

(1999) 05 RAJ CK 0029
In the Rajasthan High Court
Case No : .CW.P. No. 2385 of 1992

Babulal

APPELLANT

Vs

Rajasthan State Road Transport Corporation

RESPONDENT

Date of Decision : 12-05-1999

Acts Referred:

Apprentices Act, 1961 — Section 18, 2, 22

Citation : (1999) 2 LLJ 1076 : (1999) 2 RLW 925

Hon'ble Judges : Shivaraj V. Patil, C.J.;V.S. Kokje, J

Bench : Division Bench

Advocate : D.K. Parihar, for the Appellant; Sangeet Lodha, for the Respondent

Final Decision : Dismissed

Judgement

S.V. Patil, C.J.—Heard learned counsel for the parties.

2. The petitioners in this writ petition have sought for a direction to the respondents to give them appointment or in the alternate, consider them for appointment as Fitters in the permanent cadre, they be treated as Fitters w.e.f. the date shown in their appointment orders Exhibits 1 to 3, they should be paid in the pay scale of Fitter w.e.f. the date of their appointment or to grant any other pay to which the petitioners are entitled.

3. The case of the petitioners in brief, as can be gathered from the writ petition is that they were appointed as trainees under Apprenticeship programme under Exhibits 1 to 3 on January 4, 1991, January 19, 1991 and January 4, 1991 respectively. They completed their apprenticeship programme from the Industrial Training Institute, Government of Rajasthan, Barmer in July, 1991. The services of the employees who are working in the workshops and depots of the respondents are governed by the Rajasthan State Road Transport Workers and Workshop Employees Standing Orders, 1965 (for short, the Standing Orders.) Clause 12 of the said Standing Orders reads thus:

"A person may be appointed as trainee by the Corporation on his signing an

agreement under the Apprentices Act, 1961 (for short the Act) and deputed for training with a view to employment in the Corporation. During; the period of training, the apprentice shall be paid an allowance as may be determined by the Corporation from time to time and shall be governed by the conditions laid down in agreement."

4. The training orders Exhibits 1 to 3 speak of termination of their services after completion of one year. According to them, this term is contrary to Clause-12 of the Standing Orders, as in that clause it is stated that the training will be with a view to employment in the Corporation. The petitioners claim that they had completed service for more than one year, there is no such provision in the Act for training programmes after the trade certificate was issued under the Act after completion of the training period; the term contained in the Standing Orders is contrary to the provisions of the Act and as such, they were entitled to the relief sought for in the writ petition.

5. The respondents have filed reply resisting the claim of the petitioners contending that a joint writ petition filed by the petitioners was not maintainable as they were appointed as apprentices by different orders on different dates. The petitioners made applications to the respondents for imparting training to them in the trade of Fitter as per Annexures R-1 to R-3. They suppressed and concealed the material fact that it was they who, in fact, made the said applications before the respondent Corporation for imparting the training and they have further suppressed the fact of execution of the agreements in favour of the respondent Corporation as per Annexures R-4 to R-6. The contracts executed by them were duly registered by the Joint Director and Joint State Apprentice Advisor, Technical Education, Rajasthan, Jaipur. This fact is also suppressed. Hence the writ petition is liable to be dismissed with costs without even enquiring on the main "issues.

6. It is the further case of the respondents that pursuant to the applications made by the petitioners seeking training as apprentices, the Divisional Mechanical Engineer, Jodhpur, passed order dated, January 4, 1991 informing the petitioners that they had been selected under the apprenticeship programme under the Act with a clear-cut-condition incorporated in the said orders that there will be no job guarantee and further their services would be terminated after completion of one year. Along with the said order, necessary bonds/contract were sent for execution by the petitioners and a clear-cut direction was given to the Divisional Manager, Barmer that the joining report of the petitioners be sent to the office of the Divisional Mechanical Engineer, Jodhpur by return of post along with three copies of the bond/contract duly executed by the petitioners alongwith their certificates within a period of 7 days of joining of the duties. Pursuant to the same, the petitioners did execute the necessary bonds/contract which were duly signed by them. The bonds/contract were sent by the Divisional Manager, Barmer to the Divisional Mechanical Engineer, Jodhpur. After receipt of the bonds, the Divisional Mechanical Engineer, Jodhpur, sent them to the Joint Director and Joint

State Apprentice Advisor, Technical Education, Rajasthan, Jaipur, for registering them. The contracts were registered on November 30, 1991, September 11, 1991 and September 11, 1991 respectively. It was denied that the petitioners were working as trainees till April 24, 1992 on which date, the writ petition was filed; the petitioners were guilty of making false averments. The petitioners' apprenticeship training was terminated from April 11, 1992 as per Annexure-10 written by the Chief Manager, Barmer. It is submitted that the petitioners are guilty of making false statement in the writ petition that even from the appointment orders Exhibits-1 to 3, it is clear that they being Fitters were appointed with the condition that they would continue to work, even after completion of one year. Perusal of Exhibits-1 to 3 shows that there is no such condition. The petitioners have no respect for truth and from stage to stage they have made false statements and have suppressed material facts. According to the respondents Exhibit-9 does not show who wrote the said letter, it does not bear the D.O. letter number and its date. Further it does not show that in the said letter any reference was made for giving appointment to the trainees who were working under the Chief Manager, Barmer. It is also stated that there is no post of Officer Incharge in the workshop at Jodhpur and the statement of the staff position mentioned in Exhibit-10 also does not relate to technical staff. Thus, Exhibits-9 and 10 being incorrect are also irrelevant and misconceived. Exhibits-1 to 3 produced by the petitioners themselves alongwith the writ petition, contain a clause clearly showing that they had been selected under the Apprenticeship programme for a period of one year with "No Job Guarantee". There is one clause in the said orders that the petitioners will be terminated from the training after completion of one year. Thus, it is clear that even the period of one year from the date of contract of apprenticeship training the petitioners were governed by the provisions of the Act The word "service" appearing in Clause-12 of the Standing Orders relate to the training period and not a regular service. Under the circumstances, the respondents have prayed for the dismissal of the writ petition.

7. The learned Single Judge passed order dated April 28, 1992 and referred the following two questions for decision by the larger Bench:

(a) Whether an apprentice appointed under the Apprenticeship Act, 1961 can be treated as a workman?

(b) Whether an apprentice is, as of right, entitled to absorption in employment even though the contract specifically mentions that there shall be no job guarantee?

8. Thus, the matter comes up before us for decision.

9. The learned counsel for the petitioners contended that having regard to Clause-12 of the Standing Orders, the petitioners are to be treated as workman. According to him, even though the petitioners were apprentice, they were entitled for absorption in employment notwithstanding the contract mentioning

that there shall be no job guarantee. He relied on the decision of the Apex Court in the case of Uttar Pradesh State Road Transport Corporation and another Vs. Uttar Pradesh Parivahan Nigam Shishukhs Berozgar Sangh and others, Based on this decision, he submitted that it would not be just and proper to go merely by what has been stated in Section 22(1) of the Act or for that matter in the model contract form.

10. On the other hand, learned counsel for the respondents, based on the stand taken and contentions raised in the reply statement, argued that an apprentice under the Act cannot be treated as a workman and that an apprentice is not entitled for absorption in employment as of right contrary to the term of the contract. He drew our attention to Clause-12 of the Standing Orders, which is extracted above, to contend that the petitioners were governed by the conditions laid down in the agreement executed by them. Learned counsel pointed out to Sections-18 and 22 of the Act in support of his submission that the apprentices are trainees and not workers and that it shall not be obligatory on the part of the employer to offer any employment to any apprentice on his completion of the period of apprenticeship training unless there is a condition in the contract of apprenticeship that the apprentice shall on successful completion of the training serve the employer. He also cited few decisions in support of his submissions.

11. We have carefully considered the submissions made by the learned counsel for the parties.

12. In order to appreciate the rival contentions on their relative merits we consider it appropriate to refer to the relevant documents. Exhibits-1 to 3 are the applications addressed to the Divisional Mechanical Engineer seeking apprenticeship training for a period of one year. Annexures R-4 to R-6 are the contract of apprenticeship executed which clearly shew that the petitioners were the apprentices and joined for training for a period of one year. In the said contract it is clearly stated that the petitioners and their sureties solemnly declare that they have read the Apprentices Act, 1961 and the Apprentices Training Rules, 1962 regarding contract of apprenticeship training including obligations and agree to abide by all the provisions made thereunder. It is pertinent to mention here that there is no clause in these contracts providing for employment to the petitioners after the period of apprenticeship was completed. Annexures R-7 to R-9 are the certificates of registration issued from the office of the Joint Director of Technical Education and Joint State Apprentice Advisor, Rajasthan registered under the Apprentice Act. These certificates also show that the petitioners were only apprentices and period of apprenticeship training was for one year and that period was completed on January 9, 1992, January 28, 1992 and January 9, 1992 respectively. Exhibits-1 to 3 are the letters issued by the Divisional Mechanical Engineer, Jodhpur to the petitioners informing that they had been selected by the Rajasthan State Road Transport Corporation under the Apprentices Act programme and that the selection had been made subject to certain conditions. One of the conditions was that there was "No Job Guarantee".

It is not disputed that during the apprenticeship training period stipend. As per Clause-12 of the Standing Orders it is clear that during the period of training the apprentices shall be paid allowance as may be determined by the Corporation from time to time and shall be governed by the conditions laid down in the agreement. It is not disputed that the petitioners were apprentices. According to Section 2(aa) of the Act apprentice means a person who is undergoing apprenticeship training in pursuance of a contract of apprenticeship. Section 18 of the Act reads thus:

18. Apprentices are trainees and not workers-Save as otherwise provided in this Act-

(a) every apprentice undergoing apprenticeship training in a designated trade in an establishment shall be a trainee and not a worker; and

(b) the provisions of any law with respect to Labour shall not apply to or in relation to such apprentice.

13. As can be seen from the above section of the apprentices are only trainees and not workers save as otherwise provided in the Act. No provision was pointed out to us to say that the petitioners were not to be treated as trainees or they should be treated as workers. Section 18(b) also adds that the provisions of any law with respect to labour shall not apply to or in relation to such apprentice. Hence the petitioners cannot claim any benefit under the provisions of the Industrial Disputes Act in this regard seeking their absorption in the employment.

14. Section 22 of the Act reads thus:

22. Offer and acceptance of employment -

(1) It shall not be obligatory on the part of the employer to offer any employment to any apprentice who has completed the period of his apprenticeship training in his establishment nor shall it be obligatory on the part of the apprentice to accept an employment under the employer.

(2) Notwithstanding anything in Sub-section (1), whether there is a condition in a contract of apprenticeship that the apprentice shall, after the successful completion of the apprenticeship training, serve the employer, the employer shall, on such completion, be bound to offer suitable employment to the apprentice, and the apprentice shall be bound to serve the employer in that capacity for such period and on such remuneration as may be specified in the contract.

Provided that where such period or remuneration is not, in the opinion of the Apprenticeship Adviser, reasonable, he may revise such period or remuneration so as to make it reasonable, and the period or remuneration revised shall be deemed to be the period or remuneration agreed to between the apprentice and the employer."

15. Having due regard to the provisions contained in the above sections of the

Act and keeping in view the various documents referred to above, in particular Exhibits 1 to 3, letters of selection containing condition that there was no job guarantee and Annexures R-4 to R-6 contract form signed by the petitioners not containing any clause for providing employment, we have no doubt in our mind that the petitioners cannot claim any relief to absorb them in employment of the respondents. Looking to the express provision contained in Section 18 extracted above, the petitioners being apprentices were only trainees and not workers.

16. A learned Single Judge of this Court in *Uttama Ram Bhargava Vs. Raj. State Road Transport Corporation and Another*, has held that in the absence of specific condition regarding further employment, apprentice is not entitled to be employed in permanent cadre; relying on *Abdul Aziz Vs. State of Raj. and Another*, *Hanuman Prasad v. R.S.E.B.*, RSEB ILR 1985 842 and the decision of the Supreme Court in *The Employees' State Insurance Corporation and Another Vs. The Tata Engineering and Locomotive Co. Ltd. and Another*, In the aforementioned decision of the Apex Court, it is held:

"From the terms of the agreement it is clear that apprentices are mere trainees for a particular period for a distinct purpose and the employer is not bound to employ them in its works after the period of training is over. During the apprenticeship they cannot be said to be employed in the work of the company."

17. Yet in other case of *Rajasthan State Road Transport Corporation v. Mahaveer Singh and Anr.* 1998 (10) WLC 229 a learned Single Judge of this Court referring to the earlier decision of this Court as well as the Apex Court, has taken the view, that apprenticeship period having come to an end, the apprentice did not become workman.

18. In the case of *Hanuman Prasad v. R.S.E.B.*, (supra), a learned Single Judge has also held that an apprentice governed by the Act is no workman for the purpose of I.D. Act.

19. The Division Bench of this Court in the case of *Abdul Aziz v. R. S. R. T. C. and Anr.* (supra), referring to Section 2(aa) of the Act and Section 25 of the Industrial Disputes Act, has held that an apprentice undergoing an apprenticeship training in pursuance of express contract of apprenticeship to be in effect for one year but continued for any subsequent period does not get any higher status in the employment. Para 4 of the said judgment reads thus:

"The first question that arises for consideration is to find out the status of the petitioner. He had been taken in service as an apprentice for one year. Even after the expiry of the period of apprenticeship the petitioner continued in that very capacity drawing Rs. 150/- p.m. which he was getting initially. The submission of the petitioner's counsel is that he was a workman within the meaning of that term under the Industrial Disputes Act and that consequently, the first respondent could not have terminated the petitioner's services without complying with the provisions of Section 25-F of the Industrial Disputes Act. The petitioner did not acquire the status of a workman. He continued to be an

apprentice. The word "apprentice" has been defined u/s 2(aa) of the Apprentices Act. "Apprentice" means a person who is undergoing apprenticeship training in pursuance of a contract of apprenticeship."

20. In paragraph-9 of the same judgment, it is stated that the petitioner's continuance did not clothe him with higher status than what he had at the time of entry in the respondent employment as an apprentice.

21. The decision of Narinder Kumar and Others Vs. State of Punjab and Others, does not help the petitioners in the absence of any clause in the contract that apprentice shall serve the employer after the successful completion of the training. As already noticed above, there is no clause in the contract executed between the parties that the petitioners shall serve the employer after completion of the training. Per contra, letters of selection Exhibits-1 to 3 expressly state that there was no job guarantee. Hence, this decision of the Apex Court does not advance the case of the petitioners.

22. The case of U.P. State Road Transport Corporation v. U.P. Parivahan Nigam, (supra), relied on by the learned counsel for the petitioners, is also of no help to the petitioners. It was a case set up on the basis of principle of promissory estoppel having regard to Circular dated, December 21, 1997 issued by the Corporation as well as memo of directorate of training saying that full efforts should be made to provide trainees with employment. In the case in hand, no such situation existed. To say it again, it was very specific under the Exhibits-1 to 3 that there was "No Job Guarantee" and the agreements executed by the petitioners as per Annexures R-4 to R- 6 also did not contain any clause containing provision for further employment after the period of apprenticeship.

23. For the reasons stated and the discussions made above, we answer both the questions referred for decision in the negative. In this view of the matter no relief can be given to the petitioners.

24. Consequently, the writ petition is dismissed with no order as to costs.