

(2008) 02 GUJ CK 0064

In the Gujarat High Court

Case No : Letters Patent Appeal No. 1696 of 2005 in Special Civil Application No. 10335 of 1999

Chauhan Mehbub Osman

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 12-02-2008

Acts Referred:

Apprentices Act, 1961 — Section 18

Citation : (2008) 118 FLR 929 : (2008) 3 LLJ 484

Hon'ble Judges : R.M. Doshit, J;K.M. Thaker, J

Bench : Division Bench

Advocate : Sangeeta N. Pahwa, for the Appellant; M.L. Shah, AGP, for the Respondent

Final Decision : Dismissed

Judgement

R.M. Doshit, J.—This Appeal preferred by the petitioner under Clause 15 of the Letters Patent arises from the judgment and order dated 17th August, 2005 passed by the learned Single Judge in Special Civil Application No. 10335 of 1999.

2. The appellant was engaged by the respondent-State Government under the Deputy Executive Engineer, Junagadh as an apprentice in the trade of Helper for a period of three years from 1st April, 1989 to 31st March, 1992. During the period of apprenticeship, he was paid stipend. After completion of the period of apprenticeship, he was discharged. Feeling aggrieved, the appellant raised industrial dispute which came to be referred to the Labour Court, Junagadh and registered as Reference [LCJ] No. 174 of 1994. Before the Labour Court, the appellant submitted statement of claim. According to the appellant, he was employed by the respondent as a Helper in the year 1987. He worked as such from 1987 till 1989 when he came to be engaged as an apprentice in the trade of Helper. The appellant was, therefore, an employee of the respondent, and a workman within the meaning of Section 2[s] of the Industrial Disputes Act, 1947 [hereinafter referred to as, the Act]. His service was terminated without following

the procedure as envisaged by Section 25F of the Act. He, therefore, claimed right to regular employment and the backwages. The said claim was contested by the respondent. The respondent maintained that the appellant was engaged as an apprentice under the Apprentices Act, 1961 on the terms and conditions contained in the apprenticeship agreement. On completion of the apprenticeship, he had no right to employment under the respondent nor was he under obligation to accept employment under the respondent. His apprenticeship was terminated in accordance with the terms of the contract. The provisions contained in the Act, therefore, were not attracted.

3. The Labour Court, by its judgment and award dated 27th January, 1999 held that the appellant was a workman within the meaning of Section 2[s] of the Act. The termination of apprenticeship was retrenchment within the meaning of Section 2[oo] of the Act. Therefore, the provisions of Section 25F of the Act were attracted. Admittedly, the service of the appellant was terminated in violation of the provision of Section 25F of the Act. The Labour Court, therefore, decided the Reference in favour of the workman, directed the respondent to reinstate the appellant in service with full backwages and consequential benefits.

4. Feeling aggrieved, the State Government preferred Special Civil Application No. 10335 of 1999 before this Court. The learned Single Judge was, by impugned judgment, pleased to hold that the apprentice engaged under the Apprentices Act, 1961 had no right to claim that it was a contract of employment. The learned Single Judge has relied upon the judgment of the Hon'ble Supreme Court in the matter of U.P. State Electricity Board Vs. Shri Shiv Mohan Singh and Another, and held that the appellant engaged under the Apprentices Act was not a workman within the meaning of Section 2[s] of the Act. The Labour Court had no jurisdiction to entertain the dispute between the workman and the respondent. Feeling aggrieved, the appellant has preferred the present Appeal.

5. Ms. Pahwa has appeared for the appellant and has assailed the impugned judgment. She has submitted that prior to his appointment as apprentice in the year 1989, the appellant was employed under the respondent as a Helper from 1987 to 1989. The appellant was, therefore, entitled to continue in employment after expiry of the period of apprenticeship. In support thereof, she has relied upon the judgment of the Hon'ble Supreme Court in the matter of Mukesh K. Tripathi Vs. Sr. Divisional Manager, L.I.C. and Others,

6. It be noted that it was not the case of the appellant that while being engaged as an apprentice, he was also working as an employee changing his status from that of an apprentice to that of an employee or servant or workman within the meaning of the Act. His precise case is that prior to his being engaged as an apprentice in the year 1989, for two years, he was employed as a Helper. Even if that be so, evidently, the appellant abandoned or left his employment as Helper of his own volition and accepted the apprenticeship. The appellant, therefore, cannot claim any benefit of his employment prior to the period of apprenticeship. The Hon'ble Supreme Court has, in the above referred matter of U.P State

Electricity Board considered the definition of the word workman occurring in Section 2[s] of the Act and express inclusion of the apprentice in the said definition. It is held that, It is also necessary to mention here that the definition of the word workman as given in Section 2[s] of the Industrial Disputes Act, 1947 includes apprentice. But the expression appearing in Section 2[z] of the U.P Industrial Disputes Act and the Industrial Disputes Act, 1947 are not applicable to the apprentices appointed under the Apprentices Act, 1961. The Apprentices Act is a code in itself and it clearly stipulates that in Section 2(aa) apprentice means a person who is undergoing apprenticeship training in pursuance of contract of training and the workers are employed for wages for work done by them. Section 18 clearly mentions that the apprentices are not workmen and the provisions of any law with respect to labour shall not apply to or in relation to such apprentice. Therefore, reading of definition of apprentice in Sections 2(aa) and 2[r] read with Section 18 of the Apprentices Act leaves no manner of doubt that this Act which is a special Act does not cover the apprentices [sic workmen] and it precludes the application of any other labour laws i.e., U.P Industrial Disputes Act and Industrial Disputes Act, 1947. When both these Acts are not applicable then the Labour Court/Industrial Tribunal will not have any jurisdiction to entertain any dispute arising therefrom. The application of U.P Industrial Disputes Act, 1947 and the Industrial Disputes Act, 1947 automatically stands excluded. Same is the view expressed by the Hon"ble Supreme Court in the matter of Mukesh K. Tripathi [Supra]. In the said matter, the Hon"ble Supreme Court has observed that, In case any person raises a contention that his status has been changed from apprentice to a workman, he must plead and prove the requisite facts. In absence of any pleading or proof that either by novation of the contract or by reason or the conduct of the parties, such a change has been brought about, an apprentice cannot be held to be a workman.

7. It never was the case of the appellant that during the period of apprenticeship, he was not taking the training but was performing duties as a servant.

8. In above view of the matter, the learned Single Judge has rightly held that the appellant was not a workman within the meaning of Section 2[s] of the Act nor did the Labour Court have jurisdiction to entertain and decide the dispute raised by the appellant.

No case for interference is made out. The Appeal is dismissed in limine.