
(2005) 04 MP CK 0031

In the Madhya Pradesh High Court

Case No : Writ Petition No. 2370 of 1995

Ghisilal

APPELLANT

Vs

State Industrial Court and Others

RESPONDENT

Date of Decision : 25-04-2005

Acts Referred:

Apprentices Act, 1961 — Section 16, 18, 2(13)
Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 25F
Madhya Pradesh Industrial Relations Act, 1960 — Section 31, 61

Citation : (2005) 106 FLR 801 : (2006) ILR (MP) 721 : (2005) 3 LLJ 458 :
(2005) 3 MPLJ 135

Hon'ble Judges : A.K. Shrivastava, J

Bench : Single Bench

Advocate : D.K. Khare, for the Appellant;

Final Decision : Allowed

Judgement

A.K. Shrivastava, J.

By this petition under Articles 226 and 227 of the Constitution of India, the petitioner has challenged the validity of the order passed by Industrial Court, Bhopal reversing the order of Labour Court and dismissing the application filed u/s 31 read with Section 61 of M. P. Industrial Relations Act, 1960 (in short "the Act").

No exhaustive statements of facts are necessary for the disposal of this petition. Suffice it to state that petitioner was appointed as an Apprentice Artisan in the Machine Shop/Maintenance Section/Craft Section on January 31, 1980 (Annexure-P-1). In pursuance to the order Annexure-P-1 dated January 31, 1980 the petitioner started discharging his duty. Thereafter by order dated October 30, 1980 (Annexure-P-2) he was removed from the services. The petitioner thereafter filed an application u/s 31 read with Section 61 of the Act before Labour Court praying therein for his reinstatement with full back wages. In the

application it has been submitted that on account of misconduct his services were terminated. However, no departmental enquiry was conducted against him. The petitioner has submitted Annexure-P-3 which is a letter of Vice President (Works) addressed to the petitioner in which it is stated that the petitioner has committed a misconduct as he insisted his co-employees to do less work. In the application filed before Labour Court it has been submitted that since the provisions as contained u/s 25F of the Industrial Disputes Act, 1947 were not complied with, the action of Management removing the petitioner from the service amounts to illegal retrenchment and, therefore, petitioner is entitled for reinstatement and also back wages.

The employer refuted the averments made in the application by filing written statement and has taken the stand that the petitioner was not an "employee" in terms of Section 2(13) of the Act as he was an "apprentice" and his services were governed by the Apprentices Act, 1961 (for brevity "Act of 1961.")

The Labour Court after framing issues recorded evidence of the parties. The Labour Court held that petitioner was an employee in terms of Section 2(13) of the Act and since provisions of Section 25F of the Industrial Disputes Act, 1947 were not complied with, action of the Management removing petitioner from services amounts to illegal retrenchment and, therefore, allowed the application and directed the employer to reinstate the petitioner with full back wages.

The order of the Labour Court was assailed by the respondent No. 3 by preferring an appeal u/s 65 of the Act. The Industrial Court by the impugned order dated November 15, 1994 (Annexure-P-14) has allowed the appeal and dismissed the application of petitioner, holding him to be an apprentice under the Act of 1961. Hence this petition.

I have heard Shri O.K. Khare, learned Counsel for petitioner and perused the record.

The Industrial Court by the impugned order allowed the appeal of respondent No. 3 on the ground that petitioner was not an employee in terms of Section 2(13) of the Act since vide Annexure-P-1 he was appointed as an "Apprentice Artisan" and, therefore, according to the Industrial Court the order passed by the Labour Court was contrary to the law. It be seen that u/s 18 of the Act of 1961 an apprentice would not be deemed to an employee if he is undergoing apprenticeship training in a designated trade in an establishment. For ready reference it would be apposite to re-write Section 18 of the said Act, which read 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."

On going through the abovesaid provision it is clear as like a noon day that before the applicability of this Section is taken into consideration, it should be proved that apprentice was undergoing apprenticeship training in a designated trade in an establishment. There is nothing on record nor there is any finding of the Industrial Court that respondent No. 3 has been notified as "designated trade". In absence of any material on record it will be very difficult to apply Section 18 of the Act of 1961.

In the case of M.P. Electricity Board and Others Vs. Basant Kumar Pandey, , Division Bench of this Court considered the same point and held that since there was nothing on record that M.P. Electricity Board was notified as "designated trade", therefore, provisions of the Apprentices Act, 1961 were not applicable. The Division Bench directed to reinstate employee Basant Kumar. If the ratio decidendi of the case of Basant Kumar (supra) is tested on the touchstone of the present factual scenario, one can safely say that ratio decidendi of Basant Kumar (supra) governs the field of this case also. In the present case also there is nothing on record in order to prove that respondent No. 3 was notified as a "designated trade", therefore, according to me, provision of Section 18 of the Act of 1961 is not applicable to the petitioner.

Under Section 2(13) of the Act "Employee" has been defined. For better understanding it would be appropriate to re-write said provision, which reads thus:

"(13) "Employee" means any person employed in any industry to do any skilled, 2 unskilled, manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be express or implied, and includes -

(a) a person employed by a contractor to do 3 any work for him in the execution of a contract with an employer within the meaning of Sub-clause (e) of Clause 14; and

(b) an apprentice other than an apprentice under Sub-clause (v); but does not include any person-

(i) who subject to the Army Act, 1950 (XLVI of 1950), or the Air Force Act, 1950 (XLV of 1950), or Navy Discipline 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 capacity; or

(iv) who being employed in a supervisory capacity draws wages exceeding one thousand and six hundred rupees per mensem; or

(v) who is a craftsman or an apprentice working under a scheme approved by the State Government on the condition that such craftsman or apprentice shall

not be deemed to be an employee under this Act;

Explanation.- An employee who has been dismissed, discharged or retrenched from the employment or whose employment has been otherwise terminated shall, in respect of matters relating to such dismissal, discharge, retrenchment or termination, be deemed to be an employee for the purpose of this Act;"

It is no more in dispute that petitioner was appointed in the establishment of respondent No. 3 vide order dated January 31, 1980 (Annexure-P-1) and thus he was an employee in terms of Section 2(13) of the Act. It is also no more in dispute that he was removed from the service without following the procedure as required u/s 25F of the Industrial Disputes Act and, therefore, action of Management removing the petitioner from service amounts to illegal retrenchment.

Judging from all angles I do not find that the order passed by the Industrial Court dated November 15, 1994 (Annexure-P-14) can be allowed to remain stand. The same is hereby quashed. The order passed by the Labour Court dated May 13, 1994 (Annexure-P-12) is hereby restored.

The petition is allowed with costs. Counsel's fee Rs. 1,000/- if pre-certified.