
(1998) 04 RAJ CK 0006
In the Rajasthan High Court
Case No : C.W.P. No. 854 of 1996

Rajasthan State Road Transport Corporation APPELLANT
Vs
Mahaveer Singh and Another RESPONDENT

Date of Decision : 06-04-1998

Acts Referred:

Apprentices Act, 1961 — Section 2

Citation : (2001) 3 LLJ 1075 : (1998) 3 WLC 229

Hon'ble Judges : B.S. Chauhan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

B.S. Chauhan, J.—The instant writ petition has been filed by the Corporation challenging the award of the Labour Court dated February 4, 1995 and its Notification dated June 30, 1995 contained in Annexure 9 to this petition.

2. The facts and circumstances giving rise to this petition, as alleged by the petitioner, are that respondent-apprentice had executed an agreement under the provisions of the Apprenticeship Act, 1961 on November 25, 1987, contained in Annexure 1 to the petition, alongwith petitioner Corporation. Clause (2) of the said agreement provided for extending the . period of one year training if it is not completed within one year. In the instant case as the apprentice-respondent could not complete the training within one year, his period of training was extended upto April 30, 1989 by passing, order dated December 30, 1988 (Annexure 6). On completion of the training, his apprenticeship came to an end on February 28, 1989 and was relieved on March 2, 1989. Apprentice-respondent raised a dispute alleging that he was neither an apprentice nor he entered into any agreement. He was workman from the initial appointment and his retrenchment order dated February 28, 1989, contained in Annexure 7, is bad as his services had been terminated without complying with the provisions of Sections 25F, 25G and 25H of the Industrial Disputes Act, 1947 (hereinafter referred as "the I.D. Act").

3. A reference u/s 10 of the I.D. Act was made as to whether the termination of service of respondent-workman w.e.f. March 2, 1989 was valid? Petitioner had contested the case before the Labour Court and it was asserted therein that the respondent-workman was given apprenticeship as per the contract dated November 25, 1987 (Annexure 1) on certain conditions contained in the said contract. It provided that the Corporation is not responsible for his employment and if his work or conduct was not found satisfactory then he can be removed without any notice. Petitioner had filed documents before the Labour Court to the effect that as respondent-workman could not complete the training within the stipulated period of one year, his training was extended as per Clause (2) of the contract and when he completed his training, he was discharged from there, therefore, the question to treat him as a workman did not arise.

4. The Labour Court, after considering the entire evidence on record and the depositions made by the parties orally came to the conclusion that the respondent-workman was an apprentice and he entered into an agreement (Annexure 1) but the Corporation was not within its competence to extend the period of training and the contract came to an end on November 24, 1988 and subsequent to it, the respondent would be deemed to have been an employee/workman of the Corporation as there was no fresh contract between the parties regarding the apprenticeship and termination of his services, had been in contravention of the mandatory provisions of Sections 25G and 25H of the I.D. Act and Rule 77 of the Industrial Disputes (Central) Rules, 1958 and his termination cannot be treated as retrenchment within the purview of the provisions of Section 2(oo) of the I.D. Act for the reason that respondent-workman did not complete 240 days from November 25, 1988 to March 2, 1989 and as his services had been terminated in contravention of the statutory provisions of Section 25G, the termination order was bad and the order dated March 2, 1989 was set aside and it was directed that respondent-workman shall be treated to be in continuous service and shall be entitled for full back wages.

5. Heard Mr. Saneet Lodha, learned counsel for the petitioner and Mr. S.N. Trivedi, learned counsel for the respondent-workman.

6. In fact, the Labour Court proceeded with the presumption that under the contract of apprentice, contained in Annexure 1 to the petition, the Corporation had no power to extend the period of training as is evident from para 7 of The Award. The Corporation had placed all the relevant documents before the Labour Court explaining the reason why his period of training was extended, but the Labour Court failed to take notice of Clause (2) of the said agreement which provided that in the event of apprentice being unable to complete the full apprenticeship course within the said period or to make the final test owing to illness or other circumstances beyond his control, the employer shall have power to extend the period of his apprenticeship training until the next test is held. It is evident from the letter dated January 11, 1988, contained in Annexure 3, that the respondent-workman was relieved on that date to join Related Instructions

(R.I) Training. It is further evident from the letter dated April 29, 1988, contained in Annexure 4, that he was directed to attend R.I. Training in Jaipur. Again vide letter dated December 29, 1988, contained in Annexure 5 to the petition, he was directed to take the Related Instruction Training in Kota. Thus, it is clear that the period of training was extended from time to time in the interest of respondent-apprentice so that he could complete the training. Respondent-apprentice did not join in Kota in response to the letter dated January 11, 1988 and failed to join at Jaipur in response to the letter dated April 29, 1988. Thus, the Corporation cannot be held responsible if his training period was extended from time to time. The findings recorded by the Labour Court are on the presumption that the period of training came to an end on November 24, 1988 and beyond it there was no power of extension as is evident from para 10 of the impugned Award. The Labour Court has taken note of the submissions of the Corporation that his training period was extended from time to time to enable him to complete the R.I. Training but he did not join but took an erroneous view that the period of training came to an end on November 24, 1988 and without having a fresh contract of apprenticeship, the period could not have been extended. This finding is perverse as there was no need to have a fresh contract for the original agreement dated November 25, 1987 (Annexure 1) provided for the provision for extension of the training period. This has categorically been consistently held by this Court that the period of training/apprenticeship cannot be treated as an employment, (vide Uttar Pradesh State Road Transport Corporation and another Vs. Uttar Pradesh Parivahan Nigam Shishukhs Berozgar Sangh and others, Hanuman Prasad Choudhary v. R.S.E.B., Jaipur 1985 RLR 842 and J.K. Synthetics Ltd. v. State of Rajasthan and Ors. RLW1992 (1) 691 and Uttama Ram Bhargava v. R.S.R.T.C. and Anr. RLW1992 (2) 154. Thus, the findings recorded by the Labour Court that respondent was a workman after one year training of apprentice is not tenable and is liable to be set aside.

7. Even if he is treated as workman after November 25, 1988, the finding recorded by the Labour Court that his retrenchment was bad being violative of provisions of Section 25G of the I.D. Act cannot be upheld. In Malkhan Singh v. Union of India 1981 II LLJ 174 (Delhi), the Hon"ble Supreme Court has observed that where it is admitted or shown from the evidence on record that many persons engaged after the applicant-workman were retained in employment and no reasons were disclosed for departing from the principle enshrined in Section 25G of the I.D. Act, only then there may be a case of violation of provisions of Section 25G and such a violation may render the termination/retrenchment invalid. In the instant case, no particulars were furnished as to who were the persons who had been appointed subsequent to respondent-workman and retained in service.

8. Mr. S.N. Trivedi, learned counsel for the respondent-workman was confronted with the fact-situation and was asked to point out from the Statement of Claim filed by the workman, which is contained in Annexure 8 to this petition, as where the workman had laid the factual foundation to meet the requirement of the

provisions of Sections 25G of the I.D. Act and Rule 77 of the Rules, 1958, and that too on the allegation that he had never entered into the agreement for apprenticeship. Without laying factual foundation and without mentioning the name of a single person, who had joined the service after him and had been retained, such finding could not have been recorded. Mere allegation in vague terms is not sufficient. Mandate of law requires that a party which makes allegation, has to plead and prove his averments by adducing sufficient evidence to substantiate (vide *Bharat Singh and Others Vs. State of Haryana and Others*,

9. In the instant case, respondent-workman did not even whisper as to how the provisions have been violated. The Labour Court has held against the petitioner-Corporation without any evidence. It has not recorded any finding as under what circumstances there had been a violation of the provisions of Section 25G of the I.D. Act and who was the person who had been employed subsequent to the respondent-workman and had been retained in service. The Tribunal ought to have given a finding of fact on the basis of the evidence before it. As the workman himself did not whisper as to how the provisions of this Section have been violated, the finding recorded by the Labour Court is not tenable. In fact it is a case based on no evidence. In *Folk Stone Corporation v. Brokman* 1914 AC 338, it has been observed as under:

"An order made without any evidence to support it, is in truth made without jurisdiction and is, therefore, invalid at law."

10. The finding recorded by the Labour Court is not based on any evidence and hence cannot be upheld and is patently illegal.

11. Thus, in view of the above, petition succeeds and is accordingly allowed. The Award dated February 4, 1995 (Annexure 9) is set aside. In the facts and circumstances of the case, the parties shall bear their own costs.