

(1998) 05 DEL CK 0008
In the Delhi High Court
Case No : C.W.P. No. 1336 of 1996

Kamal Kumar

APPELLANT

Vs

J.P.S. Malik, Presiding Officer, Labour Court and Others

RESPONDENT

Date of Decision : 18-05-1998

Acts Referred:

Citation : (1998) 5 AD 518 : (1998) 73 DLT 611 : (1998) 45 DRJ 530 : (1998) 79 FLR 965 : (1998) 119 PLR 58

Hon'ble Judges : Dr. M.K. Sharma, J

Bench : Single Bench

Advocate : Mr. D.N. Vohra, for the Appellant; Mr. Jagat Arora and Ms. Kitoo Bajaj, for the Respondent

Judgement

Dr. M.K. Sharma, J.—The present writ petition is directed against the award dated 31.1.1996 passed by the Presiding Officer, Labour Court, Tis Hazari, Delhi, holding that the petitioner does not come within the purview of the definition of "workman" as defined u/s 2(s) of the Industrial Disputes Act and, Therefore, he being not a workman, there is no illegality or un justifiability in action of the Management in terminating the service of the petitioner.

2. The aforesaid award was passed on the basis of a reference raised by the petitioner against the order passed by the Management-respondent terminating his services. On the basis of the aforesaid dispute raised by the petitioner, the appropriate Government referred the following issue to the Labour Court:

"Whether the termination of services of Sh. Kamal Kumar is illegal and/or unjustified and if so, to what relief is he entitled and what directions are necessary in that respect?"

3. The case of the petitioner as disclosed from the statement of claim is that he was a workman employee with the respondent since 1985 drawing remuneration at Rs. 450/- per month and after completion of his training with the Management in the year 1984, he was interviewed and was selected for training with effect

from 1.3.1985. It was further stated that on 20.3.1986, the petitioner met with an accident and was bed-ridden from 20.3.1986 to 3.4.1986, but, on 25.3.1986, the services of the petitioner was terminated without issuing any charge sheet and without holding any enquiry.

4. In the counter affidavit filed on behalf of the Management, the stand taken was that in pursuance of a Contract entered into between the petitioner and the Management dated 1.3.1985 for imparting training, the petitioner was offered to undergo training in the respondent Company as a "Trade Trainee" and that the relationship of the petitioner and the Management was governed by the terms and conditions stipulated in the said Contract. The Management has specifically denied the relationship of employer and employee between the parties and has stated that the petitioner is not a workman within the meaning of the definition of "workman" as defined u/s 2(s) of the Industrial Disputes Act. It is also stated that the petitioner was being paid a stipend of Rs.350/- per month. It is also denied that the petitioner was undergoing training with the Management since 1982 and stated that he was inducted as a "Trade Trainee" in pursuance of a Contract dated 1.3.1985. It is further stated that the aptitude of the petitioner was assessed by the Board of the Management who submitted its report on 15.3.1986 and in view of the report submitted by the Interview Board, contract of training of the petitioner was brought to an end by the Management with effect from 25.3.1986.

5. On the basis of the pleadings of the parties, the Labour Court framed six issues, one of which was:

"Whether the claimant is a workman u/s 2(s) of the Industrial Disputes Act?"

The Labour Court also recorded evidence adduced by the parties and thereafter by award dated 31.1.1996 held that the petitioner was not a workman and is not covered by the definition provided in Section 2(s) of the Industrial Disputes Act and that there was no illegality or unjustifiability in the action of the management in terminating the services of the petitioner as the same was done by the management as per the terms and conditions of the Contract.

6. I have heard Mr. D.N. Vohra, Counsel appearing for the petitioner who submitted that the petitioner was a workman as he is fully covered by the definition of "workman" u/s 2(s) of the Industrial Disputes Act. According to him, since Section 2(s) of the Industrial Disputes Act includes the expression "apprentice", Therefore, an apprentice is covered and comes within the definition of "workman" and, Therefore, the Labour Court erred in law in holding otherwise that the petitioner was not a workman. In support of his contention, the learned Counsel relied upon a decision of the Madras High Court in H.B. Vinobha and Others Vs. The Managing Director, Hindustan Photo Films and Others reported in 1998 (78) F.L.R. 857. Learned Counsel for the petitioner also relied upon a decision of the Supreme Court in The Employees' State Insurance Corporation and Another v. The Tata Engineering & Co., Locomotive Co. Ltd., and Another

reported in 1976 L I C 1.

7. Mr. Jagat Arora, Counsel appearing for the respondent-Management, however, submitted that the award passed by the Labour Court is legal and valid and this Court should not interfere with the findings and conclusion arrived at by the Labour Court on appreciation of evidence. He further submitted that the jurisdiction of this Court to interfere with the findings of the Labour Court is limited and, Therefore, it is not an appropriate case where the findings and conclusion of the Labour Court should be upset by this Court.

8. Counsel for the respondents also drew my attention to the terms and conditions of the Contract centered into between the petitioner and the Management respondent which was also exhibited before the Labour Court as "Exb. M.W.2/1". Counsel for the respondents specifically drew my attention to Clauses 2 and 3 of the said terms and conditions and relying on the same submitted that the petitioner was a mere trainee and by assisting the employer in his work, he cannot claim himself to be a workman. He further submitted that the petitioner was paid a fixed stipend of Rs.350/- per month which is not a remuneration payable by an employer to his employee and, Therefore, the petitioner did not come within the purview of the definition of "workman" u/s 2(s) of the Industrial Disputes Act.

9. The main question, Therefore, that arises for my consideration is whether in view of the definition of "workman" as defined u/s 2(s) of the Industrial Disputes Act, the petitioner could be said to be a workman. It is no doubt true that Section 2(s) of the Act also uses the expression "apprentice", but, merely using the word "apprentice" within the definition of "workman", in my considered opinion, cannot confer a right on a trainee to be called a "workman" within the meaning of Section 2(s) of the Act. When the said definition is looked into closely, it is apparent that an apprentice could be a workman u/s 2(s) of the Industrial Disputes Act, if he is employed to do any manual, clerical, supervisory or technical work. Therefore, on the facts and circumstances of the case it is to be seen as to whether the petitioner was employed as such to do any manual, clerical, supervisory or technical work.

10. The terms and conditions of Contract between the petitioner and the respondent dated 1.3.1985 indicates that the petitioner was offered to have training as Trade Trainee in the respondent Company under a specific term that he would be given basic training for an initial period of 12 months and that during or at the end of the said period his training could be terminated without notice and without assigning any reason. It was further submitted that on satisfactory completion of the above basic training, the training with the Company would continue for a balance of two years with such training schedules and routines as may be indicated, established and/or reviewed by the Management. It was also stipulated in Clause 3 of the said terms and conditions that, during the training period his progress would be carefully watched and subject to his training being found satisfactory and in the event of there being

further vacancies in the organisation, he would be offered suitable employment. The aforesaid terms and conditions make it crystal clear that the petitioner was given training for an initial period of twelve months which was in the nature of basic training and on completion of which, the petitioner was supposed to undergo another course of training with the Company for a balance period of two years and only after completion of the same the Management reserved the right to offer suitable employment to the petitioner.

11. Service of the petitioner was terminated by the Management-respondent on expiry of the initial period of twelve months, that is, immediately after completion of the course of basic training. It has also been brought in evidence by the Management that the petitioner was interviewed by an Interview Board of the Management to assess the aptitude of the petitioner on completion of the basic training so as to assess as to whether he could be inducted into further training for two years or not. It is also disclosed from the evidence on record that the Interview Board of the Management assessed the aptitude of the petitioner and submitted its report on 15.3.1986 according to which, performance of the petitioner was found to be not satisfactory and, Therefore, the Contract was brought to an end.

12. Admittedly in the present case the provisions of Apprenticeship Act is not applicable. During the period of training the petitioner was given a stipend of Rs. 350/-. A close examination of the terms and conditions of the contract entered into between the petitioner and the respondents leads to the conclusion that the principal object with which the parties entered into the agreement of training was an offer by the employer to the petitioner to have an opportunity to learn trade or craft to acquire such knowledge that may be obtained in the course of training. From the a fore-said terms of the agreement, it is clear that the petitioner was a mere trainee for a particular period and for a distinct purpose and the respondent was not bound to employ him in their works after the period of training is over. It, Therefore, cannot be said that the petitioner was a workman of the respondent Company, inasmuch as, the purpose of engagement of the petitioner was only to offer him training under the terms and conditions stipulated above. No wage was paid to the petitioner as defined within the meaning of "wages" under the Industrial Disputes Act. Merely because some amount was paid to the petitioner as Provident Fund, it cannot be said that he had become a workman of the respondent Company.

13. The decision of the Madras High Court relied upon by the learned Counsel appearing for the petitioner in H.B. Vinobha (supra), in my considered opinion, is distinguishable on the facts and circumstances of the case. In the said case although the petitioners were called for trainees, they were discharging regular work and their services were required. They were also paid over time allowances and increments. In the said case al-though the petitioners were appointed for a specific term, they were permitted to work even after expiry of the term. Under those circumstances and taking into consideration the said factors, the Court

held that the petitioners although were described as apprentice, they were really workmen as defined in the definition clause of Industrial Disputes Act. Therefore, on facts, the said case is clearly distinguishable and, in my considered opinion, the ratio decided is not applicable to the facts of the present case.

14. In *Thungabhadra Sugar Works P. Ltd. Management Vs. Presiding Officer, Labour Court and Another* decided by a Division Bench of Karnataka High Court and reported in 1983 (46) F.L.R. 190, it was held that in order to come within the ambit of the expression "workman" as defined u/s 2(s) of the Industrial Disputes Act, it must be established that the person concerned is employed in industry and that mere finding of apprentice or trainee is not enough. It was held that whether the person claiming status as a workman is an apprentice or any other person, it has to be established that he is employed in an industry to do any skilled or unskilled, manual, supervisory, technical or clerical work for hire or reward whether the terms of employment are express or implied. In my considered opinion the principle laid down in the aforesaid decision is the correct approach to decide as to whether a person comes or not within the ambit of the definition of "workman" in Section 2(s) of the Industrial Disputes Act.

15. The petitioner in the present case has failed to prove and establish that he is employed in the respondent Company and that also to do any skilled or unskilled manual, supervisory, technical or clerical work for hire or reward. The terms and conditions of his appointment clearly indicate that he was engaged as a Trainee and not employed to do any skilled or unskilled manual, supervisory, technical or clerical work for hire or reward. In *The Employees' State Insurance Corporation and Another (supra)*, the Supreme Court held that an apprentice is not an employee within the provisions of Section 2(9) of the Employees State Insurance Act.

16. On appreciation on the facts and circumstances of the case, I do not find any infirmity in the award passed by the Labour Court and the writ petition stands dismissed, but, without any cost.