
(2014) 01 AHC CK 0078
In the Allahabad High Court
Case No : W.P. No. 636 (S/S) of 1991

Tarkeshwar Nath Rai

APPELLANT

Vs

Presiding Officer Labour Court and Another

RESPONDENT

Date of Decision : 29-01-2014

Acts Referred:

Apprentices Act, 1961 — Section 18, 18(b), 2(aa), 22, 4
Uttar Pradesh Industrial Disputes Act, 1947 — Section 2(z), 6-N

Citation : (2014) 141 FLR 397 : (2014) 1 LLJ 740

Hon'ble Judges : Narayan Shukla, J

Bench : Single Bench

Advocate : V.C. Verma, Advocate for the Appellant; Satyanshu Ojha for Respondent No. 2, Advocate for the Respondent

Judgement

Narayan Shukla, J.—Heard Mr. V.C. Verma, learned counsel for the petitioner as well as Mr. Satyanshu Ojha, learned counsel for respondent No. 2.

Through the instant writ petition the petitioner has assailed the award dated 19.7.1990, passed by the Labour Court, Lucknow in Adjudication Case No. 97/1986 and 107/1986. By means of these two awards the Labour Court has adjudicated the reference on retrenchment of services of two Apprentices, namely, Tarkeshwar Nath Rai (Petitioner) and Pramod Kumar Pandey.

By means of award impugned the Labour Court has held that there was no relationship of employer and employee between the petitioner and the U.P. State Food & Essential Commodities Corporation Ltd., opposite party No. 2, therefore, it refused to acknowledge the reference under the U.P. Industrial Disputes Act, 1947. The Labour Court further held that from the terms of their appointment it is obvious that they were engaged for apprenticeship for one year and after the period of one year was over, the training period had come to an end. They have also been issued training certificate, therefore, their stoppage of training further has been found valid. The Labour Court further held that since they were not allowed to work as workmen, no question arises for their retrenchment from

service.

2. Learned counsel for the petitioner further submits that the Apprentices Act, 1961 governs the terms and conditions of engagement of apprentices for their training. Section 4(1) of the Act provides that "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."

3. He further contended that the Labour Court in its judgment has observed that a contract was reduced into writing over which these apprentices signed also but no signature was made by the employer and further it was not sent to the apprenticeship adviser for registration" whereas sub-section (4) of Section 4 of the Act provides that "every contract of Apprenticeship Adviser entered into sub-section (1) shall be sent by the employer within such period as may be prescribed to the Apprenticeship Adviser for registration. Since the employer did not sign over the contract it cannot be said to be contract enforceable under the law. Therefore, these apprentices cannot be said to be engaged as apprentices under the Apprentices Act, 1961. On the other hand, the word "workmen" as defined u/s 2(z) of the U.P. Industrial Disputes Act, 1947 includes an apprentice. Thus, these apprentices being not covered under the Apprentices Act, 1961 are definitely covered under the definition of the "workmen." Therefore, the provisions of U.P. Industrial Disputes Act, 1947 shall apply in the matter of retrenchment. It is further stated that thus he was fully entitled to the protection of the provisions of Section 6-N of the Industrial Disputes Act, in the event of termination of his services but no provisions of Section 6-N of the Industrial Disputes Act have been complied with and the Labour Court has failed to appreciate the provisions of the Act. Hence order impugned deserves to be quashed.

4. In support of his submission he cited following decisions;

(1) Hanuman Prasad Choudhary and Others Vs. Rajasthan State Electricity Board and Others, .

The fact of this case is completely different to the case on hand, therefore, I am of the view that it would not be helpful to the petitioner.

However, on scrutiny of the Judgment, I find that Rajasthan High Court held that the provisions of Section 18 of the Apprentices Act will prevail over the provisions contained in section 2(S) of the Industrial Disputes Act relating to apprentices and an apprentice governed by the Apprentices Act cannot be regarded as a workman u/s 2(S) of the Industrial Disputes Act. The provisions of Section 2(S) of the Industrial Disputes Act are analogous to the provisions of Section 2(Z) of the U.P. Industrial Disputes Act.

(2) Karuna Shankar Tripathi Vs. State of U.P. and Others,

5. In this case this Court held that an apprentice, who is not appointed in

accordance with the provisions of Apprentices Act, 1961 comes within the ambit of definition of "workmen" as is defined u/s 2(Z) of the U.P. Industrial Disputes Act, 1947. He further cited a decision of this Court i.e., Smt. Subhadra v. District Co-operative Bank Ltd. and Others 1989 (5) All. H.C.L.B. 232, in support of his submission, in which it has been held that the service of daily wagers being workmen cannot be terminated without following the procedure for retrenchment provided under the Industrial Disputes Act, 1947.

6. Per contra the learned counsel for opposite party No. 2 without disputing the fact that there was no signature of employer over the contract, submitted that the fact remains that there was a contract reduced into writing over which the apprentices signed, knowing well that he was being appointed as apprentice. Therefore, their status of apprentices cannot be changed only for want of signature of the employer. He further stated that the petitioner was appointed as apprentice under the Apprentices Act, 1961 for a fixed of one year vide order dated 13th June, 1983. He was allowed to get Rs. 230/- per month stipend in the training period.

7. The petitioner also joined the training programme being fully aware that he was appointed as an apprentice. He also drew the attention of this Court towards Sections 18 and 22 of the Apprentices Act.

8. Section 18 provides that every apprentice undergoing apprenticeship training in a designated trade in an establishment shall be a trainee and not a worker and the provisions of any law with respect to labour shall not apply to or in relation to such apprentice.

9. Section 22 provides that 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 nor shall it be obligatory on the part of the apprentice to accept an employment under the employer.

10. It is admitted case of the petitioner that he moved an application for appointment as an apprentice before the Apprenticeship Adviser and requested as such to send his name to the Corporation.

11. In support of his submission he cited following decisions,

(1) U.P. State Electricity Board Vs. Shri Shiv Mohan Singh and Another, , in this case Hon"ble Supreme Court considered the following question;

Whether non-registration of the contract can render the contract void or illegal and what is the result thereof?

In this case Hon"ble Supreme Court propounded that simply because the contract has not been registered with the Apprenticeship Adviser that will not change the nature and character of the apprentices.

Hon"ble Supreme Court further held that once an incumbent is appointed as an apprentice, he will continue to be an apprentice unless a formal order of

appointment follows.

(2) U.P. State Electricity Board and Another v. Dharmendra Kumar Bajpai (2005) 13 SCC 679.

In this case Hon''ble Supreme Court held that the decision rendered in the case of U.P. Electricity Board v. Shiv Mohan (supra) governs the facts of the present case. Once it is found that engagement of respondent was as an apprentice, obviously the provision of Industrial Disputes Act cannot be applied and the forum of adjudication cannot be any forum created under the aforesaid Act.

(3) National Small Industries Corpn. Ltd. Vs. V. Lakshminarayanan, :

12. In this case question for consideration was "Whether the respondent was, in fact, a workman within the meaning of Section 2(S) of the 1947 Act or an apprentice trainee within the meaning of Section 18 of the 1961 Act.

13. After examining the facts of the said case as well as the provisions of aforesaid Section, Hon''ble Supreme Court held that there is nothing on record to indicate that the respondent's service had ever been regularized or that he was brought on the rolls of the permanent establishment and in absence of any such material, it is difficult to understand the reasoning of the Labour Court that the respondent was not apprentice- trainee but a workman, who was made to perform full time job under the guise of an apprentice- trainee.

14. In order to understand the controversy involved in the matter, I think it apt to reproduce the provisions of Section 2(aa) which defines the word" apprentice" under the Apprentices Act, 1961, which is reproduced as under;

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

It is also worthy to reproduce Section 4 which envisages contract of apprenticeship.

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

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 in the designated trade specified in the contract.

(6) Where the Central Government, after consulting the Central Apprenticeship Council, makes any rule varying the terms and conditions of Apprenticeship training of any category of apprentices undergoing such training, then the terms and conditions of every contract of apprenticeship relating to the category of apprentice and subsisting immediately before the making of such rule shall be deemed to have been modified accordingly

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; and

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

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 nor shall it be obligatory on the part of the apprentice to accept an employment under the employer.

(2) Notwithstanding any thing in Sub-section (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 such 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 or remuneration agreed to between the apprentice and the employer.

The relevant provisions of U.P. Industrial Disputes Act 1947 are also quoted hereunder;

2(S) "Retrenchment" means the termination by the employer of the service of a workman or any reason whatsoever, otherwise than as punishment inflicted by way of disciplinary action, but does not include-

(i) voluntary retirement of the workmen; or

(ii) retirement of the workmen on reaching the age of superannuation if the contract of employment between the employer and workman concerned contains a stipulation in that behalf;

(z) "Workman" means any person (including an apprentice) employed in any industry to do any skilled or unskilled manual, supervisory, technical or clerical 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 Army Act, 1950 or the Air Force Act, 1950, or the Navy (Discipline) Act, 1934; or

(ii) who is employed in the police service 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 five 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. "6 N. Conditions precedent to retrenchment of workmen No workmen employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(a) the workmen has been given one month's notice in writing indicating the reason for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice wages for the period of the notice:--

Provided that no such notice shall be necessary if the retrenchment is under an agreement which specifies a date for the termination of service;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of service or any part thereof in excess of six months, and

(c) notice in the prescribed manner is served on the State Government.

15. A plain reading of the definition of words "retrenchment" and "workman" shows that the workman has been defined as a person employed in any industry to do the work and retrenchment is a termination of service of a workman by the employer and provisions of Section 6-N of the U.P. Industrial Disputes Act shall be attracted only in a case where the workman was employed in any industry and has been in a continuous service for not less than one year. Whereas the

apprentice as defined under the Apprentices Act, 1961 means a person who is undergoing apprenticeship training in pursuance of a contract of apprenticeship which has no significance of employment rather Section 18 of the Apprentices Act, 1961 provides that apprentice shall be a trainee and not a worker. In order to claim the right of workman the provisions of Industrial Disputes Act necessarily has to be applied whereas Section 18(b) categorically provides that the provisions of any law with respect to labour shall not apply to or in relation to such apprentice. Thus, it is clear that the apprenticeship is not an employment rather it is course of training.

16. Learned counsel for the petitioner has given much emphasis over Section 4(1) of the Apprentices Act, 1961 and submitted that unless a contract has been entered into between the apprentice and the employer, the engagement of an apprentice shall be in the form of employment and since the definition of workman u/s 2(Z) of the U.P. Industrial Disputes Act also includes the apprentices in absence of contract between the parties, the petitioner is covered under the definition of workmen.

17. Whereas such a situation has been dealt with by Hon"ble Supreme Court in the cases referred to above and on keen scrutiny, it is unfurled that unless the apprentice is employed in the industry or establishment, mere his engagement as an apprentice even without registration of contract shall not signify his status as workman.

18. The Hon"ble Supreme Court has also observed that the provisions of Apprentices Act shall prevail over the provisions of Section 2(z) of the U.P. Industrial Disputes Act. Further in the case of U.P. State Electricity Board and Another v. Dharmendra Kumar Bajpai (supra) Hon"ble Supreme Court has categorically held that once it is found that nature of engagement was as an apprentice, obviously the provisions of Industrial Disputes Act cannot be applied.

19. The facts of the case on hand reveal that the petitioner was engaged as an apprentice. He signed over the contract knowing well that he was being engaged as an apprentice. Therefore, in absence of signature of employer or registration of contract before the Apprenticeship Adviser the character of his engagement as an apprentice shall not be changed and thus I have no scintilla of doubt that the petitioner was engaged as an apprentice and after period of apprenticeship was over, he has rightly been disengaged by the employer. Thus, I do not find any error in the award impugned. In the result, the writ petition is dismissed.