

(1986) 02 KL CK 0029
In the High Court Of Kerala
Case No : O.P. No. 4901 of 1982

R. Bhaskaran and Others

APPELLANT

Vs

K.S.E.B. and Others

RESPONDENT

Date of Decision : 06-02-1986

Acts Referred:

Apprentices Act, 1961 — Section 18, 2(aa), 4
Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 25F

Citation : (1986) 23 KLJ 301

Hon'ble Judges : V.S. Malimath, C.J;K. Sukumaran, J

Bench : Division Bench

Advocate : M.M. Cherian, Asok M. Cherian and Poly Mathai, for the Appellant;
T.C.N. Menon, K.P.O. Menon and Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Malimath, C.J.—The petitioners entered into a contract of apprenticeship with the first respondent, the Kerala State Electricity Board. When they were undergoing apprenticeship training in pursuance of the said contract of apprenticeship, their services were terminated by the first respondent by Ext. P7 order. The petitioners challenge the said termination in this petition under Article 226 of the Constitution. The learned single Judge before whom the matter came up for consideration felt that this case involves consideration of important questions of law and has therefore referred the matter to the Division Bench. Before advertng to the principal contentions urged by Sri M. M. Cheriyan, learned counsel for the petitioners, we would like to advert to the admitted facts. The admitted facts are: The petitioners entered into a contract of apprenticeship with the first respondent for undergoing training and that in pursuance of the said contract they were undergoing such training. The contract of Apprenticeship executed by the petitioners was not got registered from the Apprenticeship Adviser as required by sub-section (4) of Section 4 of the Apprenticeship Act, 1961 (hereinafter referred to as "the Act"). When the service of the petitioners were

terminated, the provisions of Section 25F of the Industrial Disputes Act were not complied with.

2. It was contended by Sri M. M. Cheriyan, learned counsel for the petitioners that the petitioners were workmen within the meaning of that term under the Industrial Disputes Act, 1947, and that consequently the 1st respondent could not have terminated the petitioners' services without complying with the provisions of Section 25F of that enactment. The argument is made by the respondent by relying on Section 18 of the Act. The contention of the learned counsel for the petitioners is that the provisions of Section. 18 of the Act cannot be invoked by the first respondent in the present case since the contract of apprenticeship executed by the petitioners; has not been got registered as required by sub-section (4) of Section 4 of the Act. It was submitted by Sri Cheriyan that unless the condition specified in Section 18 of the Act are satisfied, the first respondent would not be entitled to take the stand that the provisions of Section 25F of the Industrial Disputes Act will not be attracted to the facts of the case.

3. Section 18 of the Act which calls for interpretation in this case reads as follows:

18. Apprentices are trainees and not workers - Save as otherwise provided in this Act, -

(a) every apprentice undergoing apprenticeship training in a designated trade in an establishment shall be a trainee and not a worker; and

(b) the provisions of any law with respect to labour shall not apply to or in relation to such apprentice,

It is clear from the provisions of Section 18 of (he Act that the petitioners cannot invoke the provisions of the Industrial Disputes Act. Sub-Section (1) of Section 4 of the Act requires that 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. Sub-section (4) of Section 4 provides that every contract of apprenticeship entered into under sub-section (1) shall be sent by the employer with in such period as may be prescribed to the Apprenticeship Adviser for registration. Rule 4B of the Apprenticeship Rules, 1962 provides that every employer shall send to the apprenticeship Adviser the Contract of Apprenticeship for registration within three months from the date on which it was signed. Sub-section (5) of Section (5) of Section 4 of the Act states that the Apprenticeship Adviser shall not register contract of apprenticeship unless he is satisfied that the person described as an apprentice in the contract is qualified under the Act for being engaged as an apprentice to undergo apprenticeship training in the designated trade specified in the contract.

4. Section 18 of the Act provides that an apprentice shall not be regarded as a worker if he is undergoing apprenticeship training in a designated trade in an

establishment. In other words, apprentices as defined in the Act cannot claim any privilege as workmen under the relevant law in respect of labour. The principal question that requires examination in this case therefore is whether the petitioners are not apprentices under the Act, because the contract of apprenticeship has not been got registered as required by sub-section (4) of Section 4 of the Act. The word "apprentice" has been defined in Section 2 (aa) of the Act to mean "a person who is undergoing apprenticeship training in pursuance of a contract of apprenticeship". 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. It is not provided that the contract of apprenticeship adverted to therein should have been registered as required by sub-section (4) of Section 4 of the Act. If the intention of the Legislature was to include only those persons in the category of apprentices who have entered into a contract of apprenticeship which has been registered, the word "registered" would have been used before the word "contract" in Section 2(aa) of the Act. On a plain reading of the definition of the expression "apprentice" occurring in Section 2 (aa), it becomes clear that registration of a contract of apprenticeship is not necessary for the person answering the description of the word "apprentice". Sub-section (4) of Section 4 which required registration of contract of apprenticeship provides that every contract of apprenticeship entered into under sub-section (1) shall be sent for registration. In other words, it contemplates the existence of a concluded contract of apprenticeship, which is required to be sent up for registration. It therefore becomes clear that it is the existing contract of apprenticeship that is required to be registered and not that such contract becomes a contract of apprenticeship only after it is registered as required by sub-section (4) of Section 4 of the Act. We have therefore no hesitation in taking the view that the registration of the contract of apprenticeship is not a necessary ingredient for answering the description of the expression "apprentice" occurring in Section 2(aa) of the Act. As it is admitted that the petitioners have entered into a contract of apprenticeship and were undergoing training in pursuance of such a contract they satisfy all the requirements of the definition of the expression "apprentice" occurring in Section 2 (aa) of the Act. That being the position, the provisions of section 18 of the Act come into operation. Therefore the petitioners cannot be regarded as workers and therefore the provision of Section 25F of the Industrial Disputes Act are not attracted to the facts of the case. Hence the termination of the services of the petitioners is not illegal. For the reasons stated above, the original petition is dismissed.