
(1994) 03 AP CK 0020

In the Andhra Pradesh High Court

Case No : Writ Petition No. 15493 of 1991

M. Raghuram

APPELLANT

Vs

Labour Court, Hyderabad and Others

RESPONDENT

Date of Decision : 11-03-1994

Acts Referred:

Industrial Disputes Act, 1947 — Section 2, 25F

Citation : (1994) 1 ALT 728

Hon'ble Judges : D. Reddeppa Reddy, J

Bench : Single Bench

Judgement

D. Reddeppa Reddi, J.—The petitioner is a post-graduate in Communication and Journalism (MCJ). He has filed this writ petition, questioning the award dated 20.11.1990 in I. D. No. 59 of 1980 on the file of the Labour Court, Hyderabad. The facts leading to the filing of this writ petition are as follows :-

The petitioner was appointed by the 2nd respondent viz., Deccan Chronicle, an English Daily published from Secunderabad, as an apprentice by proceedings dated 22.11.1978 for a period of six months with effect from 1.12.1978. On completion of apprenticeship, he was appointed as a staff reporter by proceedings dated 17.7.1979 for a period of one year with effect from 1.7.1979. Clause (2) of the said proceedings provided that the management shall have absolute rights to terminate his services without any notice or notice pay in lieu of notice. In exercise of that right, the services of the petitioner were terminated by proceedings dated 23.10.1979. It is stated in the said proceeding that his services were no longer required. Thereupon, he made a representation to the 2nd respondent on 24.10.1979, requesting for reinstatement. As there was no response thereto, he raised an industrial dispute and the same was referred by the Government of Andhra Pradesh by G. O. Ms. No. 653, dated 5.9.1980 to the Labour Court, Hyderabad for adjudication. The said dispute was registered as I. D. No. 59 of 1980. The Labour Court by its award dated 16.10.1984, holding that the termination of the services of the petitioner was not justified, directed the

2nd respondent to reinstate him into service and pay him 50% backwages with all consequential benefits. The 2nd respondent questioned the said award by filing Writ Petition 7199 of 1985 before this Court and the same was disposed of in the following terms :

"The petitioner herein challenges the award made under the Industrial Disputes Act by the Labour Court. His argument in the main is that the first respondent is a working journalist u/s 2(f) of the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955 and the definition of "working journalist" u/s 2(f) is exhaustive and does not include apprentice and hence the provisions of Section 25(f) of the Industrial Disputes Act are not attracted in the case of the first respondent's termination. As this being a special enactment, the Labour Court will have to consider under the provisions of the said enactment. Though this contention was not raised before the Labour Court, in as much as ex facie the first respondent is a Working Journalist and this being a question of law, it is quite apparent that the case has to be considered within the ambit of Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955.

Hence, the matter is remitted to the Labour Court for due consideration after giving notices to all the concerned parties. The writ petition is accordingly allowed. No costs."

2. Thus, the matter again came up for consideration before the Labour Court, Hyderabad. At that stage, 2nd respondent raised an additional plea to the following effect :

Petitioner, who was working as a staff reporter is not a "workman" as defined u/s 2(s) of the Industrial Disputes Act, 1947, but he is a "working journalist" as defined u/s 2(f) of the Working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 (for short "the Journalists Act"). The definition of a "working journalist" u/s 2(f) is exhaustive and it does not include an "apprentice". Therefore, the provisions of Section 25-F of the Industrial Disputes Act, 1947, are not applicable to the petitioner. It is necessary to mention here that in the additional Counter filed by the 2nd respondent before the Labour Court, there is no plea that the petitioner was appointed as an "apprentice" under the provisions of the Apprentices Act, 1961 and his appointment is governed by the provisions of the said Act and the rules made thereunder. However, the Labour Court, Hyderabad having found that the petitioner must have been appointed by the 2nd respondent as an apprentice under the Apprentices Act, 1961 and therefore the period he worked as apprentice cannot be taken into account so as to treat him as a "workman" as defined u/s 2(s) of the Industrial Disputes Act, passed the impugned award holding that the reference made by the Government is not maintainable and the petitioner is not entitled to any relief. Hence this writ petition.

3. Sri J. Chalameswar, learned Counsel appearing for the petitioner submits that the provisions of the Apprentices Act, 1961 (for short "the Act") have no

application to the present case and thus, there was relationship of employee and employer between the petitioner and the 2nd respondent during the period of apprenticeship also. Therefore, the order terminating the services of the petitioner is in contravention of the provisions of Section 25-F of the Industrial Disputes Act, 1947 read with Section 3 of the Journalists Act. In opposition, it is contended by the learned Counsel for the 2nd respondent that the provisions of the Act are very much applicable and thus, there was no relationship of employee and employer during the period the petitioner worked as apprentice. Therefore, the principal point for consideration is whether the provisions of the Act are applicable to the present case and if so whether they have been complied with?

4. The object of the Act is to utilise the facilities available for training apprentices and to ensure their trading in accordance with a planned programme. It came into force on March, 1962, vide G. S. R. No. 246, dated 12.2.1962. Sub-section (4) of Section 1 of the Act provides that :

" (4) The provisions of this Act shall not apply to.....

(a) any area or to any industry in any area unless the Central Government by notification in the Official Gazette specifies that area or industry as an area or industry to which the said provisions shall apply with effect from such date as may be mentioned in the notification;

(b)... (omitted)

(c) any such special apprenticeship scheme for imparting training to apprentices as may be notified by the Central Government in the official Gazette."

It is clear from the above that the provisions of the Act will have no application to any area or to any industry in any area unless a notification is issued by the Central Government. But the 2nd respondent, who asserts that the provisions of the Act are applicable to the present case, is not able to place any notification before me to show that the provisions of the Act have been extended to newspaper industry.

5. As per S. 2(e) of the Act, "designated trade" means -

"any trade or occupation or any subject field in engineering or technology or any vocational course which the Central Government, after consultation with the Central Apprenticeship Council, may, by notification in the official Gazette, specify as a designated trade for the purposes of this Act."

Under this clause, the Central Government after consulting the Central Apprenticeship Council, constituted u/s 24(1) of the Act issued three notifications G. S. R. 462(E) dated August 23, 1975, G. S. R. 1012 dated September 6, 1980 and G. S. R. 271 dated February 18, 1981, specifying various subject fields in engineering and technology as designated trades for the purpose of the Act. But, in none of these notifications, newspaper industry has been specified. Likewise,

in the notifications issued under sub-section (1) of Section 8, the post of "staff reporter" has not been specified as a "designated trade". The assertion to this effect made by the petitioner in the writ affidavit has also not been controverted by the 2nd respondent. As per Section 2(aa), "apprentice" means "a person who is undergoing apprenticeship training in pursuance of a contract of apprenticeship". As per Section 2(aaa) apprenticeship training" means "a course of training in any training" means "a course of training in any industry or establishment undergone in pursuance of a contract of apprenticeship and under prescribed terms and conditions which may be different for different categories of apprentices". Section 4 of the Act provides for contract of apprenticeship. It reads :

"4. Contract of apprenticeship - (1) No person shall be engaged as an apprentice to undergo apprenticeship training in a designated trade unless such person or, if he is a minor, his guardian has entered into a contract of apprenticeship with the employer.

(2) The apprenticeship training shall be deemed to have commenced on the date on which the contract of apprenticeship has been entered into under sub-section(1).

(3) Every contract of apprenticeship may contain such terms and conditions as may be agreed to by the parties to the contract :

Provided that no such term or condition shall be in consistent with any provision of this Act or any rule made thereunder.

(4) Every contract of apprenticeship entered into under sub-section (1) shall be sent by the employer within such period as may be prescribed to the apprenticeship Adviser for registration.

(5) The Apprenticeship Adviser shall not register a contract of apprenticeship unless he is satisfied that the person described as an apprentice in the contract is qualified under this Act for being engaged as an apprentice to undergo apprenticeship training in the designated trade specified in the contract.

(6) Where the Central Government, after consulting the Central Apprenticeship Council, makes any rule varying the terms and conditions of apprenticeship training of any category of apprentices undergoing such training, then the terms and conditions of every contract of apprenticeship relating to that category of apprentices and subsisting immediately before the making of such rule shall be deemed to have been modified accordingly."

It is axiomatic that the provisions of Section 4 are mandatory. But, nowhere the 2nd respondent states these provisions have been complied with.

6. The Act also provides for various other things. I will refer to only a few, which I consider relevant for the purpose of the present case. Section 11 lays down the obligations of employers. Section 19 mandates that every employer shall

maintain records of the progress of training of each apprentice. Section 21 deals with holding of test and grant of certificate on conclusion of training. It is not even the case of the 2nd respondent that any of these mandatory provisions have been complied with.

7. As already noticed, the 2nd respondent has not raised the plea of applicability of the provisions of the Act to the petitioner either in its counter or additional counter filed before the Labour Court. However, the Labour Court, without referring to any provisions of the Act, came to the conclusion that the petitioner must have been appointed as apprentice under the provisions of the Act. It is not discernible on what basis he came to such conclusion. In *Bhaskaran v. Kerala State Electricity Board* 1986 ICLR 292 Malimath C.J., speaking for the Division Bench observed :

"..... In order to answer the definition of the word "apprentice", two conditions are required to be satisfied, viz., (1) that the person is undergoing apprenticeship training and (2) that he is undergoing such training in pursuance of a contract of apprenticeship... " (Para 6)

Admittedly, there is no contract of apprenticeship between the petitioner and the 2nd respondent. In the circumstances, I am of the clear view that the petitioner's appointment as "apprentice" by proceedings dated 22.11.1978 cannot be treated as one under the provisions of the Act.

8. Learned Counsel for the 2nd respondent placing reliance on Section 18 of the Act, submits that the petitioner was only a trainee during the period of apprenticeship and thus he is not either a "workman" as defined u/s 2(s) of the Industrial Disputes Act or "working Journalist" as defined u/s 2(f) of the Journalists Act. I am not impressed with this submission. True Section 18 of the Act declares that apprentices are trainees and not workers. But, a reading of Clauses (a) and (b) of that Section leaves no doubt whatsoever that it is applicable only to apprentices undergoing apprenticeship training as contemplated under the Act. In other words, it has no application to every person designated as apprentice.

9. In view of the above, the next crucial question for consideration is whether there was relationship of employee and employer between the petitioner and the 2nd respondent during the period the petitioner worked as apprentice. On this aspect, the Labour Court considered the matter only with reference to the provisions of the Act, but failed to refer to the terms of appointment. Therefore, it becomes necessary to refer to the same. The order is termed as "Appointment Letter" and not as a contract of apprenticeship. The nature of training the petitioner had to undergo was not indicated in the said letter. Instead, it was clearly stated in Clause 5 that he "should attend to all the work as may be assigned either by Editor, General Manager, Deputy Editor or the Line Officials or any other person authorised in this regard". Clause 6 provided that he "Should abide by the rules and regulations of the concerned which are in force and which

may be issued by the management from time to time. " These two clauses, in my considered view, do indicate that there was relationship of employee and employer between the petitioner and the 2nd respondent during the period of apprenticeship.

10. Section 2(g) of the Journalists Act lays down that"

"all words and expressions used but not defined in this Act and defined in the Industrial Disputes Act, 1947 (14 of 1947), shall have the meaning respectively assigned to them in that Act."

Also, Section 3 provides that -

" (1) The provisions of the Industrial Disputes Act, 1947 (14 of 1947), as in force for the time being, shall, subject to the modification specified in sub-section (2), apply to, or in relation to, working journalists as they apply to, or in relation to workmen within the meaning of that Act.

(2) Section 25-F of the aforesaid Act, in its application to working journalists, shall be construed as if in Clause (a) thereof for the period of notice referred to therein in relation to the retrenchment of a workman, the following periods of notice in relation to the retrenchment of a working journalist had been substituted namely -

(a) Six months, in the case of an editor, and

(b) three months, in the case of any other working journalist."

Basing on the above provisions and the decision in Behar Journals Ltd. Vs. Ali Hasan and Another, the Labour Court held as under :

"It is clear that the petitioner in the present case comes under the definition of "workman" as defined u/s 2(s) of the I. D. Act and the provisions of I. D. Act, 1947 are applicable as laid down in Section 2(g) and Section 3 of Working Journalists (Conditions of Service) and Miscellaneous Provisions Act."

In view of this finding, necessarily, the period of apprenticeship has to be added to the total length of petitioner's service, in which case, it is not disputed that petitioner had worked for more than 240 days during the period from 1.12.1978 to 23.10.1979. It is also not the case of the 2nd respondent that there was any break in service during that period. Therefore, I am of the opinion that the order terminating the services of the petitioner, is in contravention of the provisions of Section 25-F of the Industrial Disputes Act read with Section 3(2) (b) of the Journalists Act.

11. In view of the above findings, the decisions in The Employees' State Insurance Corporation and Another Vs. The Tata Engineering and Locomotive Co. Ltd. and Another, , Tungabhadra Sugar Works (P) Limited Vs. Labour Court, Mangalore and Another, and H. P. Chaudhary v. R. S. E. Board 1987 (55) FLR 192 are of no help to the 2nd respondent.

12. Once it is held that the order of termination is in contravention of mandatory statutory provisions the workman is, normally, entitled to reinstatement with all consequential benefits including back wages. But, in the present case the petitioner, who was reinstated into service in March, 1985 pursuant to the previous award dated 16.10.1984, had left the same on his own accord on November 12, 1986 i.e., long prior to November 8, 1988, the day when Writ Petition 7199 of 1985 was disposed of by this Court. Also, it is stated he was paid a sum of Rs. 10,000/- towards back wages. However, the fact remains, he was illegally kept out of service for a period of about five and half years i.e., from 23.10.1979 to March, 1985. Having regard to these facts, I consider it just and proper to award a sum of Rs. 15,000/- in addition to the sum of Rs. 10,000/- already paid, as compensation to the petitioner in lieu of reinstatement.

13. For the aforesaid reasons, the impugned award is set aside and the 2nd respondent is directed to pay the petitioner a sum of Rs. 15,000/- in lieu of reinstatement, within 2 months from today. The writ petition is accordingly disposed of. There will be no order as to costs.