
(1986) 02 KL CK 0028
In the High Court Of Kerala

Bhaskaran

APPELLANT

Vs

Kerala State Electricity Board

RESPONDENT

Date of Decision : 06-02-1986

Acts Referred:

Apprentices Act, 1961 — Section 2, 4
Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 18, 25F

Citation : (1986) 2 LLJ 346

Hon'ble Judges : V.S. Malimath, C.J;K. Sukumaran, J

Bench : Division Bench

Judgement

Malimath, C.J.—The petitioners entered into a contract of apprenticeship with the first respondent, the Kerala State Electricity Board. When they were undergoing apprenticeship training in pursuance of the said contract of apprenticeship, their services were terminated by the first respondent by exhibit P7 order. The petitioners challenge the said termination in this petition under Article 226 of the Constitution. The learned single Judge before whom the matter came up for consideration felt that this case involves consideration of important questions of law and has, therefore, referred the matter to the Division Bench.

2. Before adverting to the principal contentions urged by Sri M.M. Cheriyan, learned Counsel for the petitioners, we would like to advert to the admitted facts. The admitted facts are: The petitioners entered into a contract of apprenticeship with the first respondent for undergoing training and in pursuance of the said contract, they were undergoing such training. The contract of apprenticeship executed by the petitioner was not got registered with the apprenticeship adviser as required by Sub-section (4) of Section 4 of the Apprentices Act, 1961 (hereinafter referred to as "the Act"). When the services of the petitioners were terminated, the provisions of Section 25F of the Industrial Disputes Act were not complied with.

3. It was contended by Sri M.M. Cheriyan, learned Counsel for the petitioners,

that the petitioners were workmen within the meaning of that term under the Industrial Disputes Act, 1947, and that, consequently, the first respondent could not have terminated the petitioners' services without complying with the provisions of Section 25F of that enactment. The argument is met by the respondent by relying on Section 18 of the Act. The contention of the learned Counsel for the petitioners is that the provisions of Section 18 of the Act cannot be invoked by the first respondent in the present case since the contract of apprenticeship executed by the petitioners has not been got registered as required by Sub-section (4) of Section 4 of the Act. It was submitted by Sri Cheriyan that unless the conditions specified in Section 18 of the Act are satisfied, the first respondent would not be entitled to take the stand that the provisions of Section 25F of the Industrial Disputes Act will not be attracted to the facts of the case.

Section 18 of the Act which calls for interpretation in this case reads as follows:

18. Apprentices are trainees and not workers. 20 - 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.

It is clear from the provisions of Section 18 of the Act that the petitioners cannot invoke the provisions of 30 the Industrial Disputes Act. Sub-section (1) of Section 4 of the Act requires that no person shall be engaged as an apprentice to undergo apprenticeship training in a designated trade unless such person or, if he is a minor, his guardian has entered into a contract of apprenticeship with the employer. Sub-section (4) of Section 4 provides that every contract of apprenticeship entered into under Sub-section (1) shall be sent by the employer within such period as may be prescribed to the apprenticeship adviser for registration. Rule 48 of the Apprenticeship Rules, 1962, provides that every employer shall send to the apprenticeship adviser the contract of apprenticeship for registration within three months from the date on which it was signed. Sub-section (5) of Section 4 of the Act states that the apprenticeship adviser shall not register a contract of apprenticeship unless he is satisfied that the person described as an apprentice in the contract is qualified under the Act for being engaged as an apprentice to undergo apprenticeship training in the designated trade specified in the contract.

4. Section 18 of the Act provides that an apprentice shall not be regarded as a worker if he is undergoing apprenticeship training in a designated trade in an establishment. In other words, apprentices as defined in the Act cannot claim any privilege as workmen under the relevant law in respect of labour. The principal question that requires examination in this case, therefore, is whether the petitioners are not apprentices under the Act, because the contract of

apprenticeship has not been got registered as required by Sub-section (4) of Section 4 of the Act.

5. The word "apprentice" has been defined in Section 2(aa) of the Act to mean "a person who is undergoing apprenticeship training in pursuance of a contract of apprenticeship." In order to answer the definition of the word "apprentice", two conditions are required to be satisfied, viz., (1) that the person is undergoing apprenticeship training and (2) that he is undergoing such training in pursuance of a contract of apprenticeship. It is not provided that the contract of apprenticeship adverted to therein should have been registered as required by Sub-section (4) of Section 4 of the Act. If the intention of the Legislature was to include only those persons in the category of apprentices who have entered into a contract of apprenticeship which, has been registered, the word "registered" would have been used before the word "contract" in Section 2(aa) of the Act. On a plain reading of the definition of the expression "apprentice" occurring in Section 2(aa), it becomes clear that the registration of a contract of apprenticeship is not necessary for the person answering the description of the word "apprentice". Sub-section (4) of Section 4, which requires registration of contract of apprenticeship provides that every contract of apprenticeship entered into under Sub-section (1) shall be sent for registration. In other words, it contemplates the existence of a concluded contract of apprenticeship, which is required to be sent up for registration. It, therefore, becomes clear that it is the existing contract of apprenticeship that is required to be registered and not that such contract becomes a contract of apprenticeship only after it is registered as required by Sub-section (4) of Section 4 of the Act. We have, therefore, no hesitation in taking the view that the registration of the contract apprenticeship is not a necessary ingredient for answering the description of the expression "apprentice" occurring in Section 2(aa) of the Act. As it is admitted that the petitioners have entered into a contract of apprenticeship and were undergoing training in pursuance of such a contract, they satisfy an the requirements of the definition of the expression "apprentice" occurring in Section 2(aa) of the Act. That being the position, the provisions of Section 18 of the Act come into operation. Therefore, the petitioners cannot be regarded as workers and, therefore, the provisions of Section 25F of the Industrial Disputes Act are not attracted to the facts of the case. Hence the termination of the services of the petitioners is not illegal. For the reasons stated above, the original petition is dismissed.