

(1996) 05 RAJ CK 0037

In the Rajasthan High Court

Case No : Civil Misc Writ Petition No. 4316 of 1992

Uttama Ram Bhargava

APPELLANT

Vs

Raj. State Road Transport Corporation and Another

RESPONDENT

Date of Decision : 09-05-1996

Acts Referred:

Apprentices Act, 1961 — Section 18, 2, 22, 7, 8
Constitution of India, 1950 — Article 226

Citation : (1996) 2 RLW 154 : (1996) 3 WLC 81 : (1996) 1 WLN 343

Hon'ble Judges : N.K. Jain, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

N.K. Jain, J.—This writ petition is pending since 1992 and has come up before me.

2. Learned counsel for the petitioner submits that the petitioner has to his credit NTC certificate of the year 1990 passed from the I.T.I., Barmer. He was selected for the training for one year under the apprentice programme vide order dt. 5.3.1991. He has relied on Kendriya, Sarvodaya Sahkari Sangh Ltd., Jaipur v. Jawan Singh Ranawat 1967 RLU 73 and S.P. Srivastava v. Banaras electric Light & Power Co. 1988 (1) 16 Factory and Labour Report 386 and submits that after completion of one year of training the petitioner was not absorbed, as Fitter and prayed for necessary direction.

3. I have heard learned counsel for the petitioner and perused the relevant Sections 7, 8, 18 and 22 of the Apprentices Act, 1961 and also the provisions of the ID Act, so also the case law cited at the Bar.

4. As per Section 2(aa) of the Apprentices Act, "apprentice" means a person who is undergoing apprenticeship training in pursuance of a contract of apprenticeship. Section 7 provides for termination of apprenticeship contract and according to Sub-section (1) of this Section, the contract of apprenticeship shall terminate on the expiry of the period of apprenticeship shall terminate on the

expiry of the period of apprenticeship training. Section 18 of the Act of 1961 makes it specifically clear that apprentices are trainees and not workers. Section 22 provides offer and acceptance of employment on the part of the employer to offer any employment to any apprentice who has completed the period of his apprenticeship training in his establishment, nor shall it be obligatory on the part of the apprentice to accept an employment under the employer. Sub-section (2) of Section 22 provides that where there is a condition in a contract of apprenticeship that the apprentice shall, after the successful completion of the apprenticeship training, serve the employer, the employer shall on such completion be bound to offer suitable employment.

5. A careful reading of the above provisions makes it clear that an apprentice is only a trainee and cannot be termed as workman. He is entitled to get training for the period specified in the contract of apprenticeship and after, the expiry of such contract the term of training automatically ends and the employer is not bound to employ him on successful completion of training unless there is a specific condition to this effect in the contract of apprenticeship. The provisions of any law with prospect to labour shall not apply to such apprentice.

6. In the instant case, the petitioner was selected vide Ex. 2 dated 5.3.1991 by the RSRTC on a stipend of Rs. 380/- for a fixed period of one year. So far as the argument that Apprentices Act, 1961 is not applicable as without obtaining permission, the petitioner was selected, as trainee has no substance as he was selected vide EX. 2 dt. 5.3.91 and completed its period. Another argument of the learned counsel for the petitioner that the appointment was with a condition that he will continue to work even after their services will be terminated after one year is also has no substance as he was for a fixed period with a condition that there is no job guarantee of the employer. There is nothing in Ex. 2 that he will continue to work even after his services are terminated after one year as it was for one year with a condition that there is no job guarantee of appointment on the post of Fitter and he cannot seek protection of umbrella of the provisions of the I.D. Act which is not applicable as he is appointed under the Apprentices Act, 1961 and governed accordingly. The petitioner cannot take advantage of Ex.3 whereby he has shown the position of staff and the alleged correspondence Ex.4 is mere correspondence without disclosing the particulars of writer of the letter and to whom it is addressed. At the most these are recommendatory letters and the petitioner cannot take advantage of these letters in the absence of their being any specific condition to provide him employment or continuation after successful completion of training, therefore, when the period of contract of apprentice has already expired and there is no specific condition regarding further employment with the respondents, in my opinion, he is not entitled to be appointed in permanent cadre on the post of Fitter and the cases cited are not helpful.

7. Counsel for the petitioner has next argued that the petitioner is entitled for appointment after completion of successful training in view of Clause 12 "in view

of employment of the Corporation" and relied on 1984(3) SLR 236 wherein their lordships has held that in case after completion of training he is not absorbed the purpose of Section 22 will be frustrated. This proposition is not disputed but the cases cited is not helpful. In that case in the terms of contract there was a condition that the trainee will be absorbed in the department if there are vacancies and admittedly there were vacancies. Under the circumstances, their lordships while interpreting Section 22(2) of the Act of 1961 has held that in view of the assurance the purpose of this section will be frustrated but as already stated admittedly in the present contract of apprenticeship there is no such term and in the absence of any specific contract provisions of Section 22(2) is not attracted and the petitioner cannot take advantage of the above case on the basis of Clause 12. That apart Section 22(1) is not obligatory and if the petitioner is appointed as prayed then in the facts of the given case the purpose of Section 22(1) will be frustrated, which provides that after completion of training neither the employer will be bound to keep the apprentice in employment nor the trainee will be bound to remain in employment as this Sub-section does not make it obligatory on both to establish relation of master and servant.

8. Counsel for the petitioner has lastly argued that the point involved in this writ petition is referred to the larger Bench in another case so this matter may be kept pending. It is true when point in controversy is pending consideration before the larger Bench Single Bench should await the decision but in the instant case since the controversy involved in this case has already been resolved by the decisions of this Court in Abdul Aziz v. RSRTC and Anr. 1992 (2) WLC (Raj.) 558 and Hanuman Prasad v. RSEB 1985 RLR 842 so also by the decision of Supreme Court in The Employees" State Insurance Corporation and Another Vs. The Tata Engineering and Locomotive Co. Ltd. and Another, wherein it has been held as under:

From the terms of the agreement it is clear that apprentices are mere trainees for a particular period for a distinct purpose and the employer is not bound to employ them in their works after the period of training is over. During the apprenticeship they cannot be said to be employed in the work of the company.

9. In view of the above it is not necessary to keep pending this petition which is pending admission since 1992 and no notice has been issued till date and a wait the decision of the pending reference as the controversy has already been set at rest. The petitioner has also not been able to satisfy me that the above cases were considered while referring the point to the larger Bench. Under these circumstances and as discussed above, the petitioner cannot be granted any relief under the extra ordinary jurisdiction of this Court under Article 226 of the Constitution of India.

10. Accordingly the writ petition has no force and the same is hereby dismissed.