(2013) 07 KL CK 0046

In the High Court Of Kerala

Case No : Writ Petition (C) No. 25917 of 2012

Indian Rare Earths Ltd. APPELLANT

Vs

John RESPONDENT

Date of Decision : 11-07-2013

Acts Referred:

Citation : (2014) 140 FLR 499 : (2013) 4 KLT 430 : (2014) LabIC 332 : (2014) LLR 43

Hon'ble Judges : C.K. Abdul Rehim, J

Bench : Single Bench

Advocate : M. Gopikrishnan Nambiar, P. Gopinath, P. Benny Thomas and K. John Mathai, for the Appellant; C.S. Ajith Prakash, Paul C. Thomas and Shyson P. Manguzha, Government Pleader, for the Respondent

Judgement

C.K. Abdul Rehim, J.—Legal issue involved in this Writ Petition is as to whether a person undergoing training after appointment under an employer will fall within the excluded category under S. 2(e) of the Payment of Gratuity Act, 1972. The petitioner company is challenging Ext. P4 order passed by the Controlling Authority under the Payment of Gratuity Act, 1972 (hereinafter for short ''the Act''). It is held in Ext. P4 that the 1st respondent is entitled for payment of gratuity during the period when he had undergone training. In an appeal filed by the petitioner company the said order was confirmed through Ext. P6. It is challenging Exts. P4 and P6 this Writ Petition is filed. The 1st respondent is a person having 22 years service in CRPF. He applied for the post of "Guard (Trainee)" set apart for Scheduled Tribe candidates, based on notification published inviting applications. He was selected and appointed as "Guard (Trainee)" with effect from 1.7.1997. On completion of 2 years training period he was appointed as "Guard (Watch & Ward)", with effect from 1.7.1999. He continued in the service without any break and retired on 3.3.2010, after rendering 12 years and 9 months service. The petitioner company paid gratuity counting his service only from 1.7.1999. Against denial of gratuity for the period from 1.7.1997 to 30.6.1999, the 1st respondent filed claim under S. 7(4)(b) of the Act, before the Controlling Authority. On the issue as to whether the period of training from 1.7.1997 to 30.6.1999 is to be counted for payment of gratuity, the Controlling Authority held that, "only apprentice has been kept out of the purview of the Act and ''trainee'' being different from ''apprentice'' will be included in the definition of employee contemplated under S. 2(e)". The controlling authority had relied on the decision in Life Insureance Corporation of India, Hyd. Vs. Regional Labour Commissioner (Central), Hyderabad and others, It is held therein that temporary/trainee period will also be eligible for payment of gratuity, provided it is continuous in nature and not covered under the Apprentices Act, 1961. On facts the controlling authority found that the 1st respondent was working during the disputed period without any interruption. It was also noticed that the 1st respondent is an Ex-CRPF personnel with rich experience of 22 years well acquainted with the job of Watch & Ward.

2. The Appellate Authority also found that, a trainee employee under a contract of employment is not an ''apprentice'' under the Apprentice Act. Since S. 2(e) of the Act excludes only apprentice and not trainee, there is no exclusion of trainee from the purview of Payment of Gratuity Act. The Appellate Authority had placed heavy reliance on the decision in The Employees'' State Insurance Corporation and Another Vs. The Tata Engineering and Locomotive Co. Ltd. and Another,

3. For a better appreciation of the issue involved, a perusal of the definition of ''employee'' contained in S. 2(e) of the Act will be beneficial, which is extracted below.

2(e). "employee" means any person (other than an apprentice) who is employed for wages, whether the terms of such employment are express or implied, in any kind of work, manual or otherwise, in or in connection with the work of a factory, mine, oil field, plantation, port, railway company, shop or other establishment to which this Act applies, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity.

As per the definition, for the purpose of payment of gratuity, an employee include any person employed for wages, other than an ''apprentice''. The term wages is also defined under S. 2(s), which is extracted below.

2(s) "wages" means all emoluments which are earned by an employee while on duty or on leave in accordance with the terms and conditions of his employments and which are paid or are payable to him in cash and includes dearness allowance but does not include any bonus, commission, house rent allowance, overtime wages and any other allowance.

All emoluments earned by an employee while on duty or on leave in accordance with the terms and conditions of employment will be considered as wages. Therefore the question mooted for consideration is as to whether the 1st respondent will come within the purview of ''employee'' for the purpose of payment of gratuity during the period when he worked as Guard (Trainee).

4. Exhibit P3 is the letter issued by the petitioner company to the 1st respondent offering the post of "Guard (Trainee)", Watch & Ward. In Ext. P3 it is mentioned that the 1st respondent will be on training for a period of 2 years, during which he will be paid only a consolidated monthly stipend of Rs. 1,200/- for the first year and a consolidated monthly stipend equal to salary applicable to minimum of the Guard''s Grade during the second year. It is also mentioned in Ext. P3 that after successful completion of training he will be placed in the grade mentioned therein with eligibility for allowances applicable from time to time under the Company''s Rules, on the basis of performance. Admittedly, designation of the 1st respondent at the time of appointment as "Guard (Trainee), Watch & Ward". But it is also evident that, without any break he was appointed as Guard (Watch & Ward) on completion of 2 years. Both the fact finding authorities have categorically found that the 1st respondent was discharging duties of Guard during the said period of 2 years. Under such circumstances the question to be decided is whether the period of 2 years can be considered as training period which is equivalent to apprenticeship excluded from the purview of ''employee'' under S. 2(e) of the Act.

5. Before the authorities under the statute it was contended by the petitioner that, ''apprentice'' appearing in S. 2(e) includes ''trainee'' and there is no distinction between ''apprentice'' and ''trainee''. Much reliance is placed on a decision of the High Court of Karnataka in The General Manager, Yellamma Cotton Woolen and Silk Mills Vs. Regional Labour Commissioner (Central) and Appellate Authority Under Payment of Gratuity Act, 1972 and Others, Per contra, the 1st respondent had placed reliance on Life Insurance Corporation of India''s case (cited supra) which is a decision rendered by the High Court of Andhra Pradesh. The appellate authority placed reliance on a decision of the Hon''ble Supreme Court in Employees'' State Insurance Corporation''s case (cited supra). It is held therein that, a trainee employed under a contract of employment is not an apprentice under the Apprentices Act, unless he is undergoing apprenticeship training in a designated trade in pursuance of a contract of apprenticeship. A trainee outside the purview of the Apprentices Act is to be distinguished from an apprentice undergoing training in a designated trade in pursuance of contract of apprenticeship. It is held that, the former is covered by definition of the term ''employee'', while the latter is excluded. Hon''ble Apex Court held that, the heart of the matter in apprenticeship is the dominant object and intent to impart on the part of the employer and to accept on the part of the person ''learning'' under the agreed terms. Payment made during apprenticeship, by whatever name called, do not convert the apprenticeship to a regular employee under the employer. Such a person remains as learner and is not as an employee. The object of the Apprentices Act provides for regulation and control of training of apprentices in trades and matters connected therewith. Therefore, exclusion of ''apprentice'' in S. 2(e) is to the effect that persons undergoing apprenticeship training in a designated trade in pursuance of a contract of apprenticeship is exempted. Hon''ble Supreme Court held that it is inherent in the word

''apprentice'' that there is no element of employment as such but only an adequate well-guarded provision for training to enable the trainee after completion of his course to be suitably absorbed in earning employment as a regular worker.

6. On the facts of the case at hand, it is evident that the appointment as "Guard (Trainee), Watch & Ward" was made on the basis of application invited by the petitioner company. There was no contract of apprenticeship between the petitioner and the 1st respondent. On the other hand, in the terms and conditions of the appointment as Guard (Trainee) it was stipulated that he will be paid stipend for the first year and salary equivalent to the grade of Guard for the second year. It is evident that the 1st respondent had discharged duties of Guard. It is also evident that the 1st respondent was appointed as Guard (Watch & Ward) without any break. Therefore it is evident that the service period of 2 years as Guard (Trainee) was not on the basis of any contract of apprenticeship, intending to impart learning or training in any trade. The long experience of the 1st respondent for 22 years in C.R.P.F. itself negatives the question of imparting any learning/training to him in the post of Guard.

7. Learned counsel appearing for the petitioner company had placed reliance on a decision of Hon''ble Supreme Court in The Regional Provident Fund Commissioner, Mangalore Vs. Central Aercanut and Coca Marketing and Processing Co-op. Ltd., Mangalore, Referring to standing orders governing service conditions of the employer, it was held that, trainees who were paid stipend during the period of training had no right for employment and therefore those trainees were apprentices engaged under the standing orders of the establishment. It was held that those persons will not come within the purview of S. 2(f) of the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952 as the definition of "employee" had specifically excluded apprentice engaged under the provisions of Apprentices Act, 1961. But on the facts enumerated itself it is evident that, the employer had invited application from intending applicants for undergoing training at their factory on the basis of a monthly stipend. It also provided that successful candidates may be considered for regular posting in the factory. In the above said decision the Hon''ble Supreme Court held that, the persons who were given training on the basis of such invitation, even though they were not termed as apprentices, will come within the purview of apprentice excluded from the purview of the definition of ''employee''.

8. This court is of the considered opinion that on the facts of the case at hand, appointment of the 1st respondent as Guard (Trainee) has got an entirely different connotation. The terms and conditions of appointment, the discharge of duties and other materials available will definitely trend to conclude that the 1st respondent was not appointed as a trainee on the basis of any contract of apprenticeship for the purpose of imparting any learning in any particular trade. But it is evident that he was appointed as Guard, subject to undergoing training

period for 2 years, which is not at all akin to a contract of apprenticeship for undergoing training/apprenticeship for the purpose of learning any trade. Hence the decision cited above has no application on the facts of the case. Conclusion of the above discussions is that the exclusion of ''apprentice'' from the definition of ''employee'' under S. 2(e) of the Payment of Gratuity Act will be applicable only with respect to apprentice appointed on the basis of a contract of apprenticeship, engaged with a dominant object and intent to impart learning in any trade, under certain agreed terms of contract of apprenticeship. But it will not exclude any period of in-service training undergone by any employee on the basis of appointment made to any particular post.

In the result the Writ Petition fails and the same is accordingly dismissed.

