

(1966) 05 PAT CK 0003

In the Patna High Court

Case No : Misc. Judicial Case No. 289 of 1964

Employees" State Insurance Corporation and Another

APPELLANT

Vs

Tata Engineering and Locomotive Co. Ltd. and Another

RESPONDENT

Date of Decision : 03-05-1966

Acts Referred:

Employees State Insurance Act, 1948 — Section 2, 2(9)

Citation : AIR 1966 Patna 445 : (1967) 14 FLR 292 : (1967) 2 LLJ 188

Hon'ble Judges : R.L. Narasimham, C.J;A. Ahmad, J

Bench : Division Bench

Advocate : Lal Narain Sinha and L.M. Sharma, for the Appellant; B.C. Ghose and A.C. Mitra, for the Respondent

Final Decision : Dismissed

Judgement

Narasimham, C.J.—This is an application under Articles 226 and 227 of the Constitution to quash the order of the Presiding Officer, Industrial Tribunal, Bihar, dated the 25th July, 1963 (Annexure B) in an application u/s 73B of the Employees" State Insurance Act, 1948 (Act XXXIV of 1948) (hereinafter referred to as the Act). The sole question for consideration by the said Tribunal was whether the provisions of the Act apply to apprentices working in the Tata Engineering and Locomotive Company, Limited, Jamshedpur (Respondent No. 1). The learned Tribunal held that those apprentices were not "em. ployees" but merely students undergoing training and hence the employer, namely respondent No. 1, was not bound to make contribution under the Act in respect of those apprentices. This view of the Tribunal has been seriously challenged by Mr. Lal Narain Sinha who appeared for the petitioner No. 1, namely, the Employees" State Insurance Corporation.

2. The Act was passed in 1948 mainly for the purpose of providing for compulsory state insurance to secure certain benefits to the workmen employed in or in connection with work in factories and establishments in the event of sickness, maternity and employment injury. The expression "employee" was

defined in Clause (6) of Section 2 of the Act (Omitting immaterial portions) as follows:

"employee" means any person employed for wages in or in connection with the work of a factory or establishment to which this Act applies and

(i) who is directly employed by the principal employer on any work of, or incidental or preliminary to or connected with the work of, the factory or establishment, whether such work is done by the employee in the factory or establishment or elsewhere."

The expression "wages" was defined in Clause (22) of Section 2 of the Act (omitting immaterial portions) as follows:

"wages" means all remuneration paid or payable, in case to an employee, if the terms of the contract of employment, express or implied, were fulfilled and includes other additional remuneration, if any, paid at intervals not exceeding two months".

Respondent No. 1 is a public limited company engaged in the manufacture of locomotives and other allied machineries. At the request of the Government of India and with a view to build up a force of trained engineers for the country's development, respondent No. 1 evolved a scheme in 1952 and another scheme in 1954 providing for technical instructions at its factory and also practical training to (1) engineering graduates who are designated as graduate apprentices and (2) for less qualified youths who are designated as trade apprentices. The period of training for graduate apprentices was normally two years during which period they were paid a stipend of Rs. 250/- per month for the first year and Rs. 300/- per month for the second year. The trade apprentices were taken on a three years course of training and they received a stipend of Rs. 2/- per day in the first year, Rs. 2.50 per day in the second year and Rs. 3/- per day for the third year. The terms of the contract between the apprentices and respondent No. 1 will be found in Annexure A which is a copy of the Apprentice-Bondsman's form. A regular course of study was prescribed for them and they were also required to pass the prescribed tests at specified intervals. On the completion of their training, they were required to serve in the said firm for a specified period, if so required; failing which they were liable to refund a certain sum to the firm. But there was no corresponding obligation on the part of the firm to offer them jobs on the completion of their training. It was left entirely to the discretion of the employer either to absorb them in the establishment or to leave them to their own resources and to seek jobs elsewhere. But those amongst them who were absorbed were given posts either as skilled workers or helpers under the first. There were the usual conditions as regards compliance with the rules and regulations in force for the training of apprentices and penalties for contravention of those rules and neglect of practical training. The firm reserved the right to dismiss or discharge the apprentices if during their period of training they contravened the rules and regulations. Clause 16 of the

agreement deals with leave concessions available to those apprentices during the period of training.

3. The crucial question for consideration is whether on a true construction of the agreement between the apprentices and respondent No. 1 (Annexure A) it can be held that these apprentices are employees of respondent No. 1 as defined in Section 2(9) of the Act. On behalf of the petitioners it was urged that, in essence, these apprentices were employees and not mere students undergoing training notwithstanding the use of such words as "students for practical training", "course of study" and "holding of periodical examinations". Some reliance was placed on the use of the words "serve the Company" occurring in Sub-clause (1) of Clause 12 of the agreement which may be quoted as follows:

"That the Apprentice will during the whole of the said term of three years of training diligently and faithfully serve the Company and to the utmost power and skill attend to the Company's business at such places and times as the Company or its representatives shall direct".

There is also a reference in Sub-clause (1) of Clause 13 of the agreement to such service in the following terms: "shall neglect his service or practical training at the Works". It was, therefore, urged that the relationship between respondent No. 1 and these apprentices was that of master and servant and that consequently the Act would apply to them.

4. On the other hand, it was urged on behalf of respondent No. 1 by Mr. Ghose that the apprentices were merely students undergoing training in the company's works. The provision in the agreement regarding their passing periodical tests and examinations was specially relied upon in support of this argument. Emphasis was also rightly placed on Clause 7 of the agreement which says that on the completion of the training those apprentices who are selected by the employer "will be considered for absorption as skilled worker". It was urged that it was only after such absorption that they became the employees or servants of the company.

5. The question as to whether the relationship between these apprentices and respondent No. 1 is that of master and servant or that of teacher and pupil must be decided on a careful scrutiny of the terms of the agreement and the surrounding circumstances as proved by evidence led before the Tribunal. The learned Tribunal rightly relied on the following passage in Halsbury's Laws of England, third edition, volume 25, at page 451.

"By a contract of apprenticeship a person is bound to another for the purpose of learning a trade or calling, the apprentice undertaking to serve the master for the purpose of being taught, and the master undertaking to teach the apprentice. Where teaching on the part of the master or learning on the part of the other person is not the primary but only an incidental object, the contract is one of service rather than of apprenticeship, but, if the right, of receiving instruction exists, a contract does not become one of service because, to some

extent, the person to whom it refers does the kind of work that is done by a servant, or because he receives pecuniary remuneration for his work"

Bearing these principles in mind, I would agree with the learned Tribunal that the primary purpose was to give training, to those apprentices.

It may be that incidentally, specially while undergoing practical training at the works, these apprentices may assist in the production, but the agreement seems to be quite clear that the relationship between respondent No. 1 and the apprentices is that of teacher and pupil. The statement in the affidavit of respondent No. 1 to the effect that the scheme of apprenticeship was introduced at the request of the Government of India and with a view to build up a force of trained engineers and skilled workers has not been challenged. Thus the main object was to give a course of special training for selected persons. It is true that one of the objects of such training was to absorb some of them in the works and the apprentices were, therefore required to give a surety band undertaking to serve the company or else to pay a certain sum to the company and to refund the stipend granted, but there was no corresponding obligation on the company to absorb all the apprentices on completion of their course of training satisfactorily. Had there been such a binding contract, it might have been urged with some justification that though the apprentice is not directly employed in connection with the work of the establishment, nevertheless his employment is incidental or preliminary to or connected with the work of the establishment.

The giving of training to persons who are guaranteed service in the establishment on the completion of their training may be said to be tantamount to their employment on a work preliminary to or connected with the work of the establishment. But where there is no such guarantee, the position of the apprentice is no better than that of a student studying in a technical institution imparting technical education. It is well known that such students while receiving stipends are required to give an undertaking to serve either the institution or the Government for a specified period if required to do so, failing which they should refund the amount paid. But many of them are not assured of jobs and are left to secure jobs elsewhere or to swell the rank of the unemployed. The word "service" on which so much emphasis was laid by the petitioners should not be given much importance because In Clause 1 the meaning intended to be given to this word by the parties is made clear in the following passage: "The Apprentice shall be bound to serve the Company for the purpose of the said training for the full duration of the said three years" Here it is made clear that the word "serve" should be construed in the light of succeeding words, namely, "serve for the purpose of the said training"

Apart from these considerations, there is one decisive factor which was perhaps not prominently brought to the notice of the learned Tribunal. I refer to Sub-clause (iv) (b) of Clause 12 of the agreement which is as follows:

"The apprentice will enroll himself in N.C.C which forms the part of his

apprenticeship and at all times confirm to and duly observe the rules and regulations for the time being in force relating to the NCC Training Course and shall obey all lawful orders and requirements from the Commandant N.C.C. or any other officer in charge of N.C.C. training"

This sub-clause thus requires every apprentice to enroll himself in the National Cadet Corps. The National Cadet Corps Act, 1948, is applicable only to students of educational institutions. The statement of objects and reasons of that Act makes itself clear in the following language:

"The problem is essentially educational which can be solved adequately only if the Educational Authorities take an active interest in this aspect of training and make it an integral part of school education. A good beginning to achieve this end can be made by the introduction of cadet training in schools and universities. With that object in view the present Bill has been drafted"

The expression "University" has been defined in Section 2 of that Act as including not only universities established by law but also technical institutions of collegiate status as may be recognised by the Government. Similarly, the expression "school" has been widely defined to include any institution recognised by the Government. Section 4 which authorises the formation of the Cadet Corps is limited to those members who are recruited from amongst the students of any university or school and not to other persons hence when under the law the membership to the National Cadet Corps is limited to students only and the parties entered into an agreement that every apprentice shall enrol himself as a member of the said Corps, the reasonable inference seems to be that all concerned knew that essentially the contract between respondent No. 1 and the apprentice is that of teacher and pupil and not that of master and servant-There is also another circumstance to which the learned Tribunal rightly attached some weight The Act was passed and came into force on 1 9-1948 The Industrial Disputes Act 1947 had already been placed on the statute book on the 11th March 1947 In that Act the expression "workman" was defined in Clause (S) of Section 2 as "including an apprentice" These words were deliberately inserted in the Act to avoid any ambiguity that may arise as regards the status of an apprentice in a factory. Hence when the very same Legislature while defining the expression "employee" in the Act one year later deliberately omitted to adopt a similar language and did not make any reference to an apprentice in the definition clause, the reasonable inference seems to be that apprentices as ordinarily understood were not intended to be included within the definition of "employee"

6. I am not attaching much importance to the description of the money paid to apprentices as stipends in the agreement or to the fact that clause 15 of the agreement provided for grant of privilege leave in addition to fixed holidays to these apprentices These are factors which cannot lead to any decisive conclusion Similarly, the definition of "worker" in the Factories Act cannot be taken as a guide. because as pointed out in Employees" State Insurance Corporation with

its Regional Office at Coimbatore Vs. Ganpathia Pillai and Others, there is a difference between the definition of workers in the Factories Act and employees in the Employees' State Insurance Act

7. Our attention was invited to Employees State Insurance Corporation, Madras Vs. S.M. Sriramulu Naidu, where at p. 259 the learned Judge observed that the term "employee" in the Act will include paid apprentices. This decision, however, cannot be of any help here because the observation was made in passing and does not appear to be based on complete discussion of all aspects of the question. The question ultimately depends on a construction of the terms of agreement between the person concerned and the employer and not on the description of the person either as apprentice or as workman. If in pursuance of a well known policy laid down by the Government of India institutions agree to give training with a view to turn out a large number of skilled engineers and other skilled mechanics without giving them a guarantee of employment in the said institutions on the completion of their training, it will be difficult to hold that they are employees within the meaning of the ACT.

8. It is true, as urged by Mr Lal Narain Sinha, that the Act is a piece of beneficent legislation intended to confer benefits in the event of sickness, maternity and employment injury to certain classes of workers and it should receive a beneficent construction. It is also true as urged by Mr Lal Narain Siugha, that apprentices during the course of their training may be subject to the same degree of risk as regular workmen and may receive employment injuries during the course of their training. There may not be any logical reason for denying these apprentices benefits of the insurance scheme under the Act while conferring them on regular workers of the establishment. But the doctrine of beneficent construction cannot be carried too far and cannot be applied to a case of this type where it is plain on a construction of the deed of agreement that the relationship between the parties is that of teacher and pupil only. If there is any lacuna in the Act, the remedy lies only by legislation.

9. For these reasons, I would affirm the order of the learned Tribunal and dismiss this petition with costs. Hearing Fees Rs 100

Anwar Ahmad, J.

10. I agree.