

(2018) 07 BOM CK 0082

In the Bombay High Court

Case No : Writ Petition No. 813 Of 2018

M/s Mukand Limited And Others

APPELLANT

Vs

Dharmarajya Kamgar Karmachari Mahasangha

RESPONDENT

Date of Decision : 11-07-2018

Acts Referred:

Industrial Disputes Act, 1947 — Section (s), 2(bb), 2(oo), 25F

Maharashtra Recognition of Trade

Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 1(b), 1(f), 3(5)

Citation : (2018) 07 BOM CK 0082

Hon'ble Judges : S.C.GUPTA, J

Bench : Single Bench

Advocate : S.K. Talsania, Rahul D. Oak, Pramod Anaokar, Jane Cox, Karishma Rao

Final Decision : Dismissed

Judgement

1 Heard learned Counsel for the parties.

2 This writ petition challenges an order passed by the Labour Court at Thane in a complaint of unfair labour practices and the revisional order passed

by the Industrial Court at Thane confirming that order.

3 Petitioner No.1 company claims to have a trainee scheme to engage fresh ITI and NCTVT pass candidates. Under the scheme, candidates were

appointed as 'In-Plant Trainee' for varying durations. In some cases, the training period extended to 12 months plus 6 months, whilst in others to 36

months with two phases of 18 months each. In December 2010, the Petitioners claim to have appointed 49 In-Plant Trainees for 18 months duration,

out of which 6 trainees resigned during the period of training. The remaining 43 persons continued to work as trainees till about October 2014, when

they were all discontinued either on the ground that their performance was not found satisfactory or on account of completion of the period of training including extension/s. Of these trainees, 23 persons filed a complaint of unfair labour practice through the representative union of the employees. The union's case in the complaint was that these persons were working as regular employees of the first Petitioner, though named as trainees, continuously till the termination of their services. All of them were ITI Diploma holders and neither was given any training by the Petitioners. They continued to carry out regular work in shifts along with other permanent employees of the Petitioners. It was submitted that under the relevant clause of Model Standing Orders applicable under the Industrial Employment Standing Orders Act, 1946, namely, Clause 4(c), these employees, having put in 240 days of uninterrupted service in the establishment during 12 preceding calendar months, were required to be treated as, and extended the benefits of, permanent workman. The terminations of their services were not in good faith but in colourable exercise of the rights of the employer and in breach of the provisions of Section 25F of the Industrial Disputes Act, 1947. Accordingly, it was alleged that the Petitioners were guilty of unfair labour practices under Item 1(b) and 1(f) of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (â??MRTU & PULP Actâ??).

4 Before the Labour Court, the complainant union examined one witness, who was from amongst the concerned 23 employees, on whose behalf the complaint was filed. Petitioner No.1 also examined one witness. After hearing evidence and submissions of both sides, the Labour Court held that there was no specific pleading on the part of the respondent (Petitioner No.1 herein), either as to the dates of appointment or extensions of their so-called training periods; even the affidavit of their witness was silent on such dates and periods. Though the appointment letters and some initial letters were not disputed by the complainant, subsequent extension letters filed on record by Petitioner No.1 employer were not admitted by the complainant. No proof was tendered in support of these extension letters. The court, after considering the facts of the case and applying the law, including judgments of our court referred to in the order, held that there was evidence before the court that all 23 employees were doing work of regular nature

in the Petitioners' establishment; they were working on different machines along with other regular employees of the Petitioner; the records of production work produced in the court clearly indicated that. On the other hand, there was no evidence before the court that they were imparted any training. The Petitioners had not examined any witness to show that any person imparted any training to, or acted as trainer of, these persons. There was no record produced concerning the so-called training. Considering the evidence before the court, the court was of the view that it was hard to believe that the employees, on whose behalf the complaint was filed, were appointed as trainees or any training was imparted to them or that there was a case of their discontinuation after expiry of training period including its extension/s. The Labour Court came to the conclusion that all of them, along with other permanent employees of the Petitioners, were doing the work of manufacture or of technical nature and were entitled to be treated as workmen under Section 2(s) of the Industrial Disputes Act and thus, employees under Section 3(5) of the MRTU & PULP Act. The Labour Court, accordingly, held their termination to be improper and in violation of law including Section 25F of the Industrial Disputes Act and not in good faith but in colourable exercise and partly allowed the complaint inter alia by directing the Petitioners herein to reinstate all 23 employees together with continuity of service and full back wages with effect from the respective dates of their termination.

5 The Petitioners carried the matter in revision before the Industrial Court at Thane. The revisional court in its impugned order observed that from the inspection reports produced before the Court as also other documents produced by the revision opponent, it was clear that the concerned workmen were working on machines in various shifts in light machine shop, heavy machine shop, mechanic maintenance and millwright maintenance, and the claim of the Petitioners that they were engaged merely as In-Plant Trainees was falsified. The revisional court was of the view that the revision applicants had failed to prove the record which was produced by them before the court. The court held that though in some cases, the applications described these employees as in-plant trainees, the details of their previous employments in other companies also appear to have been taken into consideration and appointments were made on the basis of previous work experience. In fact, in some cases, the 'post applied for' had been mentioned

specifically by the name, as say, 'Machinist'. For example, Prafulla Ramchandra Bhor, who had one year's experience as machinist in Godrej &

Boyce Manufacturing Ltd., was said to have applied for the post of 'Machinist'. The court also noticed that in some of the documents produced

before the court, these posts were mentioned and later on, by striking out the names of the posts, the words 'in-plaint trainee' had been written in a

different handwriting. The court observed that the records showed that the concerned persons were appointed on different posts and later on, shown

as trainees. After considering the evidence before the court, led both by the union and the employer, the court was of the view that there was no

evidence to show that anyone was appointed to impart training to the concerned persons. On the other hand, there was evidence to show that they

were working along with other regular employees of the Petitioners in different shifts and engaged in regular production activities. The court, in the

premises, confirmed the finding of the Labour Court that these persons were engaged to perform regular service and were not trainees in any real

sense. The Industrial Court, however, modified the order of back wages, restricting the payment to 50 per cent back wages.

6 Based on the evidence placed before them, thus, both courts below have come to a concurrent finding of fact that the concerned persons on whose

behalf the Respondent union had filed the complaint were not trainees but were regular employees appointed to perform production work in particular

departments of the Petitioners. The view taken by the courts below on the basis of evidence before them is certainly a possible view. There is no

irrelevant or non-germane material considered, or any relevant or germane material disregarded, by the courts to arrive at their conclusions. The very

fact that these persons were required to show details of their past and present employments with the names of organizations, periods, designations and

last pays drawn in their applications, which were said to be 'Applications For Employment', many of which did not even mention about any in-

plaint traineeship, lends credence to their case of regular employment. This coupled with lack of any evidence of actual training imparted to these

persons, clearly supports the Respondent union's case that they were regular employees and not trainees.

7 There is no particular significance to any designation or nomenclature used for engaging a workman by any industrial establishment. In every case,

the court has to consider the nature of duties actually performed by the person engaged. If these duties fall within the description of the nature of work described in Section 2(s) of the Industrial Disputes Act, the person ought to be considered as a workman, whatever be his designation whilst engaging him. The Supreme Court in the case of Trimbak Rubber Industries Ltd. Vs. Nasik Workers Union^{2003 SC 3329} held a trainee, in the facts of that case, to be a workman. Calcutta High Court in Ananda Bazar Patrika Ltd Vs. State of West Bengal ^{2016 LLR 915} considered the case of a trainee, whose appointment letter had stipulated a condition of permitting transfer and where the management had not produced any evidence to suggest that there was any training or any particular period of evaluation of the so-called training. The court upheld the award of the Industrial Tribunal setting aside the order of termination passed in the matter, holding him to be a regular workman.

8 Our Court in the case of Dilip Hanumantrao V. Zilla Parishad, Yavatmal ^{1989(2) Bom C.R. 661}, whilst setting aside an order of the Labour Court

holding the engagements of employees before it as fixed term appointments under sub-clause (bb) of Clause (oo) of Section 2 of the Industrial

Disputes Act, made the following pertinent observations (para 7 of the judgment) :

7. As stated above, the terminations which are included in sub-clause (bb) are those which are brought about either because of non-renewal of

the contract or because of expiry of time stipulated in the contract of employment. It needs no further explanation but the probability of the employer

exploiting the labour by giving fixed tenure appointments can never be overruled above, therefore, it would be improper and unwise simply to decide

the nature of employment on the basis of letter of appointment issued by the employer. The nature of employment will have to be determined with

reference to the nature of duties performed by the workman and type of job the workman was entrusted with. If the workman is engaged to do a

particular job which may require him to do actual work for more than 240 days in twelve calendar months, such employment would be covered by the

amended sub-clause because the employment comes to an end with the completion of the work. A stipulation in the contract that the employment

would be for a specific period or till completion of the work may also fall within the scope and ambit of this subclause. But if the employer resort to

contractual employment as a device to simply take it out of the principal clause (oo) irrespective of the fact that the work continues or the nature of

duties which the workman was performing are still in existence, such contractual engagements will have to be tested on the envil of fairness, property

and bonafides. May be that such fixed tenure employments are made to frustrate the claim of the workman to become regular or get himself

confirmed as a permanent employee either under the Rules applicable to such employment or even under the standing orders. It is always open to the

Court adjudicating the dispute to examine each and every case in its proper perspective and to protect the workman against the workman against the

abuse of the amended provision. If this protection is not afforded, the benefit flowing from retrenchment, to which every termination succumbs, would

be rendered negatory.â??

9 The law stated by our court applies with equal vigour to the facts of our case also. As in the case of fixed tenure appointments falling within subÂ?

clause (bb) of clause (oo) of Section 2, even in our case, the letters of appointment issued to them by the employer or their designations as trainees,

would not be the sole basis for deciding the nature of employment. It would have to be determined on the basis of the nature of duties performed by

the concerned persons; if they are engaged to do any manual, unskilled, technical, operational or clerical work, there is no reason why they should not

be treated as workmen under Section 2(s) of the Industrial Disputes Act and thus, employees within the meaning of Section 3(5) of the MRTU &

PULP Act.

10 Both courts below have found, as a matter of fact, going by the nature of work performed, that the persons concerned were regular workmen; the

courts, going by the evidence produced before them, did not treat their engagement as trainees as a genuine contract of traineeship; and, as discussed

above, these conclusions do not admit of any interference under Articles 226 and 227 of the Constitution of India.

11 There is no merit, accordingly, in the petition. The petition is dismissed.

12 On the application of learned Counsel for the Petitioners, the stay granted by the Industrial Court and continued by this court so far, shall continue

for a further period of eight weeks from today.

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