

(2005) 10 BOM CK 0040

In the Bombay High Court

Case No : Writ Petition No. 1277 of 1994

Superintending Engineer and Another

APPELLANT

Vs

Dattatraya Mahadeo Badarkhe and Others

RESPONDENT

Date of Decision : 13-10-2005

Acts Referred:

Apprentices Act, 1961 — Section 18
Constitution of India, 1950 — Article 226, 227
Industrial Disputes (Central) Rules, 1957 — Rule 81
Industrial Disputes Act, 1947 — Section 25(N), 25B, 2S

Citation : (2006) 2 ALLMR 193 : (2006) 2 MhLj 349

Hon'ble Judges : B.P. Dharmadhikari, J

Bench : Single Bench

Advocate : R.E. Moharir, for the Appellant; Loney, AGP for Respondent Nos. 4 and 5, for the Respondent

Final Decision : Allowed

Judgement

B.P. Dharmadhikari, J.—By this Writ Petition under Articles 226 and 227 of the Constitution of India, the petitioner Nos, 1 and 2 who are officers of the erstwhile Maharashtra State Electricity Board, are challenging the order dated 22-12-1993, passed by the Industrial Court, in Revision ULP No. 2/1987, challenging the order dt. 30-10-1986 passed by the Labour Court in ULPA Complaint Case No. 31/1985. This order dated 30-10-1986 of Labour Court is in favour of the petitioners.

2. The respondent Nos. 1 to 3 filed ULPA Complaint No. 31/1985 before Labour Court, challenging their termination from service orally on date 5-3-1985. Their contention was that they were appointed as Apprentice by order dt. 15-5-1980 and they were provided work on Nominal Muster Roll (NMR) on temporary establishment as skilled worker by order dated 8-4-1982. They relied upon the agreement between the Union of Employees and Management, which provided that NMR workers who have worked for 5 years should be regularized as and when vacancies arose. Their contention that there was no compliance of

provisions of section 25(N) of the Industrial Disputes Act, and also of Rule 81 of the Industrial Disputes Central Rules. The petitioner employer disputed this and contended that the provisions of law have been complied with. The Labour Court dismissed the complaint observing that there was no unfair labour practice. The respondent Nos. 1 to 3 approached Industrial Court, by filing Revision u/s 44 of the MRTU and PULP Act. The Industrial Court found that the retrenchment compensation arrived at was not proper because the period of service of respondents No. 1 to 3 as apprentice was not taken into account while calculating it. Hence, the Industrial Court has partly allowed the revision and has directed the petitioners to pay compensation to these respondents in accordance with the provisions of section 25-N(b) of the Industrial Disputes Act, for the period from 15-5-1980 to 7-4-1982 with interest " 9% pa. since 5-3-1985 till the entire payment. The present petition has been admitted on 5-4-1987 and on 26-6-2002, this Court has granted interim relief in terms of prayer clause (iii). The said stay is operating even today.

3. I have heard Advocate R.E. Moharir, for petitioners and learned AGP Shri Loney, for respondent Nos. 4 and 5, nobody appears for respondent No. 1 to 3, though served.

4. Advocate Moharir contends that the findings of the Industrial Court about counting the period of apprentice training as service for the purpose of computation of retrenchment compensation is contrary to law. He invites attention to the provisions of section 18 of the Apprentice Act, 1961, for the said purpose. He further states that as the said ground was not raised by the respondent Nos. 1 to 3 in their pleadings before the Labour Court or before the Industrial Court, the petitioner did not get opportunity to point out the correct legal position in this respect. He further states that the Industrial Court has recorded a finding in the process of delivering the impugned order though no such arguments were advanced.

5. Section 18 of the Apprentice Act, states that except as otherwise provided in Apprentice Act, 1961, every Apprentice undergoing the Apprenticeship training in a designated trade in a establishment shall be a trainee and not workman. It further provides that the provisions of any law with respect of Labour shall not apply to or in relation to such apprentice. Advocate Moharir, has invited attention to the judgment of Rajasthan High Court reported in 1986 Lab.I.C. pg. 1014, Hanuman Prasad Choudhary v. Rajasthan State Electricity Board, He states that apprentice cannot be treated as workman u/s 2-S of the Industrial Disputes Act. In view of this defects according to him, the impugned direction of the Industrial Court is unsustainable and deserves to be quashed and set aside.

6. When the impugned order of the Industrial Court is looked into, it reveals that the Industrial Court has looked in to the provisions of section 25B of the Industrial Disputes Act, and thereafter has considered the provisions of section 25-N(b) thereof and has found that admittedly no compensation was paid to the revision applicants before it from 15-5-1980 to 7-4-1982. It has not considered

either the provisions of Apprentice Act, or the above mentioned law while arriving at the said finding. It is to be noted that provisions of section 2(s) of the Industrial Disputes Act, defines "Workman" as under :

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 (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.

7. From the definition of workman it is apparent that it includes any person employed to do the work of nature mentioned in the said definition for hire or reward. It also contemplates the term of employment either express or implied. The word "person" appearing in the - is clarified as also including a apprentice, thus the apprentice in order to be a workman should also be employed in Industry to do trade job work for hire or reward and there must be terms of his employment either express or implied. The impugned order of Industrial Court does not reveal any of these aspects and it is apparent that the learned Member of the Industrial Court has not considered these ingredients at all. In this background when provisions of section 18 of the Apprentice Act, are considered the said section clearly states that Apprentice undergoing apprentice training is not a worker and sub-clause (h) of section 18 further puts its beyond doubt by providing that any law with respect to Labour shall not apply to or in relation to such apprentice. It is thus clear that if the respondent Nos. 1 to 3 are undergoing training as apprentice under the provisions of the Apprentice Act, 1961 they cannot be treated as workers, in view of the provisions of section 18 of the Apprentice Act, 1961 or also in view of the provisions of section 2(s) of the Industrial Disputes Act. The provisions of section 18 of the Apprentice Act, read With section 2(s) of the Industrial Disputes Act, make it clear that the apprentice governed by the Apprentice Act is not and cannot be governed by the Industrial Disputes Act. It is well known that there is no contract of employment with such Apprentice and there is no remuneration paid to them and what is paid to such

apprentice is stipend, as determined under the Apprentice Act. In this background when the judgment reported in 1986 L/C 1014 (supra), is looked into the learned Single Judge of Rajasthan High Court has in paragraph Nos. 12 and 13 found that the Apprentice Act, 1961 does not cover all types of apprentices and it is only applicable to persons who undergo the apprentice training in pursuance of a contract of Apprentice Act, executed u/s 4 thereof. In this view of the matter, in para No. 13 it is clarified that, an apprentice who is governed by the provisions of Apprentices Act, would not be a workman u/s 2(s) of the Industrial Disputes Act and would not be governed by the provisions of the Industrial Disputes Act. Thus the apprentice who has contract of employment and is working for hire or reward and that training as apprentice is not governed by section 4 of the Apprentices Act, 1961 will also get the benefits of provisions of Industrial Disputes Act. This aspect is also apparent from the discussions in this respect, as contained in Tannery and Footwear Corporation of India Ltd. Vs. Labour Court and Others, ,

8. In this background, it is clear that the learned Member of Industrial Court, has not applied its mind to the relevant aspects of the matter. The order thus suffers from total non-application of mind and is unsustainable. The same is therefore, quashed and set aside. Rule is made absolute accordingly, with no order as to costs.