

State of Gujarat

Vs

Maheshkumar Dhirajlal Thakkar

Criminal Appeal No. 261 of 1974

(R. S. Sarkaria, O. Chinnappa Reddy JJ)

13.02.1980

JUDGMENT

SARKARIA, J. -

1. This accused-respondent was serving as a Tracer in the Office of the Sub-Divisional Soil Conservation Officer, Bhavnagar from December 12, 1965 to February 6, 1968. While still in service as a Tracer, he applied on January 19, 1969 to the Railway Authorities, Bhavnagar for receiving training as an Apprentice Electrical Signal Maintainer. His application was accepted by the Divisional Assistant Signal and Telecommunication Engineer. The accused obtained leave from the Sub-Divisional Soil Conservation Officer for the period from February 13, 1967 to February 15, 1968 and joined as apprentice for receiving training at Ajmer. On Completion of the training, the accused obtained leave from the Western Railway from February 5, 1968 and resumed duty in the Office of the Soil Conservation Officer, Bhavnagar and resigned from that service with effect from February 6, 1968. He obtained pay and allowances from the Soil Conservation Office for the period, December 16, 1967 to February 6, 1968, and also drew the stipend admissible to trainee apprentices from the Railway for the said period.

2. On these facts, the respondent was prosecuted under Section 168, Indian Penal Code, before the Special Sub-Judicial Magistrate, 1st Class, Ahmedabad (Rural) and was convicted under the said section and sentenced to pay a fine of Rs. 60. The Sessions Judge dismissed his appeal.

3. On revision, the Gujarat High Court set aside the conviction and acquitted the respondent by a judgment, dated July 27, 1973. Hence, this appeal by the State of Gujarat.

4. The only question that falls to be considered in this appeal is whether the engagement of the respondent as the Railway Service apprentice, amounted to engaging in 'trade' within the contemplation of Section 168, Indian Penal Code ? The High Court has answered this question in the negative, and we think rightly. The word 'trade' in its narrow popular sense means "exchange of goods for goods or for money with the object of making profits". In its widest sense, it includes any business carried on with a view to earn profit (see Halsbury's Laws of England, Vol. 32, paragraph 487). Further, the word takes its meaning from the context.

5. The respondent entered into an agreement with the Railway Administration not for the purpose of engaging in trade, business or profession, but for the sole purpose of receiving training, so that on completion of the training, he could be employed by the Railway Administration. The mere fact that he was paid a stipend during the training period as an apprentice, did not make him an employee of the Railway Administration. Indeed Clause 17 of the agreement (Ex. 69) stated in clear terms that

the Railway Administration did not bind itself to employ him on the completion of the training. In its narrow sense, the act of the the accused-respondent did not amount to engaging in 'trade'. Even if the wider interpretation were to be put on the word 'trade' in Section 168, Penal Code, the engagement of the respondent as an apprentice-trainee would not bring him within the purview of the expression 'trade'. The fact remains that during the period of his apprenticeship, the respondent was not carrying on any 'trade' as a means of livelihood within the meaning of Section 168, Indian Penal Code.

6. We have, therefore, no hesitation in upholding the judgment of the High Court and in dismissing this appeal.

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