SUPREME COURT OF INDIA

National Small Industries Corporation Limited

Vs

V. Lakshminarayanan

Appeal (Civil) 4782 of 2006

(Dr. Ar. Lakshmanan and Altamas Kabir, JJ)

10.11.2006

JUDGMENT

ALTAMAS KABIR, J.

Leave granted.

The short point for decision in these appeals is whether in view of Section 18 of the Apprentices Act, 1961 (hereinafter called the "1961 Act") the 1st Addl. Labour Court, Chennai, was justified in holding that the respondent who had been appointed as an apprentice by the appellant herein was a "workman" within the meaning of Section 2 (s) of the Industrial Disputes Act, 1947 (hereinafter referred to as the '1947 Act'). The said question also gives rise to the issue as to whether the Labour Court was right in holding that the termination of the respondent's apprenticeship was in violation of Section 25-F of the 1947 Act and consequently whether he was entitled to reinstatement with continuity in service and all back wages and other concessions accruing to him.

A few facts are required to be set out to appreciate the award passed by the Labour Court.

The case made out by the respondent before the Labour Court under Section 2 (a) of the 1947 Act was that he had joined the appellant herein as a casual labourer on daily wages on 6th April, 1987. According to him he had continued to work in the Marketing Development Centre of the appellant

at Nungambakkam on daily wages at Rs. 15/- per day continuously till 2nd May, 1990. It was also his case that while working with the appellant he had been called for a direct interview on 13th April, 1990 for the post of Apprenticeship Trainee (Shop Assistant) and that he was selected as per the Order dated 26th April, 1990. It was asserted by the respondent that during the 1st year he was paid a salary of Rs.600/- per month and during the 2nd year he was paid Rs.750/- per month as salary and after the training period was over, the appellant herein had agreed to appoint him as a Peon. It is his case that on 8th July, 1991, he was transferred to the Government Purchase Section of the Regional Office where he was made to perform dispatch work. Suddenly, on 1st May, 1992, without any reason or inquiry, he was removed from service and that since he had served continuously for more than 240 days, his removal from service should be treated as retrenchment since the appellant herein had not followed the procedure indicated in Section 25-F of the 1947 Act.

The further case of the respondent was that while juniors were allowed to continue in service, he was not reinstated and his removal from service without any reason violates the provisions of Section 25-F of 1947 Act.

The appellant herein had chosen to remain silent despite the several letters written on behalf of the respondent and ultimately an application was filed before the Labour Officer on 30th March, 1993. However, since the conciliation failed, the respondent was compelled to pray for reinstatement with continuity of service and other concessions.

The case made out by the respondent was completely denied by the appellant herein and it was stated in its counter that the respondent had applied to the appellant for appointment to the post of Staff Assistant Apprentice Trainee and that in the interview dated 13th April, 1990 he was selected and orders were passid in this regard on 26th April, 1990 wherein it was specifically mentioned that the training period would be for two years only. It was also mentioned that during the period of training in the 1st year consolidated wages of Rs.600/- per month would be paid and during the 2nd year a sum of Rs.750/- per month would be paid. The respondent was directed to report for training before 3rd May, 1990 and the training period consequently came to an end on 2nd May, 1992. On 29th April, 1992, the respondent requested the appellant to confirm him in service and by subsequent letters dated 12th August, 1992 and 7th December, 1992, the respondent requested the appellant to make him permanent. Only thereafter notices were issued by the respondent through his advocate indicating that he had been removed from service without any reason or without holding any inquiry in violation of Section 25F of the 1947 Act. It was also contended on behalf of the appellant that since the two years training period of the respondent as a trainee had come to an end, he was not entitled to any relief as prayed for. In order to decide the dispute the Labour Court framed the following issues:-

"1. Whether it is correct to say that the petitioner was employed only as a trainee in the respondent/Management, as contended by the respondent?

2. Whether the removal of the petitioner from service is justifiable?

3. If not, what is the relief for which the petitioner is entitled.?"

After examining the evidence which had been adduced on behalf of the parties, the Labour Court recorded that the respondent herein had joined as a casual labourer on 6th April, 1987 in the Marketing Development Centre under the management of the appellant in the Eldorado Building at a daily wage of Rs.12/- which was subsequently enhanced to Rs.15/-. It was also recorded that the respondent herein was performing dispatch work, remitting money by going to the regional office, cleaning articles and delivering goods sold to customers and in this background he was offered the post of Apprentice Trainee (Shop Assistant) for which he was selected on 26th April, 1990 and was paid a sum of Rs.600/- per month during the 1st year of training, which amount was increased to Rs.750/- per month during the 2nd year of training. It was also recorded that although the respondent was appointed as Apprentice Trainee (Shop Assistant), he continued to do the same work. It was also recorded that while perusing Ex.W-7, it was noticed that the appellant had agreed to engage the respondent as a Peon in 'D' Category or as a shop assistant. It was also seen from letters exchanged between the parties that the respondent who had been serving as a casual labourer had been recommended for appointment to a permanent post by the General Manager.

Basing its judgment on the aforesaid material, the Labour Court accepted the case made out by the respondent and held that the case made out on behalf of the appellant that after the period of apprenticeship, the respondent's connection with the appellant had ended, was not acceptable. The Labour Court also came to the conclusion that even after joining as apprentice and shop assistant on 3rd May, 1990, the respondent had served in the show room and performed the same work which he had performed previously and had been performing a full-time job and hence his dismissal from service was not at all justified. In view of its aforesaid findings, the Labour Court ordered that the respondent be reinstated in service with continuity, together with back wages and all other concessions accruing to him.

On 23rd June, 1997, the appellant challenged the award passed by the Labour Court by way of a Writ Petition before the Madras High Court, being No.9462/1997. On the said petition, the learned Single Judge stayed the award and such stay was confirmed on 4th September, 1998 by the learned Single Judge with a direction upon the appellant to deposit a sum of Rs.63, 000/- before the Labour Court within 12 weeks and further directed that the said sum be invested in fixed deposit in a nationalized bank and the interest of the same be released to the respondent once in six months. There was a further direction upon the appellant to pay Rs.750/- per month to the respondent and to pay all the arrears within 12 weeks from the date of the order.

The said order of the learned Single Judge dated 4th September, 1998 was challenged by the appellant in appeal being Writ Appeal No.1364/1998. On 25th April, 2002, the Division Bench stayed the operation of the order of the learned Single Judge dated 4th September, 1998 and modified the interim order in so far as it related to payment of wages under Section 17B of the 1947 Act. A direction was given that such payment was to be made under Section 12B of the said Act from October, 1998 till the disposal of the Writ Appeal. The arrear of wages under Section 17B up to April 2002 was also required to be paid on or before 15th May, 2002 and future monthly wages on or before the 10th of every succeeding month, failing which the stay would stand automatically vacated. On 16th September, 2004, the Writ Appeal was disposed of with the following directions:-

"The appellant (NSIC) shall pay to second respondent (Shri V. Lakshmi Narayanan) directly by way of cheque a sum of Rs.15, 000/- which represents the interest on Rs.63, 000/- from the date of the impugned order till date, within a period of 4 weeks from today and in future, the appellant shall pay to the second respondent interest @ 4% p.a. on Rs.63, 000/- every quarter till the disposal of the Writ Petition No.9462 of 1997."

The writ petition itself came up for hearing on 20th September, 2004 before the learned Single Judge who dismissed the same and confirmed the award of the Labour Court dated 20th March, 1997. A restoration petition was also dismissed on 3rd January, 2005. The appellant thereupon filed another Writ Appeal against the order of the learned Single Judge dismissing the writ petition and the subsequent order dismissing the restoration petition, being Writ Appeal No.539/2005. On 28th March, 2005, the Division Bench dismissed the Writ Appeal upon holding that although the respondent was designated as an apprentice, in fact, he was not an apprentice but an employee doing full time work in the establishment.

The present appeal is directed against the said judgment and order of the Division Bench dated 28th March, 2005.

The other appeal is directed against the order of the learned Single Judge of the Madras High Court dated 20th September, 2004 dismissing the appellant's Writ Application.

Since the same set of facts will be relevant for a decision in both the appeals, they have been taken up together for disposal and are being disposed of by this judgment.

The entire dispute centers round the question as to whether the respondent was, in fact, a workman within the meaning of Section 2 (s) of the 1947 Act or an apprentice trainee within the meaning of Section 18 of the 1961 Act.

Section 2 (s) of the 1947 Act defines "workman" in the following terms:-

"2 (s). 'workman' means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person

i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

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

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

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

From the above, it will be seen that a "workman" includes an "apprentice". However, Section 18 of the 1961 Act defines that apprentices are trainees and not workers in the following terms:-

"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."

From the above, it will be seen that on the one hand while an apprentice is also treated to be a workman for the purposes of the 1947 Act, by virtue of Section 18 of the 1961 Act, it has been categorically provided that apprentices are not workers and the provisions of any law with respect to labour shall not apply to or in relation to such apprentice.

We have been taken though the letter issued on behalf of the appellant to the respondent on 26th April, 1990 with reference to the interview held on 13th April, 1990, for being engaged as Apprentice Trainee (Shop Assistant). From the said order it is very clear that the respondent was appointed as an apprentice and that the duration of his apprenticeship training would be two years from the date on which he reported for such training. It was also indicated that he would be paid a consolidated stipend of Rs.600/- per month during the first year and on satisfactory completion of the first year, he would be paid at the rate of Rs.750/- per month during the second year. It was further stipulated that the respondent would be entitled to 15 days leave every year during the period of apprentice training. Paragraph 5 of the aforesaid letter, which seems to be in consonance with Section 22 of the 1961, Act states as follows:-

"On completion of your apprentice training satisfactorily, you will be eligible to apply for consideration for recruitment to any post in Group 'D' Category (present Scale 196-290) subject to availability of vacancies and recruitment rules of the Corporation

It also appears from the letter dated 3rd May, 1990, written by the respondent to the Joint Manager (Marketing) of the appellant-corporation that pursuant to the letter of 26th April, 1990, he reported for duty on 3rd May, 1990 as Apprentice Trainee (Shop Assistant) in the Marketing Development Centre.

We have also been shown a letter dated 29th April, 1992, written by the respondent to the Regional General Manager of the appellant-corporation indicating that he had been appointed as Sales Assistant (Apprentice) for a period of two years with effect from 3rd May, 1990 and the period was to expire on 2nd May, 1992. In his said letter, the respondent requested the authorities of the appellant-corporation to consider absorbing him on a permanent basis in view of the fact that he had been working in the organization for six years. It is only on 5th February, 1993, that the respondent's lawyer wrote to the appellant-corporation indicating that at the interview held on 13th April, 1990 for appointment to the post of Apprentice Trainee (Shop Assistant), it had been agreed to absorb him in a Group 'D' Category after completion of his apprenticeship. It was also alleged that the termination of the respondent's service would amount to retrenchment.

From the aforesaid documents it would be evident that even if the respondent had been working on a daily-wage basis prior to his appointment as Apprentice Trainee (Shop Assistant), at least from 3rd May, 1990 till 2nd May, 1992, he was working as an apprentice on a consolidated salary and the respondent himself was conscious of such fact since he had requested the corporation and its authorities to absorb his services on a permanent basis purportedly on the basis of a promise held out at the time when he was interviewed for appointment to the post of Apprentice Trainee (Shop Assistant). Other than the assertion made on behalf of the respondent that the appellant had agreed to absorb the respondent in Group 'D' Category as Peon/Shop Assistant after completion of apprenticeship and the recommendation said to have been made by the General Manager indicating that the respondent could be appointed and taken as a permanent worker, there is no other material on record to support the case made out by the respondent.

In the absence of any such material, it is difficult to understand the reasoning of the Labour Court that the respondent was not an "apprentice trainee" but a "workman" who was made to perform a full-time job under the guise of an Apprentice Trainee. The High Court appears to have been impressed by the reasoning of the Labour Court with regard to the finding that although designated as an apprentice, the respondent was not undergoing training, but was an employee doing full time work in the establishment. Such a view, in our judgment, is not supported by the materials on record and is completely contrary to the appointment letter issued to the respondent on 26th April, 1990 and the respondent's own letter dated 29th April, 1992, in admission of such fact. Had such a letter of appointment not been available, the Labour Court and/or the High Court could justifiably have embarked on an exercise as to whether the respondent was in effect a "trainee" under the Apprentices Act, 1961, or a "workman" within the meaning of Section 2 (s) of the 1947 Act. There is nothing on record to indicate that the respondent's services had ever been regularized or that he was brought on the rolls of the permanent establishment.

Even if it is accepted that the respondent was a workman within the meaning of the 1947 Act, on account of his contractual tenure, his case would come within the exception of clause (bb) of Section 2(oo) thereof. In such a case also, the provisions of Section 25F of the said Act would have no application to the respondent's case. In the aforesaid circumstances, we are of the view that the respondent's case was covered by the provisions of Section 18 of the 1961 Act and both the Labour Court as well as the High Court erred in proceeding on the basis that the respondent was a workman to whom the provisions of the 1947 Act would be applicable. The appeals are accordingly allowed and the judgment and orders under appeal are set aside. This order will not affect the payments

already made to the respondent from time to time under the orders of the Courts.

Having regard to the facts involved there will, however, be no order as to costs.