SUPREME COURT OF INDIA

Uttar Pradesh State Electricity Board

Vs

Shiv Mohan Singh

Appeal (Civil) 2429 of 2003, (C.A. No. 8386/2003. 7005/03, 7006/03, 8383/03, 8385/03, 8384/03, 9231/03, 9234/03, 9232/03, 9233/03, 9679/03, 9680/03, 9681/03, 9683/03, 122/04, 14/04, 1965/04 & 2193/04)

(N. Santosh Hegde and A.K.Mathur and S.B.Sinha)

01/10/2004

JUDGMENT

A. K. MATHUR, S. B. SINHA, J.

In all these appeals common question of law is involved, therefore, they are disposed of by common order.

The main question involved in these appeals is what is the scope of Apprentices Act, 1961 vis a vis the U.P. Industrial Disputes Act, 1947

The Apprentices Act, 1961 was promulgated primarily for the purpose of recruiting the apprentices. The idea behind was strong industrial base across the country. For the industrial growth it was necessary to have trained man power and for that purpose the apprentices were recruited.

The Introduction, Objects and Reasons for enacting this Act reads as under:-

INTRODUCTION.

"After India gained independence, a wave to have its own strong industrial base swept the country. Backed by Government policies, industrial growth had a quantum leap. With the industrial growth a need was felt to have trained man-power and for that steps were taken to arrange for training of

apprentices in the industry. After some years it necessitated that the training being imparted to the apprentices should be regulated by legislation. Accordingly the Apprentices Bill, 1961 was introduced in a Parliament to provide for the regulation and control of training of apprentices.

STATEMENT OF OBJECTS AND REASONS.

The question of undertaking legislation for regulating the training of apprentices in industry has been under the consideration of the Government for a long time. Expert committees which went into the question have recommended such legislation. Although certain establishment in the public and private sectors have been carrying out programmes of training of skilled workers on a systematic basis, industry in general has not as yet fully organized such programmes.

In the context of the Five Year Plan and the large scale industrial development of the country, there is an increasing demand for skilled craftsmen.

The Government considers that it is necessary fully to utilize the facilities available for the training of apprentices and to ensure their training in accordance with the programmes, standards and syllabi, drawn up by expert bodies.

*The Bill is intended to give effect to these objectives." **

Now we shall examine the necessary provisions of the Act. Section 2 deals with the definition. Section 2 (aa) defines "apprentice" which means a person who is undergoing apprenticeship training in pursuance of a contract of apprenticeship.

Section 2 (aaa) deals with "apprenticeship training" which 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.

Section 2 (b) deals with "Apprenticeship Adviser" which reads as under:

*" 'Apprenticeship Adviser' means the Central Apprenticeship Adviser appointed under sub- section (1) of Section 26 or the State Apprenticeship Adviser appointed under sub- section (2) of that section." **

Section 2 (d) defines "Appropriate Government". Section 2 (e) defines 'designated trade' which means a trade of any vocational course which the Central Government, after consultation with the Central Apprenticeship Council, may by notification in the Official Gazette specify as a designated trade for the purposes of this Act.

Section 2 (f) deals with "employer" which means any person who employs one or more other persons to do any work in an establishment for remuneration and includes any person entrusted with the supervision and control of employees in such establishment.

Section 2 (q) defines "trade apprentice" which means an apprentice who undergoes apprenticeship training in any such trade or occupation as may be prescribed.

Section 2 (r) deals with "worker" which means any person who is employed for wages in any kind of work and who gets his wages directly from the employer but shall not include an apprentice referred to in clause (aa).

Section 3 defines qualification for being engaged as an apprentice. Only two qualifications are required that he should not be less than fourteen years of age and satisfies such standards or education and physical fitness as may be prescribed.

Section 4 which is relevant for our purpose reads as under:-

"Contract of apprenticeship (1) No person shall be engaged as an apprentice to undergo apprenticeship training in a designated trade unless such person or, if he is a minor, his guardian has entered into a contract of apprenticeship with the employer.

(2) The apprenticeship training shall be deemed to have commenced on the date on which the contract of apprenticeship has been entered into under sub-section (1).

(3) Every contract of apprenticeship may contain such terms and conditions as may be agreed to by the parties to the contract:

Provided that no such term or condition shall be inconsistent with any provision of this Act or any rule made thereunder.

(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.

(5)The Apprenticeship Adviser shall not register a contract of apprenticeship unless he is satisfied that the person described as an apprentice in the contract is qualified under this Act for being engaged as an apprentice to undergo apprenticeship training in the designated trade specified in the contract.

(6) Where the Central Government, after consulting the Central Apprenticeship Counsel, makes any rule varying the terms and conditions of apprenticeship training, of any category of apprentices undergoing such training, then, the terms and conditions of every contract of apprenticeship relating to that category of apprentices and subsisting immediately before the making of such rule shall be deemed to have been modified accordingly."

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Section 5 deals with the Novation of contract of apprenticeship which reads as under:

*" 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, on 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." **

Section 6 deals with the period of apprenticeship training which reads as under:-

"6. Period of apprenticeship training:-

The period of apprenticeship training, which shall be specified in the contract of apprenticeship, shall be as follows –

(a) in the case apprentices who, having undergone institutional training in a school or other institution recognized by the National Council, have passed the trade tests or examinations conducted by that Council or by an institution recognized by that Council the period of apprenticeship training shall be such as may be determined by that Council;

(aa) in the case of trade apprentices who, having undergone institutional training in a school or other institution affiliated to or recognized by a Board or State Council of Technical Education or any other authority which the Central Government may, by notification in the Official Gazette specify in this behalf, have passed the trade tests or examinations conducted by that Board or State Council or authority, the period of apprenticeship training shall be such as may be prescribed;

*(b)in the case of other apprentices the period of apprenticeship training shall be such as may be prescribed;) in the case of graduate or technician apprentice technician (vocational) apprentice, the period of apprenticeship training shall be such as may be prescribed." **

Section 7 deals with the termination of apprenticeship Contract which reads as under:

"7. Termination of apprenticeship contract –

(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:

Provided that where a contract is terminated-

(a) for failure on the part of the employer to carry out the terms and conditions of the contract, the employer shall pay to the apprentice such compensation as may be prescribed;

(b) for such failure on the part of the apprentice the apprentice or his guardian shall refund to the employer as cost of training such amount as may be determined by the Apprenticeship Adviser.

(4) Notwithstanding anything contained in any other provision of this act, where a contract of apprenticeship has been terminated by the Apprenticeship Adviser before the expiry of the period of apprenticeship training and a new contract of apprenticeship is being entered into with a new employer, the Apprenticeship Adviser may, if he is satisfied that the contract of apprenticeship with the previous employer could not be completed because of any lapse on the part of the previous employer, permit the period of apprenticeship training already undergone by the apprentice with his previous employer to be included in the period of apprenticeship training to be undertaken with the

*new employer." **

Section 8 deals with the number of apprentices for a designated trade.

Section 9 deals with practical and basic training of apprentices.

Section 10 deals with the related instruction of apprentices.

Section 11 deals with the obligations of employers which is relevant for our purpose which reads as under:-

"11. Obligations of employers. Without prejudice to the other provisions of this Act every employer shall have the following obligations in relation to an apprentice, namely –

(a) to provide the apprentice with the training in his trade in accordance with the provisions of this Act, and the rules made thereunder;

(b) if the employer is not himself qualified in the trade, to ensure that a person who possesses the prescribed qualifications is placed in charge of the training of the apprentice;

*(bb) to provide adequate instructional staff, possessing such qualifications as may be prescribed for imparting practical and theoretical training and facilities for trade test of apprentices; and) to carry out his obligations under the contract of apprenticeship." **

Section 12 deals with the Obligations of apprentices which reads as under:

"12. Obligations of apprentices. (1) Every apprentice undergoing apprenticeship training shall have the following obligations, namely :-

(a) To learn his trade conscientiously and diligently and endeavour to qualify himself as a skilled craftsman before the expiry of the period of training;

(b) To attend practical and instructional classes regularly;) to carry out all lawful orders of his employer and superiors in the establishment; and

(d) To carry out his obligations under the contract of apprenticeship.

(2) Every graduate or technician apprentice or technician (vocational) apprentice undergoing apprenticeship training shall have the following obligations, namely:-

(a) To learn his subject field in engineering or technology or vocational course conscientiously and diligently at his place of training;

(b) To attend the practical and instructional classes regularly;) to carry out all lawful orders of his employer and superiors in the establishment;

*(c) To carry out his obligations under the contract of apprenticeship which shall include the maintenance of such records of his work asmay be prescribed." **

Section 13 regarding payment to apprentices which reads as under:

"13. Payment to apprentices

(1) The employer shall pay to every apprentice during the period of apprenticeship training such stipend at a rate not less than the prescribed minimum rate, or the rate which was being paid by the employer on 1st January, 1970 to the category of apprentices under which such apprentices falls, whichever is higher, as may be specified in the contract of apprenticeship and the stipend so specified shall be paid at such intervals and subject to such conditions as may be prescribed.

*(2) An apprentice shall not be paid by his employer on the basis of piece work nor shall he be required to take part in any output bonus or other incentive scheme." **

Section 14 deals with Health, safety and welfare of apprentices. Section 15 deals with hours of work, overtime, leave and holidays. Section 16 deals with the employer's liability for compensation for injury. Section 18 deals with the Apprentices are trainees and not workers which read as under:

"18. Apprentices are trainees and not workers

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." **

Section 19 deals with the records and returns. Section 20 deals with settlement of disputes which is relevant for our purpose reads as under:

"20. Settlement of disputes. (1) Any disagreement or dispute between an employer and an apprentice arising out of the contract of apprenticeship shall be referred to the Apprenticeship Adviser for decision.

(2) Any person aggrieved by the decision of the Apprenticeship Adviser under sub-section (1) within thirty days from the date of communication to him of such decision, prefer an appeal against the decision to the Apprenticeship Council and such appeal shall be heard and determined by a Committee of that Council appointed for the purpose.

*(3) The decision of the Committee under sub- section (2) and subject only to such decision of the Apprenticeship Adviser under sub-section (1) shall be final." **

Section 21 deals with holding of test and grant of certificate and conclusion of training which reads as under:-

"21 Holding of test and grant of certificate and conclusion of training (1) Every apprentice who has completed the period of training shall appear for a test to be conducted by the National Council to determine his proficiency in the designated trade in which he has served his apprenticeship training.

(2) Every apprentice who passes the test referred to in sub-section (1) shall be granted a certificate of proficiency in the trade by the National Council.

(3) The progress in apprenticeship training of every graduate or technician apprentice technician (vocational) apprentice shall be assessed by the employer from time to time.

*(4) Every graduate or technician apprentice or technician (vocational) apprentice who completes his apprenticeship training to the satisfaction of the concerned Regional Board, shall be granted a certificate of proficiency by the Board." **

Section 22 deals with offer and acceptance of employment which reads as under:

"22. Offer and acceptance of employment (1) It shall not be obligatory on the part of the employer to offer any employment to any apprentice who has completed the period of his apprenticeship training in his establishment, nor shall it be obligatory on the part of the apprentice to accept an employment under the employer.

(2) Notwithstanding anything in sub-section (1), where there is a condition in a contract of apprenticeship that the apprentice shall, after the successful completion of the apprenticeship training, serve the employer, the employer shall, on such completion, be bound to offer suitable employment to the apprentice, and the apprentice shall be bound to serve the employer in that capacity for such period and on such remuneration as may be specified in the contract:

*Provided that where such period or remuneration is not, in the opinion of the Apprenticeship Adviser, reasonable, he may revise such period or remuneration so as to make it reasonable, and the period or remuneration so revised shall be deemed to be the period or remuneration agreed to between the apprentice and the employer." **

Chapter III of the Act deals with the authorities like the powers of the Apprenticeship Adviser, Powers of entry, inspection, etc. Offences and penalties, etc.

Section 37 deals with the power to make rules. In exercise of this power Central Government in consultation with Central Apprenticeship Council has framed "The Apprenticeship Rules 1992". Rule 6 requires that every employer shall send to the Apprenticeship Adviser the contract of apprenticeship for registration within three months of the date on which it was signed. Rule 7 deals with the period of apprenticeship training as may be specified in the schedule. Rule 8 deals with the termination of the apprenticeship which reads as under:

*"8. Compensation for termination of apprenticeship. Where the contract of apprenticeship is terminated through failure on the part of any employer in carrying out the terms and conditions thereof, such employer shall be liable to pay the apprentice compensation of an amount equivalent to his three months last drawn stipend. Rule 11 deals with payment of stipend to apprentices. Rule 12 deals with the hours of work.. Rule 13 deals with the grant of leave to apprentices. Rule 14 deals with the records and returns." **

In this background of the Act and Rules, the question which arises for interpretation is what is the effect of non- registration of the contract because sub-section (4) of Section 4 read with Rule 6 require that every contract of apprentice shall be sent by the employer to the apprenticeship adviser for registration within three months. Therefore, in case the contract of apprenticeship is not sent to the apprenticeship adviser for registration what will be the effect thereof?

As per the scheme of the Act it appears that the contract of apprentice is entered with employer & apprentice, and he has to undergo training for fixed duration & he will get stipend for that. After the

successfully undergoing training he appears for test for certificate as required under Section 21.

During the training period he will be treated as an apprentice and he shall not be deemed as a workman as per Section 18 of the Act read with definition of 'workman' under section 2(r). It is ordained in sub-section (b) of Section 18 that provisions of any law with respect to labour shall not apply to or in relation to such apprentices. Therefore, on a reading of all the provisions together what it transpires is that apprentices will be treated as apprentice and he will not acquire a status of workman in that establishment. After the successful completion of the training he will undergo a test and on being successful in the test a certificate to that effect will be issued to him as per Section 21.

It is open for the employer to offer him employment but it will not be obligatory on the part of the apprentice to serve that employer as per Section 22 except when there is specific condition of contract to that effect. During the course when he undergoes the apprenticeship training he is only entitled to get stipend under Rule 11 at such rate as are prescribed in the Rules.

Therefore a combined reading of the Sections as well as Rules makes it clear that the apprentices are only the persons undergo training and during that training they are entitled to get a particular stipend, they have to work for a fixed hours and at the end of period of training they have to appear in the test and a certificate is issued to them. There is no obligation on the part of the employer to give them any employment whatsoever. The position of the apprentice remains as an apprentice/a trainee and during the period of training they will not be treated as a workman. Only obligation on the part of the employer is to impart them training as per provisions of Act & Rules and to pay them stipend as required under Rule 11 and beyond that there is no obligation on the part of the employer to accept them as his employees and give them a status of workmen. There is no relation of master & servant or employer & employee.

In this background, we will examine the position vis a vis the U.P. Industrial Disputes Act, 1947

" 'workman' means any person (including an apprentice) employed in any industry to do any skilled or unskilled manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be expressed 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 Army Act, 1950 or the Air Force Act, 1950, or the Navy (Discipline) Act, 1934; 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 five hundred 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." **

Since the definition of 'workman' as given in Section 2(z) of the U.P. Industrial Disputes Act, 1947

“6N. Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched

by that employer until-

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice wages for the period of the notice;

Provided that no such notice shall be necessary if the retrenchment is under an agreement which specifies a date for the termination of service;

*(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of service or any part thereof in excess of six months, and) notice in the prescribed manner is served on the State Government." **

It is pari materia with that of Section 25(F) of the Industrial Disputes Act, 1947. Therefore, no useful purpose would be served by reproducing that definition.

In this connection, reference may be made to the definition of 'Industrial Dispute' as defined in Section 2(l) of the U.P. Industrial Disputes Act, 1947 which reads as under:

" (l) ' Industrial Dispute' means any dispute or difference between employees and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the term of employment or with the conditions of labour, or any person; but does not include an industrial dispute concerning

-(i) any industry carried on by or under the authority of the Central Government or by a Railway Company, or

(ii) Such controlled industry as may be specified in this behalf by Central Government, or

(iii) Banking and insurance companies as defined in the Industrial Disputes Act, 1947, or

*(iv) A mine or an oil-field;" **

This definition of 'Industrial Dispute' is pari materia with that of the Industrial Disputes Act, 1947

Therefore, the said definition is reproduced as under:

" (k) " industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;"

Similarly, our attention was also drawn to some of the provisions of the Indian Boilers Act, 1923 which lays down as to how the employer should maintain the boilers, and prohibits using uncertificated boiler. It is required to obtain necessary certification. It also deals with the penalties for breach of the conditions for maintenance of the boilers.

In the background of the provisions of the four enactments, the main question which has been agitated by learned counsel for the appellant is that if an incumbent is appointed as an apprentice/trainee and even if a contract of such apprenticeship has not been registered, then also he

does not cease to be an apprentice and his position does not become that of a workman. As against this, learned counsel for the respondents has strenuously urged before us that non- registration of the contract of apprenticeship under sub-section (4) of Section 4 of the Apprentices Act, 1961, with the Apprenticeship Adviser would result in the breach of the contract and the status of an incumbent is changed from the apprentice to that of a workman. Therefore, the question arose that whether registration of the contract under sub-section (4) of Section 4 is mandatory or directory and in case, it is a mandatory, then what is the effect, if it is directory, then what is the effect thereof.

In this connection, it was submitted that the word 'shall' appearing in sub-section 4 of Section 4 means the registration of the contract is mandatory and if it is not registered then the contract ceases and the incumbent becomes workman. In this connection reference was made to a decision in the case of P.T. Rajan vs. T.P.M. Sahir & Ors. reported in . It was also submitted that the Apprentices Act, 1961 is a welfare legislation and it should be construed liberally for the benefit of the workman. In this connection, our attention was drawn to the decisions of this Court in the cases of Air India Statutory Corporation and Ors. Vs. United Labour Union & Ors. and Secretary, H.S.E.B. vs. Suresh & Ors; reported in 0 and 0 . It was also submitted that the nature of work and the nomenclature of the post is not decisive.

In this connection, our attention was also drawn to a decision of this Court in the case of Surya Prasad Singh and Anr. vs. Labour Court II, Kanpur and Anr. reported in 5 .

Therefore, now going back to the basic question that in the light of the aforesaid statutory provisions whether non- registration of the contract can render the contract void or illegal and what is the result thereof. From the scheme of things it is more than apparent that the Apprentices Act, 1961

That clearly speaks that an apprentice is to undergo apprenticeship training in any industry or establishment under the employer in pursuance of the contract and in terms of the conditions pertaining to that particular trade. Section 6 lays down that what shall be the period of training and Section 7 very clearly shows that the contract of apprenticeship shall terminate on the expiry of the period of apprenticeship training. Therefore, it is more than clear that the nature and character of the apprentice is that of a trainee only and on the expiry of the training there is no corresponding obligation on the part of the employer to employ him which is also very clear from the provisions of Section 7 that the apprenticeship training shall terminate on the expiry of the period of training. It further makes clear that by virtue of Section 18 that the apprentice trainees are not workers. It clearly lays down that if an apprentice trainee is undergoing apprenticeship training in a designated trade in an establishment, he shall be a trainee and not a worker. It further contemplates that the provisions of labour laws shall not apply in relation to such apprentice. In this connection reference to definition of workman given in Section 2(r) also emphasis that it will not include apprentice. Section 20 also lays down that how a dispute arising under this Apprentices Act, 1961 can be settled. The authority for resolving such a dispute has been given to the Apprenticeship Adviser.

Therefore, any dispute which arises with the apprentice and the employer then remedy has been provided under this Act and not by way of resorting to the Labour Court. Therefore, throughout the Act stress has been laid that the apprentices are never being treated as workers. Simply because the contract has not been registered with the Apprenticeship Adviser, that will not change the nature and character of the apprentices.

It is true that sub- section (4) of Section 4 lays down that the contract of apprenticeship should be

registered with the Apprenticeship Adviser so that the Apprenticeship Adviser can monitor and keep a record thereof. Just because the contract of apprenticeship is not registered that will not render the contract as invalid resulting in change of status of an apprentice to that of a workman.

Section 21 further lays down that after the completion of the training of the apprentice, an incumbent will have to appear for a test to be conducted by the National Council to determine his proficiency in the designated trade in which he has undergone his apprenticeship training. Therefore, had there been an intention of the Legislature to confer them the status of a workman then all the provisions would not have been warranted at all. Section 22 makes it abundantly clear that at the end of the apprenticeship training, it is not obligatory on the part of the employer to offer an employment to an apprentice who has completed the period of apprenticeship. It is only if the terms of the contract of the apprenticeship lays down a condition that on successful completion of an apprenticeship training, an employer will offer him an employment then it is obligatory on the part of the employer to do so. If there is no such condition stipulated in the apprenticeship contract then the employer cannot be compelled to offer employment to such apprentice. At the same time, it is not obligatory on the part of apprentice to serve that employer if there is no such stipulation to this effect. So it is mutual thing & it depends on the terms of contract. The survey of all these provisions of the Acts and the Rules as mentioned above, makes it clear that the character & status of apprentice remains the same & he does not become workman and labour laws are not attracted.

Now, coming to the question that the expression appearing in sub section (4) of Section 4, "shall" should be interpreted as mandatory. It depends upon the context in which such expression appears. In order to interpret the word "shall" appearing in any enactment one has to see the context in which it appears and the effect thereof. We have already quoted the Introduction, Statement of Objects and Reasons above. The Objects and Reasons reveal that the Act was enacted for the purpose of recruiting the apprentices for developing a strong industrial base.

In order to have a strong industrial base, trained man power is essential and for that purpose the Act was enacted so that for the industrial growth in the country the trained man power is made easily available.

The purpose is to train the people for employing them in the industries, it was never the intention that those trained candidates automatically become the workmen. Though training was imparted by Private & Public Sector but industry in general did not fully organize such programme. Therefore, the intention of the Act is basically to recruit and train person capable of being employed in the industries. Apart from the statement of Objects and Reasons we have already reproduced above relevant provisions of the Act which clearly contemplates that such trained persons shall not fall in the definition of the workmen as the definition of workmen specifically excludes the apprentices as defined in Section 2 (r).

The definition makes it clear that they are apprentices for a purpose undergoing a training and in Section 18 it has been clearly mentioned that they will not be treated as a workmen and they will be treated as a trainee and no labour laws will apply in relation to such apprentices. Viewing the expression "shall" in this context, cannot be construed as a mandatory. Sub-section (4) of Section 4 only says that the contract of apprenticeship should be forwarded to the Adviser that is purely ministerial/administrative act so that a proper record is maintained by the Apprenticeship Adviser. Nothing turns beyond this.

It is purely administrative act and not forwarding contract of the apprenticeship to the

Apprenticeship Adviser will not change the character of the incumbent and it will not render the contract of apprenticeship invalid or void. If the contract of apprenticeship is to be treated as a mandatory and contract is not sent then the effect will be that the apprentice will not be entitled to any benefit flowing from the Act. In fact, by treating the expression "shall" here as a mandatory it will be more counter productive to the interest of the trainees rather than for their benefit.

The employer can take a shelter under the plea that since the contract of the employment has not been registered with the Apprentice Adviser, therefore, he is not under any obligation to pay stipend to the apprentice trainees and he is not under an obligation to impart the training to him also. Had that been the intention of the Legislature then they would have provided the necessary penalty for breach of the non-registration of the contract of apprenticeship. But that has not been done so because under Section 30 of the Apprentices Act, 1961 any offence arising under this Act has been penalized, like apprentice who is not qualified but he has been engaged or fails to carry out the terms and conditions of contract of apprenticeship or contravenes the provisions of the Act relating to number of apprentices or any information required to be furnished or the apprentice has been allowed to work overtime without approval of the Apprenticeship Adviser or employs an apprentice on any work which is not connected with his training or makes any payment to apprentice on the basis of piece work or requires an apprentice to take part in any output bonus or scheme.

These breaches have been termed as offences and have been made punishable. But the non-registration of it has not been construed to be an offence so as to expose the employer for any penalty. Therefore, the expression "shall" appearing in sub-section (4) of Section 4 does not appear to be mandatory. Had that to be construed to be mandatory it will be doing a great violence to the intention of the Act as well as to the interest of the apprentices/trainees.

If the non- registration is to result in the breach of a contract resulting in to invalidity & unenforceable then in that case it will be oppressive to the interest of the apprentices as the employer can get away by seeking a declaration that the apprentice contract was not registered therefore he is not under an obligation to abide by the terms of the contract.

Therefore, viewing the expression "shall" in this context, it can not be construed to be mandatory and it is directory. In this connection, reference may be made to the decision of this Court in the case of P.T. Rajan vs. T.P.M. Sahir & Ors. . Their Lordships observed that context, purport and object of the statute is to be ascertained that whether "shall" to be construed as a mandatory or directory. In that context, their Lordships referred to an earlier catena of decisions and observed "where a statutory functionary is asked to perform a statutory duty between time prescribed same would be directory and not mandatory.

Furthermore, a provision in a statute which is procedural in nature although employs the word "shall" may not be held to be mandatory if thereby no prejudice is caused. The Court cannot supply casus omissus." Their Lordships have further observed as follows:

“A statute must be read in the text and context thereof. Whether statute is a directory or mandatory would not be dependent on the user of the word "shall" or "may". Such a question must be posed and answered having regard to the purpose and object it seeks to achieve. The construction of statute will depend on the purport and object for which the same had been used." **

Therefore, viewing the provision of this Act in the light of the discussion made above, we are of the opinion that the expression "shall" appearing in sub-section (4) of Section 4 shall be construed

directory and not mandatory.

It was also submitted by the learned counsel for the appellants that this is a labour legislation which should be construed liberally and in that context our attention has been invited to a decision of this Court in Secretary, HSEB vs. Suresh & Ors. 0 . In this case, their Lordships held that Court must decide in interest of the public inspired by principle of justice, equity and good conscience. Similarly, in the case of Air India Statutory Corpn.& Ors. Vs. United Labour Union & Ors. 0 (though this case is no more a good law with regard to the Contract Labour (Regulation and Abolition) Act 1970 because subsequent decision of the Constitution Bench has reversed this decision in the case of Steel Authority of India Ltd. vs. National Union Watrerfront Workers reported in 84 . But this case has been cited in the context of the interpretation of statute that how social welfare legislation should be interpreted. In that context their Lordships have observed that such a social legislation providing for a economic empowerment to workers and poor class a provision should be considered in the light of the public law principles not of private or a common laws. So far as the philosophy behind construing a social legislation is concerned, there is no two opinion, social legislation are primarily meant for welfare of the particular section of the society and it should be construed liberally so as to advance the cause of the public at large.

But the question is in the present case whether the expression "shall" should be read mandatory so as to advance the cause of the apprentice or not. In our opinion, viewing from social legislation point of view the word "shall" appearing in sub-section (4) of Section 4 should be construed as directory because it will be for the benefit of the apprentice trainee otherwise it will be oppressive to the welfare of the apprentice as the employer can get away by not getting the contract of apprentice registered, seeking a declaration that this is a unregistered document and all benefits flowing from the Act cannot be enforced against him.

Therefore, we hold that the expression "shall" appearing in sub-section (4) of Section 4 of the Apprentices Act, 1961 is directory and non-registration of the contract will not change the character of the apprentice and they will not acquire the status of a workmen. Once an incumbent is appointed as an apprentice he will continue to be apprentice unless a formal order of appointment is followed.

It is also necessary to mention here that the definition of the word 'workman' as given in Section 2(z) of the U.P. Industrial Disputes Act, 1947

In this connection reference may be made to a decision of the Rajasthan High Court in the case of Hanuman Prasad Choudhary and Etc. vs. Rajasthan State Electricity Board, Jaipur 1986 LAB I.C. 1014 wherein Justice S.C. Agrawal (as he then was) observed thus:-

"An apprentice governed by the Apprentices Act is not a workman for the purpose of the Industrial Disputes Act and the provisions of the Industrial Disputes Act would not be applicable to him.

There is apparent conflict between the provisions of S.2(s) Industrial Disputes Act and S.18 of the Apprentices Act inasmuch as S.2(s) postulates that an apprentice is a workman to whom the provisions of Industrial Disputes Act would be applicable whereas S.18 of the Apprentices Act declares that an apprentice governed by the Apprentices Act is not to be treated as a workman and the provisions of the Industrial Disputes Act would not be applicable to him.

The conflict between the two laws can be resolved by applying the principle of harmonious construction. 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 S.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 under S.4 of the said Act.

It is possible to visualise persons who may be engaged as apprentices but who are not covered by the Apprentices Act. In that view of the matter, it can be said that for the purpose of S. 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 under S.2(s) of he Industrial Disputes Act and would not be governed by the provisions of the Industrial Disputes Act.

*Apart from the principle of harmonious construction, the Apprentices Act 1961 **

Our attention was invited to a decision of Kerala High Court in the case of Bhaskaran vs. Kerala State Electricity Board reported in 1986 KLT 447 wherein Chief Justice Malimath speaking for the Bench observed as under:

"In order to answer the definitions of the word "apprentice", two conditions are required to be satisfied viz, (1) that the person is undergoing apprenticeship training and (2) that he is undergoing such training in pursuance of a contract of apprenticeship. On a plain reading of the definition of the expression " apprentice" occurring in S.2 (aa) it becomes clear that registration of a contract of apprenticeship not necessary for the person answering the description of the word "apprentice". Sub-section 4 of Section 4 contemplates the existence of a concluded contract of apprenticeship, which is required to be sent up for registration.

It therefore, becomes clear that it is the existing contract of apprenticeship that is required to be registered and not that such contract becomes a contract of apprenticeship only after it is registered as required by sub-section 4 of Section 4 of the Act. As it is admitted that the petitioners have entered into a contract of apprenticeship and were undergoing training in pursuance of such a contract, they satisfy all the requirements of the definition of the expression "apprentice" occurring in Section 2(aa) of the Act. That being the position, the provisions of Section 18 of the Act come into operation.

*Therefore, the petitioners cannot be regarded as workers and therefore, the provisions of Section 25F of the Industrial Disputes Act are not attracted to the facts of the case." **

Similarly, the Single Bench of the Allahabad High Court in the case of U.P. State Electricity Board & Ors. vs. P.O.Labour Court, Kanpur & Ors. reported in 1998 (78) FLR 511 observed as under:-

*"Section 18 of the Act provides that an apprentice shall be a trainee and not a worker and the provisions of any law with respect to labour shall not apply to or in relation to such apprentice. The respondent No.2 was thus not a workman and no dispute could be referred to the Labour Court and the period of his training having come to an end, the action of the petitioner employer in not engaging him any further was in accordance with the contract entered into between the parties and the provisions of the Act." **

As against this our attention was also invited to a decision of Division Bench of Gujarat High Court between Ballkhan Doskhan Joya and Gujarat Electricity Board reported in 2002 (92) FLR 914 .

The Gujarat High Court has taken the view that as a result of non-registration of contract of apprenticeship an incumbent shall not be deemed to be a trainee and he would be covered by the definition of 'workman' under Section 2(s) of the Industrial Disputes Act, 1947 and he will get the protection of Section 25-F of the said Act. Similarly, Single Judge of Gujarat High Court took the same view in the case of State of Gujarat & Anr. vs. Chauhan Ramjibhai Karsanbh ai reported 2004 (102) FLR 347 . And our attention was also invited to a decision of Madhya Pradesh High Court in M.P. Electricity Board & Ors. Vs Basant Kumar & Ors. reported in 1989 JLJ 253.

This was a case decided on the facts that the M.P. Electricity Board did not notify the incumbent for a designated trade and employee continued undergone apprentice training and it was not proved that the concerned employee was undergoing apprentice training. It was in that context it was found that the termination of services of the incumbent was bad.

In view of the conflicting decisions of the various High Courts, we are of the opinion that the view taken by the Rajasthan, Kerala and Allahabad High Courts appears to be in consonance with the view taken by us and we do not agree with the view subscribed by the High Courts of Gujarat and Madhya Pradesh.

In view of the legal position crystallized above, we shall examine the individual cases. Civil Appeal No. 2429/2003.

Respondent No. 1 , Shiv Mohan Singh was appointed as a apprentice Boiler Attendant under the Apprentices Act, 1961 from 11.4.1985 to 10.4.1988 and underwent training of the U.P. State Electricity Board. His contract was drawn up but not registered with the Apprenticeship Adviser.

He completed his three years training and a certificate to this effect was issued to him and he was directed to appear before the National Council and on passing thereof he was to be awarded a certificate of proficiency as a Boiler Attendant. From this fact it is apparent that he was appointed as an apprentice trainee in the designated Trade of Boiler Attendant. After completion of his training his services were terminated on 10.4.1988. It is clear from this fact that he was a Boiler Attendant. He completed three years training and after end of the training he was relieved as per the terms and conditions of the appointment as an apprentice in designated trade of Boiler Attendant and therefore he cannot be declared to be a worker under the Act he cannot claim the benefit of Section 25-F of the Industrial Disputes Act, 1947

In this light the award given by the Labour Court in Award Dispute No. 166/1991 dated 12.8.1993 and the order dated 26.9.2002 passed in W.P. No. 21560/1995 by the High Court cannot be sustained. Civil Appeal is allowed. Both the orders of the High Court dated 26.9.2002 and the award of the Labour Court dated 12.8.1993 are set aside.

Civil Appeal No.7005/2003:In this case also respondent No.1- Ram Niwas Pal was appointed on 31.3.1986 as an apprentice in the designated trade of Boiler Attendant and his serves were terminated on 31.3.1989. He also entered into a contract of apprenticeship and the contract of apprenticeship was registered with the Apprenticeship Adviser as per the reply sent by Shri G.K. Chaturvedi, Principal and Asst. Apprenticeship Adviser, I.T.I., Kanpur. So far as this case is concerned, there is no manner of doubt that the contract of apprenticeship was registered with the Apprenticeship Adviser and at the end of the contract his services had been terminated as he was an apprentice and an apprentice is not a workman.

Therefore, termination of service after the expiry of the contract period was justified and the order passed by the Labour Court as well as by the High Court cannot be sustained. Accordingly, the Civil Appeal is allowed and the award dated 28.12.1994 made in Adjudication Case No.107/1991 by the Labour Court and the order dated 12.4.2002 passed by the High Court in Civil Misc.Writ .Petition No. 15022 of 1995 are set aside. Civil Appeal No. 7006/2003.

In this case respondent No.2-Amar Nath Mishra was appointed on 1.7.1987 as an apprentice in the designated trade of Boiler Attendant and his services were terminated on 30.6.1990. A contract was entered into between respondent No. 2 and the employer-company. But the contract was not registered with the Apprenticeship Adviser. As mentioned above, as an apprentice trainee he cannot acquire the status of a workman and therefore, he cannot get the benefit of Section 25- F of the Industrial Disputes Act as well as Section 6N of the U.P. Industrial Disputes Act, 1947.

As such the award dated 11.10.1993 made by the Labour Court in Industrial Dispute No. 252/1992 and the order dated 12.4.2002 passed by the High Court in Civil Misc. Writ Petition No. 29962/1994 are set aside. The Appeal is allowed. No order as to costs.

Civil Appeal No. 8383/2003.

Respondent No. 1- Navneet Kumar Sharma was appointed as an apprentice in the designated trade of Boiler Attendant on 9.3.1982 and his services were terminated on 8.3.1985. It is alleged that his contract was not registered with the Apprenticeship Adviser. He raised the industrial dispute in 1994 which came to be registered as Industrial Dispute No. 330/1994 before the Labour Court(2nd), U.P. Kanpur.

The allegation was that he is a workman and his termination is bad because he has already worked for more than 240 days but his services were terminated without complying with the provisions of Section 6N of the U.P. Industrial Disputes Act, 1947

Respondent- Jagat Pal was appointed on 19.9.1975 as an apprentice in the designated trade of Lineman under the Apprentices Act, 1961

Civil Appeal No.9231/2003.

In this case, a dispute was raised by the U.P. Rashtriya Vidyut Shramik Sangh about six of its members who were appointed as a trade apprentice and their services were terminated illegally.

Details of the members are as under:

Name of Incumbent	Period of service	Date of termination
Abhitabh Chatterjee	21.4.1982 to 20.4.1983	21.4.1983
Sadhna Srivastava	19.10.1984 to 18.10.1985	19.10.1985

Suman Srivastava	19.10.1984 to 18.10.1985	19.10.1985
Prem Chandra	30.4.1986 to 29.4.1987	30.4.1987
Akhilesh Kumar	10.10.1988 to 9.10.1989	10.10.1989
Kumari Kiran	10.10.1988 to 9.10.1989	10.10.1989

The case of the Union was all these incumbents were appointed as apprentices in various trades and no contract form was got filled up from them under the provisions of the Apprentices Act, 1961 nor was the same registered nor any examination of National Council was held for them nor any certificate was issued to them, therefore they continued to be workmen of the Management as per the Standing Orders of the Management.

The Management took the stand that they are apprentices and they cannot be treated as workmen. It was stated on affidavit in reply by the Superintending Engineer (Headquarters), Kanpur Electricity Supply Administration (U.P.State Electricity Board, Kanpur) that all these incumbents were appointed as apprentices for a period of one year as Clerks 7 to 9 years back and their services were terminated after the expiry of apprentice period and the labour dispute was raised in 1996. It was also pointed out that the tenure of their apprenticeship was for a period of one year. It was stated by him that concerned persons were engaged as apprentices.

Therefore, from these facts it is more than apparent that these incumbents were appointed as trade apprentices in the cadre of Clerk for a period of one year and after expiry of one year their services came to an end and as mentioned above, a dispute was raised in 1996 and an award was passed by the Labour Court treating them as workmen and giving them the benefit of workmen. We are of the opinion that the view taken by the Labour Court is absolutely erroneous as they were appointed as general clerks for a fixed period of one year and after the expiry of fixed period their services automatically came to an end and the dispute which has been raised is extremely belated. They cannot be treated as workmen as they were appointed as apprentices irrespective of the fact that the contract was registered or not. Therefore, the view taken by the Labour Court as well as by the High Court cannot be sustained.

Consequently, the appeal is allowed. Award dated 16.11.2000 made by the Labour Court in Industrial Dispute No.236/1999 and the interim order dated 19.9.2003 passed by the High Court in Civil Misc. Writ Petition No.42446/2003 are set aside. No order as to costs.

Civil Appeal No.9234/2003.

In this case, respondent Ashok Kumar was appointed on the designated trade as Draftsman (Mechanical) from 30.3.1991 to 29.3.1992. His allegation was that the contract of apprenticeship was not entered in to between the parties and the same was also not registered. He was treated as a regular appointee.

It was stated by the incumbent himself in his claim petition before the Labour Court (Kanpur) that he was appointed as an apprentice under the Apprentices Act, 1961

If there is any dispute, this can be decided by the Apprenticeship Adviser under the Apprentices Act, 1961

Appellant-Lal Man Verma was appointed as an apprentice on the post of Book Keeping and Accountancy Store on 8.1.1981. It is alleged that Book Keeping and Accountancy is not a designated trade within the meaning of Section 2(e) of the Apprentices Act, 1961. It is further alleged that the contract of service entered into between the parties was not sent to the Apprenticeship Adviser for registration, therefore, it was not registered and appellant was not imparted any training under the Act, but appellant's services were terminated with effect from 8.1.1982 without complying with the provisions of the Industrial Disputes Act, 1947. The appellant raised an industrial dispute and a reference was made under Section 4K of the U.P.

Industrial Disputes Act, 1947 by the State Government to the Labour Court. The Labour Court made the award in favour of the appellant and held that the Management has failed to prove that the appellant was appointed as an apprentice and held that the appellant was not working as an apprentice but as a workman.

This award was challenged by the Management by filing a writ petition being Civil Misc. Writ Petition No.10370/1998 before the High Court of Allahabad and the High Court allowed the writ petition filed by the Management and set aside the award made by the Labour Court holding that since the contract of apprenticeship was entered in to between the parties and the incumbent was appointed as an apprentice under the Apprentices Act, 1961 and his contract was not sent for registration to the Apprenticeship Adviser that will not change the character of the incumbent. Hence, the present appeal by the appellant by way of special leave.

Though in the grounds of the Special Leave Petition an objection was taken by the appellant that his trade is not covered by the designated trade within Section 2(e) of the Act, this objection was never pressed before the Labour Court nor was it pressed before the High Court.

Therefore, no finding has been given either by the Labour Court or by the High Court whether this trade is covered by the Act or not. However, for the first time, the appellant has raised this objection in his Special Leave Petition. Whether it is a designated trade or not, it is a question of fact and since the parties have not gone on trial on this issue nor this question has been referred by the

Government for decision of the Labour Court, therefore, we cannot permit this question to be raised at this stage. Since it is a question of fact whether this trade is covered by the designated trade or not and this question for the first time sought to be agitated in the present appeal, it will not be proper to permit the appellant to raise this question of fact at this belated stage after a lapse of 21 years. An objection of delay was raised before the Labour Court that the appellant has approached the Labour Court after lapse of 11 years i.e. in 1993, his services having been terminated in the year 1982.

Therefore, we do not find any merit in this appeal filed by the appellant and the same is liable to be dismissed.

Civil Appeal No.9679/2003.

Appellant- Ahmad Ali was appointed on 9.3.1982 in the designated trade of Boiler Attendant under the Apprentices Act, 1961

Civil Appeal No.9680/2003.

Appellant- Rakesh Kumar Tripathi was appointed on 31.3.1986 in the designated trade of Boiler Attendant under the Apprentices Act, 1961

Civil Appeal No.9681/2003.

Appellant-Jai Prakash Tiwari was appointed as apprentice Cable Jointer on 31.3.1986 and his services were terminated on 31.3.1989. Contract of apprenticeship was entered in to between the parties though not registered. The appellant raised industrial dispute and the Labour Court gave an award in his favour.

This award was challenged by the Management holding that the apprentice is worker. The High Court set aside the award in favour of the Management. Therefore, the view taken by the High Court is correct and there is no ground to interfere with the same. The Civil Appeal is dismissed.

Civil Appeal No.9683/2003.

Appellant- Urmila was appointed as Switch Board Attendant on 16.10.1984 under the Apprentices Act, 1961. Her services were terminated on 16.10.1987. Apprenticeship contract was entered in to between the parties but the same was not registered with the Apprenticeship Adviser. The award given in favour of the appellant by the Labour Court treating her to be workman and it was reversed by the High Court in a writ petition filed by the Management and rightly so in our view in view of the legal position mentioned above, we do not find any merit in this civil appeal. Same is dismissed.

Civil Appeal No.122/2004.

Appellant- Ashok Kumar Shukla was appointed in a designated trade as an apprentice Boiler Attendant on 9.4.1985 and his services were terminated on 8.4.1988. A contract was entered in to but not sent for registration to the Apprenticeship Adviser. Labour Court made the award in his favour treating him to be workman and on a writ petition filed by the Management against the award, the High Court allowed the writ petition and set aside the award of the Labour Court holding that since the appellant is appointed as apprentice, therefore he cannot be treated as a workman under the Industrial Disputes Act, 1947.

The view taken by the High Court is correct in view of the legal position crystalised above. Hence, we not find any merit in this appeal. Same is dismissed. No order as to costs.

Civil Appeal No.1965/2004.

Respondent Virendra Kumar Bajpai was appointed on 31.3.1986 as a Cashier under the Apprentices Act, 1961. His services were terminated on 31.3.1987. He worked as a Cashier (General) which is not a designated trade. Contract was not sent for registration to the Apprenticeship Adviser.

The Labour Court set aside the termination order. Against that a writ petition was filed before the High Court and the High Court dismissed the writ petition and the present appeal by way of special leave by the Management. As per the award dated 29.4.1994, the respondent himself admits that he was appointed as a Cashier on 31.3.1986 under the provisions of the Apprentices Act, 1961 and his services were terminated on 31.3.1987 but no registration of the apprenticeship was sent to the Apprenticeship Adviser. Since it is the case of the respondent himself that he was appointed as apprentice in the Branch as Cashier and his appointment was for fixed period of one year, we fail to understand how can respondent be given the benefit of Section 6N of the U.P.

Industrial Disputes Act, 1947 after the expiry of the period of one year. His services automatically stood terminated and he cannot claim that he has become the employee of the Management. He was a trainee for a period of one year as an apprentice in Cash Branch and after the expiry of the period of one year he cannot claim that he be treated as a workman. In this view of the matter, his services stood terminated in 1987 and dispute was raised in 1993.

Therefore, the view taken by the Labour Court as well as by the High Court cannot be sustained and accordingly, we allow this appeal, set aside the award dated 29.4.1994 made by the Labour Court in Industrial Dispute No.277/1993 and the order dated 14.7.2003 passed by the High Court in Civil Misc. Writ Petition No.34389/1994.

Civil Appeal No.2193/2004.

Respondent- Sushma Gupta was appointed on 1.7.1988 as an apprentice Clerk for a period of one year. She was getting a salary of Rs. 290/- per month. Since her work was satisfactory hence the employer extended her tenure by one year. Her services were terminated on 1.7.1990 without any prior notice. She raised an industrial dispute and the matter was referred for adjudication by the Labour Court.

The appellant- Management filed their reply and pointed out that she was recruited as an apprentice trainee as a Clerk for a period from 4.7.1988 to 3.7.1989 under the provisions of the Apprentices Act, 1961 and on completion of the training the Management is not under an obligation to give her employment. It was also alleged that the regular recruitment to the post of Clerk is done by the Electricity Service Commission according to the prescribed Rules and it was pointed out that she was only appointed as apprentice trainee and not recruited through the Electricity Service Commission . Though the respondent has denied that she was not appointed by the appellant-Management for training but she was working against a regular post of the nature.

The Management examined four witnesses and they said that the respondent was engaged for a training purpose only. They produced the copy of the training form which was filled up by the respondent as Ext.E/1 with her signature and she also admitted her signature on the form which was filled up by her for training purpose. The Management examined one Layak Singh as EW-1 who is Head Clerk on the establishment of the Management and he produced the agreement Ext.E/1 and it was pointed out that after the completion of the training as apprentice her services were terminated but on the recommendations she is allowed to continue for some time.

From these facts it is more than apparent that an agreement was filled up by the respondent-incumbent and she admitted herself her signature on that agreement/contract. It may be that said agreement/contract has not been sent for registration before the Apprenticeship Adviser but the fact remains that she was recruited as apprentice and if she was recruited as apprentice then she cannot be treated as a workman as discussed above in detail and therefore, the award given by the Labour Court treating her to be workman under Section 2(s) of the U.P. Industrial Disputes Act, 1947 cannot be sustained.

This award made by the Labour Court was affirmed by the High Court by order dated 15.7.2003 passed in Civil Misc. Writ Petition No.30165/1999 filed by the Management challenging the award of the Labour Court. The view taken by the High Court in this case cannot be sustained in view of the legal position already examined above. Hence, we allow this appeal, set aside the order of the High Court as well as the award made by the Labour Court. No order as to costs.

Civil Appeal No. 9233/2003.Respondent-Avnindra Kumar Sharma was engaged in the establishment of the appellants on 27.7.1991 due to death of his brother on 11.10.1984 on humanitarian ground. It is alleged that he was engaged as a apprentice under the apprentices Act, 1961 on the post of Switch Board Attendant without completing the formalities. He was engaged as apprentice by the Engineer at 220 Grim Union, UPSEB, U.P., and Kanpur.

Then his services were transferred to J.E., 132, K.V.Asainee, Dibiyapur, District. Etawa. He was paid at the rate of Rs. 330/- per month initially.

Thereafter, it was increased to Rs. 380/- per month. It is alleged that instead of accepting his demand for enhancement of salary, the services were suddenly terminated on 27.7.1993. The case of the Management is that neither he was appointed as a workman nor his services were ever terminated and there was no necessity of complying with the provisions of Section 6N of the U.P. Industrial Disputes Act, 1947.

It was contended that the respondent applied to the Principal and Assistant Apprenticeship Adviser, Industrial Training Institute, Kanpur and his name was forwarded. Thereafter, he was engaged for training for a specified period of two years. The respondent filed a rejoinder and pointed out that neither any contract for apprenticeship was registered with him nor any registration number was allotted to him.

The case of the respondent was that he was engaged as a dependent of the deceased employee on a condition that after training he will be made regular. He has already received a compensation for the death of his brother. It is stated that at the time of termination he was getting Rs.380/- per month whereas under the Apprentices Act, 1961 he would have got Rs.700/-.

The Management examined one Shri R.P. Gupta, J.E., Dibiyapur under whom he was working and he has stated that the respondent was paid at the apprentice rate. The Management also examined one Shri Mohammuddin Ansari, Head Clerk (Construction Division). He has deposed that respondent has not given any application as dependent of the deceased employee and he also pointed out that as per Ext.E/2 the rules for employment to the dependent of the deceased employee there is no provision to provide employment to the brother of a deceased and he deposed that the name of the respondent was referred by the Apprenticeship Adviser according to Ext.E/3 and respondent was selected as a Switch Board Attendant apprentice. However, he pleaded that he cannot say that any registration form was filled by the respondent or not. Management also examined Shri S.R.Chowdhary, Sub- Divisional Officer, Etawa and he has deposed that the respondent was working as a trainee under him and he admitted that he worked from 1.12.1991 to 27.7.1993. But the case of the respondent was that he was employed as a brother of deceased employee, but that cannot be sustained because there was no provision for giving employment to the brother of the deceased employee of the Board and the Labour Court also found that 26 names were sent by the Principal and Assistant Apprenticeship Adviser. Respondent's name appeared in that list and it was stated that respondent has been selected for training as provided under the Apprentices Act but neither any contract was executed nor the same was registered.

Therefore, in this context the Labour Court came to the conclusion that though he was recruited under the Apprentices Act, 1961

The case put up by the respondent that he was employed on the basis of being the brother of the deceased employee of the Board has not been found established by the Labour Court and rightly so

because there is no provision for appointment of a brother of the deceased as a dependent under the Rules.

Therefore, his case failed on that ground. From the above facts it also transpires that his name was sent by the Principal and Assistant Apprenticeship Adviser for registering him as a trainee and he has worked as a Switch Board Attendant for a period of two years that is the tenure for the training and after the lapse of the training his services were terminated. In these circumstances, the view taken by the Labour Court cannot be sustained and the respondent cannot be treated as a workman so as to be covered by Section 6N of the U.P. Industrial Disputes Act, 1947.

This award has been upheld by the High Court on a writ petition filed by the Management challenging the award. In view of the position that emerges that the respondent was engaged under the Apprentices Act, 1961 as a Switch Board Attendant for a period of two years, as such, he cannot be treated as a workman.

Therefore, the view taken by the Labour Court in the award dated 10.11.1998 in Adj. Case No. 99/1998 and affirmed by the High Court in Civil Misc. Writ Petition No. 13481/1999 cannot be sustained. The Civil Appeal is allowed. The order of the High Court dated 15.7.2003 as well as the award dated 10.11.1998 made by the Labour Court is set aside.

Civil Appeal No.8386/2003.

The case of the respondent-Manoj Kumar Shukla is that he was appointed on the post of Store Keeper as an apprentice under the Apprentices Act, 1961 with effect from 10.10.1988. His services were terminated on 9.10.1989. It is alleged that no examination of National Council was undertaken and work was taken from him as the regular worker. Further, the case of the respondent is that he was not an apprentice under the Apprentices Act and he was a workman under the U.P. Industrial Disputes Act, 1947

Therefore, it is pointed out that he cannot be treated as a workman as his appointment was for a period of one year as an apprentice.

However, Labour Court by its order dated 23.1.1995 found that no document had been produced by the Management. Although the respondent has produced documents/ certificates Exts. W/1 and W/2 dated 6.11.1989 and 29.1.1990 issued by the Management and the trade shown therein is that of the Apprentice (Store Keeper) but no document of the registration was produced.

It was also stated by the Management that the river side centre where respondent was working as a trainee was closed on 7.1.1991 and the respondent was recruited by the Kanpur Electricity Supply Administration (KESA) but still the Labour Court concluded that the removal of workman- Manoj Kumar Shukla is not constitutional, legal and he is entitled to full wages.

Then a review application was filed by the Management and it was stated that the award was received in the office from there it appears that certificate Exts.W/1 and W/2 issued by the Management it is clear that incumbent was appointed as a Store Keeper in the Power House and not in the river side Power House and he never worked there and the river side Power House has been closed. It was alleged by the Management that they did not get proper opportunity to lead evidence to this effect.

The Labour Court observed that sufficient opportunity was given to the Management but they failed to avail the same.

However, it was admitted by the Presiding Officer that there is an error that Manoj Kumar Shukla was appointed in the KESA and not in the river side Power House and this is the error which crept in the award dated 23.1.1995 and therefore he rectified this error and it is also observed that since both the parties agree that the incumbent was appointed in the KESA at Kanpur and not in the river side Power House, accordingly the award was modified to this extent. However, the award passed by him on 23.1.1995 was upheld.

Aggrieved by this order, the Management filed a writ petition before the Allahabad High Court and the High Court affirmed the award. After going through the award as well as the order of the High Court it appears more than apparent that there might have been failure on the part of the Management to lead the evidence but the fact of the matter is that it is the case of the applicant himself that he was appointed as apprentice Store Keeper as is apparent from Exts.W/1 and W/2. Therefore, we cannot loose sight of the fact that he was appointed apprentice Store Keeper in the Power House and after the expiry of the period of one year applicant cannot claim to have been treated as workman.

He was appointed on 10.10.1988 to 9.10.1989 and he put up the case before the Labour Court that he was appointed as an apprentice Store Keeper under the Apprentices Act, 1961. Now, he cannot be permitted to deny that he was not appointed under the Apprentices Act and he was appointed as a workman and therefore he seeks the benefit of Section 6N of the U.P. Industrial Disputes Act, 1947. He cannot be permitted to withdraw from this position. From Exts.W/1 and W/2, certificates issued by the Management on 6.11.1989 and 29.1.1990, it is apparent that he was shown as an apprentice Store Keeper. Just because of the failure of the Management to defend the case properly the benefit cannot be claimed by the workman.

Because of his own showing it is apparent that his appointment was Store Keeper for a period of one year, therefore the award given by the Labour Court cannot be justified. More so the termination was in the year 1989 and he raised the dispute in 1993. Therefore, taking in to consideration all these factors, we are of the opinion that respondent cannot claim any benefit of being a workman. He was apprentice and after the completion of the period of apprenticeship as a Store Keeper he has no right to continue and he cannot be treated to be a workman.

Accordingly, the award given by the Labour Court dated 23.1.1995 and modified on 28.1.1997 are set aside, likewise the order of the High Court affirming the award. Consequently, the appeal is allowed.

Civil Appeal No. 14/2004.

The case of the respondent- Subodh Kumar was that he was appointed to the post of a Clerk in August, 1981 and as per the letter of the Electricity Board he had participated in the sports events in 1982-1983 and also obtained three certificates. He worked on the post of Clerk till 16.2.1984 and his services were terminated on the morning of 16.2.1984. Therefore, he raised industrial dispute that since he has worked for more than 240 days as such he is a workman and entitled to the protection of Section 6N of the U.P. Industrial Disputes Act, 1947.

The Labour Court found that there is non-compliance of Section 6N of the Act and set aside his termination/ retrenchment. The Electricity Board contested the matter and submitted that the recruitment to the Electricity Board is regulated by the Rules for appointment/ transfer/ selection/ promotion of employees and it is also contended that in fact the respondent was engaged as an apprentice trainee in the appellants' organization under the Apprentices Act, 1961 for one year.

He started his training on 17.2.1983 and on completion of the one year training, his services automatically came to an end on 16.2.1984 and it was contended that according to Section 18 of the Act a trainee does not fall under the definition of workman and accordingly labour laws are not applicable to him and the Management is not obliged to appoint him in the Department. The learned Labour Court after considering the evidence and relying on the sports certificates inferred that the incumbent was appointed as a workman and not apprentice trainee. However, the Labour Court disbelieved the evidence of Harish Chandra, WE-1 who deposed that on the basis of Ext.E/1 the incumbent was selected apprentice. Though, the incumbent has denied his own signature, Ext.E/1 is the application by the concerned workman and Ext.E/2 is the list of the persons selected as the apprentice trainees and name of the incumbent appears at Sl. No. 96. But curiously enough learned Labour Court has disbelieved them on the ground that since respondent has denied his signature, therefore, they should have produced the handwriting expert and the list, Ext. E/2 in which name of the respondent appears at Sl.No. 96 was also disbelieved. The learned Judge says, “on what basis it has been shown is not on record".

He further goes to say that if the workman has been engaged apprentice trainee then an agreement ought to have been executed but no such agreement is available on record. He says that an agreement should also be brought on record and same is to be proved and in the absence of the same the story of the apprentice trainee was subsequently developed and he held that respondent cannot be deemed to be an apprentice trainee under the Apprentices Act, 1961.

This finding of the learned Labour Court appears to be perverse on the face of it. Just on the basis of the two sports certificates he has rushed to conclude that the incumbent was appointed as a workman. The recruitment in the Electricity Board is under service rules and when the evidence has

been produced, Ext. E/2, a list of the apprentices recorded in pursuance of his application, Ext. E/1 and the name of the incumbent appears at Sl. No. 96, we fail to understand how such primary evidence of the Management could be so lightly brushed aside.

The application by the respondent and that name of the respondent appears at Sl. No. 96 of the list of the apprentices go to show that he was apprentice and there was no necessity for the Management to bring hand-writing expert to substantiate that the application bears the signature of the respondent when there is already corroborating evidence available on record that the name of the respondent appears in Ext. E/2, list of the apprentices and that has been proved by the Management, that is sufficient to show that the incumbent was recruited as a trainee apprentice and after the tenure of the period of apprenticeship, his services came to an end. Just because his agreement was not set for registration that will not change the character of the incumbent as apprentice trainee. Apart from this, the service was terminated on 16.2.1984 and the dispute has been raised in 1997. Unfortunately, High Court has also affirmed the same.

The award as well as the order of the High Court cannot be sustained on the basis of the fact that there is primary evidence which goes to show that the incumbent was recruited as apprentice trainee as a Clerk for a period of one year and after the expiry of one year he has no right to continue and he cannot be treated as workman. #

The view taken by the Labour Court in the award dated 2.1.1998 affirmed by the High Court cannot be sustained. Consequently, we allow this appeal, set aside the award of the Labour Court dated 2.1.1998 and the order of the High Court dated 15.7.2003 in Civil Misc. Writ Petition No. 41027/1998.

Civil Appeal No. 8385/2003.

Respondent-Shiv Kumar Bhatia was appointed by M/s. Kanpur Electricity Supply Administration, Kanpur on 31.3.1986 on the post of Store Keeper. The case of the respondent was that his services were wrongly terminated by order dated 31.3.1987 which was not legal. Therefore, he raised an industrial dispute and the matter was referred to the Labour Court and Labour Court found that the Board has not produced any evidence except the application vide 13-B on behalf of the Management wherein it is stated that the contract was entered in to between one S.K. Bhatia and the Management under the provisions of the Apprentices Act, 1961. Though opportunities were given to the I.T.I. Kanpur for producing the contract but they did not file the contract alleged to have been entered in to between workman and the Management. It was alleged that the application was neither registered nor any certificate issued to him after examination of the National Council and it was alleged that the Management took the work from the respondent as a permanent employee.

But they illegally terminated the services on 31.3.1987. Though the Labour Court has held that the respondent remained an apprentice although he was a workman under the U.P. Industrial Disputes Act, 1947 which establishes a relationship of a master and servant between them and that the Management terminated his services without complying with the provisions of Section 6N, therefore, it concluded that the order of termination/ retrenchment is bad.

The Management's stand was that he was an apprentice trainee from 31.3.1986 to 30.3.1987 and he cannot be treated as a workman and they led evidence of Shri K.L. Mehrotra who submitted that the incumbent was an apprentice trainee which is apparent from his own application and a contract was entered in to between concerned workman and the Management. Shri Mehrotra stated that contract was got signed for the work of apprentice but the same is not available in the official record. The learned Labour Court on these facts inferred that formalities required under the Apprentices Act, 1961 were not complied with and therefore, the incumbent shall be treated as a workman and accordingly granted relief. **Once it is accepted by the Labour Court that the incumbent was recruited under the Apprentices Act, 1961 #** The Labour Court has observed, "since the Management has not complied with the formalities required under the Apprentices Act, 1961 therefore, the concerned workman is not an apprentice".

This pre-supposes that the Labour Court accepted the incumbent as apprentice under the Apprentices Act though the necessary formalities might not have been completed that would not change the character of the incumbent from the apprentice to workman.

The character of the incumbent as an apprentice trainee cannot be changed as he owes his existence under the Apprentices Act, 1961 and after the tenure of one year his services were bound to come to an end and he cannot convert this character of a trainee to an employee of the Management. Apart from this, the services were terminated way back March 1987 and the dispute was raised in 1994. #

Therefore, the view taken by the Labour Court of treating the respondent apprentice/ trainee to that of a workman cannot be sustained, likewise the order of the High Court dated 15.7.2003 in Civil Misc. Writ Petition No. 19422/1999 whereby this order of the Labour Court has been affirmed by the High Court. Accordingly, we allow this appeal, set aside the order of the High Court dated 15.7.2003 as well as the award dated 13.5.1998 made by the Labour Court. No order as to costs.

Hon'ble Justice S.B. Sinha

Section 2(z) of the U.P. Industrial Disputes Act, 1947 defines 'Workman' to mean *"any person (including an apprentice) employed in any industry to do any skilled or unskilled, manual, supervisory, technical or clerical 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."* * A workman includes apprentice in terms of the said provision.

U.P. Industrial Disputes Act, 1947, is a general law. The Parliament enacted Apprentices Act, 1961 (for short 'the said Act') which is a special law. It deals with the regulation and control of training of apprentices and for matters connected therewith.

The special statute, therefore, shall prevail over the general statute having regard to the maxim "generalia specialibus non derogant [See Talcher Municipality Vs. Talcher Regulated Mkt. Committee & Anr., [ ].

The said Act is a complete code in itself. An apprentice, as defined in Section 2(aa) of the said Act, is a person who enters into a contract of apprenticeship for the purpose of undergoing apprenticeship training in a designated trade. Entering into a contract of apprenticeship, therefore, is the basis for attracting the provisions of the said Act.

The primal question which arises for consideration is as to whether a person who is an apprentice within the meaning of Section 2(aa) of the said Act would become a workman and, consequently, would be entitled to the benefits of various labour laws in the event of breaches of the terms of the said contract as also non-registration thereof.

It is neither in doubt nor in dispute that an 'apprentice' within the meaning of the provisions of the said Act would per se not be a workman within the meaning of Section 2(z) of the U.P. Industrial Disputes Act. It is further not in dispute that in terms of Section 18 of the Act the apprentices being trainees and not workers would not be entitled to the benefits of provisions of any labour laws.

Section 4(1) of the said Act provides that a contract of apprenticeship will have to be executed by the employers and the apprentice before the apprenticeship training begins. Such training commences as soon as the said contract is executed. Sub-sections (4) and (5) of Section 4 of the said Act, however, provide that every contract of apprenticeship shall be sent to the Apprenticeship Advisor for registration within the period prescribed therefor whereupon, he would register the same if he is satisfied that they meet the qualifications provided in Section 3 thereof.

It is relevant to notice at this juncture that prior to amendment of the said Act in the year 1973 by Act No. 27 of 1973, Section 4 postulated that apprenticeship training would not commence till a contract of apprenticeship was entered into by and between the apprentice and the employer and the same was registered with the Apprenticeship Advisor.

The provision of Section 4 of the said Act as it existed prior to 1973 assumes importance for the purpose of interpretation thereof.

It is furthermore not in dispute that the said amendment was brought about with a view to avoid delay in commencement of training of the apprentices.

Mr. R. Venkataramani, learned senior counsel appearing on behalf of the Respondents would suggest that despite such amendment the importance of the registration of the contract of apprenticeship cannot be held to be diluted having regard to the expressions used therein which are

imperative in character. The learned counsel is not entirely correct.

Ordinarily, although the word "shall" is considered to be imperative in nature but it has to be interpreted as directory if the context or the intention otherwise demands. (See M/s. Sainik Motors, Jodhpur and others, Vs. State of Rajasthan, para 12)

It is important to note that in Crawford on Statutory Construction at page 539, it is stated:

"271. Miscellaneous Implied Exceptions from the Requirements of Mandatory Statutes, In General.- Even where a statute is clearly mandatory or prohibitory, yet, in many instances, the courts will regard certain conduct beyond the prohibition of the statute through the use of various devices or principles. Most, if not all of these devices find their jurisdiction in considerations of justice.

It is a well known fact that often to enforce the law to its letter produces manifest injustice, for frequently equitable and humane considerations, and other considerations of a closely related nature, would seem to be of a sufficient caliber to excuse or justify a technical violation of the law." *

It is no doubt true that the Apprenticeship Advisor has certain statutory duties and functions as contained in Sections 4(5), 5, 7, 8, 9, 10, 15 and 29. It is furthermore true that Sections 19 and 20 provide for certain obligations upon the employer to obtain approval of the Apprenticeship Advisor and forward the records to the concerned authorities.

Similarly, the rules framed under Section 37 of the Act confer certain benefits upon the apprentices. If an employer fails to perform his statutory duties or deprives an apprentice from the benefits to which he is entitled to, the Apprenticeship Advisor can file an appropriate complaint before a competent court of law. In terms of Section 31 of the Act the only penalty which can be imposed upon the employer is fine which shall not be less than one thousand rupees but may extend to three thousand rupees. Violation of the provisions of the Act, therefore, does not result in imprisonment.

A question which also arises for consideration is as to whether Section 18 of the said Act must be strictly construed.

If a contract of apprenticeship is entered into; the violation of the terms and conditions thereof, in our opinion, although may lead the penal consequences but the same would not render the contract of apprenticeship void or illegal.

In the event, the Apprenticeship Advisor obtains informations about such violations, he is entitled to take suitable steps in that behalf under the Act or the rules but he has not been conferred with any power to declare such contract of apprenticeship to be ipso facto void ab initio. Section 20 also provides resolution of disputes between an apprentice and the employer arising out of the contract

of apprenticeship which shall be referred to the Apprenticeship Advisor for decision. While resolving a conflict by and between an employer and an apprentice under Section 20 of the said Act, indisputably he can issue directions which the employer will have to comply with and on his failure to do so, he would run the risk of being prosecuted in terms of Section 30 of the Act, but even in such a situation he cannot bring an end to the contract. The contract of apprenticeship like any other contract can be brought to an end by the parties thereto.

Once a contract of apprenticeship commences, the same cannot be brought to an end except in accordance with law. By reason of non- registration of the contract of apprenticeship, the same does not become a nullity. If it is to be held that by reason of non-registration of such contract of apprenticeship the contract itself comes to an end, it would be detrimental to the interest of the apprentices, which would frustrate the object of the Act.

The definition of 'Apprentice' nowhere states that an apprentice with a view to obtain the benefits of the said Act must also be registered. Section 18 of the said Act says that an apprentice shall not be a worker. It does not say that an unregistered apprentice shall be a worker.

Only because the expression "shall" has been employed in sub- section (4) of Section 4, the same may not be held to be imperative in character having regard to the fact that not only, as noticed hereinbefore, a contract of apprenticeship commences but also in view of the fact that an application for registration of apprenticeship contract is required to be made within a period of three months in terms of Rule 4B of the Apprenticeship Rules, 1962. The Act nowhere provides for the consequences of non-registration.

It is not in dispute that the list of apprentices used to be sent by the Apprenticeship Adviser himself and, thus, presumably the preliminary scrutiny in that regard had been made by the said authority. If in a given case, as noticed hereinbefore, the employer fails to get the contract of apprenticeship registered and/or fails to carry on his obligations in terms of Section 11 of the Act, he faces penal consequences in terms of Section 31 of the Act. The employer, furthermore, is liable to pay compensation for termination of apprenticeship as would appear from Rule 6 of the Apprenticeship Rules, 1962, which reads thus:

"Compensation for termination of apprenticeship.- Whereas the contract of apprenticeship is terminated through failure on the part of any employer in carrying out the terms and conditions thereof, such employer shall be liable to pay the apprentice compensation of an amount equivalent to is three months' last drawn stipend; and when the said termination is due to failure on the part of an apprentice in the above manner, then a training cost of an amount equivalent to his three months last drawn stipend shall be made recoverable from such apprentice or from his guardian in case he is minor." *

No provision of the Act or the rules framed there under was brought to our notice to show that non-registration of the contract of apprenticeship or violation and/or neglect on the part of the employer to comply with the other provisions of the Act it would result in invalidation of the contract.

An apprentice remains an apprentice having regard to the definition contained in Section 2(aa) of the Act and continues to work in the said capacity. His status does not change to that of a workman only because the contract has not been registered or the employer has not carried out his obligations there under. If such a construction is placed, an apprentice may be held to have ceased to be an apprentice if he himself defaults in performing his obligations under the contract.

Recently, in Canbank Financial Services Ltd. Vs. The Custodian and Ors. [2004 (7) SCALE 495] this Bench has held that even if a benami transaction is prohibited the same per se would not render the transaction void ab initio and illegal.

It is now well-settled principle of law that if the language used in a statute is capable of bearing more than one construction, the true meaning thereof should be selected having regard to the consequences resulting from adopting the alternative constructions. A construction resulting in hardship, non-fulfillment of the purpose for which statute has been brought in force should be rejected and should be given that construction which avoids such results.

Sub-section (4) of Section 4 of the said Act can also be held to be directory having regard to the rule laid down in Heydon's case. [(1584) 3 Co. Rep. 7a]. [See Ashok Leyland Ltd. Vs. State of Tamil Nadu & Anr., nd Ameer Trading Corporation Ltd. vs. Shapoorji Data Processing Ltd. 6].

The mischief rule enables the court to take into consideration the following four factors for construing an Act:

(i) What was the law before the making of the Act,

(ii) What was the mischief or defect for which the law did not provide,

(iii) What is the remedy that the Act has provided, and

(iv) What is the reason of the remedy.

The rule then directs that the courts must adopt that construction which "shall suppress the mischief and advance the remedy".

Prior to 1973, the provision for registration was mandatory in character. Only having regard to the delay which has occasioned for registration of contract of apprenticeship, the said amendment had been brought about; pursuant whereto or in furtherance whereof the contract of apprenticeship commences. If the purpose of amendment was to make the contract workable even without registration, we fail to see any reason as to why the provision should be construed as imperative in

character so as to render a contract of apprenticeship a nullity which is possible to be avoided and the object thereof can be achieved by taking recourse to the penal provisions.

It may be true that rules framed under Section 37 of the Act are required to be laid before both Houses of Parliament after formulation; but even such a provision is directory in nature.

It is not a case where any of the apprentices repudiated the contract. No argument has also been advanced to the effect that the contract of apprenticeship was merely a camouflage or a ruse so as to establish that in effect and substance, while appointing a person as an apprentice, the employer has been taking work from him malafide or with a view to deprive him from the benefits of the labour legislations, nor any material in respect thereof had been brought on records.

Whether a relationship of an employer and workman or an employer and an apprenticeship had been brought about, is essentially a question of fact. The Court while determining such a dispute must consider the factual matrix involved therein in the light of the provisions of the said Act. Once it is held that a contract of apprenticeship entered into by and between the employer and the workman is a genuine one and not a camouflage or a ruse, a presumption would arise that the concerned person is not a workman.

It is one thing to say that a contract is illegal being opposed to public policy so as to render the same void in terms of Section 23 of the Indian Contract Act but it is another thing to say that by reason of breaches of the terms and conditions thereof by one of the parties it becomes voidable at the instance of the other party to the contract. If a contract is valid in law the breaches thereof would not render it invalid but the same may only enable a party thereto, who had suffered by reason of such breach, to avoid the contract. Unless the terms and conditions of a contract are avoided by a party thereto the contract remains valid and all consequences flowing there from would ensure to the benefit of the parties thereto.

Mr. Venkataramani has relied upon a decision of the Court of Appeals in F.C. Shepherd & Co. Ltd. vs. Jerrom [1986 Indlaw CA 17 wherein it is stated:

"If the party against whom frustration is asserted can by way of answer rely on his own misconduct, injustice results." *

Ex facie the said decision has no application in the present case.

The plea of frustration was not pleaded or established. It is one thing to specify as what would be the legal consequences of a breach of a contract but it is another thing to say that despite subsistence of a valid contract, the statutory benefits thereof shall not ensure to the parties thereto. In absence of any specific provision in the statute, we are unable to accede to the submissions of the learned counsel to the effect that in the event of commission of a breach by the employer the contract of

apprenticeship shall become a contract of employment. Such a novation of contract is not contemplated in law.

With a view to become a workman, not only the apprentice has to show that he comes within the purview of the definition of the term 'workman' as contained in Section 2(z) of the U.P. Industrial Disputes Act, 1947 but he must further plead and establish that his job is such which fulfills the requirements of the said term. [See Mukesh K. Tripathi Vs. Sr. Divn. Manager, LIC & Ors. 2004 (7) JT 232 = 2004 (7) SCALE 442].

In Bruton Vs. London and Quadrant Housing Trust, 1999 (3) AllER 481 , a contract of tenancy was held to be binding upon the parties even though the grantor lacked the necessary power. A housing association which itself was a licensee granted a licence which in view of the decision in Street Vs. Mountford, 1985 Indlaw HL 16 was treated to be a tenancy even though the housing association, being themselves mere licensees had no power to grant a legal tenancy valid against all the world. It is, therefore, necessary to ascertain as to how the parties to the contract thought thereabout. Ordinarily, it is impermissible in law for a party to the contract of apprenticeship to allow it to be worked out and then contend that it was a contract of employment.

In The Employees' State Insurance Corporation and Another vs. The Tata Engineering & Locomotive Co. Ltd. and Another , it was held:

"The concept of apprenticeship is, therefore, fairly known and has now been clearly recognized in the Apprentices Act. Apart from that, as we have noticed earlier, the terms and conditions under which these apprentices are engaged do not give any scope for holding that they are employed in the work of the company or in connection with its work for wages within the meaning of Section 2(9) of the Act..." *

Decisions are galore to show that despite a contract of apprenticeship coming to an end, the concerned workman must fulfill the eligibility criteria of appointment. (See Rajendra Singh and Others Vs. U.P. State Electricity Board, Shakti Bhawan, Lucknow and Others, 2000 (86) FLR 155 , Sri Chittaranjan Das Vs. Durgapore Project Limited & Ors., 1995 (2) CLJ 388 , Babulal and Others Vs. Rajasthan State Road Transport Corporation and another, 2000 (84) FLR 847 and Mitrangshu Roy Choudhary Vs. Union of India & Others, 5)

A Division Bench of the Gujarat High Court in Ballkhan Doskhan Joya vs. Gujarat Electricity Board [2002 (92) FLR 914], whereupon Mr. Venkataramani, relied, observed :

"The Central Legislature was, therefore, fully alive to the situation that an apprentice, undergoing an apprenticeship training under an apprenticeship contract duly registered, would be only a 'trainee' and not a 'workman', to which other laws in respect of labour shall not apply. Therefore, in including, in the definition of 'workman', 'apprentice' as well, the legislative intention appears to be obvious that such apprentices, who are not undergoing apprenticeship training under a duly

*registered 'apprenticeship contract, envisaged by the Apprentices Act, and to whom provisions of Section 18 of the said Act are not applicable, would, nonetheless, be included in the definition of 'workman' under the I.D. Act and would get all the protection of labour laws. The learned single Judge may be right in his reasoning that even after non-registration of the contract of apprenticeship, the appellant would only be a 'trainee', or an 'apprentice', as intended by the parties and he would not be an 'employee' or a 'workman', within the meaning of the Apprentices Act. Even if, as stated by the learned single Judge, the appellant, as a result of non- registration of contract of apprenticeship, is deemed to be a trainee or an 'apprentice', he would, nonetheless, be covered within the definition of 'workman' under Section 2(s) of the I.D. Act." **

The ratio enunciated in the said decision appears to be self- contradictory. An apprentice cannot both be an apprentice and a workman under the 1947 Act.

Similarly, the observations made by the Patna High Court in Ram Dular Paswan and Others vs. P.O. Labour Court, Bokaro Steel City and Others 1998 (80) FLR 399] to the effect that

"The Apprentices Act does not deal with the investigation and settlement of industrial disputes between the employer and the workmen. Therefore, so far as the settlement of the industrial disputes is concerned, the I.D. Act will prevail over the Apprentices Act. If the employer takes the kind of work mentioned in Section 2(s) of the I.D. Act from the apprentice, the dispute between them has to be settled under and in accordance with the said Act. But if the apprentice does not perform such work, the I.D. Act will not apply to him. The line of demarcation between the apprentice and the workman is very clear. If and when a question as to whether an apprentice is really an apprentice or is a workman wearing the mask of an apprentice, is raised the appropriate authority/Labour Court will have to apply mind to the nature of his work. The veil has to be lifted in order to find out the reality. But such a question cannot be decided merely on the basis of apprenticeship contract or on the basis of the label, which a person wears." * does not appear to be correct, particularly for the reasons that the High Court has failed to consider that Section 20 of the 1961 Act provides for settlement of disputes. Furthermore, as observed hereinbefore, such a contention has to be specifically pleaded and established. Moreover in terms of Section 22 of the Act, the employer has no statutory liability to give employment to an apprentice.

We are, therefore, are of the considered view that non-registration of the contract of apprenticeship would not render the same nugatory.

Subject to the foregoing supplemental reasons, I respectfully concur with the judgment of Mathur, J.