

(1998) 04 PAT CK 0029

In the Patna High Court

Case No : C.W.J.C. No. 40, 41 and 44 of 1991

Ram Dular Paswan and Others

APPELLANT

Vs

P.O., Labour Court and Others

RESPONDENT

Date of Decision : 02-04-1998

Acts Referred:

Industrial Disputes Act, 1947 — Section 2, 33A

Citation : (1998) 3 BLJR 1587 : (1999) 1 LLJ 451 : (1999) 1 PLJR 534

Hon'ble Judges : R.A. Sharma, J;A.K. Prasad, J

Bench : Division Bench

Advocate : T.K. Das and S.N. Das, for the Appellant; M.M. Banerjee and S.K. Laik, for the Respondent

Judgement

R.A. Sharma, J.—The petitioners in these writ applications filed complaints u/s 33A of the Industrial Disputes Act, 1947 (hereinafter referred to as the I.D.Act) before the Labour Court. Bokaro Steel City, with the allegation that they have been removed from service by their employer, namely, M/s. Hindustan Malleables and Forgings Ltd., Dhanbad (Respondent No. 2) during the pendency of an industrial dispute, being Reference Case No. 7/85, illegally without complying with the provisions of law. The Labour Court has rejected the said complaints on the ground that the petitioners are not the workmen, but are merely apprentices to whom the I.D.Act is not applicable. Being aggrieved by the said order of the Labour Court, the petitioners have filed these writ applications.

2. We have heard Mr.T.K.Das, learned Counsel for the petitioners, and Mr.M.M. Banerjee, learned Counsel for the respondents.

3. Section 2(s) of the I.D.Act defines "workman" as follows:-

"2(s) "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 purposes 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, or the Army Act, 1950, or the Navy Act, 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 annum or exercise, 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."

4. The apprentice is expressly included in the definition of workman. According to the said definition every person, including an apprentice employed in an industry to do the kind of works mentioned therein is a workman. In *H.R. Adyanthaya Vs. Sandoz (India) Ltd., etc. etc.*, the Supreme Court while considering the definition of workman as contained in Section 2(s) of the I.D.Act has laid down as under:

"..... Hence, the position in law as it obtains today is that a person to be a workman under the I.D.Act must be employed to do the work of any of the categories, viz., manual, unskilled, skilled, technical, operational, clerical or supervisory."

5. Every person or every apprentice working in an industry cannot be a workman. It is the type of work a person performs and the nature of duties, which he discharges, which is the determining factor in order to find out as to whether he is or is not a workman. The same test will apply to an apprentice also. If he is performing the type of work mentioned in Section 2(s) of the I.D.Act, he is a workman to whom the said Act will apply.

6. Section 2(aa) of the Apprentice Act, 1961, defines the "apprentice" as under:-

"2(aa) "apprentice" means a person who is undergoing apprenticeship training in pursuance of a contract of apprenticeship."

Section 3 of the said Act has laid down the eligibility qualifications for being engaged as an apprentice. Section 4 states that no person shall be engaged as an apprentice to undergo apprenticeship training in a designated trade unless he has entered into a contract of apprenticeship. Sub-sections (4) and (5) of the said Section require the apprenticeship contract to be registered. Section 6 deals with the period of apprenticeship training and Section 7 provides for termination of apprenticeship contract. Section 18 of the said Act, which has laid down that apprentices are trainees and not workers, being relevant is reproduced below:-

"18. Apprentices are trainee 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."

According to the above provisions an apprentice is a trainee and not a worker and the provisions of the I.D. Act shall not apply to him.

7. There is no conflict between the provisions of the two Acts. The purposes and objects of two Acts are different and they operate in different fields. The Apprentice Act has been enacted in order to regulate and control the training of apprentices and to provide for matters connected therewith. As regard the scope of the Apprentice Act and the nature of job of the apprentices, the Supreme Court in *The Employees' State Insurance Corporation and Another Vs. The Tata Engineering and Locomotive Co. Ltd. and Another*, has observed thus:-

"The object of 1961 Act is to provide for the regulation and control of training of apprentices in trades and for matters connected therewith. By the definition clause under this Act, namely, Section 2(a) "apprentice" means a person who is undergoing apprenticeship training in a designated trade in pursuance of a contract of apprenticeship". It is, therefore, inherent in the word "apprentice" that there is no element of employment as such in a trade or industry but only on adequate well-guarded provision for training to enable the trainee after completion of his course to be suitably absorbed in earning employment as a regular worker. The fact that a trainee may have been absorbed in the company where he is undergoing the training, is not relevant for the purpose of comprehending the content of the term."

8. On the other hand the object of the I.D. Act is the investigation and settlement of industrial disputes between the employer and the workmen. In *L.I.C. of India v. D.J. Bahadur and Ors.* 1981 I LLJ 1), the Supreme Court as regard the aim and objective of the I.D. Act has observed as under at P. 13:-

"Be that as it may, a bird's eye view of the I.D. Act reveals the statutory structure and legal engineering centering round dispute settlement in industries according to the rule of law and away from fight with fists or economic blackmail..... The soul of the statute is not contract of employment, uniformity of service conditions or recruitment Rules, but conscionable negotiations, conciliations and adjudications of disputes and differences animated by industrial justice, to avoid a collision which may spell chaos and imperil national effort at increasing the tempo of production."

9. The apprentices are mere trainees who are given training in specified trade. They are not employees of the person, who has engaged them. So long as they act as trainees they will be governed by the Apprentice Act and the I.D. Act

cannot be applied to them. But if an apprentice does "any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward", he will be a workman to whom I.D. Act will apply and, therefore, will not be governed by the Apprentice Act, even if he was enrolled as an apprentice trainee. It is not the label a person has, but the type of work which he does, which is relevant criteria for determining as to whether he is or is not a workman.

10. The submission of the learned Counsel for the respondents to the effect that the Apprentice Act being the special later law as regards apprentices, will prevail over the earlier I.D.Act, which is a general law, cannot be accepted for two reasons, namely, (i) such a question can arise only when there is a conflict between the two enactments. As mentioned hereinbefore there is no conflict between these two Acts. They have different objectives to achieve and operate in different areas; and (ii) I.D.Act is the special law as regard settlement of industrial disputes and it will prevail over other Acts in this regard. In this connection reference may be made to *L.I.C. of India v. D.J.Bahadur and Ors.*, (Supra), wherein the Supreme Court has laid down as follows atp.23:-

".... The I.D.Act is a special statute devoted wholly to investigation and settlement of industrial disputes which provides definitionally for the nature of industrial disputes coming within its ambit. It creates, an infra-structure for investigation into, solution of and adjudication upon industrial disputes. It also provides the necessary machinery for enforcement of awards and settlements. From alpha to omega the I.D.Act has one special mission-the resolution of industrial disputes through specialised agencies according to specialised procedures and with special reference to the weaker categories of employees coming within the definition of workmen. Therefore, with reference to industrial disputes between employers and workmen, the I.D.Act is a special statute".

The Apprentice Act does not deal with the investigation and settlement of industrial disputes between the employer and the workmen. Therefore, so far as the settlement of the industrial disputes is concerned, the I.D.Act will prevail over the Apprentice Act. If the employer takes the kind of work mentioned in Section 2(s) of the I.D.Act from the apprentice, the dispute between them has to be settled under and in accordance with the said Act. But if the apprentice does not perform such work, the I.D.Act will not apply to him. The line of demarcation between the apprentice and the workman is very clear. If and when a question as to whether an apprentice is really an apprentice or is a workman wearing the mask of an apprentice, is raised, the appropriate authority/ Labour Court will have to apply mind to the nature of his work. The veil has to be lifted in order to find out the reality. But such a question cannot be decided merely on the basis of apprenticeship contract or on the basis of the label, which a person wears.

11. When the Parliament has expressly included apprentice within the definition of the "workman" as is contained in Section 2(s) of the I.D.Act, it is not open to deny the benefit of the said Act to him, if he satisfies the requirements laid down therein. In *Employees' State Insurance Corporation and Anr. v. The Tata*

Engineering & Locomotive Co. Ltd, and Anr., (Supra), the Supreme Court, while holding that an apprentice is not an "employee" under the Employees' State Insurance Act, 1948, has expressly referred to the definition of "workman" as contained in Section 2(s) of the I.D.Act in order to highlight that an apprentice cannot be an employee unless he has been expressly included in the definition of the word "employees". In this connection the Supreme Court has observed as under at p. 85:-

"Again we find that where the legislature intends to include apprentice in the definition of a worker it has expressly done so. For example, the Industrial Disputes Act, 1947, which is a piece of beneficial labour welfare legislation of considerable amplitude defines "workman" u/s 2(s) of that Act and includes apprentice in express terms. It is significant that although the legislature was aware of this definition u/s 2(s) under the Industrial Disputes Act, 1947, the very following year while passing the Employees' State Insurance Act, 1948, it did not choose to include apprentice while defining the word "employee" u/s 2(9) of the Employees' State Insurance Act, 1948. Such a deliberate omission on the part of the legislature can be only attributed to the well known concept of apprenticeship which the legislature assumed and took note of for the purpose of the Act. This is not to say that if the legislature intended it could not have enlarged the definition of the word "employee" even to include the "apprentice" but the legislature did not choose to do so.

12. In the instant case, the Labour Court dismissed the complaints of the petitioners on the ground that they are apprentices and while holding so, heavy reliance has been placed on the apprenticeship contracts and Section 18 of the Apprentice Act. The case set up by the petitioners before the Labour Court was that they were permanent workmen and the apprenticeship contracts are nothing but paper transaction and a device to deprive them of the benefit of the I.D.Act. It was, therefore, obligatory on the part of the Labour Court to find out the type of work done by the petitioners and record a finding in connection therewith. But it failed to do so. The impugned order, therefore, cannot be sustained.

13. That apart it appears that the apprenticeship contracts on which reliance has been placed by the Labour Court were de hors the Apprentice Act. In paragraph Nos. 10 and 12 of the impugned order the Labour Court has mentioned the following facts:-

- (i) Although the eligibility/minimum qualification for an apprentice is 8th class pass, but in the instant case many of the petitioners are illiterates
- (ii) the maximum period of the Apprenticeship Contract can be three years only, but the contracts in question are for five years and in some cases even the period of apprenticeship have gone beyond five years; and
- (iii) the Apprenticeship Contracts were not registered.

In spite of the above position the Labour Court did not declare the apprenticeship

contracts as bad on the ground that the parties to the contracts did not approach the Apprenticeship Adviser for their cancellation. Such a view of the Labour Court cannot be sustained for the following reasons:-

Sub-sections (1) to (5) of Section 4 of the Apprentice Act being relevant in this connection are reproduced below:-

"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 inconsistent 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 to the designated trade specified in the contract."

Section 7 of the said Act deals with the termination of apprenticeship contract, which is also reproduced below:

"7. Termination of apprenticeship contracts-

(1) The contract of apprenticeship shall terminate on the expiry of the period of apprenticeship training.

(2) Either party to a contract of apprenticeship may make an application to the Apprenticeship Adviser for the termination of the contract, and when such application is made shall send by post a copy thereof to the other party to the contract.

(3) After considering the contents of the application and the objection, if any, filed by the other party, the Apprenticeship Adviser may, by order in writing, terminate the contract if he is satisfied that the parties to the contract or any of them have or has failed to carry out the terms and conditions of the contract and that it is desirable in the interests of the parties or any of them to terminate the same.

Provided that where a contract is terminated-

(a) for failure on the part of the employer to carry out the terms and conditions of the contract, the employer shall pay to the apprentice such compensation as may be prescribed:

(b) for such failure on the part of the apprentice, the apprentice or his guardian shall refund to the employer as cost of training such amount as may be determined by the Apprenticeship Adviser."

14. Section 4(4) of the Apprentice Act casts a duty on the employer to send the apprenticeship contract to the Apprenticeship Adviser for registration. There is nothing on the record to indicate as to why the apprenticeship contracts executed between the employer and the petitioners were not sent by the former to the Apprenticeship Adviser for registration. It is admitted that the said contracts were not registered. They were also not capable of being registered. In view of the provisions contained in Sub-section (5) of Section 4 of the Apprentices Act, apprenticeship contract can be registered by the Apprenticeship Adviser only when he is satisfied that a person described as an apprentice in the contract is qualified for being engaged as an apprentice to undergo apprenticeship training. As some of the petitioners were not even eligible or qualified for being engaged as apprentice, the contracts could not have been registered. The said contracts were, therefore, neither registered nor were capable of being registered. If the contracts have not been registered by the Apprenticeship Adviser, the question of their cancellation by him does not arise.

15. That apart, in view of the provisions of Section 7(3) of the Apprentices Act the Apprenticeship Adviser can terminate the Contract only if he is satisfied "that the parties to the contract or any of them have or has failed to carry out the terms and conditions of the contract and that it is desirable in the interests of the parties or any of them to terminate the same." In the instant case that is not the position. Here, the Labour Court has refused to take into consideration the infirmities and illegalities in the apprenticeship contracts on the ground that the petitioners did not approach the Apprenticeship Adviser for the cancellation of their contracts. The Labour Court was, therefore, wholly wrong in not considering the various infirmities in the apprenticeship contract and their effects,

16. For the reasons given above, these writ applications are allowed. The impugned Award/Order dated August 30, 1989 passed by the Labour Court is quashed and the Labour Court is directed to consider the matter afresh in accordance with law, after giving reasonable opportunity of being heard to the concerned parties.

17. As the dispute has now become quite old on account of pendency of the writ applications, it is necessary that the Labour Court should decide the matter within a period of three months from the date of production of the certified copy of this judgment. Both the parties, who are being represented in this Court through their respective counsel, are directed to appear before the Labour Court

within four weeks of the date of this judgment, so as to enable it to fix a date and proceed with the matter and decide it afresh in accordance with law within the time specified above. No cost.

A.K. Prasad, J.

I agree.