

(2011) 03 GUJ CK 0051
In the Gujarat High Court

Case No : Special Civil Application No's. 3563 and 3565 of 2011

Y.R. Barad

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 17-03-2011

Acts Referred:

Administrative Tribunals Act, 1985 — Section 14, 3

Citation : (2011) 131 FLR 151 : (2011) 3 GLR 2328

Hon'ble Judges : V.M. Sahai, J;G.B. Shah, J

Bench : Division Bench

Advocate : M.S. Trivedi, for the Appellant;

Final Decision : Dismissed

Judgement

V.M. Sahai, J.—The short question which arises for consideration in these two units is whether the apprenticeship training would be covered under Sec. 3(p)(q) of the Administrative Tribunals Act, 1985?

2. Brief facts are that the respondents issued a Notification dated 12th March, 2003 inviting applications for apprenticeship training. A stipend was to be paid to the apprentices who were selected. The petitioners were selected by the respondents for apprenticeship training and while they were undergoing training, a show-cause notice was issued to them in May, 2008 to show-cause as to why they may not be terminated from apprenticeship training in view of the office memos (1) This office Memorandum of even No. dated 12-3-2007 (2) Regional Director, R.D.A.T. Mumbai's letter No. RDATM/ 10007/App/2007-08-5791 dated 19-12-2007 (3) GM(E) C.C.G's. letter No. E (R and T)/120/10 Vol. XVIII dated 15-4-2008. The petitioners submitted their reply. The objection of the respondents was that the petitioners have not passed I.T.I. trade examination, and therefore, they were not eligible for apprenticeship training. The petitioners filed O.A. No. 187 of 2010 with M.A. No. 215 of 2010 and O.A. No. 188 of 2010 with M.A. No. 216 of 2010. Both the O.A. have been rejected by the Tribunal by judgment and order dated 29th June, 2010, wherein the Tribunal has held that

apprenticeship training was imparted in compliance with the Apprentice Act. It is a different matter that after the training, the applicant may be absorbed by the respondents in service, but apprenticeship training could not be treated as a pre-condition for service or employment with the respondents, therefore, it held that it had no jurisdiction to entertain the O.A. and dismissed the O.A. as barred by law.

3. We have heard Mr. M.S. Trivedi, learned Counsel for the petitioners. He has vehemently urged that in view of the definition of sub-sec. (p) and (q) of Sec. 3 of the Administrative Tribunals Act, 1985, (for short "the Act") since the petitioners were selected for training, therefore, it will be deemed that they were selected for service in Railways after completion of the training, and therefore, their original applications filed before the Tribunal were maintainable. Learned Counsel further urged that the show cause notice was issued to the petitioners and they submitted their reply to the show-cause notice on 3rd June, 2008 stating therein that they would be completing I.T.I. trade course by joining evening classes and they may be permitted for completing I.T.I. training. Learned Counsel for the petitioners lastly urged that in view of the instructions of the Railway Board with regard to apprenticeship training filed as Annexure "C" to the petition, the petitioners could not be disengaged as it provided for engagement of non-I.T.I. candidates as well.

4. For appreciating the arguments of the learned Counsel for the petitioners, it is necessary to extract sub-secs. (p) and (q) of Sec. 3 of the Act which read as under :

(p) "service" means service within or outside India;

(q) "service matters" in relation to a person, means all matters relating to the conditions of his service in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India, or, as the case may be, of any corporation (or society) owned or controlled by the Government, as respects-

(i) xxx xxx xxx

(ii) xxx xxx xxx

(iii) xxx xxx xxx

(iv) xxx xxx xxx

(v) xxx xxx xxx

5. Section 14 of the Act provides for jurisdiction of the Tribunal which provides that Central Administrative Tribunal would have the jurisdiction in the matters of recruitment and matters concerning recruitment and ail service matters in connection with the service. As we have stated earlier, apprenticeship training is not a service, but training is imparted under Apprenticeship Act, 1961 by the respondents as per the Scheme of the Government.

6. As per sub-secs. (p) and (q) of Sec. 3 of the Act, a person has to be in service or there has to be a recruitment for service and then it will attract the jurisdiction of the Tribunal. Merely by selection for apprenticeship training which is a training under Apprenticeship Act, it cannot be said that the petitioners were in service or apprenticeship training is a mode of recruitment or was a pre-condition of employment. It may be another thing that after completion of apprenticeship training, apprentice may be absorbed by the respondents in service, but it cannot be said that apprenticeship training conferred any right on the petitioners to claim appointment. It is always open to the respondents to make recruitment in accordance with law without engaging the apprenticeship trainees.

7. The next argument of the learned Counsel for the petitioners is that in their reply, the petitioners had made a request that they may be granted time to complete apprenticeship training in the evening classes which was not granted by the respondents. We do not find any substance in this submission for the reason that as per Regional Central Apprenticeship Advisor-Mumbai's letter No. RDATEM/IMP/New/Estt/99/1912 dated 31-5-2005 and C.P.O. (Admn's Letter No. E (R and T) 120/10 Vol. XVII dated 13-7-2005, only N.T.C. passed candidates i.e. Ex. I.T.I. candidates are to be engaged, a candidate who are selected for training are required to pass I.T.I. course. Admittedly, the petitioners have not passed I.T.C. course, therefore, they were not eligible for apprenticeship training and they were selected by the respondents under a mistake which could be rectified by the respondents.

8. The last argument advanced by the learned Counsel for the petitioners is that as per the instructions issued by the Railway Board with regard to trade apprenticeship, the petitioners even though non-I.T.I. candidates, were entitled for training. It is necessary to extract the Railway Board instructions issued by the Railways which read as under :

In terms of Para 2202(2) R-II an apprentice means a person deputed in a trade or business with a view to employment in Government service. Trade Apprentices are recruited by the Railway Administration to fill 50% of the vacancies of skilled grades in Railway workshops. The age-limit prescribed is between 15 to 20 years for non-I.T.I. candidates, 22 years for I.T.I. candidates and for S.C./S.T. the age-limit will be relaxable by 5 years. The educational qualification is prescribed as Middle School Standard.

9. A perusal of the instructions will demonstrate that a non-I.T.I. candidate could only be selected if he was within the age limit of 15 to 20 years, but if the candidate is 22 years or above, then I.T.I. training was required. Admittedly, both the petitioners at the time of selection were above 22 years of age and they were required to possess I.T.I. trade training and since they had not passed I.T.I. training, therefore, they were selected under mistake which has been corrected by the respondents.

10. For the aforesaid reasons, we do not find any merit in these petitions. Both

these petitions fail and are accordingly dismissed summarily.