

HIGH COURT OF GUJARAT**SECRETARY - INDIAN RED CROSS SOCIETY & 1***Versus***MANOJ AMBARAM KAHAR & 1****Date of Decision:** 26 March 2014**Citation:** 2014 LawSuit(Guj) 386**Hon'ble Judges:** [N V Anjaria](#)**Case Type:** Special Civil Application; Civil Application**Case No:** 8577 of 2013, 8675 of 2013; 7459 of 2013**Subject:** Labour and Industrial**Acts Referred:**[Industrial Disputes Act, 1947 Sec 33A, Sec 2\(s\)](#)**Advocates:** [Keyur Gandhi](#), [Nirav Joshi](#), [Nanavati Associates](#), [A K Clerk](#), [Paritosh Calla](#)**Cases Referred in (+): 27****N. V. Anjaria, J.**

[1] Both the petitions relate to identical subject matter and are connected. Therefore both are dealt with and decided by this common judgment.

[2] In Special Civil Application No.8577 of 2013, the petitioner Indian Red Cross Society has prayed to set aside order dated 21.04.2011 passed by Labour Court, Navsari below Exhibit 28 in Complaint No.01 of 2008 in Reference (LCND) No.01 of 2008. It is further prayed to set aside award dated 25.03.2013 passed by the Labour Court in Complaint (I.D. Act) No.01 of 2008. The aforementioned order dated 21.04.2011 was an order whereby the Labour Court rejected the application of the petitioner-employer raising a preliminary contention to hold that the respondent fell within the definition of "workman". The other petition being Special Civil Application No.8675 of 2013, the petitioner whereof is respondent in Special Civil Application No.8577 of 2013, who has prayed for a writ of mandamus to enforce the aforesaid award dated 25.03.2013 passed by the Labour Court.

2.1 The parties are hereinafter mentioned as petitioner and respondent as referable to Special Civil Application No.8577 of 2013.

[3] A profile of facts relating to the proceedings between the parties and giving rise to the present petitions may be outlined. The respondent of Special Civil Application No.8577 of 2013 and the petitioner in the other petition was holding decree of M.D. Pathologist. He was appointed by the petitioner- Red Cross Society as Pathologist-cum-Medical Officer as per appointment letter dated 08.06.2001. As per the case of the employer, the activities and behaviour of the respondent were found to be against the interests of the petitioner-Society; he was not giving sufficient time as Pathologist to the Society; therefore, he came to be relieved from service with effect from 30.06.2008, and was asked to collect his legal dues. It appears that the employees of the petitioner-Society had raised a Charter of Demands which was pending by way of Reference (LCND) No.01 of 2008. The respondent, upon being relieved from service as above, filed a complaint under Section 33-A of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for sake of brevity). The petitionersociety filed its reply-cum-explanation at Exhibit 9 opposing the complaint of the respondent, contending inter alia that the respondent was working as Pathologist and was not a workman within the definition of Section 2(s) of the Act. The Labour Court was requested to decide the said point as preliminary issue.

3.1 On the said application (Exh.28) of the petitioner-Society, the Labour Court passed order dated 13.08.2009 accepting the request that the question whether the rt was 'workman' would be decided as preliminary issue. The respondent filed an application Exhibit 95 for amendment in his complaint, which was allowed by the Labour Court on 19.01.2010.

The petitioner-Society filed reply to the amended complaint. Thereafter by impugned order dated 21.04.2001 below Exhibit 28, the Labour Court rejected the application of the petitioner-Society holding that the respondent was covered within the definition of "workman". Against the said order, the petitioner- Society preferred Special Civil Application No.14392 of 2011. This Court by order dated 12.10.2011 disposed of the petition reserving liberty for the employer to challenge the order below Exhibit 28 together with the final award which may be passed in Complaint No.01 of 2008. Thereafter the said order was subjected to challenge in Letters Patent Appeal No.230 of 2012. The Division Bench disposed of the Appeal as not maintainable without prejudice to the rights and contentions of the appellant.

3.2 The Labour Court (S.D.), Navsari allowed Complaint No.01 of 2008 filed by respondent No.1 by impugned order dated 25.03.2013, and directed the petitioner-

society to reinstate the respondent on the original post with continuity of service but without backwages. Accordingly in the present petition, the aforementioned two orders are brought under challenge. First is the order dated 21.04.2011 below Exhibit 28 as per the liberty reserved by this Court; the second order being the order allowing the Complaint as aforesaid.

3.3 The bone of contention between the parties is whether the respondent holding the degree of M.D. Pathologist, appointed as Pathologist-cum-Medical Officer would fall within the canopy of Section 2(s) of the Act and thus whether he was 'workman'.

[4] Learned advocate Mr. Keyur Gandhi for Nanavati Associates for the petitioner-society submitted that the respondent would not be falling within the purview of the definition of "workman" as he was a professional possessing the degree of M.D. Pathologist. He was appointed by the society as Medical Officer-cum-Pathologist. The submission that the respondent being a professional, would not fall within the definition of "workman" was emphasized by learned advocate for the petitioner by relying on Apex Court decision in [Muir Mills Unit of NTC \(U.P.\) Vs Swayam Prakash Srivastava and another](#), 2007 1 SCC 491. It was submitted by learned advocate that the said decision left no room for any conclusion other than that respondent was not a workman.

4.1 the respondent was holding high qualification and was required to do work of highly qualified nature, it was submitted. It was further submitted that the respondent had his own laboratory where the technicians were working under him; he was associated with several other institutions as a professional in the field. Learned advocate further submitted that the duties which the respondent had been discharging in the petitioner-Society, were supervisory in nature. He took the Court through the evidence considered by the Labour Court in that respect. It was submitted that even if it was to be assumed that the respondent was doing certain other work in course of discharge of duties as Pathologist, such other work was not his main work. He thus submitted that the finding recorded by the Labour Court that the respondent was workman was not born out even with reference to the evidence on record with regard to the respondent's duties, and that the Labour Court misread the evidence to record a perverse finding that respondent was a workman.

4.2 In furtherance, learned advocate relied on the definition of Medical Practitioner from Advance Law Lexicon by P. Ramanatha Iyer (Vol. 3) 3rd Edition, 2005 and emphasised that medical person holds a qualification which is recognised and one specified under Section 3 of the Indian Medical Degrees Act, 1916 or in the Schedule II to the Indian Medical Council Act, 1956, which entitles for practice in

medicines. He also referred to definition in Section 2(h) of the Indian Medical Council Act, 1956 which defined "recognised medical qualification" to mean medical qualification included in the Schedules and on that basis, wanted to bring home his point that the respondent was a professional.

4.3 Learned advocate for the petitioner-society in the next, relied on decision in [Heavy Engineering Corporation Limited Vs Presiding Officer, Labour Court and others](#), 1996 11 SCC 236. In that case, the doctor was having under him staff of male nurse, attendant, sweeper and ambulance driver and he was found to be working in the supervisory capacity. The Apex Court held that the doctor was not a workman. Decision in [Alok H. Prapanna Vs Official Liquidator of Mayo Hospitals \(in Liquidation\) and others](#), 2010 4 GLR 3316, of this High Court was pressed into service more particularly by relying on paragraph 8 and 11 thereof. Therein this Court held that doctor whose duties were not to end just at consultation but would continue over supervising the treatment of the patients and giving directions to the staff, was not a workman; the claim by the doctor for disbursement of his dues was held not maintainable under Section 529-A of the Companies Act, 1956. Decision of the Delhi High Court in [Management of Multan Seva Sangh Charitable Eye Hospital Vs Presiding Officer, Labour Court - II](#), 2012 3 LLJ 479 was relied on in the next, wherein the surgeon in an Eye Hospital was held to be not a workman.

4.4 Learned advocate for the petitioner-society submitted also that the burden to prove that the respondent was workman was on respondent only. In that regard, he relied on decision of the Apex Court in [Electronics Corporation of India Limited Vs Electronics Corporation of India Service Engineers Union](#), 2006 7 SCC 330 in which the Court observed that the High Court, though having accepted initially that the onus was on the persons claiming to be workmen to prove that they were workmen, it came to a peculiar conclusion that since the preliminary issue was raised by the employer, the onus shifted on the employer.

4.5 Learned advocate for the respondent Mr. Abhilash Clark disputed the proposition canvassed by learned advocate for the petitioner. He submitted that the statement in *Muir Mills* that a professional cannot be termed as a workman was not ratio of the judgment, as according to learned advocate for the respondent, the same was laid down in the context of the facts of that case. It was submitted that ratio decidendi in any judgment has to be not viewed in the context of of the facts of that case.

4.6 Learned advocate for the respondent thereafter proceeded to submit in extenso as to what constitutes ratio decidendi in a judgment. On the aspect, learned advocate for the respondent firstly relied on decision in [Dalbir Singh v. State of](#)

Punjab, 1979 3 SCC 745. He next relied on another decision in Orient Paper and Industries Limited Vs State of Orissa, 1991 Supp1 SCC 81 by referring to paragraphs 18 and 19 thereof. By placing reliance on decisions in Bhavnagar University Vs. Palitana Sugar Mill (P) Limited and others, 2003 2 SCC 111 and Union of India Vs Chajju Ram, 2003 5 SCC 568, learned advocate drew attention of the Court to the proposition that a decision is an authority for what it decides and not what can logically be deduced therefrom and that a little difference in facts or additional facts may lead to a different conclusion.

4.7 Again from yet another decision in R.L. Jain Vs DDA and others, 2004 4 SCC 79, the proposition of law highlight1ed was that what is of the essence in a decision is its ratio and not every observations found therein or what logically follows from the various observations made therein. Decision in Delhi Administration Vs. Manohar Lal, 2002 7 SCC 222 was pressed into service to submit that the High Court is not to mechanically apply a decision of the Supreme Court. The essence of his contention was that the ratio of a judgment has to be seen always in the context of facts of the case and not divorced from the facts.

4.8 In the next, learned advocate for the respondent submitted that the respondent was discharging technical duties by using his skills as Pathologist. It was submitted that since he was doing technical work which was his main work assigned by the employer-society, he would be covered within the category of a person doing a technical work, and hence he was a workman. Learned advocate for the respondent also extensively highlight1ed the duties of the respondent and the evidence in that regard, to explain that it was expert technical work. It was submitted that in the licence of the society, name of respondent was included as one of the technical employee.

4.9 He submitted that the Assam High Court in Bengal United Tea Company Limited Vs. Ram Labhaya, Presiding Officer, Industrial Tribunal, 1961 AIR(Gau) 30 took view that the functions discharged by the Medical Officer were included diagnosis and prognosis, which is a work of highly technical nature, which could not have been performed by a layman. It was held, submitted learned advocate, that since the respondent Medical Officer was possessing knowledge of specified character the same fell within the meaning of word "technical" occurring in Section 2(s) and he was held to be workman within the meaning of said definition. It was submitted that in Heavy Engineering Limited, the Supreme Court did not disapprove the said aspect.

4.10 Learned advocate for the respondent thereafter relied on decision of this Court in Gayatri Gram Arogya Mandal Vs Nainaben Jasabhai Patel, 1997 2 GCD 578 to

contend that looking to the nature of employment of the respondent and the kind of duties, which was a question of fact, he was rightly held to be falling within Section 2(s) of the Act by the Labour Court. Next relied on was decision of the Calcutta High Court in *Dr.P.N. Gulati Vs Labour Court, Gorakhpur, 1978 2 LLJ 1978* which held that a permanent part time doctor attached to an industrial undertaking on a monthly salary of Rs.350/- was a workman within the meaning of the Section. Another decision of Bombay High Court in [Chandrasekhar Chintama Vaidya Vs. National Organic Chemical Industries Limited, Akola](#), 2011 1 LLJ 200 was pressed into service with reference to the observations in paragraph 3, 34 and 35 thereof to contend that for deciding whether a person is workman or not, predominant nature of his duties, and not the nomenclature, was relevant.

4.11 Learned advocate for the respondent submitted that the nature and kind of duties of the respondent as was shown on evidence, in addition to they being technical, were not supervisory. He submitted that from that angle also the Labour Court was right in holding the respondent to be the workman. Learned advocate by referring to the decisions relied on from the side of the petitioner-Society submitted that all those decisions were distinguishable on the count that in all those cases the person concerned was a doctor performing duties of attending and treating the patients and that being the kind of work, he was functioning as professional, and hence held not to be the workman. He submitted that work performed by the respondent of pathologist was different, was of technical nature which would make him a workman.

4.12 Learned advocate relied on decision in [Indian Overseas Bank Vs. IOB Staff Canteen Workers Union](#), 2000 4 SCC 245 to highlight the principle that this Court in exercise of jurisdiction under Article 226 cannot interfere with pure finding of fact, nor the re-appreciation of evidence was permissible. He submitted that insufficiency of evidence or that another view is possible was also no to be the ground to interfere with the findings of the Industrial Tribunal. By emphasizing these principles, learned advocate wanted to convey that the findings arrived at by the Labour Court holding the respondent to be the workman were factual findings based on evidence and therefore, interference therein was not warranted in the writ jurisdiction.

[5] Broadly classified and shortlisted, the rival contentions could be viewed in their three facets. Firstly the decision in *Muir Mills*, and its applicability-whether the statement that a professional was not to be a workman was or was not a ratio. The second limb of the contentions were that whether work of a professional was "technical" which would bring him within the ambit of the definition of workman; whether the respondent's duties as Pathologist-cum-Medical Officer was 'technical'. The

third was a factual part about kind and nature of the work and the duties discharged by the respondent. All the three aspects are dealt with hereinafter separately to have an ultimate conjoint view on the question.

5.1 Prefacing the discussion by referring to the definition of the term "workman" in Section 2(s), which reads as under:

Section 2(s) of the Act reads as under:

"(s) 'Workman' means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person -

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

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

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

5.2 From the above definition, what emanates is that in order that a person is a "workman", he has to fall within any of the five categories mentioned in the definition. These categories are (a) manual workers, both skilled and unskilled; (b) a person employed in a technical work; (c) a person employed in operational work; (d) a person employed in clerical work and (e) a person employed in supervisory work. Sub-clauses (i) to (iv) in the said definition provide for exceptions. Any person falling under the excepted clauses would not be workman. Whether a person is a workman or not is to be decided primarily on the basis of whether he is employed to do work of any of the kinds of the said five categories. If he is not doing any such work of the categories mentioned, he would be out of the scope of the word "workman" without having to resort to exceptions.

Decision in Muir Mills

[6] In Muir Mills , forcefully relied on by learned advocate for the petitioner, the Supreme Court stated in paragraph 40, "Therefore, it is clear that Respondent 1 herein is a professional and never can a professional be termed as a workman under any law."

6.1 The Supreme Court was considering the question whether respondent No.1 who was working as Legal Assistant was "workman". It was the case of the appellant-employer before the Supreme Court that respondent No.1 Mr.Swayam Prakash Srivastava was designated as Legal Assistant in the litigation department, was working in supervisory category and drawing emoluments accordingly.

6.2 The above quoted statement of law was reached after processing the facts and evidence thus, "Before the Labour Court the respondent was examined as WW I. In his deposition-in-chief, he stated on oath that on 4-6-1982 he was appointed as the Legal Assistant in the Mill. In the crossexamination he stated that he was appointed to the post of Legal Assistant in the Mill and a total of Rs 850 per mensem was being paid as salary. One Mr Naresh Pathak was examined as EW I; he deposed on oath that he was working as Senior Legal Assistant since 1971 and that the respondent had worked in his department in the post of Legal Assistant in June 1982 in a supervisory capacity and the work of Respondent 1 was to supervise the court cases and whenever necessary to prepare draft reply to matters that were pending in the court. He also deposed that the work of the respondent was not satisfactory and in this regard a note was issued to the General Manager. In cross-examination the witness deposed that he had no document to prove that the nature of work of the respondent was supervisory. However, this was not given any kind of serious consideration by the High Court while deciding on the claim made by the respondents."

6.3 The Supreme Court cemented the proposition that "and never can a professional be termed as workman under any law" by explaining the concept of profession.

"Furthermore, if we draw a distinction between occupation and profession we can see that an occupation is a principal activity (job, work or calling) that earns money (regular wage or salary) for a person and a profession is an occupation that requires extensive training and the study and mastery of specialised knowledge and usually has a professional association, ethical code and process of certification or licensing. Classically, there were only three professions: ministry, medicine and law. These three professions each hold to a specific code of ethics and members are almost universally required to swear to some form of oath to uphold those

ethics, therefore "professing" to a higher standard of accountability. Each of these professions also provides and requires extensive training in the meaning, value and importance of its particular oath in the practise of that profession."

6.4 For arriving at what was held in paragraphs 38 and 40, the decision in Muir Mills had an intake of its own two decisions in [Management of M/s.Sonepat Co-operative Sugar Mills Ltd. Vs Ajit Singh](#), 2005 AIR(SC) 1050 and [A. Sundarambal Vs Government of Goa, Daman and Diu](#), 2005 3 SCC 232. In Management of M/s.Sonepat Sugar Mills Ltd. also the respondent was appointed as Legal Assistant, the qualification for which was degree in law with a practicing licence. The nature of duties comprised in preparing written statements and notices, recording inquiry proceedings, giving opinions to the management, drafting, filing the pleadings and representing the appellant in all types of cases, In A. Sundarambal , the question was whether teacher employed in a school was a 'workman'. The Supreme Court answered it in negative holding that teacher's work of imparting education was in its nature a noble one, and teacher could not be said to be falling under any of the categories under Section 2(s) of the Act, notwithstanding the incidental work of clerical nature he may be doing.

6.5 Taking a sojourn at this stage in discussing the decision in Muir Mills , only for portraying later as to how it applies to the present case, the next issue as to what constitutes ratio in Muir Mills and how to construe it, may be adverted to.

Ratio Decidendi and the Precedent in a Decision

[7] It was a submission forcefully made by learned advocate for the respondent that the decision of Muir Mills would not apply to the facts of the case on hand, as what was held therein was in the confines of the facts of that case only. As learned advocate wanted to argue at length as to what is meant by ratio in a decision, and he was permitted by the Court to accordingly argue, the said aspect is discussed herein with due elaboration so as to accord justice to his submissions.

7.1 In Dalbir Sing , the Supreme Court stated,

"According to the well-settled theory of precedents every decision contains three basic ingredients:

"(i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct or perceptible facts;

(ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and

(iii) judgment based on the combined effect of (i) and (ii) above."

7.1.1 The Supreme Court proceeded, "For the purposes of the parties themselves and their privies, ingredient (iii) is the material element in the decision for it determines finally their rights and liabilities in relation to the subject-matter of the action. It is the judgment that estops the parties from reopening the dispute. However, for the purpose of the doctrine of precedents, ingredient (ii) is the vital element in the decision. This indeed is the ratio decidendi. (R.J. Walker & M.G. Walker : The English Legal System, Butterworths, 1972, 3rd Ed., pp.123-124.) It is not everything said by a judge when giving judgment that constitutes a precedent. The only thing in a judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. In the leading case of [Qualcast \(Wolverhampton\) Ltd. v. Haynes](#), 1959 2 AllER 38) it was laid down that the ratio decidendi may be defined as a statement of law applied to the legal problems raised by the facts as found, upon which the decision is based."

7.2 It is possible to view the statements in the judgments of a higher Court in three ways. In a particular case, statements in the nature of legal propositions may hold true purely in the context of the facts of that case. In such cases, law laid down has to be comprehended in the attendant factual context only. It may not have universal application in subsequent cases where the facts differ. These are the instances of cases which may be classified as laying down "facts based principles".

7.3 The second category of decisions is that wherein the proposition stated becomes dictum of law which can independently be applied in subsequent cases. In applying it as a principle of law, facts of the case dealt with, of course would have to be taken into account, but it can be said that the principle would inform the facts rather than facts informing and bringing out the principle, the facts would not play a clinching role. The statement of law would have a guiding value and would be of beaconing an importance for other cases and similar facts.

7.4 The propositions laid down in the second category of their kind are not the principles arrived at on the basis of facts alone. They stand as legal principles to have a feedback of appropriate facts to be applied in a given case. They, even while interacting with facts, retain their own character as legal dictum. So to say, they take colour from the facts, but do not stand entirely coloured by the facts, as they are not "fact based principles".

7.5 The third category are the decisions which contain a neat statement of law which may be in the nature of interpretation of a statutory provision, which may

construe statute or law or bring out a pure principle of law to become authoritative to be applied in every case. The statements and observations of the Apex Court in the decisions falling under the last mentioned two categories above have binding force for the High Court when High Court while dealing with a similar matter or an identical issue, the caveat being that in respect of second category of decisions, the statements or propositions in the apex judgment would be applied keeping in view the context of facts so as to ensure that legal proposition applied is not wholly unmatched to the facts involved in the case in which it is applied, and does not deviate materially from those applied in the decision of serving as a precedent.

7.6 There is yet another category, under which statements or observations in a judgment of court may fall, called obiter dictum. The obiter are in the nature of passing remarks, which as such have no direct linkage with the issue involved, and which are not the law declared. Posing here, the statement in Muir Mills that a professional can never be the workman was indeed not an obiter. It would not be gainsaid that when the Supreme Court held in Muir Mills that a professional cannot be a workman, it does have an authoritative element and binding value. Paragraphs 39 and 40 were not general in nature; nor were without occasion; nor were they isolated statements. Rather they had direct and inevitable nexus with the question arose and issue addressed by the Apex Court. They were expressed in the context whether the respondent Legal Assistant, a professional, could be said to be workman.

7.7 The proposition laid down in paragraph 40 read with paragraphs 38 in Muir Mills belongs to and fall in the second category above. It serves as a binding precedent in all cases of professionals where the facts are akin. The principle in Muir Mills would govern, and the facts would guide, for the present case as well.

7.8 On what makes a binding precedent, the Supreme Court in [Krisheni Kumar Vs Union of India](#), 1990 4 SCC 207 stated, "The doctrine of precedent, that is being bound by a previous decision, is limited to the decision itself and as to what is necessarily involved in it. It does not mean that this Court is bound by the various reasons given in support of it, especially when they contain' propositions wider than the case itself required' . A deliberate and solemn decision of court made after argument on question of law fairly arising in the case, and necessary to its determination, is an authority, or binding precedent...."

Nature of Duties Performed by the Respondent

[8] In order not to apply the legal propositions laid down in Muir Mills bereft of requisite factual aspects, it may be considered at this stage whether the facts and

evidence in the present case, in particular pertaining the kind and nature of duties discharged by the respondent stand true to, and for applying the proposition that a professional-M.D. Pathologist in this case-cannot be the workman.

8.1 Seeing the letter of appointment of the respondent dated 08.06.2001, the petitioner was appointed as a Pathologist in the services of the Blood Bank run by the petitioner-Society. It was stated in the appointment order that the respondent would be functioning as a Pathologist-cum-Medical Officer and that he would look after day-to-day working of the Blood Bank, the administration and other projects as and when required. It was further stated that the respondent would be required to attend indoor and outdoor Blood Donation Camps.

8.2 The respondent amended his originally filed complaint by Exhibit 95 application to insert paragraph 2(a) whereby various duties claim to have been discharged by him were narrated. Petitioner- Society disputed the same in its reply stating that many of them were conveniently stated by the respondent though he was not performing any of them. When the said Exhibit 95 application was moved, the oral evidence of the respondent had commenced and he had deposed at Exhibit 61. From the pleadings of the parties closely read with respondent's evidence at Exhibit 171 read with evidence of the Secretary of the Society at Exhibit 149, the real nature of duties performed by the respondent could be culled out.

8.3 In paragraph 2(a), respondent stated that as a Pathologist, he used to examine the blood donors, and used to verify whether the blood checking was properly carried out. He was to organise blood donation camps, participate in quality control programmes, assess the technical work and undertake various expert projects. It was claimed that he was also employ advanced techniques in the working and arrange seminars for Medical Officers, Pathologists and other Staff.

8.4 The respondent pleaded as well as admitted in his evidence that his duty was to ensure that the blood was not infected, and the blood particles were properly formed. He stated to accept that the said work of quality checking was an expert work which could be done by a person holding M.D. Pathologist only. It was also accepted that his duty consisted in acting as an expert at the time of inspection by the Food and Drug Control Administration.

8.5 From his evidence at Exhibit 61 in the cross-examination, he inter alia accepted that his appointment was as M.D. Pathologist. It was further deposed by him that several laboratory technicians, whose names were mentioned in paragraph 26 of the cross-examination, were working in the petitioner- Society, further accepting that he had occasion to work with them. It was also stated that other laboratory

technicians having night duty, peons and drivers were also working. It was admitted that he has his own laboratory. It was also admitted by him that he used to participate in the conferences as an expert Pathologist, and further admitted that in the blood donation camps, the presence of an expert Pathologist doctor was required. The main function of the petitioner-Society was of collection of blood and to medically preserve to make it available to the needy patients, the respondent in his evidence.

8.6 One Kersi Kekhsharu Debu, the Secretary of the petitioner-Society gave evidence at Exhibit 317. In his evidence he suggested that the work and the duties of the respondent was to ensure that the technicians working under him had been duly undertaking the checking of the blood. Said witness in his evidence suggested clearly that the respondent was employed as an expert medical person as M.D. Pathologist, and his duties were supervisory and he was supposed to take work from the technicians working in the Society in all respect of blood collection and donation, to oversee that blood quality was maintained by the technicians and to train the technicians in that regard. It was suggested further that the respondent used to assign and distribute the work amongst the technicians, to upgrade the knowledge and attend the seminars.

8.7 Reading the aforesaid evidence led by the parties in its gist, it was clearly suggested that there were other technicians and personnel working in the petitioner-Society to do the work of blood collection, maintenance and donation thereof, which was the main and principal function of the petitioner- Society. Respondent as highly qualified person with degree of M.D. (Pathology) was working and taking work. Certain types of work and duties, as was admitted in his evidence, was of the kind which could be done by the person having expert qualified degree of M.D. (Pathology) only. It could not be gainsaid that the respondent's duty had a clear taint of supervisory work in relation to blood collection, etc., which he was doing by using his professional skill, expertise and proficiency. This was his main work and dominant nature of duties. The respondent was employed by the petitioner-Society because of his high qualification and as M.D. Pathologist-cum-Medical Officer. It was obvious that he was employed by the Society requiring him to use and employ the professional skills and expertise. In whatever duties he was asked to discharge and whichever functions he was required to perform, he was to use his proficiency and expertise as a professional. He was stated to be receiving pay of Rs.08,600/-.

8.8 May be that the respondent was required to perform certain miscellaneous work such as informing blood donors, imparting information to Thalassemia patients, doing organisational work in the camps or workshop, etc. Even if it is to

be viewed that the function and duties of the respondent comprised of other than supervisory in the area of working, it was purely an incidental to the discharge of his main duty which was supervisory and in capacity of professional expert. The "main work test" or the doctrine of dominant nature of work would come into play. Whether the respondent was workman or not could be measured by, in any view, with reference to the nature of main or dominant work and duties performed by him. The Supreme Court in [Burmah Shell Oil Storage and Distributing Co. of India Ltd Vs Burmah Shell Management Staff Asscn.](#), 1971 AIR(SC) 922 enunciated the doctrine of dominant nature of work for the purpose of deciding whether a person is "workman". It was observed that it would be necessary to determine as to under which classification mentioned in Section 2(s), the duties performed were fall. It was observed that it is the main work which matters and the dominant nature of duties is decisive.

8.9 In *Burmah Shell*, the doctrine of "main work test" was explained thus, "The next aspect that has to be taken notice of is that, in practice, quite a large number of employees are employed in industries to do work of more than one of the kinds mentioned in the definition. In cases where an employee is employed to do purely skilled or unskilled manual work, or supervisory work, or technical work, or clerical work, there would be no difficulty in holding him to be a workman under the appropriate classification. Frequently, however, an employee is required to do more than one kind of work. He may be doing manual work as well as supervisory work, or he may be doing clerical work as well as supervisory work. He may be doing technical work as well as clerical work. He may be doing technical work as well as supervisory work. In such cases, it would be necessary to determine under which classification he will fall for the purpose of finding out whether he does or does not go out of the definition of "workman" under the exceptions. The principle is now well settled that, for this purpose, a workman must be held to be employed to do that work which is the main work he is required to do, even though he may be incidentally doing other type of work."

8.10 Looking to the nature of duties coming out from the evidence discussed above coupled with the fact that he was appointed as a qualified M.D. Pathologist to utilise his professional expertise in the activities of the petitioner society, he would not be falling under Section 2(s) of the Act. The respondent was discharging professional duties, which were essentially and in any view predominantly of supervisory character which was discharged by employing and using his professional skills, the statement of law in *Muir Mills* that a professional cannot be a workman would apply in case of respondent.

Whether Professional's Work is Technical Work

[9] A technical work involves expertise. It is work with specialised knowledge. The professionals are experts in their field, therefore their work is technical in nature. This was the premise on which it was argued on behalf of the respondent, though professional could be said to be doing technical work, hence would stand covered within the definition of 'workman'. It was on the basis of Assam High Court decision in Bengal United Tea Company Limited that it came to be emphasised that doctor's work in that case was held to be technical in nature; the said decision came under consideration of the Apex Court in Heavy Engineering Corporation Limited . The Apex Court distinguished it by observing paragraph 10 of its judgment that in case of Bengal United Tea Company Limited the question as to whether Medical Officer was employed in a supervisory capacity or not was not examined but the question which was considered was whether his functions were of technical nature or not.

9.1 The Apex Court held that said decision had no relevance and held that doctor, who found to be working in supervisory capacity, was not a workman. Learned advocate for the respondent would thereby submit that proposition of law laid down in Assam decision that doctor's work was technical stands to hold the field, whereas on the other hand, petitioner- Society would contend that Assam judgment having been went through the scrutiny of the highest Court which ultimately did not follow it, loose its weight.

9.2 The same view as was taken in Bengal United Tea Company Limited that doctor's work was technical, was taken also by this Court in [Arun Mills Limited Vs. Dr.Chandraprasad C. Trivedi](#), 1976 GLR 291. The said decision in Arun Mills Limited came to the scanner of this Court in a later decision in Alok H. Prapanna . The Court dealt with the question whether doctor appointed as full time consulting physician was a 'workman'. It was held that doctor was not a workman since the duties of doctor would not end just at consultation, but would continue over supervising treatment of patients which would mean supervising the functioning of other staff. It was held that claim of a doctor for disbursement of his dues was not maintainable under Section 529-A of the Companies Act, 1956.

9.3 Taking note of apex decision in Heavy Engineering Corporation Limited , this Court in Alok H. Prapanna by way of following observations, expressed a node of disapproval to decision in Arun Mills by observing in paragraphs 11 and 12 as under:

"The learned Counsel for the applicant did rely upon the decision of the Division Bench of this Court in the case of Arun Mills Limited v. Chandraprasad C. Trivedi decided on 17.3.1975, copy whereof is produced on page 50 and he has also relied upon the decision of the Kerala High Court in the case of Mar Basellus Medical

Mission Hospital v. Joseph Babu, reported in 2007 LLR, 411 and another decision of this Court in the case of [Gayatri Gram Arogya Mandal Vs. Nayanaben Jashbhai Patel](#), 1997 2 GCD 578. However, he fairly submitted that in none of the decisions, the above referred decisions of the Apex Court in the case of Management of Heavy Engineering Corporation Limited has been considered. Therefore, as such in view of the above referred decision of the Apex Court in the case of Management of Heavy Engineering Corporation Limited, the only observation deserves to be made is that it cannot be termed as a good law in view of the later decision of the Apex Court in the case of Management of Heavy Engineering Corporation Limited. In the case of Arun Mills Limited, it was a case of part-time engagement of a doctor on daily basis, which as such cannot be equated with the facts of the present case, but as observed earlier, later on, in view of the above referred decision of the Apex Court in the case of Management of Heavy Engineering Corporation Limited, even otherwise also cannot be said as good law. In the case of Gayatri Gram Arogya Mandal, the attention of the Hon'ble Court was not drawn to the decision of the Apex Court. Therefore, when the Apex Court had expressly ruled for such purpose, holding the capacity of the doctor as in supervisory, the decision can be said as per incuriam."

"The reliance placed by the learned Counsel for the applicant upon the decision of Kerala High Court [MAR BASELIUS MEDICAL MISSION HOSPITAL v. JOSEPH BABU](#), 2007 LLR 411 and the decision of the Calcutta High Court 1978 2 LLJ 1676, cannot be of any help to the applicant, since in view of the above referred decision of the Apex Court in the case of Management of Heavy Engineering Corporation Limited, I cannot agree with the view of both the High Courts, even if it is considered."

9.4 The Bombay High Court in [M.M. Wadia Charitable Hospital Vs. Umakant Ramchandra Warerkar](#), 1997 2 LLJ 549 held that claim the doctors rendering professional service, in that case the respondent doctors, who had done their course in super specialities like Dermatology, pediatrics etc., to be 'workman' was unacceptable and on facts it was held that they could not claim status under sec. 2(s). The court came to conclusion that they were rendering professional service to the various institutions and that it was never object of the Industrial Disputes Act that highly qualified medical doctors would be entitled to claim protection of welfare legislation. In this judgment the Bombay High Court referred to and distinguished decisions in Bengal United Tea Company Limited and Arun Mills Limited, taking a view that the professional work could not be equated or termed as technical work.

9.5 The Delhi High Court while holding that surgeon in eye-hospital was a professional not falling within the ambit of sec.2(s), explained with precision the

distinction brought out by M.M.Wadia between professional work and technical work, in the following words, "We may now notice judgment of the Bombay High Court in M.M.Wadia Charitable Hospital Vs. Umakant Ramchandra Warekar . In this case, reliance was placed by the employee on the decisions of the Gauhati High Court in [Bengal United Tea Co. Vs. Ram Labhaya](#), 1962 2 LLJ 37 , and Gujarat High Court in [Arun Mills Vs. Dr. Trivedi](#), 1976 32 FLR 323 .

In these two decisions it has been held that a doctor or a medical officer come within the meaning of the term technical and, therefore, are workmen. In M.M.Wadia Charitable Hospital Vs. Umakant Ramchandra Warekar the said decisions were distinguished holding that in both cases the doctor/Assistant Medical Officers were employed in an industry i.e. tea estate and a mill and not in a hospital. The management in these cases, had submitted that doctors were performing work of supervisory nature which was rejected. It was further observed that these doctors were required to treat the employees employed in the industry/undertaking.

9.5.1 The High Court of Delhi stated further, "In M.M.Wadia Charitable Hospital Vs. Umakant Ramchandra Warekar , reference was made to [H.R.Adyanthaya Vs. Sandoz \(I\) Ltd.](#), 1994 AIR(SC) 2608), wherein it has been held that for an employee to be treated as a workman under the Act, he must be employed to do manual, skilled or unskilled; technical, operational, clerical or supervisory work for hire or reward. If he falls in any of the above categories then it has to be ascertained whether the said employee stands excluded by the four exceptions carved out in the latter half of Section 2(s) of the Act."

9.5.2 It explained, "Further, a distinction has to be drawn between profession and occupation. While examining the provisions of the Consumer Protection Act, the Supreme Court referred to certain English judgments wherein it was held that profession involves idea of occupation requiring intellectual or manual skill control, as in painting, sculpture or surgery by the intellectual skill of a person, as distinguished from an occupation which involves production or sale or arrangement for production or sale of commodities. This line of demarcation may vary but some of the tests which demarcate profession from occupation show that they have certain characteristic viz. nature of work which is skilled as specialized and intrinsically involves mental faculties more than manual faculties. Further commitment to moral principles is required in profession and these go beyond honesty."

9.6 In Management of M/s.Sonepat Cooperative Sugar Mills Limited , which was a decision relied on also in Muir Mills , the Supreme Court reasoned that since the

respondent was not engaged in any stereotype job, he could not be a workman. The Supreme Court observed, "Thus, a person who performs one or the other jobs mentioned in the aforementioned provisions only would come within the purview of definition of workman. The job of a clerk ordinarily implies stereotype work without power of control or dignity or initiative or creativeness. The question as to whether the employee has been performing a clerical work or not is required to be determined upon arriving at a finding as regard the dominant nature thereof. With a view to give effect to the expression to do "any manual, unskilled, skilled, technical, operational, clerical or supervisory work", the job of the concerned employee must fall within one or the other category thereof. It would, therefore, not be correct to contend that merely because the employee had not been performing any managerial or supervisory duties, ipso facto he would be a workman."

9.7 The Supreme Court also in *Ms.A. Sundrambal* , and proceeded to state, "Similarly, an advertising manager, a chemist employed in a sugar mill, gate sergeant in charge of watch and ward staff in a tannery, a welfare officer in a commercial educational institution have also not been held to be workmen. The Respondent had not been performing any stereotype job. His job involved creativity. He not only used to render legal opinions on a subject but also used to draft pleadings on behalf of the Appellant as also represent it before various courts / authorities. He would also discharge a quasi-judicial functions as an Enquiry Officer in departmental enquiries against the workmen. Such a job, in our considered opinion, would not make him a workman."

9.8 The decision in *Muir Mills* came to be relied on in relatively recent decision in [E.S.I.C. Medical Officers Association Vs E.S.I.C. and another](#), 2013 5 LLN 420] which held that medical officers in ESIC hospitals entrusted with task of examining patients and engaged in professional and intellectual activities could not be termed as workman. Here also the Apex Court reiterated the position of law that professionals cannot be seen as 'workman'. The Court held, "We are of the view that a medical professional treating patients and diagnosing diseases cannot be held to be a "workmen" within the meaning of Section 2(s) of the ID Act. Doctors' profession is a noble profession and is mainly dedicated to serve the society, which demands professionalism and accountability. Distinction between occupation and profession is of paramount importance. An occupation is a principal activity related to job, work or calling that earns regular wages for a person and a profession, on the other hand, requires extensive training, study and mastery of the subject, whether it is teaching students, providing legal advice or treating patients or diagnosing diseases. Persons performing such functions cannot be seen as a

workman within the meaning of Section 2(s) of the ID Act. We are of the view that the principle laid down by this Court in A. Sundarambal's case and in Muir Mills's case squarely applies to such professionals. That being the factual and legal position, we find no reasons to interfere with the judgment of the High Court. The SLP lacks merit and is dismissed accordingly."

9.9 In light of the above discussed subsequent decisions of this Court and the Apex Court highlighting the concept of profession, the principle proposition in Bengal United Tea Company Limited that functions of Medical Officer were technical and the proposition argued logically therefrom that work of a professional is technical work could be said to have virtually lost its ground.

The said view in Bengal United Tea Company Limited could be said to have been eclipsed, which even otherwise had only a persuasive value for this Court. Work by a professional and the duties discharged by him cannot be placed at a same pedestal with that of a technical personnel. Professional work is not technical work. A professional cannot be brought within the term 'technical' occurring in Section 2(s) of the Act.

9.10 The submission that in the license of the petitioner-Society, name of the respondent was classified as technical person and therefore he was employed for technical work, was really meritless, not only in light of the discussion above and what is held above, but also for the factual reason that the list of technical persons mentioned in the license (page No.262 of the compilation), rather distinguished the respondent and other doctors vis-a-vis other technicians whose names were mentioned at Serial Nos.5 to 12. Respondent and other doctors holding higher medical degrees were shown as "for blood tapping". This again would suggest of the fact that the respondent was employed for supervisory and expert work as professional possessing degree of M.D. (Pathology).

Profession has Higher Traits

[10] Though in context of the question of remedy against medical negligence of medical practitioner under the Consumer Protection Act, 1986, the Apex Court in [Indian Medical Association Vs V.P. Shantha and others](#), 1995 6 SCC 651, elaborated the concepts in paragraphs 19 and 20 of the decision, reproduced hereunder:

"While expressing his reluctance to propound a comprehensive definition of a 'profession', Scrutton L.J. has said "'profession', in the present use of language involves the idea of an occupation requiring either purely intellectual skill, or of manual skill controlled, as in painting and sculpture, or surgery, by the intellectual skill of the operator, as distinguished from an occupation which is substantially the

production or sale or arrangement for the production or sale of commodities. The line of demarcation may vary from time to time. The word 'profession' used to be confined to the three learned professions, the Church, Medicine and Law. It has now, I think, a wider meaning". [See : [IRC v. Maxse](#), 1919 1 KB 647]."

"According to Rupert M. Jackson and John L. Powell the occupations which are regarded as professions have four characteristics, viz.,

- i) the nature of the work which is skilled and specialized and a substantial part is mental rather than manual;
- ii) commitment to moral principles which go beyond the general duty of honesty and a wider duty to community which may transcend the duty to a particular client or patient;
- iii) professional association which regulates admission and seeks to uphold the standards of the profession through professional codes on matters of conduct and ethics; and
- iv) high status in the community."

10.1 The kind of expertise of a professional which would take him out of the purview of concept of "workman" is higher than what may be termed as "skilled" or "technical". A professional expertise transcends beyond a skill simpliciter. The functions and duties of a professional involves not only a kind of expert technique or skill, but has the ability of taking immediate decisions in situations unfolding anew time to time, on case to case basis. It involves a kind of creativity to be applied to answer the given situation on the basis of the expertise. The professional work is thus distinguished from a mere skilled work routinely performed technical expertise.

10.2 Further, the "profession" has special virtues of its own. The higher qualification, expertise in the field with intellectual application, ethical practice, service orientedness and adherence to certain standards decorate the concept of 'profession'. These virtues are unknown to other occupations. It is because of these ingredients that the profession cannot be equated with that of technical work, and a professional cannot be placed at a same pedestal with technician. This distinction of essence takes a professional out of purview of concept of "workman" under the Industrial Disputes Act.

10.3 Lexicographically the word 'technical' may have been treated in synonymity with 'professional', but legal concepts and definitions in law are not always

dictionary meanings. The statutory definitions are to be construed not merely in their textual sense, but they have to be connoted with contextual and legally informed meaning and purposively. Thus, dictionary meaning may often guide, but must not always glide, the legal understanding and interpretation of a definition or concept.

Conclusion

[11] In light of the foregoing reasons and discussion, take any criteria or view from any standpoint, there is no escape from the conclusion that principle in Muir Mills that a professional could not be termed as workman squarely applies to the facts of the present case. The respondent herein does not fall within the ambit of 'workman'. Not only from the standpoint of the aforesaid principle laid down in Muir Mills , but also having regard to the facts and evidence obtained in the case as regards the nature of duties to support the application of said principle, he goes out of purview of Section 2(s). As stated above, the nature of work and the duties of the respondent were supervisory and in that he was using his professional skill and expertise.

[12] The Labour Court misdirected itself in holding that the petitioner-society could not show that respondent was discharging supervisory or managerial duties. From the total reading of evidence led by the parties on the work and the duties of the respondent, noted hereinabove, the Labour Court was in clear error in holding that the respondent was 'workman'. Those findings and the conclusions of the Labour Court were based on misreading of the evidence, misapplying the same and thereby misconstruing the legal concept of 'workman'. The finding of such character are often characterised as perverse. In Indian Overseas Bank , it was observed and held that a writ Judge could see if the legally established criteria for grant of relief were satisfied or not.

[13] As a result of above discussion, it has to be held that the respondent would not fall within the purview of definition of Section 2(s) of the Industrial Disputes Act, 1947, and he could not be treated to be a 'workman'. No other aspects of the matter were, therefore, required to be gone into. In view of what is held herienabove, order dated 21.04.2011 passed below Exhibit 28 by Labour Court (S.D.), Navsari in Complaint No.01 of 2008 in Reference (LCND) No.01 of 2008 is hereby set aside. Also set aside is the order dated 25.03.2013 passed by Labour Court (S.D.), Navsari whereby it partially allowed Complaint (I.D. Act) No.01 of 2008.

13.1 Accordingly Special Civil Application No.8577 of 2013 is allowed. Rule is made absolute.

[14] Special Civil Application No.8675 of 2013 stands dismissed. Notice is discharged in the said petition.

Order in Civil Application No.7459 of 2013

This Application does not survive for consideration in view of Special Civil Application No.8577 of 2013 having been allowed. Accordingly this Civil Application is disposed of as not survived. Notice is discharged.

