
(2004) 12 P&H CK 0049
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 8117 of 2001

Virender Singh

APPELLANT

Vs

Haryana Tourism Corporation Ltd.

RESPONDENT

Date of Decision : 16-12-2004

Acts Referred:

Apprentices Act, 1961 — Section 18, 22, 22(1), 33(2), 33C(2)
Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10, 2, 25F

Citation : (2005) 105 FLR 1159 : (2005) 2 LLJ 856 : (2005) 139 PLR 830

Hon'ble Judges : Binod Kumar Roy, C.J;V.K. Bali, J;J.S. Khekar, J

Bench : Full Bench

Advocate : Abha Rathore, for the Appellant; Sanjeev Kaushik, for the Respondent

Judgement

V.K. Bali, J.—Petitioner is eligible and holds requisite qualifications for the post of Counter Incharge. He has undergone training for the said post as well for a period of five and a half months. He does not hold requisite qualifications, making him eligible for the post of Waiter, even though on this post, he worked as a trainee for long nine years. He is being denied even consideration either of the two posts as mentioned above, on the ground that whereas, he may be eligible to be appointed as Counter Incharge, he has not undergone the requisite training for the said post and further that he may have the requisite period of training for his appointment on the post of Waiter, he does not have the requisite qualification for the said post. The petitioner is on cross roads and on the facts and circumstances, to be detailed hereinafter seeks appointment on either of two jobs as mentioned above.

2. As a prelude to the detailed facts given in the writ petition, we may briefly summarise the case of the petitioner as follows:-

Virender Singh, petitioner herein, who had done Diploma in Hotel Reception and Book Keeping in April, 1990, came to be appointed as Waiter Trainee on

21.9.1992 by the Hayrana Tourism Corporation Limited, a Company incorporated under the Companies Act, 1956. His appointment letter provided that the training period would be of two years. On his successful completion of the training period, which was never extended and during which period, he was being paid a fixed amount as stipend, he was neither given any regular appointment nor regular pay scale but was yet continued to be paid a fixed sum as a trainee upto 17.5.2001 when vide order dated 17.5.2001, he was relieved from his job. Having worked with the respondent Corporation for nine years and then all of a sudden being given marching orders, he challenges order of his termination by styling the same to be illegal and nonest in the eyes of law. For the desired relief he placed reliance upon a Division Bench judgment of this Court in C.W.P. No. 16772 of 1999 (Naresh Kumar v. State of Haryana and Anr.) decided on 24.1.2001. Annexure P-9, decided two writ petitions bearing No. 16772 of 1999 and 1453 of 2000 by a common order.

4. This matter came up before the Division Bench of this Court, consisting of one of us (J.S. Khehar, J.) on 23.7.2001 and when the petitioner strenuously placed reliance, for the relief, on the judgment of this Court in C.W.P. No. 16772 of 1999, following order was recorded:-

"Learned counsel for the petitioner relies upon the decision of a Division Bench of this Court in C.W.P. No. 16772 of 1999 in support of her claim that the petitioner's claim to the post of Counter Incharge should have been considered on the basis that the training as trainee-waiter should be considered as if he had worked as trainee Counter Incharge. This decision relied upon by the petitioner squarely covers the case of the petitioner. But, however, we have reservations about the view taken by the Division Bench on this aspect. Therefore, we admit this writ petition and we direct the Registry to place this writ petition before Hon"ble the Chief Justice for appropriate orders for placing this petition, before a larger bench."

5. The order, reproduced above, would, thus, manifest that the matter is before the Full Bench in view of doubt expressed by the Division Bench in correctness of the judgment recorded in C.W.P. No. 16772 of 1999.

6. The facts, as culled out from the pleadings made in the petition, on the basis of which the relief asked for is sought to prop, reveal that after doing his diploma in Hotel Reception and Book Keeping in April, 1990, petitioner was called for interview for appointment as Waiter Trainee on 21.9.1992 and pasted at Hotel Raj Hans Suraj Kund. The appointment letter provided that the training period would be two years. He successfully completed his training period and, as mentioned above, was being paid a fixed amount as stipend. He also did his training as Counter Incharge which would be evident from the certificates, Annexure P-3 and P-4. Even though he had completed the maximum period of training, he was neither given any regular appointment nor regular scales and he continued to be paid a fixed sum as trainee. On completion of two years training, order dated 7.6.1993, Annexure P-5, came to be passed wherein it is mentioned

that all the trainees, who were kept for a period of two years, would continue to work till further orders, even if they had completed the requisite training. It is on the dint of the letter aforesaid that the petitioner continued upto 17.5.2001 when, as mentioned above, he was relieved from his post. It is the case of the petitioner that interviews for filling the posts of Waiter were held on 5.12.2001 and petitioner was also called for interview vide letter dated 19.11.1999. The respondent Corporation did not interview him because he did not possess the prescribed qualification in the advertisement of Hotel Restaurant and Counter Service. It is further his case that without any advertisement or notice, interview, were held for filling the post of Counter Incharge in the respondent Corporation on 7.2.2000 and petitioner was not called for interview, although he was fully eligible for the post of Counter Incharge. His services were abruptly terminated vide order dated 17.5.2001. It is his positive case that no retrenchment compensation in accordance with the provisions of Section 25F of the Industrial Disputes Act was paid to him. The petitioner further avers that in a writ petition filed by similarly situated trainees, who had been removed by the respondent Corporation after a period of four years (*Tikka Ram v. State of Haryana* 1992 (1) S.C.T. 1998), this Court dismissed the writ in view of the stand taken by the respondent Corporation that nothing else is required to be discussed in view of the categorical averment that jobs on regular basis and the post on which the said petitioners were undergoing training, were not available and further that as and when there was vacancy, they shall be considered in order of seniority. In January, 1999, 400 posts of Waiters, Counter Incharge, Assistant Cooks, Tandoria etc., were sanctioned by the Haryana Bureau of Public Enterprises. The petitioner was entitled to adjustment on one of these regular posts as well but was not considered for the same.

7. On the pleadings, details whereof have been given above, the petitioner challenges order dated 17.5.2001 being violative of Section 25F of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act of 1947). It is also his case that the said order is in violation of the Certified Standing Orders of the respondent-Corporation, by virtue of which Apprentices Act, 1961 (hereinafter referred to as the Act of 1961) would apply to the trainee. The petitioner then places reliance on Section 7 of the Act of 1961, by virtue of which the contract of apprentices training would terminate on the expiry of period of apprenticeship as also Certified Standing Order 18(ii), according to which the Management is under an obligation to abide by the provisions of the Act of 1947, which necessarily entails following the procedure as contained in Section 25F of the Act of 1947 in the matter of termination of service of any employee. The standing Order 18(ii) is reproduced as under:-

"18(ii) No notice shall be necessary for termination of the service of any other class of employee. The above provisions shall not, however, absolve the management of their obligation to abide by the provisions of the Industrial Disputes Act or any other law for the time being in force for the termination of service by way of retrenchment or otherwise."

8. The continuance of the petitioner for long period as a casual, temporary or trainee has also been styled by the petitioner to be unfair labour practice in terms of Item No. 10 of Schedule V of the Act of 1947. The petitioner also clamours for a regular post as the same, it is stated, indeed are available with the respondent Corporation and the petitioner is entitled to be given such appointment in terms of clause 3 of his appointment letter. The petitioner also claims regular appointment on the basis of decision of this Court in Tikka Ram's case (supra).

9. The respondent-Corporation entered defence and hotly contested the case of the petitioner. In the preliminary submissions incorporated in the written statement, it has been averred that a perusal of the impugned order, Annexure P-7, would show that the services of the petitioner were not terminated, rather he was relieved from training as per terms and conditions of the appointment letter. It is in pursuance of the order passed by this Court in Letters Patent Appeal No. 866 of 1999 decided on 30.9.1999, wherein a direction was issued to consider absorption of the petitioners in the said case against the advertised posts if they were eligible for the same, that pursuant to advertisement, all eligible persons were called for interview for filling up 139 posts of Waiter. The petitioner was not having one year diploma and certificate in the Hotel Restaurant and Counter Service and, therefore, his candidature was not considered. It is then pleaded that the petitioner and other similarly situated persons were appointed as trainees in their respective fields/categories for a period of two years and given stipend during the course of training. As per condition No. 1 of the appointment letter, petitioner was appointed for a period of two years and as per condition No. 3, on completion of the training, it was not obligatory on the part of the Corporation to offer him any employment nor it was obligatory for him to accept any employment in the Haryana Hotels Limited. He was, however, to be considered for appointment on regular post subject to its availability, on completion of his successful training. It was not mandatory for the respondent Corporation to offer an appointment on regular basis to the petitioner. It is then pleaded that number of other similarly situated persons, who had knocked at the doors of this Court, seeking regular appointment on completion of their training as they were appointed as trainees by the respondent Corporation, the main emphasis of the petitioners and other similarly situated persons had been that once they were appointed as trainees, then the Corporation is duly bound to appoint them on regular posts and further that the Corporation was also duty bound to appoint them on regular basis in terms of the Act of 1961. One such writ petition filed by other similarly situated persons (C.W.P. No. 2921 of 1998 titled as Baljit Singh and Ors. v. State of Haryana and Ors., was decided on 17.8.1998 with a direction that the claim of the petitioners shall be considered against the posts that may be available and if they were found suitable, they may be absorbed, otherwise action in accordance with law may be taken. A copy of the order passed by this Court in the writ petition aforesaid has been annexed with the written statement as Annexure R-1.

Another similar writ petition (C.W.P. No. 18474 of 1996) filed by Dharambir alongwith other similarly situated persons, was decided by learned Single Judge of this Court on 1.6.1999 wherein a direction was given to the Corporation to appoint the petitioners in that writ petition against the available posts (Annexure R-2). This order was challenged by the respondent-Corporation by filing L.P.A. No. 866 of 1999 which was decided on 30.9.1999 whereby order dated 1.6.1999 was modified and a direction was issued to the respondent Corporation to consider absorption of the petitioners in the said matter against the advertised posts (Annexure R-3). The respondent Corporation thereafter formulated a criteria to evaluate suitability and seniority of the waiter trainees to consider all trainees who had done their training from the respondent Corporation against 139 posts which were sanctioned vide letter dated 27.1.1998. Yet another similar writ petition No. 4374 of 1998 was filed in this Court which was disposed of vide order dated 12.10.1998 on the basis of judgment of this Court dated 17.8.1999. On the basis of the judicial precedents, as mentioned above, it is the case of the respondent Corporation that it is not bound to appoint all the trainees against the regular posts more particularly when regular posts are not available. After sanctioning the 139 posts by the Government, the Corporation, as per the directions issued by this Court, considered the cases of the trainees in view of the criteria formulated by it. All concerned were called for interview for adjudging their suitability in accordance with the criteria. The petitioner was also called but since he was not having the Diploma/Certificate in the respective field/category, his candidature was not considered. In the preliminary objections, taken in the written statement, the respondent Corporation pleads that the petitioner was engaged on the job-trainee on a fixed stipend of Rs. 850/- per month. His training was discontinued as per the terms and conditions of his engagement/appointment letter and, therefore, he can not assail the validity of the impugned order. The petitioner was taken as job-trainee in the category of Waiter in the respondent Corporation on a fixed stipend with a clear stipulation in the appointment letter that on completion of the training, it would not be obligatory on the part of the management to offer him any employment nor it would be obligatory in his part to accept any employment in the Corporation. He was, however, to be considered for appointment on same regular post subject to its availability on completion of his successful training. The petitioner, thus, can not be termed as a workman and his relieving from the training does not amount to retrenchment as contemplated under the provisions of Section 2(oo)(bb) of the Act of 1947. It is then pleaded that from reading of the writ petition, an impression has been given as if the petitioner was appointed under the provisions of the Act of 1961 and, therefore, his service can not be dispensed with by the Corporation without complying with the provisions of the said Act. In this regard, it is the positive case of the respondent Corporation, that the said Act shall not be applicable to the petitioner as, in view of the provisions contained in the said Act, no agreement has been signed or registered with the Apprentice Institute of Kanpur, without which the apprentice training can not be said to be governed under the provisions of the Act of 1961. Even otherwise, as

per Section 22 of the Act of 1961, it is not obligatory on the part of the employer to offer an employment to an apprentice, who might have completed the period of his apprentice training in the establishment nor is it obligatory on the part of the employee to accept the employment under the employer. Reply on merits, by and large, is reiteration of the pleas raised in the preliminary submissions and objections. It is, however, significant to mention here that be it in the preliminary submissions or on merits, it is the positive cases of the respondent Corporation that the petitioner is not governed by the provisions of the Act of 1961.

10. To the specific pleadings made in para No. 15 of the writ petition, pertaining to Certified Standing Orders of the respondent Corporation, by virtue of which Act of 1961 is to apply to the trainees, reply given by the respondent Corporation reads thus:-

"15. That the averments of this para of the writ petition are totally wrong hence vehemently denied. As stated above the provisions of Apprentice Act, 1961 is not applicable qua the petitioner as per the provisions of the Apprentice Act, 1961 no agreement has been signed or registered with the Apprentice Institute of Kanpur and it is only in such circumstances that the apprentice training is governed under the provisions of Apprentice Act, 1961. Even otherwise, u/s 22 of the Apprentice Act, 1961, it is clearly stated that it shall not be obligatory on the part of the employer to offer an employment to an apprentice who have completed the period of their apprentice training in the Establishment nor shall it be obligatory on the part of apprentice to accept the employment under the employer."

11. From the pleadings of the parties, as culled out above, it would be apparent that on some basic facts, there is no dispute. Petitioner has done Diploma in Hotel Reception and Book Keeping in 1990 and he was called for interview for appointment as Waiter Trainee and was given appointment as Waiter Training vide letter dated 21.9.1992 is not in dispute. The training was to be of two years and petitioner successfully completed the same, which was never extended is also not disputed. The petitioner did his training as Counter Incharge also as would be borne out from the Certificates, Annexure P-3 and P-4, has also not been disputed. That there was a direction by this Court in the matter of persons, similarly situated, to consider them for regular jobs that had since been advertised and the petitioner did not find favour with the respondent Corporation in the said consideration because, he had not passed the required diploma in Hotel Restaurant and counter Service but had passed diploma in Hotel Reception and Book Keeping, which entitles him for consideration to the post of Counter-Incharge, are also not in dispute. Further, at a time when petitioner was recruited as Waiter Trainee, even though, he was holding the requisite qualification for counter incharge there was no requisite qualification provided under the Rules for the post of Waiter, is also not in dispute.

12. From the facts, as fully detailed above, the significant question, that arises for adjudication is as to whether the petitioner is a trainee, having been so

appointed under the Act of 1961 and, therefore, the provisions of the Act of 1947 would not apply. The question is of importance as, if finding is to be recorded that the petitioner is a workman as defined u/s 2(s) of the Act of 1947, then non-compliance of the provisions of Section 25F of the said Act would vitiate order dated 17.5.2001, Annexure P-7. To determine this question, naturally, the basic governing principle would be the pleadings of the parties. While giving details of his appointment, the petitioner has nowhere pleaded that his appointment was under the provisions of the Act of 1961. For the desired relief, it is no doubt true, he has relied upon violation of Section 25F of the Act of 1947 and alternatively non-adherence or violation of the Certified Standing Orders of the respondent Corporation and, in particular, Standing Order No. 18(ii). Sum and substance of the pleadings made in the petition is that the petitioner is a workman as defined in Section 2(s) of the Act of 1947 but in case this Court might hold that he is an apprentice, within the meaning of Section 2(aa) of the Act of 1961, order of termination has to be annulled for violation of Standing Order No. 18(ii).

13. The respondent Corporation, on the other hand, while construing the pleadings made in the petition, so as to mean that the petitioner was governed by the Act of 1961, has rather been categorical in stating that the provisions of the said Act were not applicable as regards petitioner as no agreement had been signed or registered between the petitioner and respondent Corporation as it is only in such circumstances that the apprentice trainee shall be governed by the provisions of the Act of 1961. The pleading made to the effect aforesaid, has been repeated at number of places in the written statement and in particular, para No. 15, reproduced above. What, thus, transpires is that whereas, the petitioner for invalidating the impugned order, Annexure P-7, first states that he being a workman, respondent Corporation has not complied with the mandatory provisions of Section 25F of the Act of 1947, alternatively, even the Certified Standing Orders have not been adhered to. The respondent Corporation which is in a better position to give the way and manner the petitioner came to be employed, denies applicability of the Act of 1961 in the case of the petitioner.

14. The pleadings of the parties apart, the accompanying documents with the writ petition and in particular, letter of appointment, Annexure P-2, would further show that the appointment of the petitioner on the job of trainee Waiter was not under the provisions of the Act of 1961. Not that the mention of the Act of 1961 or the provisions contained therein is significantly missing from the appointment letter, Annexure P-2, there is also no provision in the conditions of appointment, No. 1 to 5, which may even remotely suggest the parties entering into any contract, even though in clause 3 of the appointment, it has been mentioned that on completion of the training, it would not be obligatory on the part of the management to offer any employment to the petitioner nor it would be obligatory on his part to accept any employment in the respondent Corporation and further that the petitioner shall, however, be considered for appointment on regular post, subject to its availability on completion of successful training. Available on records is also order dated 7.6.1993. Annexure P-5, which would clearly manifest

that on completion of training of the petitioner of two years, he was ordered to continue to work till further orders. The term of appointment of the petitioner as trainee had, thus, come to an end. The petitioner continued to be in service, even though as a waiter trainee, till such time, he was relieved from the said post on 17.5.2001, Annexure P-7, meaning thereby he continued to be in service for a period of almost eight years from the date he was ordered to continue after completion of his successful training of two years.

15. Having seen the pleadings and accompanying documents, it is now time to take stock of the provisions of the Act of 1961 in our further endeavor to find out as to whether the petitioner was apprentice appointed under the Act of 1961 or was an apprentice otherwise, i.e., not appointed under the provisions of the said Act. "Apprentice" has been defined in Section 2(aa) of the Act of 1961 to mean a person who is undergoing apprenticeship. Definition of "apprenticeship training" by virtue of Section 2(aaa) is as follows:

"apprenticeship training". means a course of training in any industry or establishment undergone in pursuance of a contract of apprenticeship and under prescribed terms and conditions which may be different for different categories of apprentices".

16. Section 4 deals with contract of apprenticeship. Sub-Section (1) of Section 4 mandates that no person shall be engaged as an apprentice to undergo apprenticeship training in a designate, trade unless such person or, if he is a minor, his guardian, has entered into a contract of apprenticeship with the employer. Sub-Section (4) of Section 4 reads thus:-

"(4) Every contract of apprenticeship entered into under Sub-section (1) shall be sent by the employer within such period as may be prescribed to the Apprenticeship Adviser for registration".

17. Section 5 of the Act, which deals with notation of contract, reads thus:

"Where an employer with whom a contract of apprenticeship has been entered into is for any reason unable to fulfil his obligations under the contract and with the approval of the Apprenticeship Adviser it is agreed between the employer the apprentice or his guardian and any other employer that the apprentice shall be engaged as an apprentice under the other employer for the unexpired portion of the period of apprenticeship training, the agreement, or registration with the Apprenticeship Adviser, shall be deemed to be the contract of apprenticeship between the apprentice or his guardian and the other employer, and on and from the date of such registration, the contract of apprenticeship with the first employer shall terminate and no obligation under that contract shall be enforceable at the instance of any party to the contract against the other party thereto."

18. The period of apprenticeship training, as per provisions of Section 6, has to be specified in the contract of apprenticeship in the manner, mentioned in the

said Section. Section 7 which deals with termination of the apprenticeship contract, insofar as it is relevant, is reproduced as under:-

"TERMINATION OF APPRENTICESHIP CONTRACT.

7(1) The contract of apprenticeship shall terminate on the expiry of the period of apprenticeship training.

(2) Either party to a contract of apprenticeship may make an application to the Apprenticeship Adviser for the termination of the contract, and when such application is made, shall send by post a copy thereof to the other party to the contract.

(3) After considering the contents of the application and the objections, if any, filed by the other party, the Apprenticeship Adviser may, by order in writing, terminate the contract 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 that it is desirable in the interests of the parties or any of them to terminate the same."

19. Section 18 of the Act of 1961 stipulates that apprentices are trainees and not workers. The same reads as follows:-

"18. Save as otherwise provided in this Act.-

(a) every apprentice undergoing apprenticeship training in a designated trade in an establishment shall be a trainee and not a worker; and

(b) the provisions of any law with respect to labour shall not apply to or in relation to such apprentice."

20. After giving our anxious thoughts to the rival contentions of learned counsel for the parties with regard to the issue framed above, we are of the considered view that the petitioner was not an apprentice, having been employed under the Act of 1961. It is no where the case of the petitioner, culled out from the pleadings made by him in the petition that he was appointed as an apprentice under the provisions of the Act of 1961. The pleadings do not go beyond a ground taken for invaliding order dated 17.5.2001. Annexure P-7, that as per Certified Standing Order 18(ii) framed by the respondent Corporation, a notice for termination had to be issued to him before dispensing with his services. The respondent Corporation, as observed earlier, was in a better position to give details of the employment of the petitioner. It specifically and repeatedly denies applicability of Act of 1961 in the matter of employment of the petitioner as a Waiter Trainee. An essential condition of employment of a person as apprentice, envisaged u/s 4(1) and (4) is stated to be missing in this case. In other words, it is the specific case of the respondent Corporation that no contract as envisaged u/s 4(1) came into being between the parties nor any contract came to be registered between the parties as envisaged u/s 4(4). The petitioner, in the circumstances, may have been appointed as an apprentice but same, by no

stretch of imagination, can be said to be under the provisions of the Act of 1961. Our view is further strengthened from the letter of appointment of the petitioner, which, besides not mentioning the appointment of the petitioner under the Act of 1961, also does not contain an essential ingredient of his appointment under the said Act as the parties were not required to even enter into a contract. The petitioner was only asked to join the service if conditions of his appointment, as mentioned in letter, Annexure P-2, were acceptable to him.

21. Assuming, however, that the petitioner was appointed under the Act of 1961, his continuous employment, even after the specified period of training, mentioned in his letter of appointment, would entail cessation of his being apprentice. Apprentice means a person who is undergoing apprenticeship training. The moment apprenticeship training comes to an end and that too successfully and when there is no order of extension of period of training, not novation in terms of Section 5 a person can not be styled as apprentice. Apprenticeship training by virtue of Section 2(aaa) means a course of training in any industry or establishment undergone in pursuance of a contract of apprenticeship and under prescribed terms and conditions which may be different for different categories of apprentices. It is no doubt true that by virtue of the provisions of Section 18 of the Act of 1961, apprentices are trainees and not workers and the provisions of any law with respect to labour shall not apply to or in relation to such apprentice. But the petitioner, in our considered view, can not be called as an apprentice after his training period came to an end as he was asked to continue till further orders and when significantly, in the said order as well, no specified period was mentioned.

22. One of us (V.K. Bali, J.) while sitting singly in *Ashok Kumar v. Presiding Officer, Labour Court, Gurdaspur* 1992(3) S.C.T. 659, while holding that apprentices are trainees and not workers and that the definition of workman as spelled out in Apprentice Act would apply, being special legislation, further held that "this, however, would be of no consequence in the facts of the present case as it is amply made clear in the award, which is a judgment inter parties that the petitioner was restored his status of Apprentice Turner and that too with back wages". Brief facts of the case aforesaid reveal that the petitioner was appointed as an Apprentice Turner on 23.8.1975. He worked upto November 15, 1977, where after he was not permitted to join his duties. Taking the aforesaid action of the management to be a retrenchment, the petitioner sought reference u/s 10 of the Act of 1947 and vide order dated 4.12.1981 it was directed that the petitioner shall be called by the management to work on temporary basis on his previous conditions of service when the working of the sugar mill would start keeping in view his seniority at the time of termination of his services. This order was passed on the statement made by the representatives of the parties. After the award dated 4.12.1981, when the petitioner reported for duty, he was deliberately kept out of service. Constrained, thus, he moved an application u/s 33(c)(2) of the Act of 1947 for grant of wages which was allowed. Once again the petitioner reported for duty but the Management adopted the same course of not

permitting him to join. This constrained him to file yet another application u/s 33(c)(2) of the Act of 1947 for a specified period. The Labour Court, vide order dated 20.8.1990 came to the conclusion that the petitioner was entitled to wages from December 4, 1981 to December 31, 1986 and the management was directed to make the payment to the workman for 30 months and six days. The petitioner then challenged the award as the entire relief claimed by him in his application u/s 33(c)(2) was not allowed which pertained to regular wages.

23. It was urged on behalf of learned counsel for the petitioner that vide Annexure P-2, petitioner was restored his status of apprentice turner and vide Annexure P-5, which was a decision rendered by the Labour Court, on an application filed by the workman u/s 33C(2), it was held that person junior to the petitioner were still in the employment of the management and that being so, there was no question for the Labour Court not to have granted wages to the petitioner, at the rate the person junior to him was getting and also to limit salary of the petitioner i.e. for six months a year. This contention was sought to be countered by learned counsel representing the Management by contending that the petitioner was appointed as apprentice and under the Apprentices Act after the period of contract was over, the management was well within its right to discharge him from service. Reliance, for this contention was placed on Sections 18 and 19 of the Act of 1961. On the aforesaid contention of learned counsel, it was held by this Court that "it is no doubt true that apprentices are trainees and not workers and inasmuch as the Apprenticeship Act is a Special Act, the definition of workman as spelled out in Apprenticeship Act would apply". After so observing, the Court further held that "this, however, would be of no consequence in the facts of the present case as it is amply made clear in the award, which is a judgment inter-parties that the petitioner was restored his status of apprentice Turner and that too with back wages". It was further observed that if the contention of learned counsel for the respondents was correct, then apprenticeship period was over which was stated to be upto November 15, 1977 after giving him extension, there was no question for the management to make such a statement before the Presiding Officer, Labour Court, when order, Annexure P-1 was passed. It was further observed that if contention of learned counsel for the respondent was to be correct, then in that case the management should have at least agitated the award, Annexure P-1, by styling the same as illegal as the period of apprenticeship of the petitioner had come to an end and he was no more an apprentice as per the provisions contained in the Act of 1961. What we have said above shall also be fortified by Section 7 of the Act of 1961 which clearly shows that the contract of apprenticeship shall terminate on the expiry of the period of apprenticeship training.

24. Having held that the petitioner was not appointed as an apprentice under the Act of 1961 and further in any case ceased to be apprentice, even if appointed under the provisions of the said Act, to be an apprentice, when he was asked to continue till further orders, there appears to be no need to further probe the

issue. However, we may mention that Ms. Abha Rathore, learned counsel for the petitioner, vehemently contends that the provisions of Section 2(s) of the Act of 1947 and Section 18 of the Act of 1961 are contradictory and that only harmonious way of interpretation would be to hold that even when a person might have been appointed as an apprentice otherwise, that is, not under the provisions of the Act of 1961, the provisions of the Act of 1947 would apply. We find considerable merit in the aforesaid contention of learned counsel.

25. A Division Bench of Rajasthan High, Court in Hanuman Prasad Choudhary etc. v. Rajasthan State Electricity Board, Jaipur 1986 Lab.I.C. 1014, after noting an apparent conflict between the provisions of Section 2(s) of the Act of 1947, by virtue of which an apprentice is a workman and would be governed by the provisions of the said Act, and Section 18 of the Act of 1961, which postulates that an apprentice is not to be treated as workman as the provisions of the Act of 1947 would not be applicable to him, held that the conflict between the two laws can be resolved by applying the principle of harmonious construction. It was held as under:-

"Apprentices Act is not an exhaustive Act to cover all types of apprentices because in view of the definition of term "apprentice" as contained in Section 2(aa) of the Apprentices Act, it is applicable only to persons who are undergoing apprenticeship training in pursuance of the contract of Apprentices executed u/s 4 of the said Act. It is possible to visualise persons who may be engaged as apprentices but who are not covered under the Apprentices Act. In that view of the matter, it can be said that for the purposes of Section 2(s) of the Industrial Disputes Act a person who is designated as Apprentice but is not governed by the Apprentices Act would be a workman governed by the provisions of the Industrial Disputes Act. But an apprentice who is governed by the provisions of the Apprentices Act would not be a workman u/s 2(s) of the Industrial Disputes Act and would be governed by the provisions of the Industrial Disputes Act".

26. This judgment of the Division Bench of Rajasthan High Court was approved by the Hon"ble Supreme Court in U.P. State Electricity Board v. Shiv Mohan Singh 2004(4) S.C.T. 598. The question involved before the Hon"ble Supreme Court was with regard to scope of Apprentices Act, 1961, vis-a-vis the U.P. Industrial Disputes Act, 1947, Industrial Disputes Act, 1947 and the Indian Boilers Act, 1923. Registration of the contract under sub-Section (4) of Section 4 of the Act of 1961 being mandatory or directory was the other significant question that was gone into by the Hon"ble Supreme Court. While dealing with the second question, as mentioned above, it was held that because of non-registration of the contract, the position of the apprentice would not be changed to that of a workman. It was further held that non-registration of the contract would not take the person to be appointed under the Act of 1961 within the definition of apprentice and further that when a person is appointed under the Act of 1961, it is the said Act, i.e., Act of 1961 which shall prevail. After holding so, the Hon"ble Supreme Court also noted the conflict between Section 2(s) of

the Act of 1947 and Section 18 of the Act of 1961. In that context, the Hon'ble Supreme Court also examined the Division Bench judgment of Rajasthan High Court in Hanuman Prasad's case (supra), other judgment of Kerala High Court in Bhaskaran v. Kerala State Electricity Board 1986 K.L.T. 447 as also single Bench judgment of Allahabad High Court in U.P. State Electricity Board and Ors. v. P.O. Labour Court, Kanpur and Ors. 1998 (7) F.L.R. 511 and the contrary view reflected in Ballkhan Doskhan Joya Vs. Gujarat Electricity Board, and Single Bench judgment Gujarat High Court in State of Gujarat Vs. Chauhan Ramjibhai Karsanbhai, and a decision of Madhya Pradesh High Court in M.P. Electricity Board and Ors. v. Basant Kumar and Ors., 1989 J.L.J. 258, but ultimately held that the view taken by Rajasthan, Kerala and Allahabad High Courts appears to be in consonance with the view taken by the Hon'ble Supreme Court. The view taken by Gujarat and Madhya Pradesh High Court was not approved.

27. From the discussion made above, we hold, on the dint of the pleadings and accompanying documents as also relevant provisions of the Act of 1961 that petitioner was not appointed under the Act of 1961 and, therefore, he shall be deemed to be a workman within the meaning of Section 2(s) of the Act of 1947, we further hold that even if the petitioner is a presumed to be appointed under the provisions of the Act, 1961, he ceased to be an apprentice both on the dint of conditions of his appointment spelt out from his appointment letter, Annexure P-2 as also Section 7 of the said Act.

28. Having examined the contention of learned counsel representing the parties with regard to appointment of the petitioner under the Act of 1961 or otherwise and effect thereof, time is now ripe to analyse the Division Bench judgment of this Court in Naresh Kumar's case (supra) (Annexure P-9), which was relied upon by the petitioner and correctness of which had been doubted by the Motion Bench, thus, necessitating reference to the larger Bench. At the out set, we would like to mention that Division Bench judgment of this Court in Naresh Kumar's case (supra) does not lay down any law. The Division Bench noted the basic facts of the case like that the petitioner had done Diploma in the trade of Hotel Reception and Book Keeping and was given appointment by the respondent Corporation as a Waiter Trainee. He completed his period of training and was allowed to continue on the same job and when, in pursuance of the directions given in C.W.P. No. 1847 of 1996, an advertisement came to the issued to fill up 139 posts of Waiters, the cause of petitioner did not find favour with the respondent Corporation as he was not holding the requisite qualifications, as stipulated in the advertisement. The Court also considered the prayer of the petitioner for his appointment as counter incharge as for that post he did hold the requisite qualifications. The petitioner was not given the job as a trainee counter incharge pursuant to interim directions issued by the Court in that case on the ground that he did not work as a trainee on the said post. The Court then observed that no rule or regulation had been shown to it that may show that prior appointment as trainee counter incharge was necessary for appointment as counter incharge and further that it was not understandable as to why the

petitioner, who did not have the requisite qualification for the post of waiter, was allowed to join as Trainee Waiter. The Court also observed that when the petitioner was appointed as a Trainee Waiter, there was no qualification laid down as such and the qualifications for that post were laid down in the advertisement issued on 27.3.1999. It is in the facts of the case that the Court observed that the petitioner is losing on both ends. He having been appointed as Trainee Waiter can not be appointed as Waiter because he did not have the qualifications of Waiter as advertised on 27.3.1999 and he also could not be appointed as Counter Incharge because he had not worked as Trainee Counter Incharge. The Court, specifically observed, that "on facts and circumstances of this case, we are of the view that the period spent by the petitioner as Trainee Waiter may be considered as if he had worked as Trainee Counter Incharge. (presuming that such training is necessary)". By thus considering the facts and circumstances of the said case, a direction came to be issued that the case of the petitioner should be considered for appointment as Counter Incharge and till that was to be done, he shall continue on the job that he was holding before he was relieved.

29. A reading of the Division Bench judgment of this Court in Naresh Kumar's case (supra) Annexure P-9, clearly manifests that the matter came to be decided on the facts of the case. No law, we repeat, was laid down. It is clear to us that relief in the said case was given on the basis of justice, equity and good conscience, which is always permissible in the prerogative writs that are issued by the High Court in exercise of its powers under Article 226 of the Constitution of India. The language of Article 226 also provides that the High Court can exercise the jurisdiction to issue to any person or authority, including in appropriate cases, any Government, various writs for enforcement of any of the rights conferred by Part III and for any other purpose. It is, thus, clear that it is not a right conferred upon a person by Part III of the Constitution of India for which the High Court can issue a particular kind of writ to grant the relief, but it can impart justice for any other purpose also and any other purpose, in our considered view, would have in its sweep justice, equity and good conscience as well. It is, thus, clear that where the facts of a particular case may demand some relief to be granted to a citizen of the country, it shall not be necessary for him to show infringement of any right. Converse of that, in our considered view, is also true. In a given case, a citizen may show infringement of a right on account of violation of some law, but the facts and circumstances of the case may be such that he may still not be entitled to any relief. What we have said above could be demonstrated by illustrations of judicial precedents, but, inasmuch as Hon''ble Supreme Court, while dealing with the Act of 1961 itself, culled out some guidelines for the benefit of those, who came to be appointed as apprentices in the facts and circumstances of that case, and for which there was no provision as such in the Act of 1961, it will not be necessary to give reference of judicial precedents, as mentioned above, in the matter of Kripa Shankar Chatterji Vs. Gurudas Chatterjee and others, , Hon''ble Supreme Court, while dealing with the provisions of the Act of 1961 balanced the rights of the employees to

accommodate them on the jobs for which they had taken training. The bare minimum facts of the case aforesaid, that need a mention, reveal that when no completion of training of apprentice, they were not absorbed in the jobs, the High Court in a writ petition filed on their behalf, gave a direction to give them employment by invoking the principle of promissory estoppel. The Hon''ble Supreme Court, while delving on the principle of promissory estoppel, in the context of the provisions of the Act, held that "for a promise to be enforceable, the same has to be clear and unequivocal. It is not possible to read any such promise in the aforesaid circular, memo and Government letter dated 31.8.1978 and, therefore, the High Court erred in applying the doctrine of promissory estoppel and on that basis issuing the direction in question". Even while holding so the Hon''ble Supreme Court took into consideration the material resources of the country, which were limited, resource crunch, which is acute and so whenever and wherever public money is invested, it has to be seen that there is proper utilization of the same, it was held that it would not be just and proper to go merely by what has been stated in Section 22(1) of the Act or for that matter, in the model contract form. What is required is to see that the nation gets the benefit of time, money and energy spent on the trainees, which would be so when they are employed in preference to non-trained direct recruits. This would also meet the legitimate expectation of the trainees. The material resources of this country are limited. The resource-crunch is, however, acute for us; and so when ever and wherever public money is invested, it has to be seen that there is a proper utilization of the same in the sense that the public ultimately gets benefits of the same. In the background, as mentioned above, Hon''ble Supreme Court directed that while dealing with the claim of trainees after successful completion, following aspects can be taken into consideration:-

"(1) Other things being equal, a trained apprentice should be given preference over direct recruits.

(2) For this, a trainee would not be required to get his name sponsored by any employment exchange. The decision of this Court in Union of India V.N. Hargopal would permit this.

(3) If age bar would come in the way of the trainee, the same would be relaxed in accordance with what is stated in this regard, if any, in the service rule concerned. If the service rule be silent on this aspect, relaxation to the extent of the period for which the apprentice had undergone training would be given.

(4) The training institute concerned would maintain a list of the persons trained year wise. The persons trained earlier would be treated as senior to the persons trained later. In between the trained apprentices, preference shall be given to those who are senior."

30. A perusal of the guiding factors, as enumerated above, would show that even though by virtue of provisions contained in Section 22(i), it is not obligatory for the employer to provide a regular job to the trainee, it is by considering the facts

and circumstances of the case that it was ordered that other things being equal, a trained apprentice should be given preference over direct recruits and further that a trainee would not be required to get his name sponsored by any employment exchange and still further that even the age bar, if the same may come in the way of the trainee, needs to be relaxed. These directions came to be issued, even though there was no duty cast upon the Corporation in the said case to give regular employment to the apprentices and there was no corresponding right with the trainee to get regular job.

31. The decision of the Hon'ble Supreme Court in U.P. State Road Transport Corporation's case (Supra) was followed by it in U.P. Rajya Vidyut Parishad Apprentice Welfare Association and Anr. v. State of U.P. and Ors. (2000) 5 SCC 438. Pertaining to entries 1 to 4 reproduced above, even though, dispensing with the requirement of examination, it was held, would apply to petitioner of that case and not to all concerned.

32. In light of the discussion made above, there is no need to go into the correctness of the decision rendered by Division Bench of this Court in Naresh Kumar's case (supra) Annexure P-9, even though it shall have to be considered as to whether the directions issued in that case need any modification or not and we indeed do feel that there is need to vary the directions/conclusions drawn in the decision rendered in Naresh Kumar's case (supra), so that the same are in consonance and are commensurate to the qualifications as also training in terms and criteria laid down for selection and appointment.

33. The facts of the case are not in dispute. At the time petitioner came into the job of Waiter Trainee, there were no qualifications prescribed for the said job. He was yet assured vide condition No. 3 of the appointment letter, Annexure P-2, that after successful completion of the training, he shall be considered for regular job and it is for that reason that petitioner, even though possessed the prescribed qualification for the post of Counter Incharge, was given the job of a Waiter Trainee. By the time, however, regular vacancies occurred in the respondent Corporation and an advertisement was issued to fill the same, a prescribed qualification for the job under contention came into being. The petitioner does not qualify for the post of waiter but is eligible to be appointed as Counter Incharge and has also training for the same as made out from the pleadings contained in para 6 of the petition, which are not denied by the respondents and which is also evident from Annexures P-3 and P-4. The period of training of the petitioner, on the post of Counter Incharge was for two periods, i.e., from 18.9.1990 to 12.11.1990, i.e., one and half months as also for another four months, as made out from Annexure P-3 and P-4.

34. On undisputed facts, as mentioned above, what transpires is that at the time when petitioner came to be employed as Waiter Trainee, no qualifications for the said post had since been prescribed. It was not mentioned in the letter of appointment that he shall be considered for appointment on regular basis if he was to have a particular kind of qualification. It is, thus, clear that even though

the respondent Corporation was not obliged to give him regular appointment but, it was, in any case, bound to consider him and surely on the basis of the qualifications, that he was already holding. The criteria prescribing requisite qualifications for the post came to be laid when this Court issued directions in various writ petitions, mentioned in earlier part of the judgment, to consider absorption of the persons, who were similarly appointed. It is, thus, a case where the respondent Corporation, while complying with the directions issued by this Court, formulated a criteria in 1999, which was not in existence and, thus, also did not find mention in the conditions of letter of appointment of the petitioner. As mentioned above, petitioner was to be considered for regular appointment on the basis of qualifications that has already possessed. The petitioner continued on the job for nine years and by now, would certainly be over-age to occupy any government or semi government post. He is surely not at fault. It is rather the respondent Corporation which gave the petitioner to understand that he would be considered for appointment on regular basis on the dint of his existing qualifications and yet laid down such qualifications which he did not have. Further, what we have said above shall be demonstrated from the fact that even though having requisite qualifications for the post of Counter Incharge, as formulated in 1999, petitioner was nonetheless given the job of a Waiter Trainee. It is absolutely clear that no requisite qualifications were in existence at the time petitioner came to be appointed as a Waiter Trainee. The action of the respondent Corporation to deny even consideration to the petitioner on either of the two posts would be unjust and unfair. It is for these reasons that we are of the view that in the facts and circumstances of this case, some directions so as to mitigate miserable plight of petitioner and to do justice to him, need to be issued.

35. The petitioner, surely, on the basis of his qualifications, can be considered for appointment on the post of Counter Incharge. We, thus, direct that the respondent Corporation, if it may so choose, may put him on training for the remaining period i.e., for a period of a year and six and half months and then consider him for appointment on the regular job of Counter Incharge. If in such consideration, he is found suitable he be given regular appointment on the said post. By this method, the petitioner, who has already served the respondent Corporation for nine years, would have requisite qualifications as also training and shall certainly be eligible. It shall, however, be open to the respondent Corporation to consider the petitioner for appointment to the post of Waiter, if according to it, non-holding of his requisite qualifications for the said post, might have balanced his long training on the said post, but in the facts and circumstances of the present case, a direction needs to be issued to the respondent Corporation to consider his case for regular appointment on either of two jobs, as mentioned above. We order accordingly.

36. We have already held that the petitioner was not appointed under the provisions of the Act of 1961. Even if it is assumed that he was appointed under the Act of 1961, after successful completion of his training and when order dated

7.6.1993. Annexure P-5, came to be passed, that he shall hold the post till further orders, he can not be said to be continuing to hold the post under the Act of 1961 for the period subsequent to 7.6.1993. He was certainly a workman as defined in Section 2(s) of the Act of 1947 and his retrenchment would be violative of Section 25F of the said Act. Same is annulled. A further direction needs to be issued in this case, which we hereby issue, that the petitioner shall be taken back in service on the post that he was holding at the time when he was relieved on the same emoluments that he was getting. He shall be paid all his back wages from the date he was relieved from the said post till such time the payment is made to him. The contention of learned counsel for the respondent Corporation that he was employed for a fixed period and, therefore, provisions of Section 2(oo)(bb) would be applicable is rejected by observing that after 7.6.1993, when he was ultimately relieved on 17.5.2001. Order dated 7.6.1993 does not limit his extension for a fixed period. Order rather stipulates that he would continue to hold the post till further orders. The words "till further orders" cannot be interpreted to mean a fixed contractual term.

37. In the facts and circumstances of the, present case, parties are left to bear their own costs.