

(1996) 05 AHC CK 0167
In the Allahabad High Court
Case No : C.M.W.P. No. 6198 of 1991

U.P. State Spinning Mills Co. (No. II) Ltd.	APPELLANT
Vs	
Labour Court and Others	RESPONDENT

Date of Decision : 03-05-1996

Acts Referred:

Apprentices Act, 1961 — Section 18, 2, 4
Uttar Pradesh Industrial Disputes Act, 1947 — Section 16N, 2

Citation : (1996) AWC 634 Supp

Hon'ble Judges : D.K. Seth, J

Bench : Single Bench

Advocate : M. Katju and Krishna Murari, for the Appellant; Arvind Kumar, S.C., Suman Sirohi and K.P. Agarwal, for the Respondent

Final Decision : Allowed

Judgement

D.K. Seth, J.—Shiv Kant son of Sri Kedar Nath, Respondent No. 2 in the writ petition, was engaged as a Trainee in the Petitioner's factory by order dated 24th August, 1983. Respondent No. 2 continued as trainee till 31st March, 1984. He was then appointed as a helper in a temporary capacity on 1st April, 1984. During the training period, a stipend of Rs. 5 per day was allowed. Now from 10th January, 1985 till 15th April, 1985, there was strike in the Petitioner's establishment. The Respondent No. 2 did not come back and Join his duty after the strike was over. He had worked only for 204 days as a temporary workman between 1st April, 1984 till 10th January, 1985 as has been specified in Ext. E/14/4 before the learned Labour Court which is Annexure "2" to the writ petition. Subsequently the Respondent No. 2 raised a dispute that his service was illegally terminated on 15th February, 1985 out of which Adjudication Case No. 128 of 1985 was registered. By award dated 27th September, 1990, it was held that the service of Respondent No. 2 was illegally terminated in violation of Section 16N of the U.P. Industrial Disputes Act without giving any retrenchment benefit while holding that the Respondent No. 2 had worked for more than 240 days within a period of preceding 12 months and directed reinstatement of the

workman. It is this Award which is being Impugned in the present writ petition.

2. Mr. Krishna Murari, learned Counsel for the Petitioner, contends that the learned Labour Court had illegally held that the period spent in training shall be included for the purpose of calculating the period of 240 days working during the preceding 12 months. He also contends that the calculation attempted to be made by the Labour Court that the workman had worked for 240 days in the manner as indicated in the Award is perverse. According to him, the definition of "workman" given in Section 2(z) in the U.P. Industrial Disputes Act, hereinafter referred to as "the U.P. Act" includes apprentice within the meaning of Section 2(a) of the said U.P. Act. The workman not being apprentice within the meaning of Section 2(a) which is an admitted fact, he cannot be treated to be a workman during the period he was a trainee and, therefore, the period of training is to be excluded. If the said period is excluded, then the workman cannot be said to have worked for more than 204 days as calculated in Annexure "2" to the writ petition. He relies on the decision in the case of *Burmah Shell Oil Storage and Distribution Company of India Ltd. Vs. The Burma Shell Management Staff Association and Others*, and contend that in order to be a workman the employee must be employed to do skilled or unskilled manual work, supervisory work, technical work or clerical work. If the work done by an employee is not of such a nature, he would not be a workman.

3. Miss Suman Sirohi, learned Counsel appearing for the Respondents who have been substituted in place of Respondent No. 2, since deceased, led by Mr. K. P. Agarwal, contends that the period of training as apprenticeship in the facts and circumstances of the present case has been rightly included for the purpose of calculating 240 days by the learned Labour Court. Even then the Labour Court has come to a finding that even excluding the period alleged to have been spent as Apprentice, the Respondent No. 2 has worked for 240 days. This finding being a finding of fact cannot be interfered with in exercise of writ Jurisdiction. She contends further that in order to be an Apprentice as expressed in the definition of "workman" in Section 2(z), he must be an Apprentice as defined in Section 2(aa) of the Apprentice Act, 1961 and in any other case he would be a workman inasmuch as the Apprentice Act being a special statute, the definition of "Apprentice" given in Section 2(a) of the U.P. Act would yield to the special statute being the Apprentice Act. An apprentice other than those as defined in the Apprentice Act are to be termed as workman. Alternatively she submits that in the present case, the Respondent No. 2 is not an apprentice within the meaning of Section 2(a). Since the workman did not satisfy the test laid down in the definition of Section 2(a) he cannot be said to be an apprentice inasmuch as if the workman is not an apprentice within the meaning of Section 2(a), he is a workman since the U.P. Act does not conceive of any other kind of apprentice. According to her, after the legislation of the Apprentice Act, 1961, which is a Central Act, the definition of "apprentice" in Section 2(a) of the U.P. Act stands eclipsed. She contends further that if there is no agreement, in that event, the workman cannot be called an apprentice. in view of the provisions contained in

Section 6N of the U.P. Act, according to her, in the application of Section 6N, an apprentice is also not excluded.

4. In support of her contention, she relied on the decision in the case of Hanuman Prasad Chaudhary v. Rajasthan State Electricity Board 1986 Lab IC 1014 and contends that a person who is designated as apprentice but is not governed by the Apprentice Act would be governed by the provisions of the Industrial Disputes Act as has been held in the said decision she also placed reliance on the said judgment in support of her contention that special statute being the Apprentice Act would prevail over the general statute U.P. Act as contended by her. She also relies on the decision in the case of Karuna Shankar Tripathi Vs. State of U.P. and Others, and contends that when apprentice is not appointed under the Apprentice Act, then he would be a workman within the ambit and scope of Section 2(z) of the U.P. Act as has been held in the said judgment. She relied on the case of The State Bank of India Vs. Shri N. Sundara Money, , in order to substantiate that the termination of workman services amounts to retrenchment within the meaning of Section 6N of the U.P. Act. She also relies on the judgment in the case of Burmah Shell Oil Storage and Distributing Company of India Ltd. (supra) in order to substantiate that it is not the designation but the work done is the determining factor as to whether he was a trainee or a workman. She further relies on the decision in the case of S.K. Verma Vs. Mahesh Chandra and Another, , on the same point and contends that it is the nature of work which determines the character whether a person is an apprentice or a workman. According to her, in the present case, the Tribunal has found the Respondent No. 2 to be a workman and the same being a finding of fact, the same should not be interfered with in exercise of writ jurisdiction. Therefore, the writ petition should be dismissed.

5. The definition of workman as contained in Section 2(s) of the Industrial Disputes Act, 1947 underwent a substantial amendment in 1956. The definition of "workman" in Section 2(s) in the Central Act and that given in Section 2(z) of the U.P. Act is *pari materia*, the same excepting only one additional word "operational" is found in Section 2(s) qualifying the "work" with a minor deviation in the four categories of persons specified in clauses (i) to (iv) who are excluded by the said definition. That is *pari materia* persons excluded are identical in both the definitions. Section 2(z) defines "workman" in the following manner:

(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 or as an officer or other employee of a person; 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. Therefore, the definition of "workman" both in Section 2(s) and Section 2(z) includes an apprentice but those apprentices who are required to do any skilled or unskilled work of manual, technical, clerical or supervisory nature for hire or reward. Therefore, only those apprentices who are required to do any skilled or unskilled work of the nature mentioned for hire or reward can be termed as workman. But the said expression including "apprentice" as used in the definition of workman cannot be said to have any other meaning except that has been ascribed to it by the definition of apprentice in Section 2(a) of the U.P. Act which defines "apprentice":

(a) "apprentice" means a person who is employed in an Industry for the purpose of training, therein in accordance with a Scheme prepared in that behalf and approved by the State Government.

7. Admittedly, in the present case, Respondent No. 2 was not employed in accordance with any scheme for the purpose of training and approved by the State Government. Therefore, admittedly the Respondent No. 2 is not apprentice within the meaning of Section 2(a) of the U.P. Act.

8. Since apprentice has been defined in Section 2(a), reference of apprentice in Section 2(z) cannot have any other meaning than that has been ascribed in Section 2(a). In view of the definition of apprentice given in the Act, the apprentice Included in the definition of workman cannot be interpreted to mean an apprentice other than apprentice defined in Section 2(a). If any such interpretation is made, in that event, It would be contrary to the scheme of the U.P. Act itself. Now that the definition of workman in the Central Act includes apprentice but the word "apprentice" has not been defined in the said Act, therefore, though an apprentice who may not be an apprentice as defined in Section 2(a) may be included in the definition of workman as defined in Section 2(s) of the Central Act. But in cases where U.P. Act applies, such an Interpretation cannot be given because of the maxim "Generalia specialibus non-derogant". Inasmuch as a general statute must yield to a special statute. The U.P. Act is a special statute applicable only to U.P. and has been enacted under the concurrent legislative power provided under the Constitution would prevail upon the general definition. Therefore, the apprentice Included in the definition

of "workman" in Section 2(z) of the U.P. Act includes apprentice defined in Section 2(a) of the said Act and not otherwise.

9. My above view is supported by the ratio decided in the case of U.P. State Electricity Board and Ors. v. Hari Shanker Jain and Ors. 1978 FLR 280 , in the case of Western India Match Company Ltd. Vs. Workmen, , it was observed:

Now if anything be certain it is this, that where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, you are not to hold that earlier and special legislation, indirectly repealed, altered, or derogated from merely by force of such general words, without any Indication of particular Intention to do so.

10. Similarly, in the case of J.K. Cotton Spinning and Weaving Mills Co. Ltd. v. State of U.P. 1951 (2) FLR 529, it has been held:

The rule that general provisions should yield to specific provisions is not an arbitrary principle made by lawyers and Judges but springs from the common understand of men and women that when the same person gives to directions one covering a large number of matters in general and another to only some of them his Intention is that these latter directions should prevail as regards these while as regards all the rest the earlier direction should have effect.

11. The decision in the case of Hanuman Prasad Chaudhary (supra) cited by Miss Sirohi does not help her for the proposition sought to be advanced in the present case. Inasmuch as in the said case, it was held that an apprentice under the Apprentices Act cannot be a workman within the definition of workman in section 2(s) which Includes apprentice, because of the reason that the definition of workman in Section 2(s) yields to the provision of Section 18 of the Apprentices Act which is a special statute prevailing over the general statute.

12. The said decision does not help Miss Sirohi because of the reason that apprentice having been defined in Section 2(a) which means apprentice outside the meaning of Apprentices Act and, therefore, apprentice Included within the definition of Section 2(z) is an apprentice defined in Section 2(a). Section 2(aa) read with Section 4 of the Apprentices Act does not mean that there cannot be any apprentice other than apprentice defined in the Apprentices Act. The said Act being a special statute is applicable only to categories of apprentices who are apprentices appointed under the said Act. The Apprentices Act has no manner of application in respect of apprentice within the meaning of Section 2(a) of the U.P. Act. If Miss Sirohi's argument is accepted, then again Section 2(z) read with Section 2(a) of the U.P. Act is bound to yield to Section 18 of the Apprentices Act and such a submission would be counter-productive for her. Similarly, the decision in the case of Karuna Shanker Tripathi (supra) does not help her. Miss Sirohi relied on the observation made in the said case in paragraph 8 in the following expression:

8. Thus, the main question which crops up for decision in this writ petition is that If an apprentice has been appointed under the provisions of the Apprentices Act, 1961, then he cannot be treated as; workman and after the completion of the training period he is not entitled to be retained in service and the provisions of the Industrial Disputes Act would not be attracted to him. But if an Apprentice is not appointed in accordance with the provisions of Apprentices Act then he would be an apprentice in accordance with the general terms and would come within the ambit and scope of the definition of "workman" contained in Section 2(z) of the U.P. Industrial Disputes Act.

13. In the said case, the question that has been raised herein has not been attended to that relates to the definition of apprentice in Section 2(a) of the U.P. Act. On the other hand, on the materials on record, it was found that the Petitioners who were designated as apprentices were workmen.

14. Under the certified Standing Order applicable to the Petitioner in paragraph 8 (e), it has been provided that "an apprentice is a learner or trainee who may or may not be paid any wages or allowances during the period of his training".

15. Therefore, the Respondent No. 2 having been appointed as an apprentice under Para 8 (e) of the Certified Standing Order. Here the Respondent No. 2 was described as "Prashikshartha" for "Prashikshan" which means appointed "trainee" for "training". The Respondent No. 2 was not termed as apprentice. Therefore, he was not an apprentice within the meaning of Section 2(a) of the U.P. Act and as such, not a workman.

16. Now to meet the contention of Miss Sirohi, while elaborating her submissions that the Respondent No. 2 though described as an apprentice but he having not satisfied the definition of apprentice in Section 2(a) was not an apprentice but a workman on account of Respondent No. 2 being employed to do unskilled work of the nature mentioned in Section 2(z) for hire and reward is a workman in view of the principle that it is the work done which determines the character not the designation, it is necessary to refer to the meaning of the expression "hire" or "reward". It is also required to see as to whether the Respondent No. 2 was hired for reward or the amount received during the period of training could be termed as paid for hire or as reward. The word "hire" means to utilise, enjoy, service or property against payment on the basis of certain contract. That the person is hired against payment for the purpose of doing certain Job which is not paid to a person for helping him to sustain but which one earns by allowing his services to be utilised by some one else for his purpose. The word "reward" means that some amount is paid by way of reward for doing certain jobs or services. The amount paid on hire or for reward cannot include any amount paid by way of stipend which is paid to a trainee. Annexure "1" being the contract indicates that the Respondent No. 2 would be paid the sum of Rs. 5 per day by way of stipend during the period he would receive training. The said contract indicates that after the training, it would not be the responsibility of the Petitioner to give him employment. The statement of the workman which is

annexed to the writ petition being Annexure "6" does not spell out that during the period of training, he was required to do any of the works specified in the definition of workman. The burden of proving that the Respondent No. 2 was a workman though designated as apprentice or in other words that he was required to do unskilled work of any of the nature mentioned for hire or reward. The materials on record do not show that he has been able to discharge the said burden by adequate evidence. On the other hand, the Petitioner by producing the document contained in Annexure "1" hereto supported by oral evidence of their witnesses which are Annexures "8" and "9", had shown that the Respondent was not a workman. It appears that the workman has not been able to prove that he was a workman though he was designated as an apprentice. It is the case of the workman himself who in his evidence has stated that during the period of training he used to receive Rs. 5 per day and then Rs. 8 per day whereas when the card was issued to him, he was getting Rs. 21 per day. If the payment is Rs. 21 per day being the hire or reward paid to other workmen, in that event, Rs. 5 cannot be said to be hire or reward inasmuch as the amount of hire or reward has a nexus of proportion with regard to the service rendered or value which is evaluated according to the standard and is fixed having regard to the provision contained in the Minimum Wages Act. By no stretch of imagination, payment of stipend of Rs. 5 or Rs. 8 per day can be said to be hire or reward. The said sum of Rs. 5 does not stand to any proportion with the measurement of hire or reward. Therefore, it cannot be said that the Respondent No. 2 was employed for hire and reward. There is also nothing on the materials on record to prove or come to a conclusion that the workman was required to do any work during the period of training which can be termed to be work producing something.

17. In the case of *Burmah Shell Oil Storage and Distributing Co. of India Ltd.* (supra), it has been held:

For an employee in an industry to be a workman under this definition, it is manifest that he must be employed to do skilled or unskilled manual work, supervisory work, technical work or clerical work. If the work done by an employee is not of such a nature, he would not be a workman. Mr. Chart on behalf of the Association, however put forward the argument that this definition is all comprehensive and contemplates that all persons employed in an industry must necessarily fall in one or the other of the four classes mentioned above and, consequently, this Court should proceed on the assumption that every person is a workman; but he may be taken out of the definition of "workman" under the four exceptions contained in the definition. The two exceptions with which we are primarily concerned are exceptions (iii) and (iv). Under exception (iii), even a workman, who is employed mainly in a managerial or administrative capacity, goes out of the definition of "workman", while under exception (iv), persons who are employed in a supervisory capacity, go out of the definition provided they either draw wages exceeding Rs. 500 per mensem or exercise, by the nature of the duties attached to the office or by reason of the powers vested in them functions mainly of a managerial nature.

If every employee of an industry was to be a workman except those mentioned in the four exceptions, these four classifications need not have been mentioned in the definition and a workman could have been defined as a person employed in an industry except in cases where he was covered by one of the exceptions. The specification of the four types of work, obviously is intended to lay down that an employee is to become a workman only if he is employed to do work of one or those types, while there may be employees who not doing any such work, would be out of the scope of the word "workman" without having resort to the exceptions.

18. Therefore, it is very difficult to accept the submission of Miss Sirohi that the Respondent No. 2 is a workman in view of the above observation. In absence of any material, the contention of Miss Sirohi to the effect that though designated as apprentice, the Respondent No. 2 was required to do work for hire or reward as a workman, therefore, the ratio decided in paragraphs 21 and 22 in the case of *Burmah Shell Oil Storage and Distributing Company of India Limited (supra)* as referred by Miss Sirohi does not come to her assistance. Similarly, the decision in the case of *S. K. Verma (supra)* also does not help her in the facts and circumstances of the case inasmuch as in the said case from the terms and conditions of appointment and the nature of work performed by him, according to the terms and conditions as stipulated therein, showed that he was not exercising any administrative control and, therefore, he was not working in managerial capacity. But in the present case no such material is available to bring home the contention of Miss Sirohi.

19. Now the calculation made by the learned Labour Court does not appear to be sound. Admittedly, the termination has been made in violation of Section 6N of the U.P. Act. In the case of *State Bank of India v. N. Sundra Money (supra)*, termination of service as involved herein has been held to be retrenchment. In the present case, it cannot be disputed that the Respondent No. 2 is entitled to the benefit of Section 6N because of his termination provided it is proved that he has worked for 240 days during the 12 months preceding the termination. Now the calculation made by the Labour Court appears to be vague. On the materials placed before this Court, it is not possible to enter into a finding of fact as to whether the Respondent No. 2 had worked for 240 days during the said period. The learned Labour Court has proceeded to deduct 180 days from the total days beginning from the date of entry till the day of termination without advertting to any material as to whether the Respondent No. 2 had actually worked for 240 days.

20. In that view of the matter, the impugned award is hereby quashed and the adjudication case is remanded to the Labour Court for decision afresh on the materials already on record as to whether the workman had worked for 240 days excluding the period during which he was an apprentice within a period of 6 months from the date a certified copy of this order is produced before the learned Labour Court.

21. Before parting with the case, I must record my appreciation of the manner in which Miss Sirohi has advanced her arguments.

22. The writ petition, therefore, succeeds to the above extent and accordingly disposed of as such. There will, however, be no order as to costs. Certified copy may be issued on payment of usual charges within 7 days.