
(1994) 05 DEL CK 0058

In the Delhi High Court

Case No : Civil Writ Petition No. 1271 of 1992

Sanjay Kumar and Another

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 07-05-1994

Acts Referred:

Citation : (1994) 54 DLT 403

Hon'ble Judges : R.C. Lahoti, J;Arun Kumar, J

Bench : Division Bench

Judgement

Lahoti, J.—This common judgment shall govern the disposal of Civil Writ Petitions Nos. 1271 of 1992, 2659 of 1992, all the three raising common questions of law in the background of common set of facts and the three petitions having been heard analogously.

2. On 9 January 1990, the petitioners were appointed as apprentices for the term of two years by the respondents. Vide order, dated 6 January, 1992, the apprenticeship training period of the petitioners was extended up to 30th January. 1992. The performance of the petitioners as apprentices was satisfactory. From 1 October 1991, certain posts of Junior Scientific Assistants in the employment of respondents were all called for interview on 21 October 1991. One of the terms of the letter of appointment, dated 9 January 1990, appointing the petitioners as apprentice scientists was :

"5. You are required to sign the enclosed bond to reimburse to this Board the expenditure incurred or a sum of Rs. 30,000 whichever is higher, in case of a default from your side as detailed in the enclosed bond form by the Board during your training in the Board."

3. The letter was accompanied by a proforma of surety bond, which the petitioners were required to fill in and which they did fill in. Term 3 of the surety bond reads as under :-

"3. That the employee shall be bound to join the post if any offered by the employer to the employee after successful completion of the period of apprenticeship of two years."

4. On 4 February, 1992, respondent 2 issued an office memorandum whereby Cl. 5 of the appointment letter with regard to surety bond condition was directed to be deleted pursuant to some office order of the Board, dated 19 September 1991. This change in the terms of appointment letter was done without the consent of the petitioners.

5. The respondents thereafter did not appoint the petitioners as Junior Scientific Assistants and instead terminated their apprenticeship. The petitioners having approached this Court at a point of time when the respondents were going to make other appointments on the posts of Junior Scientific Assistants, this Court protected them by issuing an interim direction that any appointment to the post of junior Scientific Assistant made by the respondents shall be subject to further orders of this Court.

6. The case of the petitioners is that they are governed by the provisions of the Apprentices Act, 1961, and in accordance with S. 22(2) thereof, the respondents were bound to offer suitable employment to the petitioners and the petitioner's apprenticeship could not have been terminated so abruptly.

7. The defense of the respondents is that the Apprentices Act, 1961 does not apply to them and moreover Cl. 5 of the appointment letter having been deleted, the petitioners were not entitled to avail the benefit of S. 22(2) of the Act.

8. The learned counsel for the petitioners has placed implicit reliance on the law laid down by the Supreme Court in *Narender Kumar and Ors. v. State of Punjab* 1985 1 CLR 121 and our opinion rightly so.

9. Looking to the terms of appointment of the petitioners, it cannot be denied that they were "Apprentices", appointed by the respondents to undergo "apprenticeship training", as defined under Cls. (aa) and (aaa) of S. 2 of the Act. Section 22 of the Act provides as under :

"22. Offer and acceptance of employment. -

(1) It shall not be obligatory on the part of the employer to offer any employment to any apprentice who has completed the period of his apprenticeship training in his establishment not shall it be obligatory on the part of the apprentice to accept an employment under the employer.

(2) Notwithstanding anything in Sub-sec. (1) where there is a condition in a contract of apprenticeship that the apprentice shall after the successful completion of the apprenticeship training, serve the employer, the employer shall, on completion, be bound to offer suitable employment to the apprentice and the apprentice shall be bound to serve the employer in that capacity for such period and on such remuneration as may be specified in the contract :

Provided that where such period of remuneration is not, in the opinion of the Apprenticeship Adviser, reasonable, he may revise such period of remuneration so as to make it reasonable and the period of remuneration so revised shall be deemed to be the period of remuneration agreed to between the apprentice and the employer."

10. The above said provision came for the consideration of their Lordships of the Supreme Court in Narender Kumar case 1985 1 CLR 121 (vide supra). Referring to Sub-sec (2) of S. 22, their Lordships observed, in Para 4, page 247 :

"This sub-section leaves no doubt that despite the provision contained in Sub-sec. (1), the employer is under an obligation to offer suitable employment to the apprentice if the contract of the apprenticeship contains a condition that the apprentice shall serve the employer after the successful completion of the training. Indeed, when such an offer is made, the apprentice on his part is bound to serve the employer in the capacity in which he was working as an

11. The petitioners accepted the appointment as apprentices in terms of appointment letter, dated 9th January 1990. They were required to sign and submit the bond in the proforma accompanying the appointment letter. The term 3 of the bond clearly contemplated that the petitioners had no choice to deny the employment offered by the employer. The terms clearly suggests, as was the case before their Lordships in Narender Kumar case 1985 1 CLR 121 (vide supra), that on successful completion of the period of apprenticeship of two years, the respondents were to offer employment to the petitioners and the petitioners were bound to join. The surety bond created reciprocal obligations. The terms could not have been withdrawn ex parte by the respondents. The petitioners had successfully completed the period of probation. The very fact that the respondent had initiated the process of appointment of Junior Scientific Assistants and had also called the petitioner for interview, clearly suggests that the vacancies were also available with the respondents where against the petitioners could have been appointed. The respondent cannot be permitted to wriggle out of their obligation contemplated by S. 22(2) of the Act.

12. Though the respondents have contended that the Apprentice Act, 1961, is not applicable to them, but they have not been able to substantiate their plea. There is an establishment and they are an employer. They are appointing apprentices undergoing apprenticeship training. Nothing has been pointed out to exclude the applicability of the Act to them.

13. We may deal with and dispose of preliminary objection raised on behalf of the respondents to the maintainability of the petitions. It is submitted that S. 20 of the Act provides as alternate efficacious remedy to the petitioners which having not been availed, the petitioners would not lie. Section 20 of the Act read as under :

"20. Settlement of dispute - (1) Any disagreement or dispute between an employer and an apprentice arising out of the contract of apprenticeship shall be

referred to the Apprenticeship Adviser for decision.

(2) Any person aggrieved by the decision of the Apprenticeship Adviser under sub-sec (1) may, within thirty days from the date of communication to him of such decision, prefer an appeal against the decision to the Apprenticeship Council and such appeal shall be heard and determined by a committee of that Council appointed for the purpose.

(3) The decision of the committee under S. (2) and subject only to such decision, the decision of the Apprenticeship Adviser under S. (1) shall be final."

14. To attract the applicability of S. 20 there must be disagreement or dispute arising out of the contract of Apprenticeship.

15. In the case before us the very existence of contract of apprenticeship is in dispute in view of the terms there of having been altered by the respondent. The plea under S. 20 aforesaid does not lie in the mouth of the respondents in view of their stand that benefit of the Act was not available to the petitioners. What petitioners are agitating is not any disagreement or dispute "arising out of the contract of Apprenticeship. " They are seeking enforcement of the statutory obligation of the employer arising under S. 22 of the Act. The plea of availability of alternate efficacious remedy, Therefore fails. For the foregoing reasons, all the three petitions are allowed respondents are directed to appoint the petitioners in all the three cases as Junior Scientific Assistants within a period of two months from today.