
(1997) 11 AHC CK 0105

In the Allahabad High Court

Case No : C.M.W.P. No. 17762 of 1995 & Civil Miscellaneous Writ Petition No. 17762 of 1995

U.P. State Electricity Board and Another

APPELLANT

Vs

Presiding Officer, Labour Court and Others

RESPONDENT

Date of Decision : 24-11-1997

Acts Referred:

Apprentices Act, 1961 — Section 18, 4, 4(1), 4(4), 7
Apprenticeship Rules, 1962 — Rule 4B, 5
Uttar Pradesh Industrial Disputes Act, 1947 — Section 4K, 6N

Citation : (1998) 1 UPLBEC 152 : (1997) 1 UPLBEC 372

Hon'ble Judges : M.C. Agarwal, J

Bench : Single Bench

Advocate : Ranjit Saxena, for the Appellant; K.N. Misra and S.C., for the Respondent

Final Decision : Allowed

Judgement

M.C. Agarwal, J.—By this petition under Article 226 of the Constitution of India, the petitioner employer challenges and award dated 24th November, 1994, made by the Presiding Officer, Labour Court I, U.P., Kanpur, in Adjudication Case No. 93 of 1994, whereby the Labour Court directed that the termination of the services of the workman respondent No. 2 as Boiler Attendant was not in accordance with law and he was entitled to be reinstated with the benefit of continuation in service. With regard to the back wages, it directed that the wages would be payable only from 1st February, 1994.

2. Counter and rejoinder affidavits have been exchanged.

3. I have heard Sri Ranjit Saxena, learned Counsel for the petitioner, and Sri K.N. Misra, learned Counsel for the respondent No. 2.

4. The Government of Uttar Pradesh referred the dispute between the petitioner and the respondent No. 2. for adjudication to the Labour Court. The dispute was

whether the removal of the workman from work with effect from 9th March, 1985, was valid.

5. Before the Labour Court, the case set up by the respondent No. 2 was that he was employed by the General Manager, Kesa at the river side Power House, Kanpur, as a boiler attendant under the Apprentices Act, 1961 (hereinafter referred to as "the Act") from 9th March, 1982 to 8th March, 1985 and his services were terminated with effect from 9th March, 1985. According to him, the work performed by him was of a permanent nature and he worked as a regular boiler attendant under rotation in all the three shifts and that no R.I. Course (Related Instructions Course) was conducted and the application of apprenticeship was not got registered with the Board, I.T.I., Kanpur, and no examination was held by the National Council and thus he could not get the trade certificate under the Act. According to him, those provisions were mandatory and were not fulfilled by the employer. The termination of his services was alleged to be in violation of Section 6-N of the U.P. Industrial Disputes Act and that he should be deemed to be in continuous service. It was alleged that on 12th August, 1993, a legal notice was sent to the employer for taking him back in employment, but no reply was received and hence a case was filed on 21st August, 1993, before the Conciliation Officer.

6. In the award, the Labour Court has stated that no written statement was filed in the proceedings by the employer. It has, however, stated that the employer participated in the proceedings, cross-examined the employee's witnesses and filed written arguments. In paragraph 9 of the writ petition, it has been stated that a written statement was filed by the employer before the Labour Court contending that the claimant was engaged only as an Apprentice under the Act and was not a workman. A copy of the written statement has been filed as Annexure 7" to the writ petition and in the counter affidavit filed on behalf of the respondent No. 2, the averments, that a written statement was filed by the employer, have not been denied while the respondent No. 1 has not filed any counter affidavit.

7. The Labour Court held that a person cannot be treated as an Apprentice under the Act till the requisite from prescribed under the Act is got filled and the same is got registered with the Apprenticeship Advisor and unless the apprentice is imparted training in accordance with the prescribed syllabus and unless he is awarded a trade certificate and that the employer has not established the fulfillment of the aforesaid conditions. Therefore, the Labour Court made the award as aforesaid.

8. The first point raised by the petitioner is that the respondent No. 2 did ! not raise the dispute within a reasonable time and, therefore, the Labour Court should not have granted him any relief. As is admitted to the respondent No. 2, he was not provided any work after 8th March, 1985. He kept quiet for a very long time and, for the first time, he sent a legal notice and 12h August, 1993, that is, about 8-1/2 years after the alleged removal from the job. This is clear

from his own written statement filed before the Labour Court, a copy of which is Annexure "5" to the Writ Petition and there is no explanation for this huge delay in the aforesaid written statement and the Labour Court has also not given any cogent reason why such abnormal delay should be ignored. It has stated that the so-called workman had been waiting for the decisions of the Labour Courts in similar matters. This cannot be a good reason for raising a claim at such a belated stage. A person cannot be allowed to raise a dispute after a very long time simply because there is some decision that might have helped him if he had made the claim at the appropriate time.

9. Learned Counsel for the petitioners placed reliance on a judgment dated 13th March, 1997, of a learned Single Judge of this Court in Civil Misc. Writ No. 3574 of 1997, U.P. State Electricity Board v. Smt. Suman and Anr., in which, like the present case, an industrial dispute was raised nine years after the alleged termination of the services. The learned Judge observed as below :

"In my opinion, it is implicit in Section 4-K of the U.P. Industrial Disputes Act that the dispute must be raised within a reasonable period of the cause of action. When no time is prescribed by the statute to do some thing, it is implicit that the thing must be done within a reasonable period of time vide Regional Provident Fund Commissioner Vs. M/s. K.T. Rolling Mills Pvt. Ltd., , Regional Provident Fund Commissioner v. M/s. K.T. Rolling Mills Pvt. Ltd. Raising an industrial dispute several years after the cause of action creates several difficulties for the employer because in the meantime someone else may have been engaged or the situation may have otherwise changed. In my opinion, in the present case, the reference order itself was arbitrary as it was made long after the cause of action, and hence the entire proceedings before the Labour Court were illegal."

10. In Civil Misc. Writ No. 26294 of 1994, U.P. State Electricity Board v. The Presiding Officer, Labour Court I, Meerut and Ors., decided by me on 17th November, 1997, I have taken the view that where the industrial dispute is raised after the expiry of the period of limitation for a civil suit in respect of the cause of action to be agitated before the Labour Court, the Labour Court should decline to grant any relief to the workman.

11. As is evident, in the present case, the respondent No. 2 woke up after 8-1/2 years. He did not raise any grievance immediately when his services were dispensed with on 8th March, 1985. He cannot take the employer by surprise after such a long time. Therefore, the Labour Court should have declined to grant to the respondent No. 2 any relief even if the alleged termination of his services was invalid and the award of the relief of reinstatement is, therefore, illegal and deserves to be quashed.

12. Further, according to the own case of the respondent No. 2, he was engaged for training in the trade of boiler attendant under the Apprentices Act, 1961. He admitted that he was asked to fill a form. The form seems to refer to the contract of apprenticeship, referred to in Section 4 of the Act and Rule 4-B of the

Apprentices Rules, 1962 (hereinafter referred to as "the Rules"). u/s 4(1) of the Act, no person shall be engaged as an apprentice to undergo apprenticeship training in a trade unless he was entered into a contract of apprenticeship with the employer. Under sub-section (4), such contract shall be sent by the employer within such period, as may be prescribed, to the Apprenticeship Adviser for registration. The period is prescribed by Rule 5 is three months. The Rules make detailed provisions regarding the manner in which the training has to be provided, the records to be maintained by the apprentices, the amount of stipend to be paid, hours of work, grant of leave etc. etc. Section 7 of the Act provides that the contract of apprenticeship shall terminate on the expiry of the period of apprenticeship training. Sub-section (2) makes provisions for termination of the contract earlier which can be done only by the Apprenticeship Adviser by making an order under sub-section (3) of Section 7 of the Act if he is satisfied that the parties to the contract or any of them have or has failed to carry out the terms and conditions of the contract and it is desirable in the interests of the parties or any of them to terminate the same.

13. Section 20 of the Act provides for settlement of disputes between the employer and the apprentice. Any such dispute has to be referred to the Apprenticeship Adviser for decisions against whose decision, an appeal lies to the Apprenticeship Council. Section 21 provides that every trade apprentice who has completed the period of training shall appear for a test to be conducted by the National Council to determine his proficiency in the designated trade in which he has undergone his apprenticeship training. 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 in the establishment. Section 29 confers the power on the Central Apprenticeship Adviser and his assistants to enter, inspect and examine any establishment or part thereof as well as to examine any apprentice employed therein and require the production of any register, record or other documents maintained in pursuance of this Act and take on the spot or otherwise statements of any person which he may consider necessary for carrying out the purposes of this Act. The Central Apprenticeship Adviser has also been given the authority to examine and enquire as he thinks fit in order to ascertain whether the provisions of the Act and the Rules made thereunder are being observed in the establishment. Section 30 prescribes for offences and penalties and if an employer contravenes the provisions of this Act, he shall be punishable with imprisonment for a term which may extend to six months or with fine or with both. If the employer requires an apprentice to work over-time without the approval of the Apprenticeship Adviser, the employer is punishable u/s 30(2)(c). Similarly, if the apprentice is employed on any work, which is not connected with his training, the employer is punishable under Clause (d) of Section 30(2). Even if certain conduct of the employer is not punishable u/s 30, but is in contravention of the provisions of the Act then it is punishable u/s 31 with fine. Thus, the Apprenticeship Act, 1961 along with the Rules framed thereunder is a

complete Code within which the rights and liabilities of the employer and the apprentice have to be determined.

14. In this case, admittedly, the respondent No. 2 was engaged as an apprentice boiler attendant under the Act. In para 4 of his written statement before the Labour Court, it was stated that no R.I. Course was conducted, the application of apprenticeship was not got registered with the Board, I.T.I., Kanpur, and no examination was held by the Central Apprenticeship Council and thus, he could not get the trade certificate under the Act. Holding of the Examination is not the responsibility of the employer. It has to be done by the Central Apprenticeship Council and the employer can not take any action in that regard.

15. So far as the alleged non-registration of the application and the omission to impart R.I. Course are concerned, the respondent No. 2 Could have brought the matter to the notice of the Apprenticeship Adviser who would have taken necessary action against the employer in accordance with the provisions of the Act, some of which have been referred to above. It may be mentioned that the petitioner has not led any proper evidence to show that the contract entered into u/s 4 read with Rule 4-B was not got registered with the Apprenticeship Adviser, In the written statement, what was stated was that the application of apprenticeship was not got registered with the Board, I.T.I., Kanpur. In the statement on oath also, he stated that an application form was got filed which was not registered. The Apprenticeship Adviser was not summoned to prove that the employer did not get the contract executed or did not send the same for registration.

16. Before the Labour Court, reliance was placed on a judgment of this Court in *K.S. Tripathi v. State of U.P.* 1992 (66) F.L.R. 203, in which there are observations that if the appointment is not in accordance with the provisions of the Act then the concerned person would be an apprentice in accordance with the general terms and would come within the ambit and scope of workman. That was a case which the workman had claimed that no contract of apprenticeship was entered into between him and the employer. This is clear from the statements made in paras 16 and 18 of the judgment and the employer had failed to controvert the averments. In the present case, however, according to the case of the respondent No. 2 himself, he was engaged as an apprentice under the Act and the contract was required to be registered under the Act. Thus, it is a case in which both the parties admit that there was between them a contract of apprenticeship to be governed by the provisions of the Act. Therefore, if there is any irregularity or illegality in that contract and there are any defaults on the part of employer in the manner of imparting training or in debuting the apprentice to work in violation of the Act and the Rules, the relationship of apprenticeship will not get evaporated and it would not get converted into a general contract of apprenticeship. Any default on the part of either has to be dealt with strictly under the Act which provides that an employer is not obliged to

offer employment and the contract of apprenticeship comes to an end on the expiry of the period of apprenticeship training. For an apprentice in the trade of boiler attendant, the period of training prescribed is three years and the petitioner rightly stopped and further engagement of the respondent No. 2 as soon as the period of training was completed on the 8th of March, 1985. Section 18 of the Act provides that an apprentice 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. The respondent No. 2 was thus not a workman and no dispute could be referred to the Labour Court and the period of his training having come to an end, the action of the petitioner employer in not engaging him any further was in accordance with the contract entered into between the parties and the provisions of the Act.

17. For the above reasons, this writ petition is allowed and the impugned award dated 24th November, 1994, is hereby quashed. The respondent No. 2 shall pay the costs of the petitioner of this writ petition.