
(2009) 09 P&H CK 0007
In the Punjab And Haryana At Chandigarh

The Executive Engineer, Haryana State Electricity Board,
Division Dharuhera, Now Dakshani Haryana Bijlivitran Nigam
Limited and Another

APPELLANT

Vs

Presiding Officer, Labour Court and Others

RESPONDENT

Date of Decision : 05-09-2009

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F

Citation : (2010) 124 FLR 461 : (2010) 2 LLJ 72 : (2009) 156 PLR 580

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

K. Kannan, J.—The effect of the termination of a trainee in an establishment before confirmation is the issue for adjudication before this Court. The workman's complaint before the Labour Court was that he had been terminated without enquiry and without following the mandate of Section 25-F of the Industrial Disputes Act. The response from the management was that a trainee is an "apprentice" to whom the provisions of the Industrial Disputes Act were not applicable as per Section 18 of the Apprenticeship Act and that further a termination simpliciter before confirmation did not amount to retrenchment to attract the provisions of Section 25-F of the Act.

2. The Labour Court found that a misconduct was attributed to the workman as evidenced through files and the termination effected without constituting an enquiry into proof of such misconduct was bad in the eyes of law. He treated the issue that the workman as covered under the Industrial Disputes Act to have been conceded by the authorized representative of the Electricity Board and the Labour Court proceeded to answer the reference in favour of the workman.

3. When the attempt of the counsel for the petitioner was to show that the workman was merely an apprentice and hence the provisions of the Industrial Disputes Act were not applicable, it was pointed out at the outset that the non-

applicability of the Industrial Disputes Act was never urged before the Labour Court and on the other hand, it had been conceded by the learned Counsel for the management that he was a workman under the provisions of the Industrial Disputes Act. The learned Counsel appearing for the petitioner, however, submits that there could not have been a concession on a point of law and even if there was, he shall not be precluded from urging the said contention. I allowed the learned Counsel appearing for the petitioner to make his submissions with reference to the maintainability of the reference before the Labour Court also.

4. The first contention of the counsel for the writ petitioner is that Section 18 read with Section 2(aa) of the Apprenticeship Act, 1961 carves out an exception to the applicability of labour laws in the event of a person being an apprentice. In *U.P. State Sugar Corporation Ltd. v. Om Prakash Upadhyaya*, 2002 I LLJ 241 (SC) , the respondent had been engaged as an apprentice under the Apprenticeship Act on a monthly stipend for getting training as general Clerk. After the expiry of the period, the employee stated that the respondent's engagement had come to an end, however, the respondent raised an industrial dispute. The Labour Court held that the provisions of Section 2(o)(bb) were not applicable. The Labour Court found that the respondent was a workman within the meaning of U.P. Industrial Disputes Act. There was an obvious repugnancy between the provisions of the Central Act namely the Industrial Disputes Act, 1947 and the U.P. State Act. Section 31(1) of the UP Act however, made it clear that the operation of the State Act would not be affected by the Central Act and with this legislative history, the Hon'ble Supreme Court upheld the High Court's view that even the "apprentice" was a workman within the definition of Section 2(z) of the U.P. Industrial Disputes Act and directed reinstatement. In *Mukesh K. Tripathi Vs. Sr. Divisional Manager, L.I.C. and Others*, , referring to the expressions "employee", worker and workman" found in the Apprenticeship Act and the Industrial Disputes Act, the Hon'ble Supreme Court held that though the definition of workman in the Industrial Disputes Act included an apprentice, a workman in order to conform to the requirements laid down in the Industrial Disputes Act, he must be working in one or the other capacities mentioned in Section 2(s) of the Industrial Disputes Act and he will not otherwise acquire the status of a workman. A workman within the definition of Section 2(s) of the Industrial Disputes Act shall not only establish that he is not covered by the provisions of the Apprenticeship Act of 1961, but he must also further establish that he is employed in the establishment for the purpose of doing any other work contemplated under the Apprentices Act. Raising a question whether a person who worked beyond the period of apprenticeship would acquire the status of workman, the Hon'ble Supreme Court held a further written contract carrying out such intention need not be executed but when a person is allowed to continue without extending the period of apprenticeship either expressly or the necessary implication and regular work is taken from him, he may become a workman. These observations came in the case of an apprentices of a Development Officer appointed by LIC. On facts, the Hon'ble Supreme Court

held that the appellant had not adduced any evidence whatsoever that he performed any skilled, unskilled, manual, technical or operational duties as required to come within the definition of the workman under the Industrial Disputes Act. His own letter of appointment clearly proved that he was appointed as an apprentice and not to do any job that fitted with the above description and found that the appellant had not proved that he was a workman and further held that a Development Officer of LIC by no stretch of imagination could be held to perform the duty of an apprentice. These observations of the Hon"ble Supreme Court came on the interplay of provisions of Section 18 read with Section 2(aa) of the Apprenticeship Act and the provisions of the UP Industrial Disputes Act, 1947.

5. In my view, a broad statement of law that whenever a person is appointed as an apprentice or a trainee, the provisions of the Industrial Disputes Act would not apply, may not be a correct proposition. An apprentice could still prove that he is a workman coming within the definition of Section 2(s). In this case, the order of the appointment refers to his status as Trainee Junior Engineer. The actual details of the job have not been mentioned anywhere in the letter of appointment. The workman had himself not given any evidence before the Labour Court about the nature of work perhaps only on account of the fact that there had been no express denial by the management that the claimant was not a workman. The Labour Court had not even framed an issue and the Court below proceeded on the issue that he was a workman by the concession given by the authorized representative of the management that his status as a workman was not being denied. The respondent shall definitely be grossly prejudiced by allowing the counsel for the petitioner to urge on the status of the claimant as not a workman since the decision of the Hon"ble Supreme Court clearly points out that an apprentice cannot cease to be a workman only by virtue of operation of Section 18 of the Apprenticeship Act. It shall depend wholly on the evidence adduced by the workman and since in this case such evidence was not required to be given by virtue of admission made on the side of the management in the manner indicated above, the counsel shall not be permitted to take up the said objection. While a statement of law cannot be conceded nor can such concession be binding at another forum, his statement that will have a bearing on establishing a fact, if it is conceded, cannot be re-opened again to the detriment of the party aggrieved by a challenge taken for the first time at a higher forum or before this Court. I reject, therefore, the contention of the learned Counsel appearing for the petitioner that the provisions of the Industrial Disputes Act would not apply.

6. Even admitting that the Industrial Disputes Act is attracted, the issue has to be considered from the fact whether the termination order made constituted retrenchment in the eye of law. Admittedly the workman had been appointed as a Trainee Junior Engineer for a period of one year. On the successful completion of the training, the trainee was required to enter into an agreement with HSEB to serve the Board for at least five years. It is again an admitted case that even before the completion of the training period, an order came to be issued on

13.11.1990 that his services were dispensed with immediate effect. The Labour Court rejected this order as not effective only because the order itself recited that a regular order will follow. The order further stated that it was being issued by the approval of the Chief Engineer, O.P. (South), Delhi. Even apart from this order, it appears that the workman had himself sought for reconsideration of the issue and for reengagement as a fresh trainee. The Additional Secretary, HSEB, who was the higher authority to the Chief Engineer had communicated through a letter dated 17.03.1993 that his plea for a re-induction as a trainee was being rejected and the training period would not be extended. It is not a case where the workman had continued his work beyond the period of one year. The initial order of appointment contemplated execution of a fresh agreement under bond to work for a period of five years. Admittedly, the workman had not completed the one year period and before that the impugned order of termination had been effected. Although the order contemplated the issuance of a further regular order, it cannot really make a difference because the initial period mentioned in the order of appointment had expired and the workman, as a matter of fact, was not engaged subsequently. It is really therefore a case of an exception provided u/s 2(oo)(bb) to operate against the workman. The stipulation of training for a period of one year had operated itself and so long as a fresh appointment by entering into an agreement or continuance of employment beyond one year period did not take effect, it shall only be taken that the termination became effective. By the operation of the stipulation relating to the period of training and the stipulation that it would be possible to terminate the service during the course of training itself if his conduct was found to be not satisfactory, the workman could have been terminated. Clause 10 of the order of appointment reads as follows:

That Board also reserves the right to determine the training if your work and conduct is not found satisfactory during that period. Such determination shall not entitle you to any compensation on that account." It is evident from the above clause that the termination effected under the impugned order dated 13.11.1990 was perfectly tenable.

7. If we notice that the workman was a trainee and that the termination order came to be effective under one of the terms of the appointment, there is no scope for a further requirement that there could have been any enquiry into any misconduct. The order of termination does not cast any stigma but operates as an order on discharge simpliciter. While a regular workman cannot be removed from service on the ground of misconduct without an enquiry, the same shall not avail to a trainee, who is governed by the terms of his engagement. Even if the reasons for the removal were to be unearthed from previous correspondence to be one of an imputation of misconduct, the person cannot complain since the satisfactory completion of the training alone gives the workman a right to demand that an enquiry should have been conducted. After all, the order itself did not cast any stigma and it should only be therefore taken as an instance of a discharge simpliciter under the terms of a contract that enabled the trainee to be

discharged if his services were not found to be satisfactory.

8. Even otherwise, it was not as if the order of the termination came from the blue. The stand-off came about only when there had been a complaint by a superior officer that when he was asked to report at another place at Dharuhera on being relieved from his first place of posting, the workman is reported to have used unparliamentary language against a Junior Engineer officiating as SDEO and also held out some threats against him. The intra-departmental communications put in before the Court revealed that he was not assessed as a candidate worthy of confirmation in the post as Junior Engineer. The internal assessment that brought out the conduct of the workman in bad light, cannot avail to a workman that enquiry must have been conducted. Such a procedure would be necessary only if he had been confirmed or when the misconduct is cited as a ground for removal if a removal is made simpliciter, during the training period, the workman cannot dig out incriminating circumstances against himself and use it to his own benefit to find fault with the order of termination. It will amount to creating a premium for one's own misconduct and giving a better advantage for a person who misbehaves than a person who behaves well.

9. The award of the Labour Court, therefore, would be required to be set aside for two reasons: One, that the termination did not amount to retrenchment and the removal from service operated by virtue of the application of Section 2(oo) (bb); Two, the workman was a trainee whose service had not been confirmed under power to terminate the service, if the workman was not found to be satisfactory, which was available for the management under the terms of appointment itself. The termination simpliciter was, therefore, perfectly justified.

10. The award of the Labour Court is, accordingly, set aside and the writ petition is allowed.