
(1992) 07 RAJ CK 0026
In the Rajasthan High Court
Case No : C.W.P. No. 2506 of 1991

J.K. Synthetics Ltd.

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 02-07-1992

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 10(1), 2

Citation : (1994) 1 LLJ 835 : (1992) 1 RLW 691 : (1992) 2 WLC 740 : (1992) 2 WLN 557

Hon'ble Judges : M.B. Sharma, J

Bench : Single Bench

Advocate : N.K. Maloo, for the Appellant; Virendra Bandhu, for the Respondent

Final Decision : Dismissed

Judgement

M.B. Sharma, J.—The petitioners J.K. Synthetics Ltd., have prayed that the order of reference u/s 10(1) of the Industrial Disputes Act, 1947 (for short "the I.D. Act) dated October 15, 1990 (Annex. 7) be quashed and be declared illegal.

2. The main ground of challenge to the aforesaid order of reference is that the respondent No. 1 to 3 Shri Raghuvir Singh, the worker was only engaged as an Apprentice under the Apprentice Act, 1961 (52 of (1961)) (for short "Apprentices Act") and, therefore, is governed by the provisions of that Act and the provisions of the I.D. Act are not applicable and, therefore, a reference to the Labour Court, Kota is without jurisdiction and the said Court has no jurisdiction to adjudicate the dispute.

3. The writ petition is contested on behalf of the workman and the ground of contest is that he was appointed as a worker and was an employee of the petitioners and it appears that the petitioner-company has created a sort of camouflage or cover of the "Apprentice" under the Apprentices Act with an ulterior motive to deprive the answering respondent from acquiring any right to continue in the service. So far as the contract of apprenticeship allegedly

executed by respondent No. 3 is concerned, his case is that he was not allowed to read it and his signatures were obtained, he was not even asked to bring a surety and the petitioner company itself got the signatures of one of his employee as a surety on the contract of apprenticeship.

4. It was contended by the learned counsel for the petitioner that prima facie it is a case where the respondent No. 3 was appointed as "Apprentice" under the Apprentices Act and, therefore, the Labour Court has no jurisdiction and, therefore, the dispute is not an industrial dispute and the Government could not have made a reference u/s 10(1) read with Section 2(k) of the I.D. Act. In support of his contention, the learned counsel for the petitioner has placed reliance on *Hanuman Prasad Chaudhary v. R.S.E.B. Jaipur* 1985 RLR 842 ; *The Employees" State Insurance Corporation and Another Vs. The Tata Engineering and Locomotive Co. Ltd. and Another, Dena Nath and others Vs. National Fertilisers Ltd. and others, Management of Bangalore Woollen, Cotton and Silk Mills Co. Ltd. Vs. The Workmen and Another, Miss A. Sundarambal Vs. Government of Goa, Daman and Diu and Others*, He also placed reliance on the *Delhi Cloth & General Mills v. State of Rajasthan and Ors.* SBC WP No. 1007/90 (Raj) dated 26-11-1990 and *The Delhi Cloth & General Mills Co. Ltd. v. State of Rajasthan and Ors.* SBC WP No 1218/81 (Raj) dated 11-12-1991 and two connected similar writ Petitions decided on October 22, 1991 and on the case of *Jaipur Polyspin Limited v. State of Raj.* and Anr. SBCWP No 2886/1990 (R) dated 11-12-1991 The learned counsel for the contesting respondent has contended that it is a question of fact as to whether or not the contesting respondent No. 3 was engaged as an "Apprentice" under the Apprentices Act or was engaged as a workman more so when according to the contesting respondent he worked from the morning of May 31, 1988 and continued to work upto September 4, 1989. It was further contended by him that during the aforesaid period, the contesting respondent was also required to work even overtime and he has filed Annex. R3/5 to R3/63 respectively in support of this contention.

Thus the contention of the learned counsel for the contesting respondent is that it is a disputed question of fact as to whether in fact the contesting respondent was appointed as "Apprentice" or not and no training whatsoever was given to the contesting respondent and if he would have been engaged as an "Apprentice" it was necessary that he must have been sent for training. The learned counsel contended that in case of this dispute it is the Labour Court which should decide the dispute where objection can be taken by the petitioner that the contesting respondent was appointed as "Apprentice" and, therefore, it is not an industrial dispute which could be subject of reference by the State Government to the Labour Court and further that the Labour Court has no jurisdiction and which has only jurisdiction to adjudicate industrial disputes as defined in the I.D. Act.

5. There can be hardly any dispute if the contesting respondent No. 3 was in fact appointed as an "Apprentice" under the Apprentices Act, therefore, a dispute will

not be an industrial dispute which could be subject of reference to the Judge, Labour Court. This Court in the case of Hanuman Prasad (supra) said that the "Apprentice" appointed under the Apprentices Act is not a workman u/s 2(S) of the I.D. Act and therefore, cannot invoke the protection of Section 25(f) of the said Act. In the case of Delhi Cloth and General Mills Co. Ltd. v. State of Raj (supra), I had the occasion to examine the question as to whether in case of contract labour appointed under the Contract Labour (Regulation & Abolition) Act, 1970 a reference may be made, u/s 10 read with Section 2(k) of the I.D. Act, to the Labour Court and said that no reference may be made and jurisdiction to decide the matter connected with prohibition of contract labour is now vested in the appropriate Government. From the perusal of the aforesaid referred to cases, there can be no dispute that where a person is appointed as a "Apprentice" under the Apprentices Act and there is no dispute that he was so appointed, the State Government has no jurisdiction to make a reference to the Judge, Labour Court u/s 10(1) read with Section 2(k) of the I.D. Act. But in the case it is not admitted that a person was so appointed as an "Apprentice" under the Apprentices Act and the fact of his having been so appointed is in dispute the question is as to whether in such a case it can be said that the reference made by the State Government is without jurisdiction? A bare reading of the order of reference in this case, which order has been extracted at page 5 of the writ petition, will show that the reference has not been made as to whether the termination of the services of respondent No. 3 who was appointed as "apprentice" under the Apprentices Act is valid and the reference has been made as to whether the action of the management of J.K. Synthetics Ltd., Kota in removing its workman. Raghuvir Singh son of Shankar Lal, General Clerk without notice, is valid. It has, however, been said earlier that the case of contesting respondent is that he was not appointed as "Apprentice" and the company has created sort of camouflage or cover of the "Apprentice" under the Apprentices Act in order to deprive him of the benefits of the provisions of the Labour Laws. In the case of Dena Nath (supra), the Apex Court at page 121 said that a question can be referred to the Labour Court for adjudication as to whether the engagement of the labour contract was bona fide or it was a camouflage. In the case in 1989 Jabalpur Law Journal, 253 M.P. a Division Bench of the Madhya Pradesh High Court has said that unless and until it is established in any particular case that the person sought to be labelled as an "Apprentice" is "undergoing apprenticeship training in a designated trade in an establishment," there would be no scope for making any reference or placing any reliance on the provisions of the Act. It has to be established by pleading and proof in any particular case that the person concerned was being given training in a "designated trade," I am, therefore, of the opinion that it is a question of fact as to whether any training was at all imparted to respondent No. 3 in the trade (General Clerk). The petitioner can take this objection and it will be necessary for the Judge, Labour Court, Kota to first decide the question as to whether respondent No. 3 is a workman as alleged by him and it is covered within the definition of Section 2(s) of the I.D. Act and the reference by the State

Government is competent and whether a dispute referred by him is an industrial dispute or not. In case the Labour Judge comes to the conclusion that the respondent No. 3 was appointed as "Apprentice" under the Apprentices Act only then he will be above the jurisdiction to adjudicate the dispute. This question being highly disputed unless evidence of parties is recorded & a categorical finding is recorded that the respondent No. 2 is an "Apprentice" under the Apprentices Act, the jurisdiction of the Govt. to make a reference or for that matter the jurisdiction of the Judge, Labour Court to adjudicate the same will not be ousted.

6. Consequently, in my opinion, this writ petition is premature and is hereby dismissed summarily with the above observations.