
(2005) 03 MAD CK 0113
In the Madras High Court
Case No : Writ Appeal No. 539 of 2005

National Small Industries Corporation Ltd.	APPELLANT
Vs	
The Presiding Officer, I Additional Labour Court and V. Lakshminarayanan	RESPONDENT

Date of Decision : 28-03-2005

Acts Referred:

Apprentices Act, 1961 — Section 2
Industrial Disputes Act, 1947 — Section 25F

Citation : (2005) 3 LLJ 284 : (2005) 3 MLJ 126

Hon'ble Judges : Markandey Katju, C.J;F.M. Ibrahim Kalifulla, J

Bench : Division Bench

Advocate : R. Thiagarajan for N.C. Ramesh, for the Appellant; N.G.R. Prasad, for Row and Reddy, for the Respondent

Final Decision : Dismissed

Judgement

This Judgment has been overruled by : National Small Industries Corpn. Ltd. Vs. V. Lakshminarayanan, (2006) 111 FLR 1205 : (2007) 1 JT 69 : (2006) 11 SCALE 684 : (2007) 1 SCC 214 : (2007) 1 SCC(L&S) 145 : (2006) 8 SCR 821 Supp : (2007) 3 SLJ 25 : (2006) 2 UJ 1461

Markandey Katju, C.J.—This writ appeal has been filed against the impugned order of the learned single Judge dated 3.1.2005.

2. We have heard the learned counsel for the parties and perused the records.

3. The order dated 26.4.1990 of the appellant Corporation states that the second respondent herein has been engaged as an Apprentice Trainee (Shop Assistant) for a period of two years on a consolidated salary. It is alleged in the petition filed by the respondent that on 1.5.1992 without any reason or enquiry, the Management had removed him from service orally although he served continuously for more than 240 days. He has also alleged that his termination was in violation of the provisions of Section 25F of the Industrial Disputes Act. It

was also alleged that the same post was re-advertised which means that there were vacancies and his juniors were retained in service. An Industrial Dispute was referred to the I Additional Labour Court, Chennai, which was decided in favour of the workman. Against that award, writ petition was filed which was dismissed by the learned single Judge. Hence this writ appeal.

4. Mr. R. Thiagarajan, learned Senior Counsel for the appellant relied on the decision of the Supreme Court in *Chairman/M.D., Mahanadi Coalfields Ltd. and Others Vs. Sri Sadashib Behera and Others*, and *U.P. State Electricity Board Vs. Shri Shiv Mohan Singh and Another*, . We have also perused the decision of the Supreme Court in *Dhampur Sugar Mills Ltd. Vs. Bhola Singh*, .

5. In our opinion, all these decisions are distinguishable for the simple reason that in the present case, the Labour Court has recorded a finding of fact in paragraphs 9, 17 and 22 of its award that even though the petitioner was designated as apprentice trainee in his appointment order dated 26.4.90 he was actually doing the work of a workman.

6. Thus, in paragraph-9 of its award, the Labour Court observed: -

" Further, from the evidence of MW-1, it is seen that even though the petitioner was appointed as apprentice trainee (job assistant) the petitioner was doing the same work as a labourer, and further in the cross examination, it has been mentioned that even though the petitioner was the shop assistant, he worked only in the show room on a full time job, and no special training was given to the petitioner, and that during the time of tenure of service the petitioner was doing his work properly.....From the evidence of both the parties, it is seen that no such training for the period of two years had been given to the petitioner. Further, MW-1 in his evidence during cross examination had admitted that the petitioner during his tenure of service was properly attending to his work.

7. In paragraph-22 of the award, the Labour Court observed: -

" Further since it had been admitted by MW-1 in its evidence that no training was given to the petitioner and further having admitted in the cross examination that the petitioner did same work which he was doing as a casual labourer even while undergoing training and also did full time job and further since it had come to be known that the post was lying vacant as seen from Ex.W-18 and consequently the argument made on behalf of the petitioner that the refusal to offer job to the petitioner by the respondent/firm after the period mentioned in its Ex.W-7 had expired, was not at all justifiable seems to be acceptable and I also decide accordingly."

8. Thus, the Labour Court has examined the evidence on record before it in detail and has come to the conclusion that no training was given to the petitioner and he was doing the work as casual labourer and did it on full time basis. Moreover, posts were lying vacant, as seen from Ex.W-18, and the same has not been offered to the petitioner. The petitioner worked in the show room on full time

basis, and all these facts have been admitted by MW-1, and there is also a recommendation by the Manager that the petitioner could be taken as a permanent worker. These are all findings of fact which cannot be interfered with in writ jurisdiction.

9. It may be mentioned that an apprentice is a person who is undergoing training. The word "apprentice" has not been defined in the Industrial Disputes Act, 1947, but it has been defined in Section 2(aa) of the Apprentices Act, 1961 as follows:

"'apprentice' means a person who is undergoing apprenticeship training in pursuance of a contract of apprenticeship."

The expression "apprenticeship training" has been defined in Section 2(aaa) of the Apprentices Act, 1961 as follows:

" 'apprenticeship 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 ..."

Thus, the word "apprentice" means a person who is undergoing training.

10. In the Shorter Oxford Dictionary, an "apprentice" has been defined as a "learner of a craft; one who is bound by a legal agreement to serve an employer for a period of years, with a view to learn some handicraft, trade, etc, in which the employer is reciprocally bound to instruct him". In the Chambers Dictionary, to serve apprenticeship means "to undergo training of an apprentice". Stroud's Judicial Dictionary defines an "apprentice" as " a person bound to another for the purpose of learning his trade or calling; the contract being of nature that the master teaches and the other serves a master with the intention of learning".

11. In Employees' State Insurance Corpn. Tata Engineering and Locomotive Co. Ltd., (1976) 1 LLJ 81, the Supreme Court observed: -

"...the heart of the matter in apprenticeship is, therefore, the dominant object and intent to impart on the part of the employer and to accept on the part of the other person learning, under certain agreed terms. That certain payment is made during the apprenticeship, by whatever name called, and that the apprentice has to be under certain rules of discipline, do not convert the "apprentice" to a regular employee under the employer. Such a person remains a learner and is not an employee."

Thus, the contract of apprenticeship accentuates teaching on the part of the master and learning on the part of the apprentice, as the primary object of the "contract of apprenticeship". Where, therefore, this object is only ancillary and not primary, the contract is one of service, rather than that of "apprenticeship"

12. The Labour Court in paragraphs 9, 17 and 22 of its award has recorded findings of fact that in fact no training was given to the respondent herein and he was in fact working as casual workman, but on full time basis in the show room.

13. It may be mentioned that the Industrial Disputes Act makes no difference between a regular employee and a casual employee. The word "workman" has been defined in Section 2(s) of the Industrial Disputes Act, 1947 as follows:

" "workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purpose of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person -

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature."

A perusal of the definition of "workman" shows that it makes no difference between a permanent employee and a temporary employee or a casual employee. vide Chief Engineer (Irrigation) Chepauk v. N. Natesan, 1973 II LLJ 446; Management of Crompton Engineering Co. v. Presiding Officer, Additional Labour Court, 1974 I LLJ 459; Elumalai Vs. Management of Simplex Concrete Piles (India) Ltd. and Another, ; Hutchiah Vs. Karnataka State Road Transport Corporation, , etc. Hence even if a person is a casual employee he will be entitled to the benefit of the provision of Section 25F of the Industrial Disputes Act, 1947 if he satisfies the requirements of that provision.

14. In the present case, in view of the findings of the Labour Court that the respondent herein was not undergoing training, we are of the opinion that although he was designated as apprentice, in fact he was not an apprentice but was an employee doing full time work in the establishment and not undergoing training.

15. Learned Senior Counsel for the appellant submitted that the respondent had accepted the order dated 26.4.1990 designating him as apprentice.

16. In our opinion the whole approach of Industrial Law is that the employer and employee do not stand on an equal bargaining position. Industrial Law recognises that the workers are in a weaker position than the employers who have financial resources, management skills, connections etc. Hence the whole

object of Industrial Law is to help the weaker section in the society (the workmen) and give them protection from exploitation. In our opinion, there can be no estoppel against a person who accepts his designation as an apprentice, but later on raises a plea that in fact he was not an apprentice but was doing the work of a workman.

17. It is the actual work which a person is doing which must be seen, and not the designation. Thus in S.K. Maini Vs. M/s. Carona Sahu Company Limited and others, , the Supreme Court observed : -

"The designation of an employee is not of much importance, and what is important is the nature of duties being performed by him".

The same view was taken in Ananda Bazar Patrika (P) Ltd. Vs. The Workmen, , Syndicate Bank Ltd. v. Its Workmen, 1966 (II) LLJ 194, Management of May and Baker (India) Ltd. Vs. Their Workmen, , Lloyds Bank Ltd., New Delhi Vs. Panna Lal Gupta and Others, , etc.

18. If we accept the contention of the learned Senior Counsel for the appellant that once a person accepts an appointment order he cannot challenge the designation mentioned in that order then the employer can always exploit the workers by giving them designation as apprentice though in fact taking regular work from them. This would be contrary to the whole approach of Industrial Law, and hence we cannot accept this submission.

18. In view of the above, we find no merit in the above appeal and it is dismissed. W.A.M.P.No.1055 of 2005 for stay is dismissed.