2015 SCC OnLine Del 9551 : (2015) 221 DLT 242 : (2015) 146 FLR 188

In the High Court of Delhi

(BEFORE DEEPA SHARMA, J.)

Raj Kumar Rastogi ..... Petitioner

Mr. Rajiv Aggarwal and Mr. Sachin Kumar, Advocates

Versus

P.O. Labour Court-X & Anr. ..... Respondents

Mr. Anurag Lakhotia, Advocate for Respondent No. 2 (M/s. Delhi Press)

W.P.(C) 4815/2001

Decided on May 18, 2015

Labour Law — Industrial Disputes Act, 1947 — S. 2(s) — Workman — Definition — Workman or trainee — Whether the petitioner was a workman within the meaning of S. 2(s) or was working as a trainee, is a finding of fact — and the Labour Court has returned the finding of this fact on the basis of the evidences on record — Petitioner had been appointed as a trainee — Under the terms of the contract, his training period was extended from time to time — Held, petitioner being a trainee is not a workman within the meaning of S. 2(s)

(Paras 10 and 14)

R. Kartik Ramchandran v. *Presiding Officer, Labour Court*, 2006 LLR 223; *Management of Otis Elevator Co. (India) Ltd.* v. *Presiding Officer, Industrial Tribunal-III*, 2003 LLR 701, *reliance placed on*

Kamal Kumar v. *J.P.S. Malik, Presiding Officer, Labour Court*, 1998 LLR 628; *National Small Industries Corporation Limited* v. *V. Lakshminarayanan*, 2007 LLR 154, *referred*

JUDGMENT

1. Vide the present writ petition, the petitioner-workman has challenged the award dated 23.04.2001, whereby the learned Labour Court has held that the petitioner is not a workman within the meaning of Section 2(s) of Industrial Disputes Act, 1947 (hereinafter referred to as 'the ID Act'), hence not entitled to any relief.

2. The petitioner had set out a case before the Labour Court, wherein in his Statement of Claim he had alleged that he was employed with the Management since 01.06.1983 and from the very beginning, he had been working as full time Grainer, yet in the appointment letter he was shown as a trainee. He had further claimed that at the time of his

appointment with the Management, he had produced experience certificates of various other establishments where he was employed earlier and since he had already taken the training before he joined the Management, the question of his taking the training from the Management did not arise. It is also claimed that the Management as per his practice used to show its regular employees as trainees. His claim was that he could not report for his duty from 11.06.1986 to 17.06.1986 due to his illness and on his return to duty on 18.06.1986, he was not allowed to resume. According to him, his services were illegally terminated on 18.06.1986.

3. The case of the Management before the Labour Court was that the workman was working as a trainee with the Management. At the time of joining the Management he had not produced any experience certificates. He was issued appointment letter of a trainee only and his training was extended from time to time. He was paid honorarium only. It is further alleged that it was the claimant who had been absent from duty since 09.06.1986.

4. On these pleas of the parties, the Labour Court adjudicated the matter and after recording the evidences had returned its findings. The Labour Court has found that the letter Ex.P-2 proved on record by the workman was his appointment letter bearing his signatures and the workman was engaged by the Management as a Grainer and that he had been working in the said capacity with the Management. The appointment letter further indicated that stipend of Rs. 400/- was payable to the claimant and period of training also could be extended from time to time and in case the claimant would absent himself from training without prior information, he would be deemed to have voluntarily abandoned his training. Relying on the findings in the case of *Kamal Kumar* v. *J.P.S. Malik, Presiding Officer, Labour Court* : 1998 LLR 628, the Labour Court reached to the conclusion that the claimant was not a workman within the meaning of the ID Act.

5. The said findings have been assailed before this Court on the ground that the petitioner, in fact, was a full time Grainer and worked with the respondent for more than three years without any absence and that the petitioner was not aware about the fact that in his appointment letter, he had been shown as a trainee. It is further contended that the workman was not covered under the provisions of Apprentices Act and, therefore, he was a workman within the meaning of Section 2(s) of the ID Act which also includes the apprentice. It is further contended that the petitioner was getting his dearness allowance from the Management which itself shows the status of the petitioner as a workman, as only the regular workers has a right to get these allowances. Copy of the alleged dearness allowance receipts are also placed with the writ petition. It is further contended that it was obligatory on the part of the

Labour Court to find the type of work done by the petitioner and record a finding in this connection. On these contentions, it is prayed that the award be set aside and the petitioner be ordered to be reinstated with back wages and continuity in service.

6. In the present case, arguments have been addressed by the counsels for both the parties and written synopses with supporting case laws have also been furnished by them.

7. The issue before this Court is "whether the petitioner is a workman within the meaning of Section 2 (s) and whether his services were illegally terminated". The definition of "workman" under Section 2 (s) is reproduced as under : -

"'Workman' means any person (including an apprentice) employed in any industry to do any manual, unskilled, unskilled, technical, operational, clerical or supervisory 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 Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages, exceeding (ten thousand 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.)"

8. The learned counsel for the petitioner has contended that since the case of the workman is not covered under the Apprentice Act as several provisions of the said Act have been violated, he, therefore, by virtue of Apprentice Act, has not been excluded from the definition of 'workman' and since definition of 'workman' also includes an Apprentice, he is a workman within the meaning of Section 2(s).

9. On the other hand, it is argued on behalf of the respondent that the petitioner was a trainee and was not appointed as an apprentice, so the provisions of the Act are not applicable. It is further argued that even otherwise Section 18 of the Apprentice Act clearly provides that apprentices are not workers. It is further argued that in case of *National Small Industries Corporation Limited* v. *V. Lakshminarayanan* 2007 LLR 154, the Hon'ble Supreme Court has clearly held that apprentices are

not workers and the provisions of any law with respect to labour shall not apply to or in relation to such apprentice.

10. In the present case, the petitioner had nowhere contended that he had been appointed by the respondent as an apprentice/trainee. His claim before the Labour Court was that he had been working as a full time Grainer and Management was in the habit of showing its fulltime workers as trainees. Therefore, it is not open to the petitioner, at this stage, to argue that he was appointed as an apprentice and since the provisions of Apprentice Act were not followed while appointing him as an apprentice, he is covered under the definition of Section 2(s) of the ID Act. Admittedly, the workman was appointed pursuant to appointment letter reproduced as under : -

"Shri Raj Kumar Rastogi Dated 01st June, 1983 Fajal Pur, Madabali Delhi-110092

With reference to your application and subsequent interview, the Management has been pleased to allow you to take Grainer/training in our Company as per the scheme of the Company on the following terms and conditions : -

1. You will receive instructions in connection with your work daily personally from the undersigned or from any other officials duly authorized.

2. During the training period, you will receive an allowance/stipend of Rs. 400/- (Rupees Four Hundred only) per month.

3. Your training may last up to one year on the expiry of which the Management does not guarantee for your employment or for any other sort of compensation whatsoever.

4. The Management, however, reserved the right of terminating your training at any time during the currency of aforesaid period without any notice and without assigning any reason whatsoever. In case you wish to leave/abandon/relinquish your training, a month's notice is necessary.

5. You should observe all the Standing Orders/Rules and Regulations of training scheme of the Company as may be in force from time to time which inter alia provide that:

(i) You can be sent for training anywhere in India and also in any concern/concerns in any Section/Plant/Unit/Department under the same ownership/management or to any firm.

(ii) in case you absent yourself from training without prior permission or proper leave, you shall be deemed to have voluntarily abandoned your training.

6. If and when the information furnished by you in your application regarding your qualifications, past experience, employment and last salary drawn etc. is found incorrect, incomplete or not true, your

training agreement will be cancelled without any notice.

7. Your training shall be terminated without notice and without assigning any reason due to the reasons of loss of confidence, gross negligence, inefficiency of work or any other wilful misconduct on your part.

8. In case you leave/abandon/relinquish your training during the aforesaid period, one month's allowance/stipend shall be deducted or the Management reserves their right to recover the same.

9. Your training also can be extended from time to time.

If you accept and agree to the above terms and conditions of the agreement of your apprenticeship/training, please sign the duplicate copy of this agreement as token of your acceptance.

Director

I have read and understood above terms and conditions of my apprenticeship/training agreement. I accept them and agree to abide by the same and in token of my acceptance. I sign below.

(Raj Kumar Rastogi)"

Pursuant to the terms and conditions of appointment letter, the training period of petitioner was extended from 31.05.1984 to 31.05.1985 and, thereafter from 31.05.1985 to 31.05.1986 and further from 31.05.1986 to 31.05.1987. It is also stipulated in this letter that he shall be paid allowance/stipend of Rs. 400/- per month. It, therefore, was clear that the petitioner was not getting any wages pursuant to this agreement, but was getting allowance/stipend of Rs. 400/- per month. Although not pleaded before the Labour Court, it is argued before this Court that the petitioner was getting the dearness allowance, payable only to the employees and not to the trainees and this further shows that he was working as a regular employee. Along with the present writ petition, copies of the receipts showing payment of dearness allowance have been placed by the petitioner as Annexure-10. From perusal of these receipts, it is apparent that these receipts do not relate to the payment of dearness allowance to the petitioner. These receipts, however, show deductions and deposits of EPF. The deduction of EPF is a statutory deduction and the petitioner cannot take advantage of such deductions. The findings on the issue "whether the petitioner was a workman within the meaning of Section 2(s) or was working as a trainee" is a finding of fact and the Labour Court has returned the finding of this fact on the basis of the evidences on record. From the evidences on record, it is apparent that the petitioner has not produced any evidence in support of his contentions that at the time when he was appointed by the respondent, he was in possession of experience certificates of the earlier employers as none of those certificates had been produced by him before the Labour Court. Also, no

suggestion had been put to the Management witness that he had furnished such certificates to the Management at the time of his appointment. It is also apparent that his appointment as a trainee was extended from time to time on the same terms and conditions contained in his initial appointment letter and at no stage, he raised any objection to showing him as a trainee, but continued to work with the respondent. He was very well aware of the terms and conditions of his appointment since the copy of the appointment letter was in his possession as he had produced and proved the same before the Labour Court. If he actually was working as a full time worker and not as a trainee, nothing precluded him from raising such objections during his tenure. The burden was upon the petitioner to prove that he was working or doing any skilled or unskilled, manual, supervisory, technical or clerical work for hire or reward. All these could be proved only by evidences. As is clear the petitioner had not produced before the Labour Court any evidences which could prove that he was working or doing any skilled or unskilled, manual, supervisory, technical or clerical work for hire or reward. Even no suggestion had been given to the Management witness that the petitioner was not working as a trainee, but was working as a full-fledged employee.

11. In the case of *R. Kartik Ramchandran* v. *Presiding Officer, Labour Court* 2006 LLR 223, the petitioner was appointed as a trainee steno clerk expeditor vide letter dated 20.04.1990 for initial period of six months which was extendable and he was paid a consolidated stipend of Rs. 1800/- per month and his training period was subsequently extended and during the extended training period his services were terminated. The issue 'whether the claimant was a workman or not' had come up for consideration before this Court in that case and the Court has held as under : -

"18. So far as the arguments on behalf of petitioner to the effect that expression "workman" in Section 2(s) of the Industrial Disputes Act, 1947 includes an 'apprentice' is concerned, the petitioner is covered under such definition. My attention has been drawn to the provisions of the Apprentices Act, 1961. Section 2(aa) of the Act defines an 'apprentice' to mean a person who is undergoing apprenticeship training in pursuance to the contract of apprenticeship.

19. As per Section 2(aa), apprenticeship training means a course of training in any industry undergone in pursuance of a contract of apprenticeship, and under prescribed terms and conditions which may be different for different categories of apprentices. Under Section 4(4), every contract of apprenticeship entered into shall be sent by the employer, within such period as may be prescribed to the Apprenticeship Adviser for registration.

20. There can be no dispute with the principles of law laid down by

the Apex Court in *S.K. Maini* v. *Carona* case (supra). It is well settled that the designation of an employee is not of importance and it is the real nature of duties being performed by the employee which would decide as to whether an employee is a 'workman' under Section 2(s) of the Industrial Disputes Act. The determinative factor is the main duties performed by the employee and not the work done incidentally. The nature of duties performed by the workman is a question of fact. An employee is required to set up such plea and to lead evidence in support thereof. Only then can the Labour Court go into the facts and circumstances of the case and based material on record, decide as to the real nature of duties and functions being performed by the employee in all cases.

21. Such a question would arise if a workman was required to do more than one kind of work. However, no such issue has been urged on behalf of the petitioner before the Labour Court. Before this Court an assertion has been made that in view of the objectives of the training scheme, it is to be held that the petitioner was performing clerical duties and undertaking typing work and was, therefore, covered under the definition of 'workman'. As already noticed hereinabove, there is not an iota of pleading or evidence led by the petitioner in this respect. It is also not open to the petitioner to lay a challenge to the award based on the plea that was not raised before the Labour Court.

12. The similar issue had come up before this Court in the case of *Management of Otis Elevator Co. (India) Ltd.* v. *Presiding Officer, Industrial Tribunal-III* 2003 LLR 701. In that case, the workman was engaged as a field/trade trainee under specified terms and conditions for imparting training for initial period of one year which was determinable without notice or assigning reason. Since his performance was not found satisfactory, he was given three months' notice to improve his performance, but no improvement being found, his training was discontinued. The Industrial Tribunal held that respondent No. 2 was a workman under the Act. The issue before the Court was "whether a trainee can be called a workman as envisaged under Section 2(s) of the ID Act". This Court had relied upon the findings in the case of *Kamal Kumar* v. *J.P.S. Malik, Presiding Officer, Labour Court* and has held as under : -

"6. Similar contention of the petitioner that a trainee cannot be called a workman as envisaged under Section 2(s) of the Industrial Disputes Act was also urged in *Kamal Kumar* v. *J.P.S. Malik, P.O., Labour Court*. In the said decision it was held that although Section 2 (s) of the Act uses the expression 'apprentice', but merely using the word 'apprentice' within the definition of 'workman' would not confer a right on a trainee to be called a 'workman' within the meaning of Section 2(s) of the Industrial Disputes Act. The said decision also

related to a person who was similarly engaged as that of the respondent No. 2 herein. There the petitioner was appointed by the company as a trade trainee and the relationship of the petitioner therein and the management was also governed by similar terms and conditions as stipulated in the present contract between the petitioner and the respondent No. 2. Considering the various cases this Court held that as the petitioner therein had failed to prove and establish that he was employed in the respondent company to do any skilled or unskilled manual, supervisory or clerical work for hire or reward, therefore he was a trainee and not a workman and the writ petition was disposed of In terms of the aforesaid observations."

13. The Court then reached to the conclusion that the workman was simply a trainee and not a workman. The Court has also held that simply because PF was deducted, which is a statutory deduction, does not change the situation.

14. The ratio of the above-mentioned cases are squarely applicable on the facts of this case. In the present case also, the petitioner had been appointed as a trainee. Under the terms of the contract, his training period was extended from time to time. The petitioner being a trainee is not a workman within the meaning of Section 2(s).

15. Also, the petitioner's stand regarding his alleged termination on 18.06.1986 is contrary to the evidences on record. The contention of petitioner before the Labour Court was that he was absent from duty from 11.06.1986 to 17.06.1986 on account of illness and when he came to join the duties on 18.06.1986, he was not allowed to join duties and his services were terminated. It is apparent that burden was upon the petitioner to prove these contentions. Although in his affidavit, WW1/A before the Labour Court, he had so stated, but in his cross-examination, he has clearly stated "it is correct that I did not went to the factory after I returned from the factory on 9-6-86." This statement of the petitioner clearly shows that he did not go to attend his duties after 09.06.1986. If he had not gone to attend his duties after 09.06.1986 (as per his own admission in cross-examination), his plea that his services were terminated on 18.06.1986 falls flat on the ground. The contention of the respondent before the Labour Court had been that it was the claimant who had left the services after 09.06.1986 as he never attended his duties thereafter. The stand of the respondent thus stands vindicated by this admission of the workman.

16. It, therefore, is clear that the findings of the Labour Court do not suffer from any infirmity. There is no reason to interfere with the findings of Labour Court.

17. The writ petition has no merit and the same is dismissed with no order as to costs.
