

(2003) 03 AHC CK 0138
In the Allahabad High Court
Case No : C.M.W.P. No. 3232 of 1997

U.P. State Electricity Board	Vs	APPELLANT
Ashok Kumar Shukla and Another		RESPONDENT

Date of Decision : 31-03-2003

Acts Referred:

Apprentices Act, 1961 — Section 4(4)

Citation : (2003) 3 AWC 2266 : (2003) 97 FLR 822 : (2003) 2 LLJ 1013

Hon'ble Judges : B.S. Chauhan, J

Bench : Single Bench

Advocate : Arvind Kumar, for the Appellant; S.K. Tripathi and K.C. Shukla, for the Respondent

Final Decision : Allowed

Judgement

B.S. Chauhan, J.—This writ petition has been filed against the Award of the Labour Court dated July 30, 1996 by which the claim of the respondent No. 1, workman, has been allowed with all consequential benefits along with back wages from the date of reference till the date of Award. In addition cost has also been awarded.

2. The facts and circumstances giving rise to this case are that respondent No. 1 raised the industrial dispute and the appropriate Government in exercise of its power u/s 4-K of the U.P. Industrial Disputes Act, 1947 (hereinafter called the Act 1947) made a reference as to whether termination of the services of the respondent No. 1 w.e.f. April 9, 1988 was in accordance with law, and if not, to what relief he was entitled to? In pursuance of the said reference, a claim petition was filed by the workman contending that he was engaged as an apprentice under the provisions of Apprentices Act, 1961 (hereinafter called Act 1961), as a Boiler Attendant. Management did not comply with the provisions of the said Act. Registration of the contract was not made nor the R.I. course was completed nor any certificate of National Council was ever granted to him. He had worked for more than 240 days in a calendar year counting backward from

the date of termination. Thus, his termination was in violation of the provisions of Act 1947.

3. The management contested the claim contending that he was enrolled as an apprentice for a period of three years from April 9, 1985 to April 8, 1988. Therefore, he was not workman. After expiry of three years" period the contract of apprenticeship came to an end automatically. As he was engaged as an apprentice, the provisions of Act 1947 were not attracted. More so, the industry, i.e., Riverside Power House stood closed on January 7, 1991, therefore, no relief could be granted to the workman. In view of the aforesaid pleadings, parties were permitted to lead evidence. The Labour Court made the Award in favour of the workman, particularly, in view of the fact that the contract was not registered as required u/s 4(4) of the Act 1961, and therefore, it was not a case under the Act 1961 and the provisions of the Act 1947 were attracted.

4. Learned counsel for the parties have made the same submissions which had been made before the Labour Court. I have considered the rival submissions made by the learned counsel for the parties and perused the record. In *The Employees' State Insurance Corporation and Another Vs. The Tata Engineering and Locomotive Co. Ltd. and Another*, *Narinder Kumar and Others Vs. State of Punjab and Others*, *Uttar Pradesh State Road Transport Corporation and another Vs. Uttar Pradesh Parivahan Nigam Shishukhs Berozgar Sangh and others*, *Hanuman Prasad Chaudhary v. Rajasthan State Electricity Board, Jaipur* 1998 LabIC 1014 , and *Tannery & Footwear Corpn. of India Ltd v. Labour Court-II, Kanpur and Ors.* 1997 III LLJ 650 , and *U.P. Rajya Vidyut Par. App. Wel. Association. and Another Vs. State of Uttar Pradesh and Others*, it has categorically been held that an apprentice is not an employee but merely a trainee. In *Patel Pravin Kumar Somnath and Others Vs. Gujarat State Land Development Corpn. Ltd. and Others*, a similar view was reiterated holding that a person entering into a contract of apprentice under the provisions of the Act 1961 cannot claim of ever coming into existence the relation of master and servant. The Court held that the Act 1961 "diligently contends well guarded provisions outlining the scope of term "trainees" and denying to apprentices the benefits available under the Labour Laws." The terms of contract of apprentice make it abundantly clear that the apprentice shall not be entitled for any other relief other than those mentioned therein. His/her engagement would stand terminated automatically on expiry of the said period and even if an apprentice remains engaged after expiry of the term, it would not make him automatically the workman.

5. Thus, in this respect all the pros and cons have to be considered before deciding the issue. So far as the issue of registration of contract of apprenticeship is concerned, the Labour Court has taken note of the fact that his contract form was sent for registration and it was the authority concerned, i.e., Senior Apprentice Adviser who did not register. This fact was proved before the Labour Court. The responsibility of the employer is over once he sends the form

for registration and for not making registration by the concerned authority. management cannot be held responsible. Section 4(4) of the Act 1961 requires registration and the question does arise as to whether in absence of such a registration apprentice could claim himself to be a workman. The issue was considered by the Division Bench of the Kerala High Court in Bhaskaran Vs. Kerala State Electricity Board, wherein it was held as under at p. 348:

"5. The word "apprentice" has been defined in Section 2(aa) of the Act to mean, "a person who is undergoing apprenticeship training in pursuance of a contract of apprenticeship." In order to answer the definition of the word "apprentice", two conditions are required to be satisfied, viz., (1) that the person is undergoing apprenticeship training and (2) that he is undergoing such training in pursuance of a contract of apprenticeship. It is not provided that the contract of apprenticeship adverted to therein should have been registered as required by Sub-section (4) of Section 4 of the Act. If the intention of the Legislature was to include only those persons in the category of apprentices who have entered into a contract of apprenticeship which has been registered, the word "registered" would have been used before the word "contract" in Section 2(aa) of the Act. On a plain reading of the definition of the expression "apprentice" occurring in Section 2(aa), it becomes clear that the registration of a contract of apprenticeship is not necessary for the person answering the description of the word "apprentice". Sub-section (4) of Section 4, which requires registration of contract of apprenticeship provides that every contract of apprenticeship entered into under Sub-section (1) shall be sent for registration. In other words, it contemplates the existence of a concluded contract of apprenticeship, which is required to be sent up for registration. It, therefore, becomes clear that it is the existing contract of apprenticeship that is required to be registered and not that such contract becomes a contract of apprenticeship only after it is registered as required by Sub-section (4) of Section 4 of the Act. We have, therefore, no hesitation in taking the view that the registration of the contract apprenticeship is not a necessary ingredient for answering the description of the expression "apprentice" occurring in Section 2(aa) of the Act. As it is admitted that the petitioners have entered into a contract of apprenticeship and were undergoing training in pursuance of such a contract, they satisfy on the requirements of the definition of the expression "apprentice" occurring in Section 2(aa) of the Act. That being the position, the provisions of Section 18 of the Act come into operation. Therefore, the petitioners cannot be regarded as workers and therefore, the provisions of Section 25-F of the Industrial Disputes Act are not attracted to the facts of the case. Hence the termination of the services of the petitioners is not illegal. For the reasons stated above, the original petition is dismissed."

Similarly, in U.P. State Electricity Board and Ors. v. P.O. Labour Court, Kanpur and Ors. 1998 (78) FLR 511, this Court considered a similar issue and held as under:

"If there is any irregularity or illegality in that contract and there are any defaults on the part of the employer in the manner of imparting training or in deputing the apprentice to work in violation of the Act and the Rules, the relationship of the 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."

6. Therefore, in view of the above, the employer was not at fault as it had for registration to the senior Apprentice Adviser and even if there was any violation of the terms of that contract that would not extinguish the contract of apprenticeship.

7. Learned counsel for the respondent has relied upon the judgment of this Court in W.P. No. 21560 of 1995 decided on September 26, 2002 V.P. State Electricity Board v. Presiding Officer, Labour Court, Kanpur, wherein the Award of the Labour Court had been upheld on the ground that the copy of the contract of apprenticeship was not filed neither such an agreement was sent for registration. Instant case is distinguishable as the contract of apprenticeship had been filed before the Labour Court and the Court itself was satisfied with the contract so sent for registration. Therefore, the ratio of that judgment is not applicable.

8. Similarly, judgment in Writ Petition No. 18 of 1995 V.P. State Electricity Board v. P. O. Labour Court, Kanpur decided on February 6, 2001 has also no application as the facts were distinguishable as no material had been placed before the Labour Court to show that the contract was sent for registration. Reliance has been placed by the respondent's counsel on a Division Bench judgment of Patna High Court in Ram Dular Paswan and Others Vs. P.O., Labour Court and Others, , wherein it has been held that it would depend upon the type of work a person performs, and the nature of duties which he discharges which is the determining factor in order to find out as to whether he is or is not a workman.

9. The said judgment dated February 6, 2001 remains per incurium as the earlier judgment of this Court in U.P. State Electricity Board and Ors. v. P. O. Labour Court, Kanpur and Ors. (supra) has not been considered at all. The concept of "per incurium" has been explained by the Courts from time to time and "per incurium" are those decisions given in ignorance or forgetfulness of some inconsistent statutory provisions or of some authority binding on the Court concerned. (Vide Tourist Guide Service v. B.D. Harsha 1989 (2) RLR 1 , Mamleshwar Prasad and Another Vs. Kanhaiya Lal (Dead) through L. Rs., A.R. Antulay Vs. R.S. Nayak and Another, State of West Bengal v. Synthetics and Chemicals Ltd. 1991 (1) SCC 139 , B. Shama Rao Vs. The Union Territory of Pondicherry, Municipal Corporation of Delhi Vs. Gurnam Kaur, , Ram Gopal Baheti v. Girdharilal Soni and Ors., (1999) 3 SCC 112 Sarnam Singh and Another Vs. Dy. Director of Consolidation and Others, Godrej, Andhra Pradesh v. B.

Satyanarayana Rao AIR 2000 SC 1229 , M/s. Fuerst Day Lawson Ltd. Vs. Jindal Exports Ltd., Suganthi Suresh Kumar Vs. Jagdeeshan, and Director of Settlements A.P. and Ors. v. M. R. Apparao and Anr. AIR 2002 SC 1504.

10. In the instant case, as the Labour Court had emphasized on requirement of registration of the contract of apprenticeship, the contract becomes unenforceable, and the person so engaged could be termed as "workman" is not in consonance with the law laid down by this Court in V. P. State Electricity Board and Ors. v. P.O. Labour Court, Kanpur (supra) and the same stands fully fortified by the judgment of a Division Bench of Kerala High Court in Bhaskaran v. Kerala State Electricity Board (supra).

11. Thus, in view of the above, the Award is liable to be set aside. There is another aspect of the matter which requires consideration. Respondent No. 1 remained engaged for a period of 3 years. He did not claim that he was drawing any salary rather he was getting a stipend. If he had any grievance, he ought to have raised the issue during the period of engagement.

12. It is settled proposition of law that once an order has been passed, it is complied with, accepted by the other party and derived the benefit out of it, he cannot challenge it on any ground. Vide Balwant Regular Motor Service v. S. T.A. T. and Ors. AIR 1969 SC 329. Thus, even on the principles of acquiescence, the petitioner is estopped to raise all these issues regarding the terms and conditions incorporated in her enrolment letter as an apprentice. In R.N. Gosain Vs. Yashpal Dhir, the Hon"ble Supreme Court has observed as under.

"Law does not permit a person to both approbate and reprobate. This principle is based on the doctrine of election which postulates that no party can accept and reject the same instrument and that "a person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could, only be entitled on the footing that it is valid, and then turn round and say it is void for the purpose of securing some other advantage."

13. Similar view has been taken by the Hon"ble Supreme Court in Sri Babu Ram Alias Durga Prasad Vs. Sri Indra Pal Singh (Dead) by Lrs., In P.R. Deshpande Vs. Maruti Balaram Haibatti, the Hon"ble Supreme Court has observed that the doctrine of election is based on the rule of estoppel the principle that one cannot approbate and reprobate inheres in it. The doctrine of estoppel by election is one of the species of estoppels in parts (sic) (or equitable estoppel), which is a rule in equity. By that law, a person may be precluded by his actions or conduct or silence when it is his duty to speak, from asserting a right which he otherwise would have had.

14. Thus, the petitioner's own conduct not to raise any dispute for a period of three years made him disentitled for any relief before the Labour Court. More so, employment in U.P. State Electricity Board must be governed by certain rules, standing orders, and any appointment made in contravention thereof may not be valid and even Award made in contravention of that statutory provision may not

be enforceable and executable as held by the Hon''ble Supreme Court in N.S. Giri Vs. The Corporation of City of Mangalore and Others,

15. In the instant case, admittedly, the petitioner had been engaged as an apprentice for a period of three years, his contract of apprenticeship was sent for registration and if for any reason it could not be registered by the Apprentice Adviser the employer should not be held responsible for the same. Not raising any dispute for a period of three years, i.e., during the subsistence of contract of apprenticeship disentitles the petitioner for any relief.

16. Thus in view of the above, the petition succeeds and is allowed. Impugned Award of the Labour Court is hereby set aside.

17. In the facts and circumstances of the case there shall be no order as to costs.