'ble Supreme Court of India was very much pleased to hold that sales promotion employees are not workman but Ld. Lawyer for the union has submitted that this case law submitted by Ld. Lawyer for the company cannot be applied in the present case as the matter appeared before Hon'ble Supreme Court of India from the state of Rajasthan Tribunal and Ld. Lawyer for the union explained that in that judgement it was held by Hon'ble Court that applicant salesman of that case had supervisory duties and such duties require creative mind and for that reason Hon'ble Court in that judgement held that sales promotion employees were not workman and also held that those employees covered under the Sales Promotion Employees (Conditions of Service) Act, 1976 are also not workman but in the State of West Bengal, there is a state amendment and by that amendment the State of West Bengal has already recognized sales promotion employees as workman.

Having gone through the statute i.e. Industrial Disputes Act, 1947, I find that State of West Bengal by West Bengal act, 57 of 1980 inserted Section 3 and has stated that in application of Section 2(s) of the Industrial Disputes Act, 1947 to the State of West Bengal, in Clause (s), after the word – technical, the words - Sales promotion were inserted and further the State of West Bengal by West Bengal Act 33 of 1986 has stated that in Clause (s) of Section 2 of Industrial Disputes Act, 1947, after the words – or supervisory work – the words – or any work for the promotion of sales – are inserted, this is the present position of law in respect of application of Section 2(s) of the Industrial Disputes Act, 1947 in the State of West Bengal due to state amendment, and this position of law has been supporting the argument by Ld. Lawyer for the union that by this amendment by the State of West Bengal, the State of West Bengal / the appropriate government has recognized sales promotion employees as workman. As I have mentioned earlier also the Ld. Lawyer for the company in the major portion of the written statement filed by the company has tried to explain that the applicants in this case being sales promotion employees are not covered by the definition of workman in any way and for that reason they cannot get any relief and at the same time Ld. Lawyer for the company has asserted

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that there is no employer-employee relation and the dispute as has been raised in the order of reference is not an industrial dispute, and such stance of the Ld. Lawyer for the company in the

written statement of the company totally made based on only one legal ground that the sales promotion employees are not covered by the definition of workman as given in Section 2(s) of the Industrial Disputes Act, 1947. What appears to be that this present matter of reference is of recent one and by West Bengal Act, 57 of 1980 and West Bengal Act 33 of 1986 with retrospective effect from 02.08.1984, the Government of West Bengal recognized sales promotion employees as workman in the State of West Bengal and had Ld. Lawyer for the company been going through between the lines of statute, the present position of the law over the matter would have become clear and it would have not been necessary to write so much in the written statement to deny that sales promotion employees are not covered by definition of Section 2(s) of the Industrial Disputes Act, 1947, which is otherwise correct by virtue of the amendment of the statute by the State of West Bengal as mentioned. Now having come to the case laws cited by Ld. Lawyer for the company it is to say that the case law as referred in 1994(II)-LLN-page-1017 originated from the State of Maharashtra and the dispute in that case was raised by the workman under Maharashtra Act and under the Industrial Disputes Act, 1947 it did not become maintainable as as per that Act the medical representatives was not recognized by that state as workman. Further the case law reported in 2016-LLR-185 is found to be based and relying on 1994(II)-LLN-page-1017 and also relying the case law referred in 1994(2)-LLN-page-358 of Hon'ble Supreme Court of India but in those cases it is found that these originated from the state of Maharashtra and as that State of Maharashtra does not recognize the sales promotion employees or medical representatives as workman, Hon'ble Court was very much pleased to decide that sales promotion employees are not workman, further the case law referred om 2016-LLR-185/44 originated from Bihar and was decided by Hon'ble High Court, Patna and in Bihar also there is no law to recognize Medical Sales Representatives as workman. The Ld. Lawyer for the company also referred 2016-LLR-130 of Delhi High Court and Hon'ble Court in that case held that service condition of an employee doing marketing work are governed by Sales Promotion Employees (Conditions of Service) Act, 1976 and not by Industrial Disputes Act, 1947. The further ruling cited by Ld. Lawyer for the company is AIR-1991-S.C.-2294 and going through this judgement of Hon'ble Court it is found that the matter of dispute involved in that case originated from the State of Rajasthan and Hon'ble Court observed that salesman having supervisory duties requiring application of creative mind are not workman. As already seen Ld. Lawyer for the union in his argument has mentioned that in the State of West Bengal, the state has recognized Medical Sales Representatives by enacting an amendment to Section 2(s) of the Industrial Disputes Act, 1947 and for that reason by virtue of that law and also by virtue of recognition by the State of West Bengal to that effect, the sales promotion employees / medical representatives in the State of West Bengal are workman and in the cited ruling by Ld. Lawyer

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for the company the matter of disputes originated from the states which did not recognize the medical representatives as workman and as a result in those cases Hon'ble Courts were very much pleased to decide in those ways but due to state amendment in the State of West Bengal recognizing medical representatives / sales promotion employees, are workman within the State of West Bengal. Further P.W.-1 Mr. Chakraborty has deposed that the medical representatives under the company/ applicants do not have any supervisory duty or any duty requiring any application of creative mind and they do not have any power of any supervision or to take any action against any subordinate official and they happen to sell the medical products of the company by means of demonstration as per demands in the market and also as per requirement of the consumers and I find that the business manager of the company Mr. Sarkar has also admitted the same as O.P.W.- 1 and further all these have been also admitted by management of the company in the written statement of the company.

Now having taken all such evidences and having taken that by state amendment by the State of West Bengal, the Government of West Bengal has included that medical representatives / sales promotion employees in West Bengal are workman, and therefore the case laws cited by Ld. Lawyer for the company are found to be helpful to state that the position of law in the State of West Bengal is different as State of West Bengal has recognized sales promotion employees / medical representatives as workman and the case laws given by Ld. Lawyer for the company are found to be not applicable in the present case. Therefore, it is very much clear both by evidence and position of law that the applicants are workman within the definition of Section 2(s) of Industrial Disputes Act, 1947 in West Bengal.

Ld. Lawyer for the company has mentioned in his argument that the union under reference does not have a locus standi to represent the applicants by stating that in order to prove the locus standi or representative capacity of the union, the union has to produce the minutes of the meeting of the union authorising the applicants / members of the union. Ld. Lawyer for the company has raised that the P.W.-1 who was examined on behalf of union deposed that they have not produced any document to show that they are members of the union under reference and the union under reference did not inform the company in writing that about 285 of the employees / medical representatives out of about 400 total medical representatives operating in West Bengal are the members of the union including the applicants, and supporting such evidence of O.P.-1 Ld. Lawyer for the company has mentioned in the argument that the applicants have not produced any document showing themselves to be members of the union and accordingly having authority to espouse the grievances and the union has also not filed any resolution to that effect, and to get support of such submission, Ld. Lawyer for the company has cited one ruling in 1976-LAB.I.C.-1685 and 1975(2)-LLN-168 and has mentioned in the argument that the Hon'ble Court in those cases was very much pleased to observe that the union must prove by production of material evidence before the Tribunal that the union had been duly authorised either by resolution of its members or otherwise that it had the authority to represent

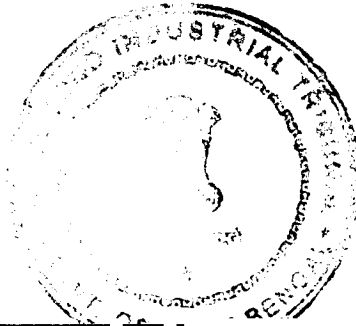
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the applicants / workman whose cause it was espousing and a mere fact that such a union was registered under Indian Trade Union Act was not conclusive proof of the real existence or authority to represent the workman in the reference before the Tribunal and the question relating

to membership of the workman of this union had been strenuously challenged by the company and the same had been denied by the respondent and under such circumstances it is incumbent upon the Tribunal to go into the question regarding the existence of the union and its authority to represent the interest of the workman for the purpose of reference. Against all these Ld. Lawyer for the union has argued that Ld. Lawyer for the company has never challenged the authority of the union or its existence in a proper way including its registration as required by law in its written statement and therefore such an argument on the part of the Ld. Lawyer for the company is simply unauthorised. Ld. Lawyer for the union has further argued that notwithstanding raising any challenge in the written statement filed by the company about the matter of union, the union has adduced both oral and documentary evidence to support that the union has authority as being a registered person and at the same time to espouse the cause of the applicants. Ld. Lawyer for the union has also mentioned in his argument that the case laws cited by Ld. Lawyer for the company cannot be applied in this case as documentary evidences (Ext. 1, Ext. 2) prove that concerned employees /applicants are all members of the union and they have authorised the union to espouse the cause. Now going through the evidences of P.W.-1 Sri Jyotirmoy Chakraborty I find that he has deposed that he has been working in the O.P. company starting from 2004 and he is the medical representatives of the company and his name exists in annexure-X attached with the order of reference. P.W.-1 has further deposed that his union is West Bengal Medical & sales representatives' union being an employee of the company and this union represents the employees of pharmaceutical and other than pharmaceutical of the company and the members of the union are related with the sales matter of the company and at present there are 400 medical representatives in the company and out of them 285 medical representatives are attached with his union. This P.W.-1 was cross-examined by Ld. Lawyer for the company and during cross-examination the P.W.-1 stated that all over India there are 2500 medical representatives but in West Bengal total number of medical representatives under the company is 400 and all the medical representatives in West Bengal are not members of the union but the union of the P.W.-1 is representing 300 medical representatives and this P.W.-1 is also representing 300 members of his union but he is not representing those medical representatives who are not attached with his union. In cross-examination P.W.-1 also deposed that he and others of the union informed the company several times that they are the members of the union under reference. P.W.-1 also deposed in cross that sales representatives of other companies are also members of his union. From the cross-examination I also find that Ld. Lawyer for the company put a suggestion to the P.W.-1 mentioning that the union under reference does not have any locus standi to raise the dispute and from the recording of the evidence it is found that Ld. Lawyer for

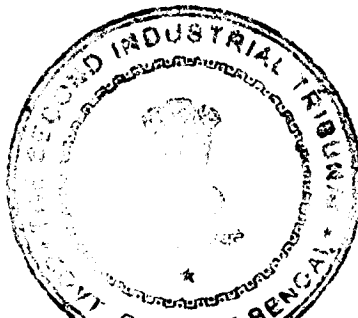
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the union then raised objection and it appears that this objection was raised against this suggestion as no question was raised against any matter of the union in the written statement filed by Ld. Lawyer for the company and I find that the P.W.-1 answered to that suggestion denying that the union does not have any locus standi to raise the dispute. Ld. Lawyer for the union also cross-examined O.P.W.- 1 Mr. Suman Sarkar who stated that he is the business manager of the company and he admitted that the company received letter dt. 25.03.2011 written by the secretary of the union to the company and it was then marked Ext. D. The O.P.W.- 1 also admitted in cross that there are about 400 medical representatives in West Bengal under the company and also admitted that he cannot say existence of any other union excepting the one under reference. The O.P.W.- 1 also admitted that the entire matter of Ext. 1 was not specifically denied in the written statement of the company and the Ext. 1 is found to be a letter addressed to the company under reference by the general secretary of the union attached with resolution which states that the state council meeting of the sales promotion employees of the company of West Bengal Medical Sales Representatives' Union is held on 10.06.2012. The Ld. Lawyer for the union in this connection has also mentioned another document (Ext. 2), which shows that it is a letter written by general secretary of the union under reference to Labour Commissioner, West Bengal in Kolkata espousing causes of the employees.

Going through the written statement filed by the company, it is found that the company has not raised any sort of challenge about the existence of the union under reference or its locus standi to espouse the cause of the employees who are medical sales representatives under the company and the same is also, as mentioned earlier also, admitted by the witness of the company, O.P.W.-1 Mr. Sarkar who is found to be the business manager of the company and he admitted that in this connection there is nothing in the written statement filed by the company. Again, from the evidences of P.W.-1 Jyotirmoy Chakraborty it is found that the union is in existence by way of registration and this union represents the medical representatives of majority number in West Bengal and the general secretary of the union wrote letters to the company (Ext. 1) about which nothing has been written in the written statement of the company. P.W.-1 also deposed that there is resolution by the union (Ext. 1) and O.P.W.- 1 admitted that the company received that letter of resolution (Ext. 1). Thus, when nothing has been raised in the written statement of the company raising any challenge about the union under reference, the evidences of P.W.-1 and further documentary evidences (Ext. 1 & Ext. 2) have been clearly proving that the union under references has been in existence as per requirement of law with the authority to espouse the cause of majority portion of medical representatives working under the company. Going through the case laws as have been cited by Ld. Lawyer for the company it is found that Hon'ble Court had raised guidelines regarding existence of union and also as to how and under what circumstances espousing causes of the employees can be done and as already seen P.W.-1 have adduced both oral and documentary evidences (Ext. 1 & Ext. 2) and at the same time all these have remained admitted by the business manager of the company, O.P.W.- 1 Mr. Sarkar,

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and thus, it is coming out that when the Ld. Lawyer for the company has not raised any challenge about the locus standi of the union in its written statement, and at the same time when the P.W.-1 / union have adduced sufficient evidence in this regard as found to be admitted by company at the same time, the challenge by Ld. Lawyer for the company only in its argument is found to be mere a faux-pas, and it is found to be unauthorised on the part of the Ld. Lawyer for the company to raise such a challenge.

Ld. Lawyer for the company has also raised further challenge mentioning that this Tribunal has no jurisdiction to adjudicate the present dispute between the management of the company and the applicants / sales promotion employees / medical representatives and mentioned that the dispute in question is not an industrial dispute as per law in the Industrial Disputes Act, 1947 as the applicants / medical representatives are not workman within the definition of Section 2(s) of the Industrial Disputes Act, 1947 and against all these Ld. Lawyer for the union has argued that the position of law in West Bengal is different and this is due to state amendment by the State of West Bengal recognizing sales promotion employees / medical representatives as workman. The Ld. Lawyer for the company, as already seen, based the challenge on the ground that applicants / sales promotion employees / medical representatives are not workman and therefore, the dispute in question is not an industrial dispute. As already found, in the State of West Bengal the sales promotion employees / medical representatives due to state amendment of Section 2(s) of Industrial Disputes Act, 1947 are workman. As per definition of industrial disputes as given in Section 2(k) of the Industrial Disputes Act, 1947 means any dispute or difference between employee and employers or between employers and workman or between workman and workman which is connected with the employment or non-employment or the terms of employment or with the conditions of labour of any person and as per evidence all these are in existence in the present matter of dispute, and as the applicants / sales promotion employees / medical representatives are workman in West Bengal, the present dispute is very well within the definition of Section 2(k) of the Industrial Disputes Act, 1947.

Now it is to be seen whether the decision of the management of M/s. IPCA Laboratories for non-granting annual increment to the wages of Sri Sukhendu Mukherjee and six others as per annexure-X attached with the order of reference for the year 2011-2012 is justified or not and if not what relief the workman are entitled to. The specific case raised by union in this connection in its written statement is found to be that for years together the company under reference has been giving increment in wages in discriminatory manner to the applicants / sales promotion employees / workman working in the head-quarters in the State of West Bengal without giving any reason and at the same time the management of the company has also been denying in increment in wages to a sectional sales promotion employees / workman in arbitrary, unreasonable and unjustified manner. The union has further raised that there is no codified order / rules / regulations in this regard and even in the appointment letter itself nothing has been indicated regarding the policy of fixation of increment if any and for that reason the union has

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given a number of representations to the management of the company to show transparency in granting increment to them basing the same on any written policy so that the employees / applicants can have knowledge as to in which manner increments are being granted but the management of the company did nothing. It is also stated that before raising the matter before Labour Commissioner, the union under reference sent various representations to the management of the company including one forwarding letter dt. 12.06.2012 enclosing a resolution of the union dt. 10.06.2012 taken in a meeting of the state council of union resolving unanimously that the management has adopted discriminatory method in giving increments to sales promotion employees / applicants and in this regard the management of the company has been acting as per its whims and fancies. The union has categorically mentioned that 7 sales promotion employees have been denied their yearly increment without any reason and in case of one of them though increment was given but it was withdrawn by deducting the same from its salary. It is also raised by union that the management of the company adopted policy of transferring the sales promotion employees who are leading functionaries of the union under reference to other divisions with mala-fide intention to harass them and at the same time the management of the company does not allow any paid holiday to enable the applicants / sales promotion employees / workman to cast their votes during Assembly / Parliament / Municipal elections as per Representation of People Act, 1951. The union has further raised that this was raised before labour Commissioner, Government of West Bengal by a letter dt. 03.07.2012 and accordingly a conciliation proceeding was drawn up by the conciliation officer, Government of West Bengal and in that conciliation proceeding the management of the company also participated but opposed the demand of the applicants / union under reference and against that opposition in writing by the company, the union also made a written representation in writing on 22.08.2012 and the union also by a letter dt. 22.08.2012 stated that granting increment to sales promotion employees should be transparent and should be preceded by a declared policy and the management of the company cannot discriminate in granting increment and thereby to show favouritism to a sectional employee and it is unfair labour practice as specified in the 5th schedule of the Industrial Disputes Act, 1947 and at the same time it is also barred U/s. 25T of the Industrial Disputes Act, 1947. It is also raised that the union under reference by a further letter dt. 27.08.2012 has shown some examples of a few sales promotion employees who either have been denied increment for the year 2011-2012 or discrimination was exercised in granting the same during that year even though all of them have been working in the same category. By a further letter dt. 26.11.2012 the union pointed out to the conciliation officer that on the basis of some unilateral appraisals without extending any opportunity to any employee to make their submissions is not permitted by law and by a further letter dt. 27.12.2012, the union raised that the applicants being sales promotion employees are workman as per law. The union has asserted in the written statement that discrimination in either granting increment or denying the same in wages to some categorised sales promotion employees is not only violative of the laws of the land but also against the laws

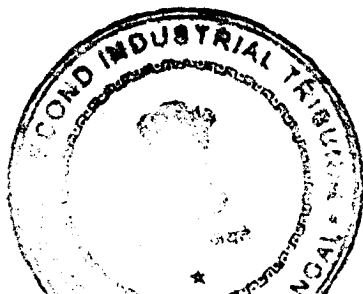
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laid down in Article 14 of the Constitution of India, asserting that the union under reference has been constantly pursuing to remove such unfair labour practices on the part of the company in a peaceful manner by adopting constitutional means. The union has further raised that the company has given designation like business executive or business officer to sales promotion employees but they do not have any power of administrative / supervisory nature, asserting that the product-wise growth or de-growth is not solely dependent upon the performance of the sales promotion employees but also on some other factors like demand of the product in the market, competitiveness in the area of work, procurement of order, supply of products in time to distributors and retailers in the market and acceptability of the product amount doctors etc. and therefore granting increment only on the basis of performance by sales promotion employees on all such basis in isolated manner amounts to mockery. The union has concluded by mentioning that the sales promotion employees are workmen under Industrial Disputes Act, 1947 in West Bengal and they do not have any power to take any decision independently in the area of work and they also do not have any subordinates and they cannot recruit any one and also cannot take any disciplinary action anybody and also do not have any power to sanction leave to anyone and the conciliation proceeding before the conciliation officer remain unsuccessful due to adamant attitude on the part of the management of the company.

Denying and at the same time disputing the allegations made by the union against the management of the company, the management of the company in its show cause has specifically raised that the company has transparent and well-defined appraisal system and policy / guideline of granting increment and it is in force and made applicable to all its employees and the management of the company has explained in the written statement that such increment policy and appraisal process includes self-appraisal and self-assessment by the employee concerned with further filters of assessment in the management hierarchy and the company has further added that the grant / or non-grant of increment to its employees is decided on the basis of such policy / guideline as per its appraisal system a part of which includes self-assessment by the employee concern and such self-assessment by the employee is then further assessed by the management and thus it culminates into an intelligible credit score which is categorised as very good, good, average and also as needs improvement and those employees who come under the category – needs improvement are now considered for any increment. Regarding holidays during the time of casting elections, the company has stated that it is not a matter of reference. Regarding withdrawal of increment to one sales promotion employees Sri Sukhendu Mukherjee, the company has stated in its written statement that Sukhendu Mukherjee was given promotion with revision of salary to a higher salary-slab but Mr. Mukherjee refused to accept such promotion and then the management of the company had to withdraw those promotional benefits as was granted to him and Mr. Mukherjee was reverted back to his original position and then also gave increment to him as per his original position. It is also added by the company that letter of appointment / other letters of appointment of its employees contain terms and conditions of

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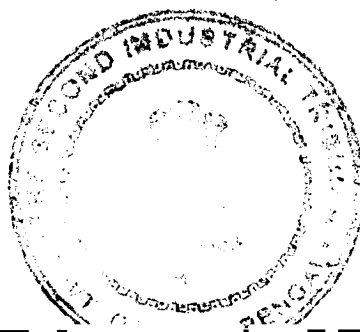


service, increment policy guidelines, annual performance appraisal. Regarding the principles of Article 14 of the Constitution of India, the company has raised that in the present case the principles of equality as mentioned in Article 14 of the Constitution of India are not applicable in the present case and added that the service conditions of the sales promotion employees and their protection are not fundamental rights and these principles are not applicable and the company has its appraisal system in granting increment to such employees. The company has also mentioned that the job of its employees who are medical representatives and sales promotion employees is to canvass, demonstrate and to promote sale of the products of the company to various companies, institutions etc. depending upon market condition, order supply co-relation and competition in the market and they have to rely on their imaginative prowess to become successful and the sales promotion employees has not become able to assail any of the features of the appraisal system used in granting increment. The company has also denied and disputed that the conciliation proceeding failed or became unsuccessful due to its adamant attitude asserting that the applicants have failed to make out any case of exercising of unreasonable discrimination in granting annual increment to its sales promotion employees.

As I mentioned earlier also Ld. Lawyers of both sides have argued the case and have also filed written notes of argument. The main contention of the union in this case is that the company has been exercising discrimination in granting increment, and Ld. Lawyer for the union in support of the doctrine of equality has cited one ruling in (1989)-4-Supreme Court cases-459 and argued that in that case Hon'ble Supreme Court of India was very much pleased to consider the doctrine of equality as per Article-14 of the Constitution of India and also explained the circumstances the doctrine of equality can be applied. The Ld. Lawyer for the union has further argued that this case law arising from Hon'ble Supreme Court of India is similar to the facts and circumstances of this case and it is applicable in this case also.

Now going through the judgement of Hon'ble Supreme Court of India in (1989)-4-Supreme Court Cases-459, I find that the petitioners in that case were carpenters of 1st and 2nd grade employed at wood working centre of Himachal Pradesh State Handicraft Corporation and they were termed as daily rated employees and they filed the petition before Hon'ble Court under article 32 of the Constitution of India seeking enforcement of their fundamental rights to have equal pay for equal work and demanded payment in terms of regular employees as carpenters or in the alternative minimum wages as was prescribed by the Deputy Commissioner for that categories of workmen and also prayed for regularization of their service with benefits of pension, gratuity etc. But the company / corporation resisted raising that the union were those petitioners were working is a factory registered under the Factories Act and they were treated as industrial workmen and they were given all benefits under labour legislation asserting that the Government had not fixed minimum wages payable to them but the corporation already adopted minimum wages payable for similar work in construction industry and they were being paid same wages as were payable to carpenters etc. and they were also given bonus with benefit of

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provident fund. In that case the Hon'ble Court was pleased to mention that the corporation was a company incorporated under Company's Act 1956 and its main purpose was to preserve traditional arts and crafts etc. and for this purpose it provided training to workers and during that training stipend used to be paid to the workers, and apart from providing such training to workers, it also ensures marketing support by purchasing products of the artisans and selling them through marketing network. Hon'ble Court also mentioned that due to its economic condition, the corporation, for reducing overhead costs, maintains administrative staff without any permanent workers. In that case the observation of Hon'ble Court on the matter of doctrine of equality is that the principle of equal pay for equal work is not one of fundamental rights expressly guaranteed by our Constitution, this was incorporated only under Article 39 (d) of the Constitution as directive principle of state policy and referring one judgement in AIR-1982-SC-879 Hon'ble Court was pleased to further observe that in that case it was innovated that it is a constitutional goal capable of being achieved through constitutional remedies and pointed out that in that case that principle has to be read in Article 14 of the Constitution of India which enjoins the state not to deny any person equality before the law or equal protection of the laws and also in Article 16 which declares that there should be equality of opportunity for all in matters relating to employment or appointment to any office under the state. Hon'ble Court was further pleased to observe that in the immediate aftermath of the decision in AIR-1982-SC-879 many cases were filed for enforcement of equal pay for equal work perhaps little realizing the in-built restrictions in that principle. Further referring another judgement in (1989)-1-SCC-121, Hon'ble Court observed that the question arose whether it was permissible to have different pay scales in the same cadre of bench secretaries who were all practical purposes performing similar duties with similar liability and there it was decided that the principle of equal pay for equal work has no mechanical application in every case of similar work and Article 14 permits reasonable classification founded on rational basis and therefore not impermissible to provide to different pay scale in the same cadre on the basis of selection based on merit with regard to experience and seniority pointing out that in service merit or experience could be proper basis for classification. Referring a further case in (1988)-3-SCC-91, Hon'ble Court further observed that in that case it was held that equal pay for equal work cannot be invoked invariably in every kind of service particularly in professional services holding further that it was open to state to classify employees on the basis of qualifications, duties, responsibilities etc. but it must have reasonable nexus with the objective sought to be achieved, and also referring the decision in Federation of All India Customs and Central Excise Stenographers Vs. Union of India, it was expressed by Hon'ble Court in that case that equal pay must depend upon nature of work done, it cannot be judged by volume of work, there must be qualitative difference as regards reliability and responsibility, functions may be same but responsibilities make a difference adding that one cannot deny that often the difference is a matter of degree and there is an element of value judgement by those who are charged with administration in fixing scales of pay and other

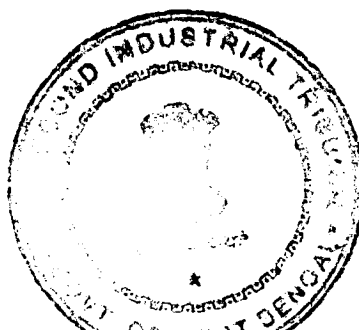
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conditions, and so long as such value judgement is made bona-fide, reasonably on an intelligible criterion which has a rational nexus with the object of differentiation, concluding that equal pay for equal work is a concomitant of Article 14 of the Constitution. Considering the merit of the main case as has been referred by Ld. Lawyer for the union as mentioned above, Hon'ble Supreme Court of India was very much pleased to observe that the Hon'ble Judges did not think that they could accept the claim of the petitioners of that case and pointed out that in the first place even assuming that the petitioner job were comparable with that of the counterparts in government service, the petitioners could not enforce right to equal pay for equal work, and then the Hon'ble Supreme Court of India laid down the guiding principles / lines for application of the doctrine of equal pay for equal work.

The Hon'ble Supreme Court of India in that case was very much pleased to observe that the discrimination complained of must be within the same establishment owned by the same management, and a comparison cannot be made with the counter parts in other establishment with different management or even in establishments in different geographical locations though owned by same master, and unless it is shown that there is a discrimination amongst the same set of employees by the same master in the same establishment, the principle of equal pay for equal work cannot be enforced reiterating that in *Meva Ram Kanojia Vs. AIIMS* (SCC-P-245) the same view was also expressed by Hon'ble Court. Hon'ble Court also observed that by general description of the job, one cannot come to conclusion that every category of workman is equal to the other in performance of work, the two jobs by mere nomenclature or by volume of work perform cannot be rated as equal, it is not just a comparison of physical activity it requires the consideration of various dimension of the job, and the accuracy required by the job and the dexterity it entails may differ from job to job and cannot be evaluated without expert opinion. Thus it is found from the above referred judgement of Hon'ble Supreme Court of India that the principle of equal pay for equal work is not one of the fundamental rights expressly guaranteed by our Constitution but it was incorporated only under Article 39(d) of the Constitution as a directive principles of state policy and Hon'ble Court also pleased to state the conditions for application of these principle in the way that the discrimination complained of must be within the same establishment owned by the same management and a comparison cannot be made with counter parts in other establishment with different management or even in establishment in different geographical locations though owned by same master and the discrimination must be of such a nature that it must be amongst the same set of employees by the same master in the same establishment. In this connection Ld. Lawyer for the union has argued that the conditions laid by the Hon'ble Supreme Court of India in that case are applicable in this case under reference as the management of the company has been discriminating within its own employees, some are being given increment while others are being deprived of without assigning any reason. Ld. Lawyer further raised that the union has raised in the written statement that the sales promotion

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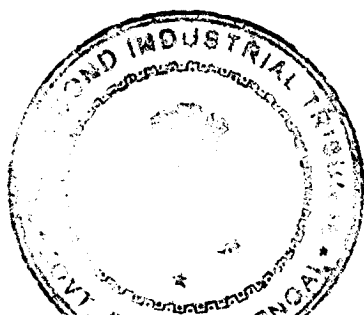


employees are the employees of the company working in different head quarters in the State of West Bengal and without assigning any reason the management of the company has been exercising wide discrimination in granting increment to their wages, it is denying increment in wages to a section of sales promotion employees unreasonably and also in an arbitrary manner and there is no codified order / rules or regulations in this regard in the company and even in the appointment letters to such employees by the company nothing has been indicated regarding the policy of fixation of increment despite representation to the management of the company by the union requesting the management of the company to show transparency in granting increment to the sales promotion employees basing upon a written policy so that the employees can have knowledge about the manner of granting increment but the management of the company did nothing. Ld. Lawyer also raised that before raising the matter to the Labour Commissioner, the union sent various representation to the management of the company including one forwarding letter dt. 12.06.2012 enclosing resolution of the union taken on 10.06.2012 in a meeting of the State Council of Union unanimously resolving that management of the company had taken discriminatory method in giving annual increments to sales promotion employees and seven sales promotion employees have been illegally denied their increment without assigning any reason and in case of one of them to whom management of the company granted annual increment, yet it was withdrawn for no reason and the management of the company also transferring sales promotion employees who are leading functionaries of the union in a mala fide manner so as to rendered the union useless. Referring the evidences given by Sri Jyotirmoy Chakraborty (P.W.-1), Ld. Lawyer for the union has submitted that it is the deposition of P.W.-1 Sri Chakraborty that there is no written order or circular or settlement or any other document regarding increment of the employees of the company and the company issues appointment letter without mentioning the terms of increment and annexure – X attached with the order of reference is for 2011 and no increment was given to the employees mentioning annexure-X during the year 2011-12 and annexure – Y attached with the order of reference is for the financial year 2011-12 and it shows exercise of discrepancy regarding granting of increment to the sales promotion employees of the company during that year and Ld. Lawyer also raised that as per annexure-X there is no endorsement that increment was declared for the employee but subsequently it was deducted and on that matter the union gave representation to the management of the company. referring the further deposition of P.W.-1 Ld. Lawyer for the union has stated that it is the deposition of P.W.-1 that as per designation, the P.W.-1 is shown as business executive by the company and his work is to promote sales but he does not have any power to work in managerial, administrative or supervisory capacity and under him there is no subordinate staff and he does not have any controlling authority. Ld. Lawyer for the union has also argued that it is further deposition of P.W.-1 that he does not have any power to grant leave to any employees under the management of the company under reference or to assess the performance of any employee or to take disciplinary action against any employee or to recruit anyone in the



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company. Ld. Lawyer for the union has further referred deposition of P.W.-1 Mr. Chakraborty that the allegations against the company is non-payment of increment of financial year 2011-12 and there is no transparency regarding payment of increment and sales growth of the company depend upon acceptability of the product of the company by doctors, competitiveness in the market with the other company, demand and supply of the product of the company in the market with other companies, demand and supply of the products in the market and procurement of orders and in this appointment letter there is no clear picture regarding granting of annual increment and though increment was given to on Sukhendu Mukherjee, the company withdrew the same. Ld. Lawyer for the union has further argued that the appraisal system as has been raised by company in granting increment in wages to the sales promotion employees, there is no criteria and there is no circular in this regard and all sales promotion employees of the company are attached with the sales department of the company and the matter of giving increment to them is being done by the HR department of the company. Ld. Lawyer for the union has further argued that as per Section 5 of the Sales Promotion Employees (Conditions of Service) Act, 1976 which is a special statute for exclusively sales promotion employees, the company is under obligation to furnish letter of appointment and as per rule-22 of the Sales Promotion Employees (Condition of Service) Rules, 1976 the letter of appointment to such sales promotion employees is to be given in Form-A and the serial No. 7 of the same is relating to scale of wages, rate of increment in wages and accordingly the management of the company is under obligation to inform each sales promotion employee about his scale of pay and annual increment in advance to enable the sales promotion employees to have advance knowledge but the management of the company has not been following that law and exercising discrimination in granting increment, Ld. Lawyer also emphasised that none of the sales promotion employees of the company has any access upon the performance assessment by the management of the company and it is done by the company internally, Ld. Lawyer for the union has also raised that achievement of sales target by the company does not depend upon performance of any sales promotion employees exclusively since other factors are also involved over which such sales promotion employees cannot have any control and in the absence of gradation, scale of pay and general annual increment, the enhancement of salary of such sales promotion employees depends upon the mercy of the employer which is not permissible by law. Ld. Lawyer for the union has further stated that as per Section 5 of the Sales Promotion Employees (Conditions of Service) Act, 1976, every employer in relation to a sales promotion employee shall furnish to such employee a letter of appointment as may be prescribed and as per clause (a) in a case where he holds appointment as such at the commencement of this Act, it must be within three months of such appointment and as per Section 22 of that Act, Sub-section (1), the letter of appointment to be furnished to a sales promotion employee U/s. 5 shall be in Form-A and as per that act Form-A must contain letter of appointment, with particulars name of establishment, address, name of the employer, name and address of the sales promotion employee, Sri / Smt. is appointed as

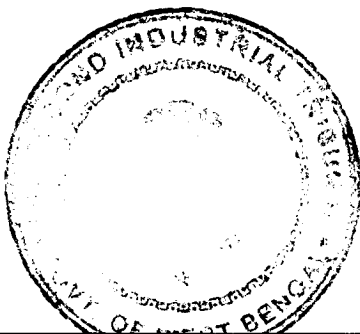


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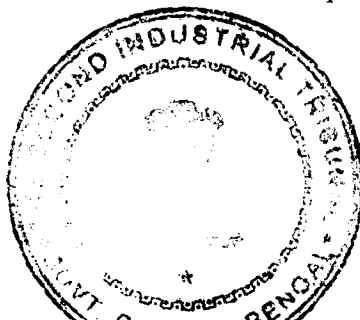
..... in this establishment with effect from (with insertion the designation), his / her appointment is on probation for / temporary basis / permanent basis, his / her scale of wages / rate of increment in wages per shall be, he / she will draw a total wages of per composed of the following namely i) basic pay dearness allowance, ii) other allowances, other conditions of service, signature of employer with date. Ld. Lawyer for the union has also raised that accordingly the employer is required to comply with the requirement of law in a satisfactory manner but in this case the employer has failed to do so. Against all these Ld. Lawyer for the company has mentioned in the argument that the union has failed to prove its case and also failed to show that prior to raising the instant dispute they intimated the company with regard to the alleged discrepancy involving increments and the union did not make even a single demand before the company mentioning the dispute and the union has also failed to file any document to prove that they it made representation before the management of the company involving the discrepancy in increment. Ld. Lawyer has further raised that in the written statement of the company, the management of the company has explained the procedure of payment of increment in paragraph No. 8 to paragraph No. 10 and over the same the company witness (O.P.W.- 1) has also given detailed evidence and O.P.W.- 1 has also deposed that before raising the dispute by this case, the union never raised it before the management of the company and regarding the matter of sales promotion employee Mr. Sukhendu Mukherjee, Ld. Lawyer for the company has argued that Mr. Mukherjee was given a promotion with revision of salary to a higher slab but he refused to accept that promotion and for that reason the management of the company had to withdraw the promotional benefits with revision of salary. Ld. Lawyer for the company has also raised that the union has adduced no evidence to show that the employees as per order of reference are members of the union and they authorised the union to espouse their dispute and the management of the company exercised any sort of discretion in granting increments to its sales promotion employees. Regarding the policy in granting increment in wages to the sales promotion employees, Ld. Lawyer for the company has mentioned that in this regard the conduct on the part of the management of the company is not arbitrary or unreasonable or unjustified and explained that the company follows a process of appraisal as per its policy and according to that appraisal system the performance of that sales promotion employees are considered and accordingly increments are granted to the sales promotion employees without any suppression or lack of transparency and there is nothing bad in law in it.

Now the entire matter is required to be considered on the basis of evidence vis-à-vis the law relating to the same. The union examined Sri Jyotirmoy Chakraborty as P.W.-1 on merit of the case, P.W.-1 deposed that he has been working in the company since 2004 and the company deals in pharmaceutical business and its office is in Calcutta at Kustia Road, Kolkata-39 and this office of the company is the regional office. P.W.-1 also deposed that he is attached with the

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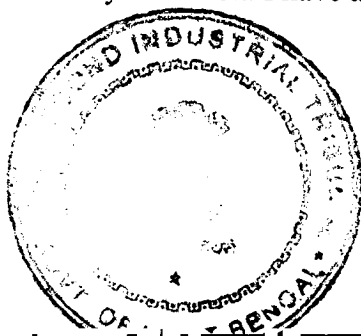


union which is West Bengal Medical and Sales Representatives' Union being an employee of the company and this union represents the employees of pharmaceutical and other than pharmaceutical of the company and they are related to sales matter and at present 285 of the medical representative out of total of 400 of them are attached with the union. P.W.-1 also deposed that he is the medical representative of the company and his name is in serial No. 2 of annexure-X of the order of reference. P.W.-1 also deposed that the employees of the company get increment but there is no written order or any circular or any settlement or any other document regarding grant of increment to the employees. P.W.-1 also deposed that the company issues appointment letter but the terms of increment is not mentioned in the appointment letter. P.W.-1 also deposed that the annexure-X is part of the order of reference for the year 2011 and no increment was given to the employees during financial year 2011-12, P.W.-1 also deposed that annexure-Y attached with the order of reference is also for the financial year 2011-12 and there is discrepancy regarding granting of increment to the employees during that financial year. P.W.-1 also deposed that in annexure-X of the order of reference there is no endorsement to the effect that increment was declared for the employee. P.W.-1 also deposed that he and others made representation to the management of the company for payment of increment to all the employees after removal of discrepancy. P.W.-1 also deposed that all the names appearing in annexure-X and annexure-Y of the order of reference are medical representatives of the company. the P.W.-1 proved a letter dt. 12.06.2012 written by union to the company along with the resolution taken by union and it was marked Ext. 1. The P.W.-1 also deposed that his union wrote a letter dt. 03.07.2012 to the Labour Commissioner, Government of West Bengal and it was proved and marked Ext. 2. P.W.-1 also deposed that the representatives of the union participated in the conciliation proceeding and proved a letter dt. 22.08.2012 written by his union to assistant Labour Commissioner, Government of West Bengal and it was marked Ext. 3 and also proved a letter dt. 27.08.2012 written by his union to Assistant Labour Commissioner, Government of West Bengal and it was marked Ext. 3/1 and also proved a letter dt. 26.11.2012 written by his union to Assistant Labour Commissioner, Government of West Bengal and it was marked Ext. 3/2 and also proved a further letter dt. 27.12.2012 deposing that it was written by his union to Assistant Labour Commissioner, Government of West Bengal and it was marked Ext. 3/3. P.W.-1 also deposed that his designation in the company is business executive but his work is to promote sales and he cannot discharge any work of managerial, administrative or supervisory nature and there is no subordinate staff under his control and he does not have any power to sanction leave to any of the employees or to assess the performance of any employee or to take disciplinary action against anyone or to recruit any staff of the company. P.W.-1 also deposed that all the employees whose names are mentioned in annexure-X and annexure-Y attached with the order of reference are members of his / their union under reference and their all sales promotion employees and their natures of job are same and their designations of all these employees are medical representative / professional sales representative / professional sales



officer. P.W.-1 also deposed that the allegation against the company by them is non-payment of increment for the year 2011-2012 and there is no transparency regarding payment of increment by the company, mentioning that sales growth of his company depends on acceptability of the products by the Doctors, competitiveness in market with other companies, demand and supply of product in the market and also procurement of orders, asserting that sale growth and de-growth depend not exclusively upon the performance of them a sales representative. The P.W. has further stated that in the appointment letters there is no clear mentioning regarding their annual increment. Showing one performance report of one of their medical representatives namely Sukhendu Mukherjee (Ext. 4 on admission), P.W.-1 further deposed that this report (Ext. 4) is produced by the company and from this report it comes out that the score given by the concerned employee was not considered by the management of the company at the time of assessment of performance and accordingly this P.W.-1 and others ventilated such grievances in the performance report mentioning that their performance was not duly considered. This P.W.-1 was also cross-examined by Ld. Lawyer for the company and from cross-examination it is found that Ld. Lawyer for the company wanted to know from this P.W.-1 as to what were their allegation against the company and the P.W.-1 replied deposing that their allegation against the company is non-payment of increment for the year 2011-12 and there is also no transparency regarding payment of increment by the company, mentioning that sales growth of his company depends on acceptability of the products of the company by the doctors, competitiveness of the market with other companies, demand and supply of the products in the market and procurement of orders as he also deposed the same in examination-in-chief as found and the P.W.-1 denied a suggestion put to him by Ld. Lawyer for the company that sale growth and de-growth of the product of the company depend exclusively upon the performance of the sales representative alone, and over this suggestion, it is the oral argument of the Ld. Lawyer for the union that in the written statement filed by the union, it has been clearly mentioned that sales growth of the products of the company depends on acceptability of the products by the doctors, competitiveness in the market with other companies, demand and supply of the product in the market and procurement of orders and this assertion of the union in its written statement has also been clearly admitted by the management of the company in its written statement by specially mentioning that the applicants in this case are sales promotion employees / medical representatives and promoting sale of the products of the company depends upon consumer requirements and other conditions and this has been mentioned by the management of the company at various places in the written statement of the company including in paragraph-3 of the written statement and for that reason the assertion of the union over this matter has also deposed by O.P.W.- 1 mentioning the same, it has become admitted by the company by the principles of admission as laid down in the Evidence Act and for that reason Ld. Lawyer for the company was not competent enough to put such a suggestion to the P.W.-1 although P.W.-1 denied this suggestion by asserting the contention of the written statement filed by the union. I have already mentioned the cases of the

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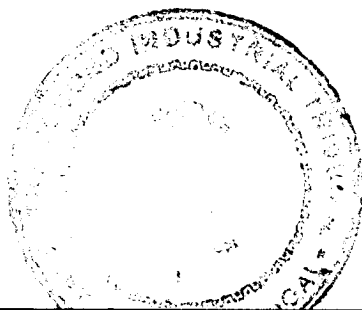


respective sides as per their written statement and I find that it is the admitted position by the management of the company that sale growth of the product of the company depends on acceptability of the products by the doctors, competitiveness of the product of the company in the market with that of other companies and supply of the products in the market and procurement of products and therefore it is found that this assertion by the union in its written statement has been clearly admitted by the management of the company and it can be treated, as Ld. Lawyer for the union submitted, as evidence by applying the principles of evidence and therefore it is coming out that Ld. Lawyer for the company was not competent enough to put such a suggestion to the P.W.-1.

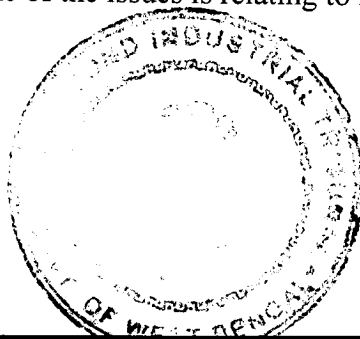
Ld. Lawyer for the company showed one letter dt. 16.03.2005 an appointment letter dt. 01.09.2005 along-with annexures thereto and these were marked Ext. A and Ext. B respectively and from the cross-examination of the P.W.-1 it is further found that the union of the P.W.-1 gave letter to the management of the company on the matter of increment and also informed the company in writing several times to the effect that they are the members of the union under reference and it has also come in the cross of P.W.-1 that the union under reference informed the company in writing before taking resolution that has been annexed with the letter (Ext. 1). From the cross-examination of P.W.-1 it has further come into evidence that sales representatives of other companies are also members of their union and this P.W.-1 himself with others have given protest letter to the company regarding discrepancy in increment. I find that Ld. Lawyer for the company wanted to know from this P.W.-1 to elaborate the matter of discrepancy in increment and P.W.-1 deposed that he and others of his union have given letter to the company regarding discrepancy of increment on the basis of performance report of one of the employees namely Sukhendu Mukherjee, adding that his union has given letter to the company to that effect i.e. regarding discrepancy in increment and also for non-considering the performance report of the employees, and the Ld. Lawyer for the company gave suggestion to the P.W.-1 that the P.W.-1 was deposing falsely and baselessly and the union did not give any protest letter to the company regarding discrepancy in increment and the union did not have any locus standi and the P.W.-1 denied them all.

As already seen the specific case raised by union is that the management of the company does not have any clear-cut policy either in writing or otherwise on the matter of granting increment and there is also no circular of settlement by the company in this regard and in the appointment letter of the sales promotion employees the terms of increment is not mentioned and the employees as mentioned in annexure-X and annexure-Y attached with the order of reference are all sales promotion employees including one Mr. Sukhendu Mukherjee and no increment to them was given by the company for the year 2011-12 and there is also discrepancy in granting increment to them during the financial year 2011-12 and in annexure-X of the order of reference there is no endorsement that increment was declared for them and subsequently it was deducted

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and all the names containing in Annexure-X and Annexure-Y are medical representatives of the company and members of the union under reference and their jobs are also same and they have all same designations i.e. medical representatives, professional sales representatives / professional sales officer and the company has not given increment to them for the year 2011-12 and it is asserted that sales growth of the company depends on acceptability of the products by the doctors, the competitiveness in the market with the products of other companies, demands and supply of the products in the market and procurement of orders, and even though increment was given to one of the sales promotion employees Sri Sukhendu Mukherjee by the company during that period i.e. 2011-12, the company deducted the same from his salary and I find that the P.W.-1 as witness of the union has stated all in ditto as given in the written statement filed by the union and from the cross-examination of P.W.-1 it is also coming out that there is nothing at all to distort the case raised by the union, and it is coming out that Ld. Lawyer for the company has also not raised any challenge by putting any question to the P.W.-1 against the main allegation by the union that the company does not have any written order or circular or settlement or any other document regarding payment of increment to the sales promotion employees and the appointment letter issued by the company to them does not contain anything regarding payment of increment and the company did not give any increment to the employees was sales promotion employees as mentioned in Annexure-X of the order of reference and there is also discrepancy in increment to the sales promotion employees as per annexure-Y of the order of reference and this is for the period 2011-12. The management of the company examined its zonal business manager Mr. Suman Sarkar as O.P.W.-1 and O.P.W.- 1 deposed that he has been holding that post of business manager of the company from 21.06.1999 and in the examination-in-chief the O.P.W.- 1 admitted that he does not know if there is any service rules in the O.P. Company. O.P.W.- 1 proved copy of letter dt. 20.07.2012 written by company to Assistant Labour Commissioner (Ext. C), letter dt. 26.05.2011 written by Labour Commissioner to the company (Ext. C/1), letter dt. 23.05.2011 written by union to Assistant Labour Commissioner (Ext. C/2), letter dt. 25.03.2011 written by Secretary of the union to the company (Ext. D), letter dt. 16.06.2011 written by company to Assistant Labour Commissioner (Ext. E) and letter dt. 01.02.2008 written by company to sales promotion employee Sukhendu Mukherjee (Ext. F) and other documents (Ext. G to Ext. T). O.P.W.- 1 Mr. Sarkar also deposed that he does not agree with the contention in paragraph-4 of the written statement filed by union and further deposed that there is a well defined written appraisal in the company and following that written appraisal increment is given to employees and over that matter of increment the union did not give any letter to the company. This O.P.W.- 1 Mr. Sarkar was cross-examined by Ld. Lawyer for the union and O.P.W.- 1 in cross admittedly deposed that in West Bengal there about 400 medical representatives of the company and he cannot say if the medical representatives made any representation or not and he also cannot say if there is any union for the medical representatives or not. O.P.W.- 1 also admitted that one of the issues is relating to non-grant of annual increment



to 7 sales promotion employees for the year 2011-12 and after going through the order of reference O.P.W.- 1 further deposed that if the issue No. 2 in the order of reference is for consideration by this Court / Tribunal or not. O.P.W.- 1 also stated in cross that there is provision in the company to grant increment and in the appointment letter to the sales promotion employees the matter of annual increment has been mentioned in the way that annual increment will depend on the performance and explained that the grant of increment is linked to performance. O.P.W.- 1 also stated in cross there are guide-lines in the appraisal and after seeing the Ext. B which is annexure-A mentioning field expenses reimbursement limits for PSRs as for head quarter working, Rs. 85/- per day etc., O.P.W.- 1 admitted that regarding discrimination of increment the union under reference issued letter to the company and also admitted that he cannot say if there is any other union operating in the company excepting the union under reference and also admitted that the contention in paragraph No. 8 of the written statement filed by the company, was dealt with in paragraph No. 5 of the written statement filed by union and also admitted that the entire matter of Ext. 1 which is a letter addressed to the company by general secretary of the union under reference with resolution therewith as mentioned in paragraph-5 of the written statement of the union was not specifically denied in the written statement by the company and this O.P.W.- 1 the business manager of the company further admitted that the targets of sales growth depends on various factors viz. acceptability of the products of the company by doctors, competitiveness in the market, demand and supply of the product, viability of head quarters and the performance of the sales promotion employees and thus it is found that the management of the company through this O.P.W.- 1 the business manager of the company has admitted that conditions of sales growth depends on various factors and not only performance of sales promotion employees alone as mainly asserted by the union in the written statement as also deposed by P.W.-1. Seeing the appointment letters to the sales promotion employees (Ext. L, Ext. O, Ext. R, Ext. N) O.P.W.- 1 admitted them to be the appointment letters issued to the sales promotion employees / workman and also admitted that these appointment letters were issued in Form-A . It is the main contention in the written statement by union that the management of the company did not mention all particulars specially the matters relating to increment in the appointment letters issued to the sales promotion employees and there is no specific order / circular regarding payment of increment to the sales promotion employees and the management of the company has been giving increment to them whimsically and discriminating in granting increments in the way that some are not getting increment as mentioned in annexure-X of the order of reference while others have been giving increment in a discriminated way as mentioned in the annexure-Y of the order of reference, and on this aspect Ld. Lawyer for the union put questions to the O.P.W.- 1, the business manager of the company and the O.P.W.- 1 admitted that he does not know if the appointment letters are given in form-A in compliance with the requirement of sales promotion employees and also admitted that it is not mentioned in the appointment letters as per form-A that the increments



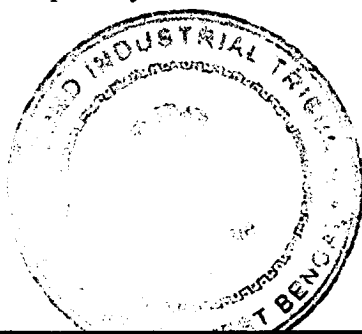
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would be given to them generally and also admitted that he cannot say if there is any provision in the appointment letters as per Form-A that increments would be given on performance basis. It is the main stance on the part of the company in its W.S. that there is an well appraisal system in the company and increments are being given as per that appraisal system and increments are given to the sales promotion employees basing on their performance but the O.P.W.- 1 Mr. Sarkar having the status of business manager of the company admitted that he cannot say if increments would be given to the sales promotion employees and if the same is mentioned in the appointment letter or not, and also admitted that it is a fact hat products of the company i.e. pharmaceutical products are promoted by sales promotion employees and the O.P.W.- 1 also admitted he joined the company in 1999 and also admitted that it is fact that from that time of his joining the company i.e. 1999 it was in vogue that increment would be given on performance basis. Admittedly the Ld. Lawyer for the company has filed one copy of document mentioning annual performance appraisal of BE/BO etc. for the period April, 2011 to March, 2012 and it was marked Ext. T and during cross-examination of the O.P.W.- 1 Ld. Lawyer for the union put questions to O.P.W.- 1 covering Ext. T as Ld. Lawyer for the union has already raised challenge that it is a unauthenticated document and doubtful and I find that O.P.W.- 1 had admitted in cross-examination that it is a fact that Ext. T has enclosures but those enclosures had not been pertained with Ext. T and O.P.W.-1 also admitted that during the filing of the document in the Court Ext. T no enclosure was mentioned and also admitted that fact that the document Ext. T is incomplete. O.P.W.- 1 also admitted that the name of the employees appearing in Annexure-X and Annexure-Y attached with the order of reference are employees of the company and their sales promotion employees / workman and a few of them are also known to him and in cross he also explained that first four numbers of employees as per annexure-X of the order of reference are also sales promotion employees and they are all known to him. O.P.W.- 1 also admitted that Ext. L is appointment letter issued to Sri Aritra Roy and he is also a sales promotion employee and as per Ext. O, Sri Sumanta Chowdhury is also sales promotion employee and as per ext. P Sri Rup Kumar Debnath is also a sales promotion employee. O.P.W.- 1 also admitted that it is a fact that all the persons mentioned in annexure-Y of the order of reference are employees of the company and some of them i.e. Mr. Abdul Feroz, Mr. Tarun Das, Mr. Anirudh Gupta, Mr. Biswanath Dasgupta are sales promotion employees and they are all know to this O.P.W.- 1, O.P.W.- 1 also admitted that Sri Paramartha Gupta, Sri Amitabha Banerjee, Sri Jyati Prakash Bhattacharjee, Sri Jayanta Mukherjee, Sri Asim Sharma Sarkar, Sri Subhendu Sarkar are also sales promotion employees as per document (Ext. S). O.P.W.- 1 also admitted that in the written statement filed by the company, no plea has been taken to the effect that the union under reference does not have any authority to file the case and also admitted that he cannot say if the company has filed any paper to show the practice of the company in respect of paying bonus etc. immediately before Ext. T which is for the year 2011-12. O.P.W.- 1 Mr. Sarkar also admitted in cross that it is a fact that two of the persons whose names appear in annexure-X of the order of



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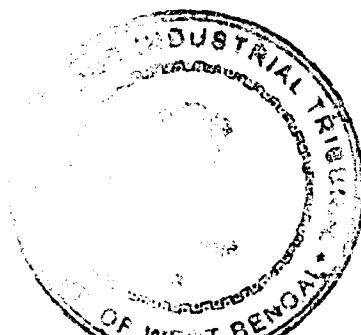
reference were not given annual increment for accounting year 2011-12 and also admitted that he i.e. O.P.W.- 1 cannot say if two of the persons whose name appear in the annexure-Y of the order of reference were given any increment at different rates in the accounting year 2011-12. O.P.W.- 1 Mr. Sarkar further admitted that he cannot say if any plea by the company has been taken in its written statement to the effect that the figures that have been given in annexure-Y of the order of reference by the company are correct or not and also admitted that he cannot say the reason as to why the company did not pay increment to the sales promotion employees and also admitted that he cannot say any reason for non-payment of increment connect to the individual employees whose names appear in the list as mentioned in Annexure-X attached with the order of reference. O.P.W.- 1 also Admittedly deposed that he cannot say the reason as to why the increments were given to the employees as mentioned in annexure-Y with the order of reference at varying rates. As per written statement filed by the union, the union has raised that the salesmen of the company Mr. Sukhendu Mukherjee was given increment by the company but the same was withdrawn by the company after deducting the money from the salary and the appointment letter given to this Sukhendu Mukherjee does not contain anything regarding payment of increment and from the cross-examination of O.P.W.- 1 the business manager of the company it is found that O.P.W.- 1 has clearly admitted that the documents (Ext. F, Ext. G, Ext. H, Ext. I, Ext. R) of sales promotion employee Sri Sukhendu Mukherjee, admittedly Ext. E is found to be a letter written by company to Assistant Labour Commissioner Mr. P.P. Das mentioning that Mr. Sukhendu Mukherjee was given increment but the company deducted the same from his salary etc. Ext. F is found to be a letter to employee Sukhendu Mukherjee by manager of the company mentioning giving increment to him by company as mentioned from the statement with it dt. 01.02.2008, Ext. G is found to be admittedly a letter to employee Sukhendu Mukherjee by company withdrawing salary and benefit given to Sukhendu Mukherjee, Ext. H is admittedly found to be a letter to employee Sukhendu Mukherjee by company mentioning giving him increased remuneration etc. and Ext. I is found to be a letter to Sukhendu Mukherjee by company showing that employee Sukhendu Mukherjee raised objection against deduction of increased benefit from his salary and the company made a reply by this letter etc. and O.P.W.- 1 also admitted that employee Sukhendu Mukherjee was given appointment letter in Form-A and also admitted that in the appointment letter of Sukhendu Mukherjee there was nothing as to payment of annual increment and also admitted that in part-A of the appraisal for increment, there is nothing to show that concerned employee filled in the blank form and also admitted that it is a fact that part-A of appraisal was not prepared personally and also admitted that he does not have any knowledge as to whether incumbent themselves put the figures by their own hands or not and also admitted that part-C of the appraisal report (Ext. S) contain some comments and O.P.W.- 1 cannot say who wrote those comments and O.P.W.- 1 denied a suggestion that the concerned sales promotion employee cannot have any access to the preparing of final score and also admitted that he cannot say if it is compulsory to mention annual increment in appointment



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letter which is in form-A and also cannot say if the same was not illegally written in the appointment letters and also admitted that he cannot say if non-payment of general increment against the law or not and also admitted that he cannot say if payments of increments at varying rates as mentioned in annexure-Y of the order of reference is unjust, illegal, inoperative or not and denied a suggestion put to him by Ld. Lawyer for the union that all factors that are required to be considered for final assessment of sales promotion employees were followed or not.

Ld. Lawyer for the company has raised a plea in its written statement that the union does not have any locus standi to file this case and as a ground mentioned that before taking the matter of dispute to this Tribunal, the union did not raise the matter with the management of the company and the union has not taken any resolution for doing anything as they have been doing now by this case and therefore as per law in Industrial Disputes Act, 1947 the union cannot have any locus standi and this Court also cannot get jurisdiction to adjudicate anything as has been raised by union by this case. Ld. Lawyer for the union raising strong objection have argued that the company has been exercising illegality in granting increment and even though it is granting, the same is being granted by the company in a discriminating way as a result of which some of the sales promotion employees have got grant of increment at varying rates while others are not given any increment and the company does not have any written order or policy or anything clear in the matters of granting annual increment to the sales promotion employees. The union raised the matter with the management of the company by letter (Ext. 1) attaching resolution of the union to that effect and it was given to the management of the company on 12.07.2012 well ahead of raising the matter before conciliation officer and also arising of the case by way of order of reference. Now this is required to be examined on the basis of evidences and the law thereto. The O.P.W.- 1 the business manager of the company Mr. Sarkar during his cross-examination by Ld. Lawyer for the union admitted receipt of the letter dt. 12.06.2012 (Ext. 1) addressed to the management of the company along with enclosure thereto which is found to be a resolution of the union in a meeting held on 10.06.2012, therefore though in the written statement the company has taken the plea that the union has not raised the dispute with the management of the company prior to coming to Court is found to be baseless. Ext. 1 shows that general secretary of the union under name and style of W.B. Medical & Sales Representatives' Union mentioning it to be a registered under T.U. Act, 1926 with a number as 17866 having its registered office at 5, Sarat Ghose Street, Kolkata-14 wrote this letter to the management of the company on 12.06.2012 enclosing a resolution adopted in its state council meeting requesting the management of the company to take necessary measures for redressal of the issues mentioned in the resolution (Ext. 1) and the resolution (Ext. 1) shows that the union has raised that the management of the company has adopted discriminatory method in giving yearly increments to sales promotion employees and as per whims and fancies the management of the company denied increment to 7 sales promotion employees without any reason and even after extending



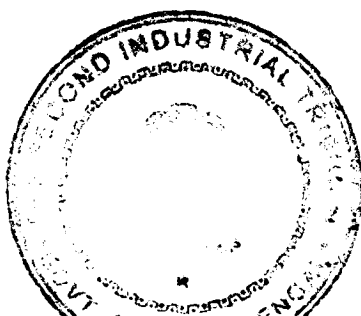
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annual increment to one of them, the same was withdrawn and it was not granting leave to them to cast vote during parliamentary etc. elections and transferring the sales promotion employees who are leading functionaries of the union and requested the management to give annual increment to all sales promotion employees considering seniority and price rise reimbursement of the deducted amount to sales promotion employee Sukhendu Mukherjee. In his written argument by Ld. Lawyer for the company, Ld. Lawyer cited one ruling in 1975(2)-LLN-168 and another ruling in 1976-LIC(9)-1685 and argued that the union has not produced any document to show that the applicants are members of the union or they have authorised the union to espouse their cause and Ld. Lawyer for the company also cited another ruling in 1976-LAB.I.C.-1685 and also in 1975(2)-LLN-168 and argued that it is required by union to show that it is authorised by resolution of its members had to represent the workman whose cause it was espousing and in this connection Ld. Lawyer raised that all these are required to be supported by material evidence specially mentioning that the applicants in this case are sales promotion employees and they are not workman in any way and the state amendment mentioning sales promotion employees as workman, Ld. Lawyer for the union has adduced no documentary evidence and the state amendment mentioning sales promotion employees took place before the Central Amending Act No. 46/1982 and joint reading of both state amendment and central amendment to this effect, it is the clear intention of the central act to nullify the effect of state amendment and therefore there is conflict between the two and this Tribunal should not accept the state amendment making the sales promotion employees as workman. As has been seen Mr. Chakraborty P.W.-1 of union has deposed that the company deals in pharmaceutical products and its office in Calcutta is located at 5, Kustia road and he is attached with the W.B. Medical and Sales Representatives' Union being an employee of the company and the union represents the employees of pharmaceutical and other companies and at present there 400 medical representatives in the company and out of them 285 medical representatives are attached with the union under reference as he is also a medical representative of the company having his name in annexure-X with the order of reference. P.W.-1 also deposed that his union wrote a letter to the company on 12.06.2012 with resolution of the union as enclosure to it (Ext.1), P.W.-1 also deposed that his union also wrote a letter dt. 03.07.2012 to Labour Commissioner, Government of West Bengal (Ext. -2), P.W.-1 also deposed that their representatives participated in the conciliation proceeding and in support P.W.-1 proved a letter dt. 22.08.2012 written by his union to Assistant Labour Commissioner, Government of West Bengal (Ext. 3) and P.W.-1 also proved a letter dt. 27.08.2012 written by his union to Assistant Labour Commissioner, Government of West Bengal (Ext. 3) and also proved another letter dt. 26.11.2012 written by his union to Assistant Labour Commissioner (Ext. 3/2) and also proved a further letter dt. 27.12.2012 written by his union to Assistant Labour Commissioner, Government of West Bengal (Ext. 3/3). As mentioned the letter dt. 12.06.2012 (Ext. 1) is addressed to the company by the general secretary of the union under reference with its resolution dt. 10.06.2012 in the state council meeting of the sales promotion employee of

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IPCA Laboratories Ltd. of W.B. Medical and Sales Representatives Union held at Kolkata and unanimously resolved that the management of the company has adopted discriminatory method of giving yearly increments to sales promotion employees etc. as mentioned earlier also and urged the company to extent early increment to all sales promotion employees considering seniority and price hike and also for reimbursing the increment as was given to Sukhendu Mukherjee but subsequently withdrawn etc. From Ext. 2 it is found that it is a letter addressed to Labour Commissioner, Government of West Bengal dt. 03.07.2012 with an issue in the way that wide discrimination in granting annual increment on wages-head in 2012 for the sales promotion employees working in different headquarters in State of West Bengal and in the body of the letter it is mentioned by general secretary of the union that the company is giving increment to sales promotion employees working in different headquarters in the State of West Bengal in a discriminatory way without assigning any reason and regarding payment of increment nothing is also mentioned in the appointment letters and requested the company to make and declare the policy in this regard (Ext. 2), Ext. 3 shows that it is a letter addressed to Assistant Labour Commissioner, Government of West Bengal dt. 22.08.2012 by union, it is mentioned that by this letter (Ext. 3), the union is making reply to contention of company's letter and mentioned that the union under reference is a registered trade union with a representative status and it has authorization from sales promotion employees in the company in the State of West Bengal to raise and follow up complaints and in response to a further letter of the company it is mentioned that sales promotion employees are workman and to a reply to another company's letter, it is mentioned in the letter of the union that the management of the company has been discriminating in dealing with the sales promotion employees and regarding increment it is also mentioned in the letter that granting increment to sales promotion employees should be transparent and backed by well declared policies by the company and sole discretion by the management in this regard is bad in law and against natural justice and in this regard also mentioned article-16 of the Constitution urging the company or to resort to unfair labour practice and it is concluded by mentioning that the company has been exploiting the sales promotion employees / workman working in State of West Bengal, who are also members of the union and the union requested the management of the company or adjudication of all such disputes, Ext. 3/1 is found to be a letter addressed by union to Assistant Labour Commissioner, Government of West Bengal mentioning discriminatory treatment in giving increment to some sales promotion employees and also mentioned a list in the way that a few of the sales promotion employees starting from Sukhendu Mukherjee to Aritra Roy were not given increment in 2011-12 while rest others starting from Parmartha Gupta to Biswanath Gupta were given annual increment in discriminatory way and asked the Assistant Labour Commissioner to take immediate step. Further Ext. 3/2 shows that Secretary of union also wrote this letter to Assistant Labour Commissioner, Government of West Bengal mentioning that without any certified standing orders / rules for the sales promotion employees in the company, the company is giving increment in a discriminatory way to some,

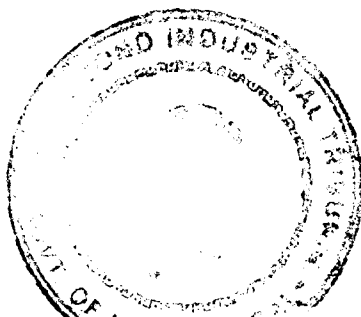


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while others are not being given any increment and requested the Assistant Labour Commissioner to refer the matter to the Tribunal, all these are coming to evidence on the basis of evidence of P.W.-1. As already seen Ld. Lawyer for the company has challenged the locus standi of the union mainly basing that the union never raised the matter of the grievances of the applicants by the union and the union also did not take any resolution to that effect, but from the evidence of P.W.-1 and also from the documentary evidences (Ext. 1 to Ext. 3), it is already established that union took resolution in a meeting attended by members of the union on the matters of their grievances as mentioned in its written statement and the same have also been given to the company prior to the raising of the matter by union before the Labour Commissioner, Government of West Bengal and after getting notice from the Labour Commissioner, Government of West Bengal, the management of the company also participated in the conciliation proceeding. Further the business manager of the company Mr. Sarkar as O.P.W.- 1 has tried to deny receiving all such letters in its examination-in-chief but in cross-examination O.P.W.- 1 last of all admitted that the management of the company received letters from the union as were issued to the company by the union regarding discrimination in increments, thus the O.P.W.- 1 has admitted all in cross. Thus, it is found that the requirement of law as per cited ruling by Ld. Lawyer for the company have been complied with by the union sufficiently and O.P.W.- 1 also admitted that except the union under reference, he knows no other union in the company. Therefore, there is no ground to challenge the locus standi of the union. Further Ld. Lawyer for the company has raised that there exists conflict of amendment between the one done by the state making the sales promotion employees as workman and the other by Central government by which conflicts with the other come into existence, and going through the state amendment, it comes out that the state has done so remaining within its limit and there is no indication of any transgression by the state in the law of the central government and the law as amended by state government can be applied in a clear manner without any violation of anything in the act.

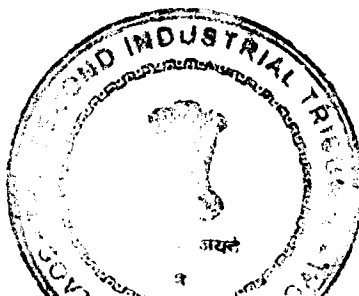
O.P.W.-1 the business manager of the company has clearly admitted that regarding discrimination in annual increment to the sales promotion employees of the company, the management of the company received letters from the union. Regarding discrimination in granting annual increment, the union has specifically raised that the union under reference always fights for workman working throughout the State of West Bengal to promote sales of the product of the company which are mainly medicines and there are 430 of such employees within the territorial limit of west Bengal and approximately 300 of them are members of the union. It has also stated that the company under reference is making discrimination in granting annual increment to wages of the sales promotion employees working under different headquarters in West Bengal without assigning any reason and the management of the company is also denying annual increment to wages to a section of sales promotion employees in an arbitrary,

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unreasonable and unjustified way, asserting that there is no codified order / rules / regulations in the matter of granting annual increment by the company and in the appointment letters to sales promotion employees the management of the company has not mentioned anything regarding the policy of fixation of increment and over that matter of discrepancy in granting annual increment union has given a number of representation to the company requiring the company to show transparency in granting annual increment to sales promotion employees basing the same in a written policy so that the sales promotion employees can have knowledge as to in which way / manner the increment is granted / rejected but the management did not do anything. The union has further stated that over this matter of discrepancy in granting increment and before raising this matter before labour commissioner, the union sent various representation to the management of the company including letter dt. 12.06.12 with resolution dt. 10.06.12 of the meeting of state council of union unanimously resolving that the management had adopted discriminatory method of giving annual increment to sales promotion employees and the company is doing everything as per its whims and fancies and 7 sales promotion employees were denied annual increment without any reason and even in case of one sales promotion employee annual increment was granted yet the same was withdrawn by the company and the management also transferring the reading functionaries of the union to other divisions with mala fide intention to harass them. As the management of the company did nothing, the union raised the matter before Labour Commissioner, Government of West Bengal, and a conciliation proceeding was drawn up by conciliation officer and management of the company also participated in that proceeding and opposed the demands of the union and then the union filed a writing on 22.08.2012 before conciliation officer asserting its case including that granting of annual increment to sales promotion employees should be transparent and supported by a proper declared policy but the management of the company to show favouritism towards all section of the sales promotion employees granting increment and this is a matter of unfair labour practice as mentioned in 5th schedule of the Industrial Disputes Act, 1947 and it is also barred by provisions of Section 25T of the Industrial Disputes Act, 1947. The union has further stated that all of them are sales promotion employees of same category, with addition that the product-wise growth and / or de-growth of the company is not only dependent upon the performance of sales promotion employees but also other various factors are involved such as demand of the product in the market competitiveness in the area of work, procurement of order, supply of products in time to the distributors / retailers in the market and acceptability of the products among the doctors but the company at the time of granting increment is considering only performance in an isolated way and as per annexure-X of order of reference a number of sales promotion employees were totally denied annual increment for the year 2011-12 and as per annexure-X a few sales promotion employees were given annual increment for the same period in a discriminated way. Thus, the union has raised question against the appraisal system of the company raising that by that system the management of the company is doing favouritism and the system is scientifically

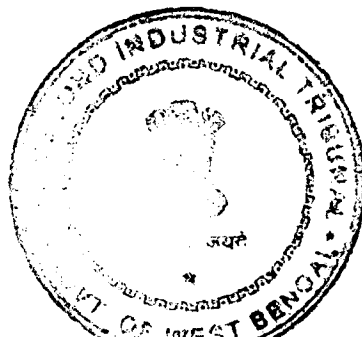
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not acceptable. Against all these the company has raised that the management of the company has a transparent and well-defined appraisal system in granting annual increment to sales promotion employees and as per that system there is a self-appraisal method by which self-assessment can be done by the employee concerned and then it is further assessed by the management in hierarchy stages and it cannot be stated that the employee cannot know anything of it. The company has also mentioned that the appraisal system includes category which are very good, good, and average and needs improvement, and those employees who come under the category – needs improvement cannot get any increment. The company has stated further that in case of sales promotion employees Mr. Sukhendu Mukherjee, he was given increment with promotion but he did not accept the promotion and for that reason the increment was withdrawn. The company has also raised that thus increment is given to the employees only the basis of performance of the employees, asserting that the sales promotion employees are required to canvassing of the product of the company, promote the sale of the products of the company through demonstration, representation of the merit of the products depending upon consumer requirements and other market conditions.

It is the argument by Ld. Lawyer for the union that for years together the management of the company is exercising wide discretion in granting annual increment to wages of the sales promotion employees working in the State of West Bengal without assigning any reason and by that method the management of the company has also been denying annual increment in wages to a section of sales promotion employees and describing all these as absolutely arbitrary, unreasonableness and unjustified, Ld. Lawyer for the union has added that there is no codified rule / order / regulation by the management of the company in granting annual increment or refuse the same and even in the appointment letters to the sales promotion employees nothing has been indicated regarding the policy of fixation of increment. The Ld. Lawyer for the has further added the union has given a number of representations to the management of the company requesting it to show transparency in granting annual increment basing on any written policy so that employees can have knowledge as to in which manner annual increment in granted / refused but the company did not do anything and at the same time it has adopted a policy of unilaterally transferring them who are leading functionary of the union. The Ld. Lawyer has further stated that the union has examined one of the sales promotion employees Sri Jyotirmoy Chakraborty as P.W.-1 and he has given sufficient evidences supported by documents to justify the case of the union. Ld. Lawyer for the union has further stated that the company examined its business manager of the company Mr. Suman Sarkar as O.P.W.-1 and he has last of all admitted the case of the union. Ld. Lawyer for the union has further raised that the appointment letter of sales promotion employee Sukhendu Mukherjee is in Form-A and the appointment letter does not contain any indication regarding grant of annual increment and the appointment letter also do not contain any indication of anyone increment but as per law the same is mandatory. Ld.

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Lawyer has further raised that part-A of the appraisal system of the company does not bear the signature of sales promotion employees and the rest part of the appraisal is assessed by the immediate senior of the employee and there is nothing in the appraisal system to show that concerned employee has given his consent. Ld. Lawyer has mentioned that sales promotion employees are covered by sales promotion employees (Condition of Service) Act 1976 and the concerned sales promotion employees in this case are working in West Bengal, and Section 5 of the sales promotion employees(Conditions of Service) Act, 1976, being a special statute, the company is under obligation to furnish letter of appointment and rule-22 of that Act prescribes that letter of appointment to sales promotion employees must be in form-A and in Form-A as per serial No. 7, scale of wages / rate of increment in wages must be mentioned and for that reason it is territory obligation on the part of employer to inform each and every sales promotion employees the scale of pay with annual increment in advance and its purpose is to provide knowledge to the individual sales promotion employees about his scale of pay and annual increment and they have must not be any chance of deprivation / discrimination and / or scope of doing anything whimsical or irrational on the part of the management, even that the management of the company under reference has been discriminating while giving increment and none of the sales promotion employees in the company can have access on the performance assessment by the management of the company which does it internally further adding that achievement of sales target does not depend on the performance of any sales promotion employee exclusively since other factors are involved over which the employee cannot have any control and therefore in the absence of gradation, scale of pay, general annual increment, the enhancement of salary simply depends on mercy of the employer. Against all these Ld. Lawyer for the company referring the evidences of P.W.-1 has mentioned in his argument that in paragraph-8 to paragraph-10 of the written statement filed by the company, the company has stated the procedure for payment of increments and the same has also been asserted by the witness of the company Mr. Suman Sarkar (O.P.W.-1) who is the business manager of the company and there is nothing illegal in the procedure adopted by the company in granting annual increment. Regarding sales promotion employee Sri Subhendu Mukherjee Ld. Lawyer for the company has mentioned that he was given promotion with annual increment but he refused to accept the promotion and for that reason that benefit to Mr. Sukhendu Mukherjee was withdrawn. The contention of paragraph-8 to paragraph-10 of the written statement filed by the company is that the company has a transparent well-defined appraisal system and policy guideline for granting increment, this includes self-appraisal and also further assessment by management of the company and according to it performance of sales promotion employees are categorised as very good, good, average and needs improvement and those employees who come under the category of 'needs improvement' are not entitled to get any annual increment.

But the entire matter is required to be examined on the basis of adduce evidences by both

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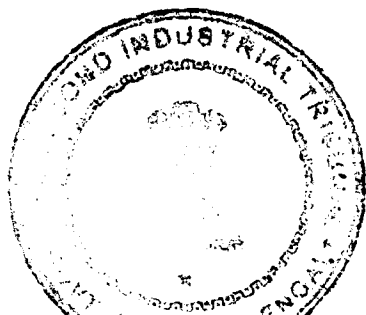
parties. Ext. 1 is a letter written to the management of the company by the secretary to the union under reference on 12.06.12 with resolution of the union dt. 10.06.2012, in the resolution it has

been mentioned that the management of the company has adopted discriminatory method of giving annual increments to the sales promotion employees and 7 sales promotion employees have been illegally denied annual increment without assigning any reason, further even after extending the same to one of them the same was withdrawn by deducting it from his salary and the management has been unilaterally transferring the sales promotion employees who are leading functionaries of the union to other divisions only to harass them and then requested the management of the company to given annual increment to all the 7 such sales promotion employees according to seniority in service, to reimburse the increment that was deducted from the salary of Sri Sukhendu Mukherjee etc., and on this, the evidences by P.W.-1 Sri Jyotirmoy Chakraborty is that no increment was given to the employees as mentioned in annexure-X of the order of reference during the financial year 2011-12 and even though increments were given to the employees as mentioned in annexure-Y of the order of reference, the same is full of discrepancy for that period of time i.e. financial year 2011-12, and as per annexure-X of the order of reference, Sukhendu Mukherjee of Kolkata Headquarter, Jyotirmoy Chakraborty of Kolkata headquarter and Sudipta halder of Kolkata headquarter, Sudip Pal of Berhampore headquarter, Rup Kukar Debnath of Chandernagar Headquarter, Sumanta Chowdhury Arambag headquarter and Aritra Roy of Srirampore headquarter were denied annual increment for the financial year 2011-12 and as per annexure-Y, Parmartha Gupta, Abdul Firoz, Subhendu Sarkar, Asim Sharma Sarkar, all being of Berham headquarter, Tarun Das of Kolkata headquarter, Anirudh Gupta and Biswanath Dasgupta, all being of Kolkata headquarter, Jayanta Mukherjee of Hooghly headquarter, Jyoti Prakash Bhattacharjee of Barrackpore head quarter and Amitabha Banerjee of Sodepur headquarter were given increment for the year 2011-12 but in a discriminatory way, and these are found to have been deposed by P.W.-1 also. The order of reference is dt. 01.08.2013 and the information by a letter with copy of resolution of the union (Ext. 1) was received by company on 12.06.2012 which is found to be much ahead of raising the matter before labour Commissioner by union as has been raised by union in its written statement. P.W.-1 also deposed that there is no written order or circular or settlement or any other document regarding giving increment to the sales promotion employees by the company and the company issued appointment letter to the employees and in the appointment letters the terms of increment is not mentioned and despite giving representation to the company for removal of all these but the company did not take any step at the allegation of the union against the company is for non-payment of increment for 2011-12 and there is also no transparency regarding non-payment of increment. Here it is required to be mentioned that the period is stated as 2011-12 and this 2011-12 is found to be admitted position, but inadvertently in the evidences of P.W.-1 Jyotirmoy Chakraborty it is mentioned as 20011-1012 which appears to be no body's case and at the same



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time meaningless. The P.W.-1 also deposed that in the appointment letter issued to them i.e. sales promotion employees the terms of increment is not mentioned in appointment letters. From the documents of the company, I find that the management of the company has filed appointment letters issued to sales promotion employee Sudip pal (Ext. N), Suman Chawdhury (Ext. O), Rup Kumar Debnath (Ext. P), Sudpita Halder (Ext. Q), Sukhendu Mukherjee (Ext. R) etc. It is the submission of Ld. Lawyer for the union over the appointment letters Ext. N etc. that the appointment letters to sales promotion employees must be in accordance with the law laid down in the sales promotion employees (Conditions of Service) Act, 1976 and as per Section 5 of that Act, every employer in relation to sales promotion employee shall furnish to such employee a letter of appointment in such form as be prescribed and in a case where he holds as such at the commencement of this Act the same must be within the 3 months for such commencement and as per chapter 3 of that act, Section 22 requires that the letter of appointment to be furnished to sales promotion employees under section 5 of that act shall be in form-A and Ld. Lawyer has further raised that the act has further provided the format A in which letter of appointment to sales promotion employees shall be issued and as per requirement of item no. 7 of form-A the scale of pay and rate of increment in wages shall be mentioned inserting the period and inserting the amount and as per item no. A of that form-A, basic pay, dearness allowance, other allowances, other condition of service must be mentioned in the appointment letter inserting the amount of basic pay, inserting the amount of dearness allowance and also inserting the particulars of other condition of services and Ld. Lawyer for the union has further raised that all these statutory provision of that act are mandatory in nature and the appointment letters (Ext. N) etc. do not contain the scale of pay, the annual increment, other allowances and thereby the company has committed illegality. Going through the argument raised by Ld. Lawyer for the company it is found that the matter of increment annually given to the sales promotion employees is guided by a self appraisal system adopted by the company and as per that system, the sales promotion employees are categorised as very good, good, average and needs improvement and accordingly those sales promotion employees who are coming under the category needs improvement, they cannot get any annual increment and rates are given increment on the basis of their performance which is done by data given by the sales promotion employee by filling a format for this purpose with all his performance and then it is assessed at the stage of the management of the company and a calculated amount is given as increment. P.W.-1 has further deposed that the management of the company thus exercising discretion without any basis as there is no rules and order in this regard in the company and by adopting the self appraisal system the company is giving increment according to its whims and thereby doing favouritism etc. The business manager of the company (O.P.W.- 1) in his evidences in chief admitted that he does not know if there is any service rules in the company and he further depose that there is well-defined written appraisal and following that appraisal increment is given to employees, Mr. Sarkar (O.P.W.- 1) also clearly admitted that there is provision in the company



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to grant increment and also admitted that in the appointment letter it is mentioned that annual increment will depend on the performance and then he explained that the annual increment is linked to performance by the sales promotion employees. Admittedly Ext. B provides for field expenses reimbursement and after going through this Ext. B O.P.W.- 1 deposed that he cannot say if there is any circular mentioning the criteria who granting increment in general. O.P.W.-1 also admitted that the matter of giving increment is done by HR department of the company and this O.P.W.- 1 Mr. Sarkar signed the appraisal mentioning as to whom increment is given. It is the case union as per its written statement and also as deposed by the P.W.-1 that the target of sales growth solely does not depend on performance by the sales promotion employee but also on other factors such as acceptability of the products by the doctors, competitiveness of the market, demand and supply of the products etc. as also raised by union in its written statement, and I find that the business manager of the company Mr. Suman Sarkar has admitted the same by clearly deposing that the target of sales growth depends on various factors viz. acceptability of the products by doctors, competitiveness of the market, demand and supply of the products, viability of head quarter and also performance of sales promotion employees. Thus, it is coming out that it is the case of the union that by applying the appraisal system by the company in granting annual increment, the company only considers performance of the sales promotion employees alone and not other factors over which the sales promotion employees cannot have any control and though management of the company raised a challenge denying such stance of the union and raising that only performance by the sales promotion employees is considered but by the admission on the part of business manager of the company O.P.W.- 1 the same i.e. the self appraisal system has become questionable and as per admission of O.P.W.- 1 that merely performance for consideration of increment is not proper and performance depends on other factors which are given by O.P.W.- 1 as acceptability of the product by doctors competitiveness in the market, demand and supply of the products viability of headquarter etc. O.P.W.-1 also admitted that he does not know if the company issues appointment letter in format-A or not in compliance the requirement of the Act i.e. sales promotion employees (Conditions of Service) Act, 1976 and also admitted that in the appointment letters the company has not mentioned increment or that if any increment would be given to the sales promotion employees generally or not and O.P.W.- 1 also admitted that he cannot say if there is any provision in the appointment letter as per format-A that increments shall be given only on performance basis. It is the further case of the union that the sales promotion employees are entitled to get annual increment generally and it cannot be considered solely on the basis of performance by the individual sales promotion employees as promotion of the product of the company by sales promotion employees does not solely depend on the performance of individual sales promotion employees alone but also other factors as mentioned earlier over which the sales promotion employees cannot have any control but in the written statement on behalf of the company the same has been challenged raising that there cannot be any annual increment generally but it is based on performance on

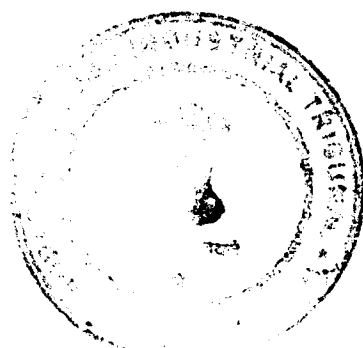
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individual sales promotion employee as per appraisal system adopted by the management of the company according to which there are categories such as very good, good, average and needs improvement and those who are coming under category of needs improvement, they cannot get any annual increment and the union has raised that such appraisal system denying general increment to all sales promotion employees is illegal and this has also been emphasised by Ld. Lawyer for the union, and now going through the evidences given by Mr. Sarkar the business manager of the company as O.P.W.- 1, it is found that the business manager of the company has admitted the stance taken by the union and admitting all, he deposed that it is a fact that the products of the company are pharmaceutical products and this products of the company are promoted by sales promotion employees and he further deposed that he i.e. O.P.W.- 1 Mr. Sarkar the business manager of the company joined the company in that capacity in 1999 and further admitted deposing that from that time of joining in 1999 it was in vogue in company that increment would be given and in the appointment letter issued by the company to the sales promotion employees nothing is mentioned regarding giving of increment generally and also deposed that he is ignorant of law requiring that appointment letter to sales promotion employees shall have to be given in form-A in compliance with the requirement of sales promotion employees (Conditions of Service) Act, 1976, with the addition that if the law is so then it is required to be done.

In the written statement filed by company, the management of the company has mentioned that annual increment are given to sales promotion employees on the basis of annual performance appraisal and this is applicable to all sales promotion employee. As already seen Ld. Lawyer for the union has raised question against this self appraisal system by arguing that as per this system the company has categorised the sales promotion employees as very good, good, average and a further category as needs improvement and those who are coming under the category of needing improvement they are denied annual increment as have been denied to the applicants as mentioned in the annexure-A of the order of reference and even the same is given to a section of sales promotion employees / workman, the same is done without any uniformity but on whimsical basis on the part of the company at varying rates as has been done by the company in the case of sales promotion employees / workman as mentioned in annexure-Y of the order of reference, with the addition that growth of sale solely does not depend on performance of individual sales promotion employees / workman but also depends on other factors which are mentioned earlier, as also admitted by business manager of the company Mr. Sarkar as O.P.W.- 1 and Ld. Lawyer for the union raised that this self-appraisal system permits separatism, it is lack of uniformity and lacs transparency due to absence of any clear-cut order / circular etc. in giving increment by the company and it also permits unequal treatment which cannot be legally done by the company. Ld. Lawyer for the company supported the self-appraisal

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system by arguing that it depends on performance by individual workman and the performance is considered on the basis of their score and if it comes to the category needing improvement, only he cannot get any increment and this self-appraisal system is proper and it is also necessary for growth of the products of the company by way of sale.

It has already been seen that the business manager of the company has already admitted as O.P.W.- 1 that growth of sale of products of the company does not solely depend on performance by each individual sales promotion employees / workman but also depend on other factors such as acceptability of the products by doctors, competitiveness in the market, demand and supply of product which were also raised by union and O.P.W.- 1 further added that viability of head-quarter is also necessary as further factors. Therefore, the stance of the company that annual increment solely depends on performance of the individual workman is questionable as also admitted by O.P.W.- 1 who is no body but the most important man in the management of the company occupying the post of business manager of the company i.e. O.P.W.- 1 Mr. Sarkar. The annual performance appraisal has been produced by the company and it has been marked Ext. T. Ld. Lawyer for the company has raised question on the authenticity of this document i.e. Ext.T and raised that it is unauthenticated document and from the face of it, it appears to be manufactured and it only fix about individual performance without considering other factors that have been admitted by Mr. Sarkar as O.P.W.- 1 and therefore, legally this document (Ext. T) does not exist. Ld. Lawyer for the company has raised that it is authentic as also mentioned earlier.

I find that this annual performance appraisal was shown to the business manager of the company Mr. Sarkar (O.P.W.- 1) and Mr. Sarkar in the capacity of business manager of the company deposed that it is a fact that the annual performance appraisal (Ext. T) does not contain any seal from the company or signature of anyone of the company and it is also not in the letter-head of the company, Mr. Sarkar (O.P.W.- 1) also admitted that there is no endorsement on the document i.e. Ext. T to show that it was circulated and also admitted that it does not contain any signature of any sales promotion employees / workman on it. O.P.W.- 1 further admitted that it is a fact that at the end of the document (Ext. T) it is mentioned that it has enclosures and those enclosures have not been pertained with this document Ext. T under any nomenclature and also admitted that when it was filed in the Court, no enclosure was mentioned and O.P.W.- 1 also admitted that the document Ext. T is incomplete.

Therefore, it has been proved by the evidences of P.W.-1 and at the same time it is also admitted in the written statement of the company and also admitted by business manager of the company Mr. Sarkar as O.P.W.- 1 that sale growth of the products of the company simply solely does not depend on the performance of individual sales promotion employees / workman and growth of sale of the product of the company depends on other factors which are acceptability of

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the product by the doctors, competitiveness in the market, demand and supply of the product viability of the head-quarter of the company and the annual performance appraisal(Ext. T) with its different categories such as very good, good, average and needs improvement and with the aid of this annual performance appraisal, the management of the company can refuse annual increment to a section of sales promotion employees / workman as happened in case of employees mentioned in annexure-X of the order of reference and also to discriminate in giving annual increment as happened in case of employees as mentioned in annexure Y of the order of reference and also withdrawal of annual increment after giving the same to an employee as happened in the case of Sukhendu Mukherjee, and under such facts and circumstance possibility of exercising nepotism / favouritism as raised by Ld. Lawyer for the union cannot be brushed aside and as per evidences of O.P.W.- 1, it is admittedly clear that the annual performance appraisal also lack authenticity due to non-signing it by any executive of the company and also for not circulating the same to the concerned sales promotion employees / workman and the full annual performance appraisal have not been filed as also admitted by O.P.W.- 1 who further admitted that the process of scoring is done in the management level and P.W.-1 has raised by deposing that the process by management is not clear and it is also not accessible and sales promotion employees / workman cannot under anything of it for want of any clear-cut order / circular by company in this regard and from the admissions of O.P.W.- 1 on the document (Ext. T) it appears that the company has admitted all these tacitly.

Ld. Lawyer for the union has mentioned that Sales Promotion Employees(Conditions of Service) Act, 1976 requires every employer in relation to sales promotion employees / workman shall furnish to such employee a letter of appointment in such form as may be prescribed as mentioned in Section 5 of this Act and in clause-(a) of this section it is stated that in a case where he holds appointment as such at the commencement of this Act, within 3 months of such commencement etc. and as per section 22(1) of the same act it has been provided that the letter of appointment to be furnished to a sales promotion employees / workman under section 5 of that act shall be in form-A and as per rule-22(1) to that act the mandatory format of appointment letter to sales promotion employees has been mentioned and in serial-7 of that form-A, it is required that his / her scale of wages / rate of increment in wages per shall have to be inserted and shall be mentioned inserting the amount and as per serial No. 8 (i) basic pay must be inserted mentioning the amount, dearness allowance must be inserted mentioning the amount and as per serial No. 9 of the format of appointment letter to sales promotion employees / workman other conditions of service must be mentioned and the same also must be signed by the employer. Ld. Lawyer has explained that in this law the requirement of mentioning scale of wages rate of increment in wages or basic pay, dearness allowance and other allowances and other conditions of service shall have to be mentioned and the word shall means that the same shall have to be done compulsorily without any deviation on the part of the employer but in the present case

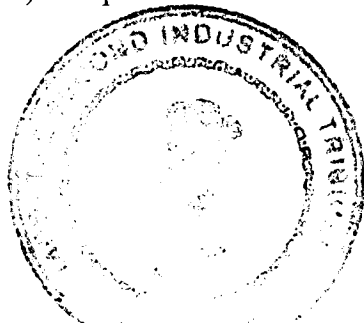
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nothing has been done by the company but the aim and object of such requirement is to enable the employees to have knowledge about their scale of pay and annual increment in advance and also disallowing the management to act whimsically, irrationally. On behalf of union P.W.-1 also deposed stating all these and the O.P.W.- 1 has also admitted them. Going through the evidences of P.W.-1 it is found that he has deposed as also mentioned earlier that there is no order or rule in company regarding payment of agreement and the company has also not mentioned the same in appointment letters and company discriminates in giving increment and also refuses to give increment to few employees. The business manager of the company as O.P.W.- 1 after going through a few such appointment letters (Ext. L, Ext. O, Ext. R, Ext. N) admitted these to be appointment letter issued to sales promotion employees / workman and O.P.W.- 1 further admittedly deposed that he cannot say or does not know if this appointment letters are in legal format i.e. Form-A in compliance with the requirement of the Act and O.P.W.- 1 also admitted that it is not mentioned in the appointment letters (Ext. L, O, R, N) and this O.P.W.- 1, as I find from the cross of O.P.W.- 1 dt. 11.04.2017, has further admitted that there is a provision in its company to grant increment to sales promotion employees / workman with further mentioning that in the appointment letter it was mentioned that annual increment would depend on the performance and he explained that increment is linked to performance and he also admitted that he does not know anything over the requirement of law that the increment must specifically be mentioned in the appointment letter and thus it is found that the matter / deposition and at the same time assertion by the company that increment is linked to performance is in deviation and violation of the law in sales promotion employees(Conditions of Service) Act, 1976, which by using the word sale have compulsorily required that employer must issue appointment letter clearly mentioning scale of wages and rate of increment inserting the amount in period and also must mention basic pay and dearness allowances inserting amounts, other allowances inserting particulars and other conditions of services.

Ld. Lawyer for the union in his cited ruling has argued that the company has violated thus the doctrine of equality of law mentioning that the concerned sales promotion employees / workman are working in west Bengal within the same establishment owned by the same management and evidences have come from P.W.-1 and at the same time admitted by O.P.W.- 1 that there is discrimination amongst the same set of employees by the same master in the same establishment and therefore equal pay for equal work is required to be enforced by the law given by Hon'ble Court. Against all these Ld. Lawyer for the company has argued that the matter of equality has been laid down in Article-14 of the Constitution of India and this cannot be appointed in this case as the company is national company all over India and the sales promotion employees / workman cannot claim it as a matter of fundamental rights which enforceable only against the state and the company is not a state.

In the cited ruling (1989) 4 Supreme Court cases 459/464 by Ld. Lawyer for the union,



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Hon'ble Court was very much pleased to refer a further case i.e. SCC p.245 i.e. Mebaram Kanujia Vs. AIIMS and laid down the principles and circumstances for applying the principle of equal pay for equal work. Ld. Lawyer for the company mentioned that the company is not a state and article 14 of the constitution cannot be applied by the applicants / union and the same is only available against the state. Hon'ble Court was very much pleased to observed that the principle of equal pay for equal work is not one of the fundamental rights expressly guaranteed by the Constitution of India and it was incorporated only under article 39(d) observing that it is to be read into article 14 and 16 of the constitution. In the cited case he applicants were carpenters in Himachal Pradesh State Handicraft Corporation and demanded equal pay for equal work as done by same group of persons who were counterparts regular services. Denying their claim, Hon'ble Court laid down that the discrimination complained of must be within the same establishment owned by same management and there must be discrimination amongst the same set of employees by the same master in the same establishment. All these have been asserted by union in its written statement as also properly deposed by P.W.-1 and the O.P.W.- 1 is silent over any all them and I find that there is also no challenge in any of this requirements on behalf of company. The Ld. Lawyer for the company raised that equal pay for equal work is a matter of fundamental rights and it can only be applied against state and the company, and from law point of view I think that Ld. Lawyer for the company has rightly submitted the same. But equal pay for equal work as a principle besides mentioning in article 14 / 16 of the constitution, is also part of directive principles of state policy, and therefore this principle can be applied in his case also. In this case it is the admitted position that by annual performance appraisal (Ex. T) as has been adopted by the company provide scope to company to discriminate in granting annual increment, it has given annual increment to a section of employees without maintaining any uniformity (annexure X of order of reference) while same was rejected totally to a few others (annexure Y of order of reference) and at the same time it has withdrawn given increment to another of the same set of employees. Admittedly this employees i.e. sales promotion employees are admittedly found to be under the same master in the same establishment and at the same time getting discrimination in getting increment or also being refused to get increment though their job is of same nature and there is also violation of mandatory requirement of law under sales promotion employees (Condition of Service) Act, 1976 which compulsorily requires mentioning of scale of wages, rate of increment by inserting the amount with period, insertion of basic pay and dearness allowance with amount, other allowances, when O.P.W.- 1 admitted in cross that the company has provision to give increment annually to its employees. Thus equal pay for equal work as a matter of directive principles of state policy is found to be applicable.

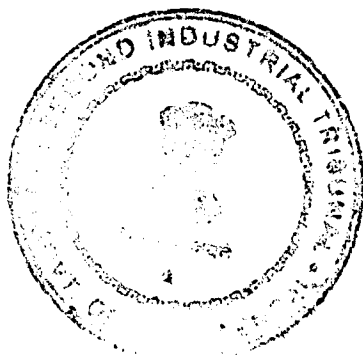
In case of sales promotion employees / workman Sri Sukhendu Mukherjee, as seen earlier also, union has raised that annual increment was given to him but surprisingly it was withdrawn and the entire amount given to him was deducted in a single stroke and against this it is the

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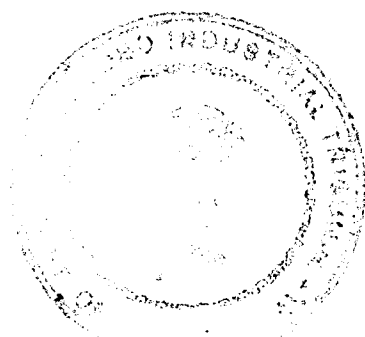
stance of the company admittedly that this sales promotion employee Sukhendu Mukherjee was given the annual increment but it was accompanied with his promotion but he refused to accept the promotion and for that reason the extended annual increment granted to him was withdrawn. As per above discussion and as per requirement of sales promotion employees (Conditions of Service) Act, 1976 and Rules thereto, his scale of wages, rate of increment in wages must be inserted with the amount and the period also must be inserted along with insertion of basic pay amount and also dearness allowance amount with other allowances with insertion of the particulars and other condition of service in the appointment letter of this sales promotion employee but admittedly as admitted by O.P.W.- 1 this compulsorily requirement of law was not complied with by the company and before taking that action of taking away money from the salary of sales promotion employee Sri Mukherjee, it was necessary on the part of the company to give him an opportunity of hearing but the company did not do so and thus found that the compulsory requirement of law has remained violated purposefully without giving any opportunity as per requirement of law regarding principles of natural justice. The O.P.W.- 1 Mr. Sarkar in the capacity of business manager of the company has admitted that the company pays annual increment to its sales promotion employees / workman but it is linked with performance and it is already found that the matter of linking annual increment with performance without mentioning the scale of pay, annual increment thereto in the appointment letter is violation of fundamental requirement of law as given by sales promotion employees (Conditions of Service) Act, 1976 and rules thereto as described earlier. It is further argument by Ld. Lawyer for the union that all such violations of compulsory requirement of law and non-giving of annual increment to sales promotion employees / workman or giving annual increment at varying rates on unauthenticated annual performance appraisal (Ext. T), and transferring sales promotion employees / workman who are leading functionaries of the union to a different place only to harass him and etc. have amounted to unfair labour practice as specified under 5th schedule of the Industrial Disputes Act, 1947 and at the same time bar U/s. 25T of the Industrial Disputes Act, 1947 but Ld. Lawyer for the company only raised that self-appraisal performance method is proper. O.P.W.- 1 Mr. Sarkar has admitted clearly in cross-examination that the company gives annual increment to its sales promotion employees / workman and also admitted that growth of sale of the products of the company does not depend on performance on the sales promotion employees / workman solely but also depends on other factors such as acceptability of the products by doctors, competitiveness in market, demand and supply of product, viability of head-quarter, over which sales promotion employees / workman cannot have any control and going through the contention of 5th schedule of the Industrial Disputes Act, 1947 it is found that all these are part of it and possibility of unfair labour practice on the part of the management of the company is found to be in existence as has been raised by Ld. Lawyer for the union and all these also come U/s. 25T of the Industrial Disputes Act, 1947.

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Therefore it is coming out that on the part of the union, sufficient evidences have been adduced in support of its case as per its written statement and the part of the management of the company, Mr. Suman Sarkar in the capacity of business manager of the company as O.P.W.- 1 has cleared the entire matter by admitting that the company gives annual increment to its sales promotion employees / workman with addition that it is linked with performance of the individual sales promotion employee and also admitted that in the appointment letters issued to the sales promotion employees / workman i.e. Ext. L, Ext. O, Ext. R, Ext. N etc. the compulsorily required particulars such as scale of wages mentioning the amount, rate of annual increment in wages mentioning the amount with period thereto, basic pay mentioning the amount, dearness allowance mentioning the amount, other allowances mentioning the particulars and other conditions of services have remained not mentioned and he also admitted ignorance of the requirement of law over the matter as required by sales promotion employees (Conditions of Service) Act, 1976 and Rules thereto and O.P.W.- 1 also deposed that he cannot say anything about it as already discussed earlier and found that the matter of linking annual increment with performance of individual sales promotion employees is in violation of compulsory requirement of law and therefore bad in law but the gentleman Mr. Suman Sarkar the business manager of the company has also admitted the stance of union that sales growth of the products of the company does not depend solely on the performance of individual sales promotion employee but also on other factors which are given by him (O.P.W.- 1) as acceptability of the products by doctors, competitiveness in market, demand and supply and products, viability of head-quarter etc. as have also been raised and asserted by union in its written statement and also as deposed by the P.W.-1 Jyotirmoy Chakraborty.

It is therefore to say that decision of the management of the company M/s. IPCA Laboratories for non-granting annual increment to sales promotion employee Sri Sukhendu Mukherjee and six others as per annexure-X of the order of reference is not justified and the same is found to be illegal, and over the matter of relief in this regard, it is to be in line with the admission of business manager of the company Mr. Suman Sarkar (O.P.W.- 1) that the company gives annual increment to its sales promotion employees / workman and his ignorant of mentioning annual increment in appointment letter to sales promotion employees and also other particular as per compulsory requirement of law as given in sales promotion employees(Conditions of Service) Act, 1976 and rules thereto as also discussed earlier and accordingly it is incumbent on the management of the company to issue modified appointment letters to the sales promotion employees w.e.f. the date of appointment or modify the existing one by inserting all the particulars such as scale of wages inserting the amount, rate of increment in wages annually by inserting amount and period, basic pay by inserting the amount, dearness allowance by inserting the amount, other allowances by inserting particulars and other conditions of services and then to calculate annual increment for disbursement and in doing so it must be



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seen that there is uniformity as per principles of doctrine of equal pay for equal work as laid down in directive principles of state policy as discussed earlier, as by evidence it has been established that nature of job performed by each of the sales promotion employees / workman are similar, and accordingly the issue no. B(i) Whether the management of the company M/s. IPCA Laboratories has made any discrimination by granting annual increment in the wages of Sri Parmartha Gupta and 9 others for the year 2011-12 as per annexure-Y of the order of reference is found to be discriminatory and illegal and regarding relief as mentioned in issue B(ii), the same process as mentioned for relief in issue A(ii) as discussed above and then to allow increment after complying with mandatory requirement of mentioning scale of pay with amount, the rate of increment mentioning the amount etc. as per requirement of contention of appointment letter from serial No. 7 to serial no. 9 as given in form-A of sales promotion employees (Condition of Service) Act 1976 and Rules thereto. As per deposition of O.P.W.-1 and also as per argument by Ld. Lawyer for the company, annual performance appraisal (Ext. T) is necessary for economic interest of the company, but this annual performance appraisal (Ext. T) is not supported by any law and it simply appears to be a brain-child of the management of the company with the impetus of business management acumen-ship without any support of any law at all and the management of the company cannot apply the same as a substitute of law providing for compulsory requirement of doing something as sales promotion employees (condition of Service) Act, 1976 and Rules thereto has compulsorily required the management of the company to mention particulars such as scale of wages inserting the amount, rate of increment in wages annually by inserting the amount and period, basic pay by inserting the amount, dearness allowance by inserting the amount, other allowance by inserting the particulars and other condition of services etc. and I think after giving the annual increment after compliance with the requirement of inserting compulsory requirements in appointment letter, the company is at liberty to bring in competition for healthy economic development but not at the cost of annual increment, taking into account that principles of natural justice is never violated .

In summing up it is to say that the union has adduced sufficient evidence and proved the case, and at the same time, it has remained admitted by the management of the company through its business manager Mr. Sarkar the O.P.W.- 1 who has clearly admitted that the company gives annual increment to its sales promotion employees and further that sales growth by selling the products of the company does not depend solely on the performance of the individual sales promotion employees / workman but also on other factors which have been given by him as acceptability of the products by doctors, competitiveness in market, demand and supply of the products, viability of head-quarter etc. are also responsible, over which the sales promotion employees / workman cannot have any control as have also been asserted by union. It is therefore,

ORDERED.

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that the decision of the management of M/s. IPCA Laboratories for non-granting annual increment in the wages of Sri Sukhendu Mukherjee and six others as per annexure-X of the order of reference for the year 2011-12 as mentioned in issue no. A(i) is found to be not justified and it is illegal ab initio and the same is set aside, and regarding issue no. B(i) as to whether the management of the M/s. IPCA Laboratories has made any discrimination by granting annual increment in the wages of Sri Parmartha Gupta and 9 others at an unequal rates for the year 2011-12 as per annexure-Y of the order of reference is answered in positive and it is mentioned that the discrimination in granting annual increment in the wages of Sri Parmartha Gupta and 9 others at an unequal rates for the year 2011-12 as per annexure-Y of the order of reference by management of M/s. IPCA Laboratories is illegal, inoperative and the same is set aside, and for relief as mentioned in issue no. A(ii) and also mentioned in issue No. B(ii) of the order of reference, the management of the company M/s. IPCA Laboratories is directed to correct / issue modified appointment letters to the sales promotion employees as mentioned in annexure-X of the order of reference and also as mentioned in annexure-Y of the order of reference with effect from their respective date of appointment by inserting all particulars such scale of wages inserting the amount, rate of annual increment in wages by inserting the amount and also inserting the period, basic pay by inserting the amount, dearness allowance by inserting the amount, other allowances by inserting the particulars and other conditions of service as per compulsory requirement of law providing Form for letter of appointments to sales promotion employees as given in the sales promotion employees (Condition of Services) Act 1976 and Rules thereto with immediate effect and then to give annual increment to the concerned sales promotion employees / workman as mentioned above i.e. sales promotion employees / workman as mentioned in annexure-X of the order of reference and also to sales promotion employees / workman as mentioned in annexure-Y of the order of reference in modification of the amount as already paid in case of employees as per annexure-Y of the order of reference for the period as mentioned in both Annexure-X and Annexure-Y of the order of reference immediately adhering to the requirements of the doctrine of the principles of equal pay for equal work mutatis mutandis as observed in the body of the judgement without violation of principles of natural justice, and this is the award of this Tribunal on contest in view of the order of reference no. 755-I.R./IR/11L-78/13 dt. 01.08.2013 by order of Governor signed by Deputy Secretary to the Government of West Bengal, Labour Department, I.R. Branch, Writers' Buildings, Kolkata-1 and it is directed that Necessary number of copies of this award be prepared and send to the appropriate government i.e. Principal Secretary to the Government of West Bengal, Labour Department, New Secretariat Buildings, 12th floor, 1, K.S. Roy Road, Kolkata – 700001.

Dictated & corrected by me.

sd/-
Judge



sd/-
Judge
2nd Industrial Tribunal
31.01.2019
Judge
2nd Industrial Tribunal
West Bengal