

(1990) 04 MAD CK 0017
In the Madras High Court

The Regional Provident fund Commissioner	APPELLANT
Vs	
The Management of Precise Wire Cloth Co. (P) Ltd.	RESPONDENT

Date of Decision : 12-04-1990

Acts Referred:

Apprentices Act, 1961 — Section 18, 38
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 7A
Employees State Insurance Act, 1948 — Section 2(22), 2(9), 2(a), 2(f)
Industrial Disputes Act, 1947 — Section 2(a)

Citation : (1990) 2 LW 347 : (1990) 2 MLJ 243

Hon'ble Judges : Nainar Sundaram, J

Bench : Single Bench

Judgement

Nainar Sundaram, J.—These two Writ Appeals are directed against the common order of the learned single Judge in W.P.Nos.4474 and 4475 of 1982. Those writ petitions were preferred by the respondent in each of the writ appeals. The appellant in these two writ appeals was the respondent in the writ petitions. We are referring to the parties as per their nomenclature in the writ petitions. The petitioners were visited with orders of determination u/s 7-A of the Employees' Provident Funds and Miscellaneous Provisions Act 19 of 1952, hereinafter referred to as the Act, for specified periods, in the case of W.P. No. 4474 of 1982, the period being between July, 1978 and December, 1981; and in the case of W.P.No.3375 of 1982, the period being between November, 1978 and May, 1980. The determinations were put in issue by the petitioners in the writ petitions. The point urged before the learned single Judge who dealt with the writ petitions, was that the determinations have been done in respect of apprentices and that is not permissible, because apprentices was not fall within the definition of an "employee" under the Act. That the

persons concerned were entertained by the petitioners only as apprentices was not put in issue before the learned single Judge. The learned single

Judge adverted to the pronouncement of another learned single Judge of this Court in *The Poly Clinic Nagercoil v. Regional Commissioner,*

Employees Provident Fund. Tamil Nadu and Ors. (1983) 1 LLJ 449 and adopting the same ratio held there could not be contributions and

determinations of the same u/s 7-A of the Act in respect of apprentices and allowed the writ petitions. These two writ appeals, as already noted,

are directed against the common order of the learned single Judge.

2. Miss. Radha Srinivasan, learned Counsel for the respondents, would endeavour her best to show that apprentices can certainly come within the

category of employees under the Act and there could be determination and demand of contributions in respect of such appetencies. But, we find

that pronouncements of courts, including a pronouncement of highest Court in the land, support not the theory of the respondent, but only the

theory of the petitioners. In *Employees' State Insurance Corporation and Anr. v. Tata Engineering and Locomotive Company Limited and Anr.*

(1976) 1 LLJ 81 the Supreme Court had occasion to consider the definition of "employee" u/s 2(9) of the *Employees' State Insurance Act 34 of*

1948, hereinafter referred to as Act 34 of 1948. The definition of an employee u/s 2(9) of Act 34 of 1948, so far as it is material, runs as follows:

employees" means any person employed for wages in or in connection with the work of a factory or establishment to which this Act applies and--

(i) Who is directly employed by the principal employer on any work of, or incidental or preliminary to or connected with the work of the factory or

establishment, whether such work is done by the employee in the factory or establishment or elsewhere; or...

3. There was a consideration of the concepts of apprentice and apprenticeship by the Supreme Court and it is worthwhile to advert to the relevant

passages occurring in that pronouncement as follows:

The word "apprentice" is not defined in the Act, nor is it specifically referred to in the definition of "employee" by either inclusion or exclusion. We

are unable to hold that in ordinary acceptation of the term apprentice a relationship of master and servant is established under the law. Even

etymologically as a matter of pure English, "to serve apprenticeship means to

undergo the training of an apprentice" (Chambers Dictionary).

According to the Shorter Oxford English Dictionary apprentice is "a learner of a craft; one who is bound by legal agreement to serve an employer

for a period of years, with a view to learn some handicraft, trade, etc., in which the employer is reciprocally bound to instruct him.

Strouds's Dictionary puts it thus: "In legal acceptance, an apprentice is a person bound to" another for the purpose of learning his trade, or calling,

the contract being of that nature that the master teaches and the other serves the master with the intention of learning.

While dealing with the nature of the relationship of master and servant in comparison with other relationship in Halsbury's Laws of England, third

edition, volume 25, the following passage appears at para 877, pages 451,452.

By a contract of apprenticeship a person is bound to another for the purpose of learning a trade or calling, the apprentice undertaking to serve

the master for the purpose of being taught, and the master undertaking to teach the apprentice. Where teaching on the part of the master or

learning on the part of the other person is not the primary but only an incidental object, the contract is one of service rather than of apprenticeship;

but, if the right of receiving instruction exists, a contract does not become one of services because to some extent, the person to whom it refers

does the kind of work, that is done by a servant, or because he receives pecuniary remuneration for his work."

The heart of the matter in apprenticeship is, therefore, the dominant object and intent to impart on the part of the employer and to accept on the

part of the other person learning under certain agreed terms, That certain payment is made during the apprenticeship, by whatever name called,

and that the apprentice has to be under certain rules of discipline do not convert the apprentice to a regular employee under the employer. Such a

person remains a learner and is not an employee. An examination of the provisions of the entire agreement leads us to the conclusion that the

principal object with which the parties enter into an agreement of apprenticeship was offering by the employer an opportunity to learn the trade or

craft and the other person to acquire such theoretical or practical knowledge that may be obtained in the course of the training. This is the primary

feature that is obvious in the agreement.

Now coming to the legislative history of our country on the subject, it is interesting to note that more than hundred years back we had the

Apprentices Act, 1850 and its preamble says, "For better enabling children, and especially orphans and poor children brought up by public

charity, to learn trades, crafts and employments, by which when they come to full age, that may gain a livelihood.... "Learning of craft or trade was

the essence of the said legislation, this Act was repealed by Section 38 of the Apprentices Act, 1961. The object of 1961 Act is to provide for the

regulation and control of training of apprentices in trades and for matters connected therewith. By the definition clause under this Act, namely,

Section 2(a) "apprentice" means a person who is undergoing apprenticeship training in a designated trade in pursuance of a contract of

"apprenticeship". It is, therefore, inherent in the word "apprentice" that there is no element of employment as such in a trade or industry but only an

adequate well-guarded provision for training to enable the trainee after completion of his course to be suitably absorbed in earning employment as

a regular worker. The fact that a trainee may have been absorbed in the company where he is undergoing the training is not relevant for the

purpose of comprehending the content of the term.

Again we find that where the Legislature intends to include apprentice in the definition of a worker it has expressly done so. For example, the

Industrial Disputes Act, 1947, which is a piece of beneficial labour welfare legislation of considerable amplitude defines "workmen" u/s 2(a) of that

Act and includes apprentice in express terms. It is significant that although the legislature was aware of this definition u/s 2(a) under the Industrial

Disputes Act, 1947, the very following year while passing the Employees' State Insurance Act, 1948, it did not choose to include apprentice while

defining the word "employee" u/s 2(9) of the Employees' State Insurance Act, 1948. Such a deliberate omission on the part of the Legislature can

be only attributed to the well-known concept of apprenticeship which the Legislature assumed and took note of for the purpose of the Act. This is

not to say that if the Legislature intended it could not have enlarged the definition of the word "employee" even to include the "apprentice" but the

Legislature did not choose to do so.

4. The definition of an employee, as found u/s 2(9) and the definition of wages",

as found in Section 2(22) of Act 34 of 1948, were considered

and after looking into the terms of the agreement, it was opined that the apprentices are more trainees for a particular period for a distinct purpose

and the employer is not bound to employ them in its works after the period of training is over. The meaning up on the question runs as follows:

During the apprenticeship they cannot be said to be employed in the work of the company or in connection with work of the company. That would

have been so if they were employed in a regular way by the company. On the other hand, the purpose of the engagement under the particular

scheme is only to offer training under certain terms and conditions. Besides, the apprentices are not given wages within the meaning of that term

under the "Act. If they were regular employees under the Act, they would have been entitled to additional remuneration such as daily allowance

and other allowances which are available to the regular employees. We are, therefore, unable to hold that an apprentice is an employee within the

meaning of Section 2(9) of the Act.

5. There was also reference to Section 18 of the Apprentices Act, 1961, in the following terms:

Incidentally we may note that Section 18 of the Apprentices Act, 1961, provides that "Save as otherwise provided in this Act, every apprentice

undergoing apprenticeship training in a designated trade in an establishment shall be a trainee and not a worker...

The concept of apprenticeship is, therefore, fairly known and has now been clearly recognised in the Apprentices Act. Apart from that, as we have

noticed earlier, the terms and conditions under which these apprentices are engaged do not give any scope for holding that they are employed in

the work of the company or in connection with its work for wages within the meaning of Section 2(9) of the Act.

6. Coming to the definition of an "employee" u/s 2(f) of the Act, as it stood at the relevant point of time, when the impugned determination came to

be made, it ran as follows:

Employee means any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an

establishment, and who gets his wages directly or indirectly from the employer, and includes any person employed by or through a contractor in or

in connection with the work of the establishment.

With effect from 1.8.1988, there has been an amendment introduced and by virtue of that amendment, the definition of an employee includes any

person engaged as an apprentice, not being an apprentice under the Apprentices Act, 1961, or under the standing orders of the establishment. But,

here we are deciding the question in relation to matters which arose before the amendment. The definition of an employee u/s 2(f) of the Act and

the definition of an employee found u/s 2(9) of Act 34 of 1948, though not same in verbatim, are similar with regard to the essential and necessary

ingredients to be satisfied. Hence, the rigour of the pronouncement of the Supreme Court in Employees' State Insurance Corporation and Anr. v.

Tata Engineering and Locomotive Company Limited and Anr. (1976) 1 LLJ 91 certainly applies to the present question. As already noted, it was

not put in issue at all before the learned single Judge that as per the terms of any agreement the concerned persons could have any role other than

apprentices. It was not claimed that the concerned persons were employed for wages. Significantly the respondent does not appear to have filed

any counter affidavit in the writ petitions. It has not been made out that the essential ingredient, namely, employment of a person for wages as such

before that person could be called an employee was present in the present cases. The specific case of the petitioners that the Persons concerned

were not employed for and paid wages has not been rebutted by the respondent.

7. Apart from the pronouncement of the highest Court in the land, there are other pronouncement of Courts in this country. In Kelvin Cinema,

Gauhati v. The State of Assam and Anr., 1973 Lab I.C.963 a Bench of the Gauhati High Court had occasion to consider the very same question

and it held that an apprentice would not be an employee within the meaning of the provisions of the Act. The fact that the amendment was

introduced effective from 1.8.1988 into the definition of an employee, so as to include a person engaged as an apprentice, subject to the exclusions

therein, also clearly demonstrates that earlier to the amendment, there was no possibility of bringing in any category of apprentice into the definition

of an employee, that is why in the pronouncement in Employees' State Insurance Corporation and Anr. v. Tata Engineering and Locomotive

Company Limited and Anr. (1976) 1 LLJ 8. it was pointed out that where the

Legislature intends to include the "apprentice" in the definition of worker it has expressly done so and the fact the Legislature did not choose to do so in respect of the Act, as it stood then, has been significantly taken note of in that pronouncement to exclude the apprentice from the category of an employees. We are not called upon to express and we are not expressing any opinion as to the implications of the amendment. Suffice it to point out that prior to the amendment, no category of apprentice was roped into the definition of an employee u/s 2(f) of the Act.

8. There is also the pronouncement of a single Judge of High Court of Kerala in Lord Krishna Bank Limited and Anr. v. Regional Provident Fund

Commissioner and Anr. (1980) 40 FLR 105. That is also a case, which directly arose under the Act. to bring an apprentice within the category of

employee, resort was made to the Employees' Provident Funds Scheme, That was not accepted by the learned single Judge of the High Court of

Kerala and the learned single Judge held that without altering the definition of an employee found in Section 2(f) of the Act, falling back upon the

scheme would be of no avail at all to rope in an apprentice into the definition of an employee. The above pronouncements have been adverted and

adhered to by the learned single Judge of this Court in The Poly Clinic, Nagercoil v. Regional Commissioner Employee Provident fund, Tamil

Nadu (1983) 1 LLJ 449. The position of law, as discussed by us above, with reference to matters which arose before the amendment, obliges us

to concur with the decision of the learned single Judge and accordingly these two Writ Appeals fail and they are dismissed.