
(2008) 09 SHI CK 0016
In the High Court Of Himachal Pradesh

Vijay Kumar

APPELLANT

Vs

Presiding Judge, Labour Court and Another

RESPONDENT

Date of Decision : 10-09-2008

Acts Referred:

Industrial Disputes Act, 1947 — Section 2(s), 25F

Citation : (2009) 2 LLJ 121 : (2008) 3 ShimLC 217 : (2009) 1 SLR 756

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rajiv Sharma, J.—A challenge has been laid by the petitioner to the award dated November 15, 2006 passed in Reference No. 71/1999 by the Presiding Judge, H.P. Labour Court, Shimla.

The brief facts necessary for the adjudication of this petition are that the State Government has made the following reference to the Labour Court:

Whether the action of the management of General De-Confeteria Ltd. Baddi in appointing Shri Vijay Kumar as a worker in the garb of a trainee w.e.f. November 9, 1995 and then termination of his services w.e.f. May 11, 1998 without any notice, chargesheet, enquiry and without compliance of Section 25-F of the Industrial Disputes Act, 1947, is legal and justified. If not, to what relief of consequential service benefits including back wages, seniority and amount of compensation Sn. Vijay Kumar is entitled?

2. In sequel to the reference made by the State Government, the petitioner has filed the statement of claim. He has primarily contended in the claim petition that he was illegally retrenched on May 11, 1998 without any justification or cause or cogent reason. The respondent No. 2, (hereinafter referred to as the Management) filed reply to the claim petition. The principal stand of the Management in the reply filed to the statement of claim was that the petitioner was engaged as a trainee as per the conditions contained in the letter of offer

dated November 5, 1995. It was further contended that the petitioner was never offered employment during or after the training was complete. The petitioner has filed detailed rejoinder to the reply filed by the Management. The Labour Court on the basis of ocular and documentary evidence answered the reference in negative. The petitioner has challenged the award dated November 15, 2006.

3. Mr. Subhash Sharma has strenuously argued that the award dated November 15, 2006 is not sustainable in the eyes of law. He also contended that the petitioner was a confirmed employee as per Exhibit P-B, i.e. the wage slip for the month of November, 1997. Mr. Rahul Mahajan has supported the award dated November 15, 2006.

4. I have heard the learned Counsel for the parties and gone through the pleadings carefully.

5. The petitioner was offered traineeship (Annexure P-1) on November 5, 1995. It is evident from the phraseology of Annexure P-1 that the period of training was 12 months. He was to be paid a stipend of Rs. 15 00/- per month. He was to be informed after the expiry of training period whether he could be offered employment or not. It was dependent on his progress during the period of training and availability of a suitable vacancy. The traineeship did not entitle him to claim employment with the Management. The training period of the petitioner was extended by one year vide letter dated November 10, 1996. Thereafter the training was further extended by another six months vide letter dated November 10, 1997. He was informed by the Management on May 9, 1998 that as per Clause 2 of his training letter his training has come to an end with effect from May 11, 1998. The text of letter dated May 9, 1998 reads thus:

This refers to our letter dated November 5, 1995 offering you training in our factory.

As per Clause 2 of your Training letter your Training comes to an end w.e.f. May 11, 1998. We congratulate you on successful completion of the Training with us and wish you all the best for your bright future.

You may contact Personnel/Accounts dept. for full and final payment of your stipend and other dues if any.

6. It is clear from the contents of Annexure P-1 that the petitioner was offered traineeship on November 5, 1995. This period was extended initially for one year and thereafter for another six months. He had completed his training on May 11, 1998. Mr. Rahul Mahajan has drawn the attention of the Court to Standing Orders duly certified by the Labour Commissioner on June 16, 1998. Sub Clause (a) of Certified Standing Order 2 defines the workman as under:

2(a) "Workman" means any person employed by the company on Probation or otherwise, to do any skilled, or unskilled or manual or clerical or technical work for hire (or reward) whether the terms of employment to be expressed or implied but does not include Apprentice's and Trainees appointed by the Government for

training or otherwise, under any subsidy or under any other scheme of the Central or State Government.

Certified Standing Order 3(f) read thus:

3(f) "Apprentice/Trainee: An Apprentice/Trainee is a learner other than a probationer who is selected for training in any job or trade, whether paid or unpaid, for such period extending upto three years with no guarantee of future permanent employment and on such terms and conditions as may be determined by the management from time to time. However such an opportunity shall not be construed as commitment for giving employment. Apprentices engaged under the Apprentice's Act, shall however, be governed by the said act.

7. It is thus evident from close reading of definition of workman and sub Clause (f) of Clause 3 of the Certified Standing Orders that the petitioner could not be termed as a workman. His period of training could be extended by three years. In the present case, the training period initially was for 12 months. Thereafter it was extended by another one year and finally it was extended by another six months. He always remained a trainee. He was never offered employment after the completion of training as noticed above. The Management was neither required to issue any notice nor any compensation was to be paid to him. The notice and compensation is only required to be paid to a workman as defined u/s 2(s) of the Industrial Disputes Act, 1947. Mr. Subhash Sharma though has argued that the petitioner was confirmed, however, there is no order of confirmation on record. The fact that in the month of November, 1997, i.e. wage slip, it has been mentioned that the petitioner has been confirmed, will not make him a confirmed employee. There should be a separate order of confirming him.

8. The Management has produced Mr. R.K. Soni as R.W.I. He has placed on record the performance appraisal of the petitioner, i.e. Exhibit R-5 to Exhibit R-9. He has also placed on record Exhibit R-10 to Exhibit R-21, i.e. the wage record. The learned Labour Court on the basis of oral and documentary evidence has come to the right conclusion that the petitioner always remained as trainee and has never attained the status of workman.

9. The petitioner was apprised of the terms and conditions as per offer letter of traineeship by the Management. The period of training could last for 3 years. He has been put to notice that after the completion of training period it would not entitle him to claim employment.

10. Their Lordships of the Hon''ble Supreme Court while dealing with the case of a trainee in Kalyani Sharp India Ltd. Vs. Labour Court No. 1, Gwalior and Another, have held as under at p. 1347 of LLJ:

1. Respondent 2 (hereinafter referred to as "the respondent") was employed as Trainee Technician in the establishment of the appellant by an order sent to him on February 29, 1989 which contained inter alia the following stipulations:

You will be on training for a period of one year from the date of joining. You are

requested to join on or before March 1, 1989. During this period the management may at its discretion withdraw the above facility of providing training to you at any time without assigning any reason whatsoever. You will be considered for regular employment on satisfactory completion of your training. The order of employment itself clearly sets out the terms thereafter which makes it clear that the facility of providing training to him could be put to an end at any time without assigning any reason whatsoever and his services could be regularised only on satisfactory completion of his training. If these Clauses are read together, it is clear he was under probation during the relevant time and if his services are not satisfactory, the same could be put to an end to. It is clear that the respondent had been appointed as a Trainee Service Technician and for a period he had to undergo the training to the satisfaction of the appellant and if his work was not satisfactory during that period the facility could be withdrawn at any time and he would be regularised only on completion of his training. Thus the respondent's services were terminated before expiry of the probationary period. In such a case, question of issue of notice before terminating the service as claimed by the respondent does not arise. Escorts case is identical with the present case. Following the said decision and for the reasons stated therein these appeals are allowed. The order made by the High Court affirming the award made by the Labour Court is set aside and the claim made by the respondent is dismissed.

11. The learned single Judge of Delhi High Court in *Kamal Kumar v. Presiding Officer, Labour Court and Ors.* 1998 XI LLJ 877 (Del) has held that petitioner being merely a trainee for a particular period and for distinct purpose was not bound to be employed by the company. His engagement was only to offer him training under the terms and conditions stipulated. The learned single Judge has further held that merely because some amount was paid to the petitioner as provident fund, it cannot be said that he had become a workman of the company. The learned single Judge has held as under at p. 879 of LLJ:

11. ...Service of the petitioner was terminated by the Management-respondent on expiry of the initial period of twelve months, that is, immediately after completion of the course of basic training. It has also been brought in evidence by the Management that the petitioner was interviewed by an Interview Board of the Management to assess the aptitude of the petitioner on completion of the basic training so as to assess as to whether he could be inducted into further training for two years or not. It is also disclosed from the evidence on record that the Interview Board of the Management assessed the aptitude of the petitioner and submitted its report on March 15, 1986 according to which, performance of the petitioner was found to be not satisfactory and, therefore, the Contract was brought to an end.

Admittedly in the present case the provisions of Apprenticeship Act is not applicable. During the period of training the petitioner was given a stipend of Rs. 350/-. A close examination of the terms and conditions of the contract entered

into between the petitioner and the respondents leads to the conclusion that the principal object with which the parties entered into the agreement of training was an offer by the employer to the petitioner to have an opportunity to learn trade or craft to acquire such knowledge that may be obtained in the course of training. From the aforesaid terms of the agreement, it is clear that the petitioner was a mere trainee for a particular period and for a distinct purpose and the respondent was not bound to employ him in their works after the period of training is over. It, therefore, cannot be said that the petitioner was a workman of the respondent Company, inasmuch as, the purpose of engagement of the petitioner was only to offer him training under the terms and conditions stipulated above. No wage was paid to the petitioner as defined within the meaning of "wages" under the Industrial Disputes Act. Merely because some amount was paid to the petitioner as Provident Fund, it cannot be said that he had become a workman of the respondent Company.

12. The same view has been reiterated by the learned single Judge of Delhi High Court in *Management of OTIS Elevator Co. (India) Ltd. Vs. Presiding Officer, Industrial Tribunal-III and Another*, The learned single Judge has held as under at p. 63 of LLJ:

7. I am of the considered opinion that the facts of the present case are similar to that of the facts of *Kamal Kumar v. Presiding Officer, Labour Court and Ors.* (supra) and therefore the ratio of the aforesaid decision is squarely applicable to the facts of the present case. The terms and conditions of engagement in the present case are similar to that of *Kamal Kumar v. Presiding Officer, Labour Court and Ors.* (supra). In the said case also the interview board of the management assessed the aptitude of the petitioner and submitted its report according to which performance of the petitioner was found to be not satisfactory and, therefore, the contract was brought to an end. In the light of the aforesaid facts it was held that the petitioner therein was not a "workman" of the company as the purpose of engagement of the petitioner was only to offer him training under the terms and conditions stipulated above. It was also held that no wage was paid to the petitioner as defined within the meaning of "wages" under the Industrial Disputes Act. Same is the position in the present case. Here the respondent No. 2 was being paid only a stipend which cannot be termed as "wages". In that view of the matter, I hold that the respondent No. 2 would not come within the ambit of the expression "workman" as defined u/s 2(s) of the Industrial Disputes Act and, therefore, the findings and the conclusions arrived at by the Industrial Tribunal are illegal and void and the same are hereby set aside.

In the present case also the petitioner was only a trainee and he never became a workman. In view of the reasons stated hereinabove, there is no force in the writ petition and the same is dismissed. No costs.