

(2015) 03 GUJ CK 0074

In the Gujarat High Court

Case No : Special Civil Application No. 12316 of 2007

Rameshbhai Maganbhai Chauhan

APPELLANT

Vs

Electrotharm Machine Pvt. Ltd.

RESPONDENT

Date of Decision : 04-03-2015

Acts Referred:

Apprentices Act, 1961 — Section 18

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

Citation : (2015) 145 FLR 900 : (2015) 4 LLN 389 : (2015) LLR 846

Hon'ble Judges : R.P. Dholaria, J

Bench : Single Bench

Advocate : Prabhakar Upadyay, for the Appellant; Kishor M. Paul, Advocates for the Respondent

Final Decision : Dismissed

Judgement

R.P. Dholaria, J.—This petition has been filed by the petitioner challenging the impugned award passed by the Labour Court, Ahmedabad, on 30.9.2006 in Reference (LCA) No. 679 of 1993 whereby the reference was rejected. The facts of the case are the petitioner was appointed as helper Mechanical on 22.5.1990 with the respondent. He was terminated from service with effect from 1.8.1992. The petitioner, therefore, lodged complaint before the Conciliation Officer, Ahmedabad, under the provisions of the Industrial Disputes Act, 1947. Since the dispute could not be resolved, the same was referred to the Labour Court for adjudication. The petitioner submitted statement of claim and filed documentary evidences in support of his claim. The respondent submitted their written statement before the Labour Court. The Labour Court, after considering the evidence on record and hearing both the parties, rejected the Reference which is under challenge before this Court.

2. Learned advocate Mr. Prabhakar Upadyay appearing for the petitioner has vehemently argued that initially the workman was appointed as Helper Mechanic with the respondent on 22.5.1990 and thereafter, illegally and wrongfully a form

as apprentice was taken from the present petitioner after completion of one year service. He has further argued that the workman was terminated from his service from 1.8.1992 without following due procedure of law as contemplated under the provisions of the Industrial Disputes Act. He has further submitted that even though the petitioner was appointed as Helper Mechanic, no documentary evidence in the nature of identity card, pay slip or any other evidence could be produced so that he could show that he was in employment with the respondent and therefore the workman is not able to prove his case. On the contrary, his services are attributed in the nature of apprenticeship by the respondent and in such cases the Labour Court is required to appreciate the evidence minutely considering his lower footing. In that view of the matter, the impugned award passed by the Labour Court is required to be interfered with.

3. Against the aforesaid arguments, learned advocate Mr. Paul appearing for the respondent has argued that the present petitioner was never employed as workman who comes within the definition of workman under the provisions of the Industrial Disputes Act, 1947. On the contrary, he was employed for a period of one year commencing from 1.8.1991 as apprentice and therefore provisions of Industrial Disputes Act are not applicable to the facts of the present case in view of the evidence on record. In support of his contention, he has placed reliance on the decision of the 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 , particularly, paragraph Nos. 2, 17, 18 and 19 which are reproduced below:

"2. The short point for decision in these appeals is whether in view of section 18 of the Apprentices Act, 1961 (hereinafter called "the 1961 Act") the First Additional Labour Court, Chennai, was justified in holding that the respondent who had been appointed as an apprentice by the appellant herein was a "workman" within the meaning of section 2(s) of the Industrial Disputes Act, 1947, (hereinafter referred to as "the 1947 Act"). The said question also gives rise to the issue as to whether the Labour Court was right in holding that the termination of the respondent's apprenticeship was in violation of section 25-F of the 1947 Act and consequently, whether he was entitled to reinstatement with continuity in service and all back wages and other concessions accruing to him.

17. Section 2(s) of the 1947 Act defines "workman" in the following terms:

"2(2) "workman" means any person (including a 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".

18. From the above, it will be seen that a "workman" includes an "apprentice". However, section 18 of the 1961 Act defines that apprentices are trainees and not workers in the following terms:

"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;

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

19. From the above, it will be seen that on the one hand while an apprentice is also treated to be a workman for the purposes of the 1947 Act, by virtue of section 18 of the 1961 Act, it has been categorically provided that apprentices are not workers and the provisions of any law with respect to labour shall not apply to or in relation to such apprentice."

4. In light of the aforesaid arguments and on going through the impugned award passed by the Labour Court as well as the evidence on record, it is clearly suggestive that in spite of the present petitioner has put up a case that he was working as Helper Mechanical with the respondent since 22.5.1990 till his form of apprenticeship was obtained from him on 1.8.1991, he has not produced an iota of evidence indicating that he was employed before 1.8.1991 with the respondent. Not only that, in spite of that he has raised industrial dispute before the Labour Court, he has not tried to even produce an iota of evidence from the custody of respondent as he has alleged that he was working with the respondent employer. On the contrary, from his own evidence, a contradictory story is revealing that since 1991 he was working and he met with an accident on 19.1.1991 and thereafter, he was unable to resume his duty for about one and half year. Still, however, he has tried to produce a gate pass dated 23.5.1991, the date on which he was hospitalized and he was undergoing treatment. In view of the aforesaid evidence on record, the Labour Court has rightly come to the finding that the workman failed to establish any sort of his employment prior to 1.8.1991 with the respondent. This Court is also taken

through the oral evidence as well as other material available on record by learned advocate Mr. Paul. Nowhere this Court has noticed that any iota of evidence is available with regard to his employment prior to 1.8.1991 with the respondent employer. In absence of any evidence his employment as Helper Mechanical with the respondent employer may not be considered. The evidence on the record clearly establishes that the present petitioner was appointed as apprentice for a period of one year and on completion of the period of one year, his services came to be terminated. In view of the provision of the Apprentices Act as well as the aforesaid judgement of Hon"ble Apex Court in the case of National Small Industries Corporation Ltd. (supra), on completion of service for a period of one year, by virtue of contractual tenure, the apprenticeship of the petitioner has expired and therefore his services came to an end. Therefore, provisions of section 25F of the Industrial Disputes Act do not attract to the case of the petitioner. The Labour Court has rightly rejected the reference of the petitioner. There is no reason to interfere with the award of the Labour Court. The petition is devoid of any merit and is dismissed. Rule is discharged. No order as to costs.