

(2001) 06 GUJ CK 0075

In the Gujarat High Court

Case No : Special Civil Application No. 6161 of 1999

Gujarat State Land Development Corporation

APPELLANT

Vs

Harshadbhai Sandipbhai Mehta

RESPONDENT

Date of Decision : 21-06-2001

Acts Referred:

Apprentices Act, 1961 — Section 18, 22, 22(1)

Citation : (2001) 06 GUJ CK 0075

Hon'ble Judges : D.H. Waghela, J

Bench : Single Bench

Advocate : H.S. Munshaw, for the Appellant; Mayakt Desai and Nilesh M. Shah for Respondent No. 1 and D.S. Pandit Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

D.H. Waghela, J.—By way of this petition, the petitioners have challenged the award of the Labour Court, Vadodara in Reference [LCV] No.407/88 whereby the respondent no.1workman is directed to be reinstated with full back wages with costs of Rs.2000/-. The impugned award further directs that in case of failure to comply with the award, the workman would be entitled to penal interest at the rate of 18% w.e.f. 1.7.1999.

2. The respondent- workman appears to have approached the Labour Court with the case that he was employed as a daily wager from 7.7.1983 and by 9.10.84, he had completed 431 days of service in the workshop under the petitioners. That immediately thereafter, instead of being made permanent, he was employed as an apprentice for a period of 3 years under an agreement entered into between the petitioners and the workman.As at the end of the completion of the period of apprenticeship he was relieved, he raised a demand and dispute for the relief of reinstatement. There appears no dispute about the fact that the respondent- workman had entered into the contract of apprenticeship with the petitioner No.2 and at the end of the prescribed period and in terms of the conditions of the contract, he was relieved. Even after adverting to these

conditions of the contract of apprenticeship, the Labour Court considered the earlier services and granted the reliefs on that basis as if the earlier period of services were illegally terminated.

3. Even while defending the impugned award, the learned counsel for the respondent- workman conceded that the dispute was raised in respect of the termination of service at the end of the period of apprenticeship. There is nothing on record suggesting that the workman was retained as an apprentice in continuance of his earlier service as a daily wager employee or that the agreement of apprenticeship was in any way forced upon him. The question of examining whether the mandatory provisions of the Industrial Disputes Act, 1947 were observed at the time of termination of the earlier service could arise only if the termination was effected by the employer and a dispute in that regard was raised and referred. In the facts of the present case, in absence of any evidence to the contrary, it appears that the respondent- workman had voluntarily accepted the termination of his earlier service, howsoever brought about, and also voluntarily accepted apprenticeship under the petitioner No.2. Therefore, illegality of the termination of the earlier service of the workman could not have been assumed and no relief could have been granted on that basis. As far as the subsequent period of 3 years of apprenticeship and its termination were concerned, it could not be gainsaid that an apprentice is a trainee for a particular period and for a distinct purpose and under the express terms of the apprenticeship agreement, the employer was not bound to employ such person at the end of the period of apprenticeship.

4. It is expressly provided in section 18 of the Apprentices Act, 1961 that " 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.

4.1 Section 22 of the Apprentices Act further provides that : " 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" . Thus, in short, under the statutory scheme, unless there is a specific condition to that effect in the contract of apprenticeship, the relationship of employer and the apprentice comes to an end as soon as the period of apprenticeship ends.

5. The learned counsel for the respondent- workman cited and relied upon the judgement of the Honb"ble Supreme Court reported in Uttar Pradesh State Road Transport Corporation and another Vs. Uttar Pradesh Parivahan Nigam Shishukhs Berozgar Sangh and others, and submitted that a promissory estoppel operated in favour of the workman when training as an apprentice was offered and accepted for a long period of 3 years. It was further submitted that the

apprentice trainees would have the legitimate expectation of employment and the same could be met if preference was given to him in the matter of offering permanent employment. In the facts of the aforesaid case before the Hon''ble Supreme Court, the grievance was made by the employer -corporation about the directions given by the High Court to employ those who had received training in the workshop of the corporation. The Court observed that :

" direction has been given mainly at the call of promissory estoppel which is not applicable according to the corporation. We would agree with this stand of the corporation. The another reason advanced for the direction was spending of money on imparting the training to the apprentice".

The Supreme Court then held that a promise to be enforceable, has to be clear and unequivocal. In absence of any such promise, it was held that, at the call of promissory estoppel, the direction in question could not have been given by the High Court. However, it is further observed that it would not be just and proper to go merely by whatever was stated in Section 22[1] of the Act or for that matter, in the model contract form. And then directions were given to keep in mind, while dealing with the claim of trainees to get employment after successful completion of their training , the other factors enumerated in paragraph 12 of the judgment.

6. In the facts of the present case, the claim of the respondent- workman was not for getting employment after successful completion of the training but it was a demand and dispute for reinstatement with back wages based on the allegation of illegal termination of service. Therefore, aforesaid full bench judgment of the Hon''ble Supreme Court is hardly of any help to the respondent- workman.

7. The learned counsel for the petitioners, relied upon the judgment of this Court in the case of Hitesh N. Vyas and Others Vs. Gujarat Electricity Board, in which relying upon the aforesaid judgment of the Hon''ble Supreme Court, it is held that the Apprentices Act, 1961 does not lay down that an apprentice who had undergone training shall be entitled to employment and the apprentice is first required to raise a dispute for employment before the Apprenticeship Advisor.

8. According to the scheme of the Apprentices Act, 1961 enacted with the objective of regulating and controlling the training of apprentices, employers are required to make suitable arrangements for imparting the course of training to the apprentice in accordance with the program approved by the Apprentices Advisor. The obligation of the employers include not only making of provision for training but also to ensure that a person possessing prescribed qualification is placed in charge of the training. The other provisions regarding payments to be made to the apprentices and regarding health safety and welfare of apprentices as also hours of work, overtime leave and holidays and conduct and discipline are akin to those made for the regular employees. It is however, made amply clear by express provisions that the apprentice shall be a trainee and not a worker. A separate express provision in the form of Section 22, as seen earlier, is

made to see that the relationship of employer and apprentice stands terminated on the completion of the period of apprenticeship training and without obligation on either side to employ or be employed unless there is a condition in respect of employment in the contract of apprenticeship. Thus, the main objective of the Apprentices Act is to create facilities and cast obligations for teaching and training apprentices without creating any master and servant relations. Although, the definition of "workman" in Section 2[s] expressly includes an apprentice, the adjudication under the Industrial Disputes Act, should not result into defeating the scheme and objective of a subsequent piece of welfare legislation. The labour Court, therefore, was not justified, in the facts of the present case in treating the case of the workman as if his services were illegally terminated after a period of service.

9. The other contention raised on behalf of the respondent- workman that initially he was employed as a daily wager under the State department and the subsequent apprenticeship period was under the State Land Development Corporation and that both the employers were, in fact, the same identity, one being a State department and another being a State owned corporation has no bearing on the legality or otherwise of his being relieved at the end of the period of his apprenticeship. Similarly the contention that some of the apprentices were absorbed and made permanent in the Agriculture Department of the Government after completion of the apprenticeship period also does not entitle the respondent- workman to an award of reinstatement with back wages.

10. Therefore, in the facts and for the reasons discussed hereinabove, the impugned award is not sustainable in law and, therefore, set aside. The petition is accordingly allowed and the Rule is made absolute with no order as to costs.