

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 3460 OF 2014

Nilesh Shivaji Sapkar, Age 27 years]
Sant Tukaram Nagar,]
Near Prajwalit Mitra Mandal,]
Bhosari, Pune 411 039].. Petitioner

Versus

- | | | |
|----|--------------------------------------|----------------|
| 1) | State of Maharashtra |] |
| | through Secretary Labour Department, |] |
| | Mantralaya, Mumbai 400 001 |] |
| | |] |
| 2) | Deputy Labour Commissioner, |] |
| | District Pune |] |
| | |] |
| 3) | Conciliation Officer/Government |] |
| | Labour Officer, Pune |] |
| | |] |
| 4) | Volkswagen India Private Limited |] |
| | through its Managing Director |] |
| | E-1, MIDC, Phase, Nighoje, |] |
| | Chakan, Tal. Khed, |] |
| | Pune : 412105 |] |
| | |]. Respondents |

Ms. Neeta Karnik for petitioner.

Ms.S.S. Bhende, AGP for respondent nos.1 to 3.

Mr.K.M. Naik, senior advocate a/w. Mr.Hemant Telkar i/b Haresh Mehta & Co. for respondent no.4.

**CORAM : ANOOP V. MOHTA,
K.R. SHRIRAM, JJ.**

**RESERVED ON : 16.04.2015
PRONOUNCED ON : 08.05.2015**

JUDGMENT (PER K.R. SHRIRAM, J.)

1. Rule made returnable forthwith and heard finally.
2. The petitioner initially was appointed for a fixed period of six months from 1st December 2010 to 31st May 2011 by respondent no.4 purely on temporary basis. Thereafter, on an application made by the petitioner, respondent no.4 offered to impart training to the petitioner.
3. The training was to be in two parts, the first part for six months and the second part was for a period of five months. The petitioner would have become eligible for the second part of the training only if he had completed successfully the first part of training. For the training period, the petitioner was entitled to a consolidated stipend. The terms and conditions are reflected in a letter dated 2nd July 2011 and letter dated 1st December 2011. Clauses 9, 10, 11, 14, 17, 19, 20, 21 in the letter dated 2nd July 2011 read as under :

9) You will sincerely and diligently undergo the training in all areas in the Company, both on the job and external training, if any. Your performance will be regularly assessed and evaluated and feedback will be given to you for needed improvement.

10) This is only a training offer based on the VWIPL Technician Development Scheme and doesn't give you a right to hold a lien for an employment in the Company.

11) If vacancy exists then on satisfactory completion of the second part under VWIPLTDS or extended period thereof, you may be considered for regular employment in the Company on probation. The decision of the management on this will be final and binding.

.....

14 You will be required to work in shifts.

...

17 You have been offered training based on certain qualifications fixed by the management and in case you acquire any additional qualification, there is no commitment or assurance on the part of the management to upgrade your training and /or to give you higher emoluments.

...

19 As discussed you shall join us for training on June 1, 2011. In case you don't join on June, 1, 2011 this offer under VWIPLTDS shall be considered as withdrawn.

20 We do hope that you will utilize this opportunity to the best of your & the Company's advantage.

21 During your training, you will not be a workman and there shall be no employer-employee relationship between you and our Management. The relationship will be that of an institute-pupil.

4. Therefore, it is quite clear from this letter that the petitioner was made aware, knew and accepted that he was being taken in by respondent no.4 purely as a trainee. The petitioner also knew and accepted that the training

included on the job and external training and also that during the training period he will not be a workman and there shall be no employer-employee relationship between the petitioner and respondent no.4. The petitioner also knew that if the vacancy exists and on his satisfactorily completing the second part of the training period, the petitioner may be considered for regular employment in respondent no.2 on probation.

5. Upon the end of the training period, the petitioner was not considered to have satisfactorily completed the second part and was not given employment and the petitioner was told to stop reporting in the factory of respondent no.4. It is the case of the petitioner that the work that he performed during the training period was similar to the work that he performed when he was temporary employee and the respondent no.4 has been doing this to about 500 employees under the garb of training. According to the petitioner, the petitioner was made to work at the production activity/manufacturing activities on the shop floor of the Company for more than 12 hours or more in the manner of extracting work whereas in effect, the petitioner was working as a workman. The petitioner also has alleged that the respondent no.4 has been paying a stipend and there are more than 500 employees identically situated who have been demanding regularization/permanency and other benefits available under the Labour

and Industrial Law from respondent no.4.

6. The petitioner raised a demand of reinstatement with continuity and with back-wages. As respondent no.4 did not respond, the same came to be submitted for conciliation before respondent no.3-conciliation officer. Respondent no.3, by an order dated 29th May 2013, admitted the matter for conciliation. But, at the same time, also recorded that respondent no.4 having remained absent and not submitting any say, there was no likelihood of conciliation in the matter and thereby closed the proceedings and forwarded a report under Section 12(4) of the Industrial Disputes Act, 1947 to respondent no.2.

7. As respondent no.2 also did not respond or take any further steps, the petitioner issued a legal notice by a letter dated 28th December 2013, on receipt of which respondent no.2 issued notices to respondent no.4 and arranged a meeting. Respondent no.2, after hearing the parties, gave his opinion that no industrial dispute exists or is apprehended and therefore, it was not just and proper to refer the dispute between the parties to the Labour Court under Section 12(5) of the Industrial Disputes Act, 1947.

According to the petitioner, respondent no.2 should not have called or heard respondent no.4 before opining in the matter and respondent no.3

having recorded that there was a failure of conciliation, respondent no.2 had no choice but to refer the matter to the Labour Court. It is the case of the petitioner that respondent no.4 had no right and authority to decide upon the merits of the disputes between the parties. The petitioner's counsel submitted that when there was a disputed question of fact and law, the same could be decided only by an appropriate Labour Court and the Government should not have given a final decision on the question.

In other words, the counsel for the appellant submitted that whether the petitioner was a workman or not can only be decided by the Labour Court and therefore reference should have made.

8. In response, the counsel for respondent no.4 submitted that the terms and conditions by which the petitioner was taken in the Company for training expressly provided that he was being taken in only as a trainee, that he will not be a workman during the period of training, there shall be no employer-employee relationship and the training would include both on the job and external training. The training does not give the petitioner a right to hold a lien for an employment in the Company and on the satisfactory completion of the training period, should a vacancy exist, the petitioner may be considered for regular employment on probation. The counsel submitted that therefore, it was basically clear to the petitioner and the petitioner

accepted and knew that he was being taken in only as a trainee and nothing else. The counsel also submitted that a Certified Standing Order applicable to respondent no.4 duly Certified under Section 5(3) of the Industrial Employment (Standing Orders) Act, 1946 read with Rule 10 of the Bombay Industrial Employment (Standing Orders) Rules, 1959 is applicable to respondent no.4 in which trainee is excluded from the definition and classification of 'workman'. The counsel read out clause 3.3. of the said Standing Order which is reproduced herein:

3.3. **TRAINEE** means a learner who may or may not be paid stipend during the period of training but does not include an Apprentice. The services of a trainee can be terminated at any time without notice or without assigning any reason. The Company shall be under no obligation to provide him employment after completion of his training period. A trainee shall not be entitled to any benefit available to the regular workman. The aggregate period of training of such trainee shall not exceed two years.

Admittedly, in this case the training period did not exceed 2 years.

9. The counsel for respondent no.4 further submitted that this Court, in the matter of **Press Trust of India Employees Union Vs. Press Trust of India Ltd. & Anr.**¹ has held that once the Standing order has been duly Certified, they constitute a statutory regulation and the terms and conditions of employment and are part of conditions of service. The counsel also relied

¹ 2007(2) Mh.L.J. 674

on a judgment of the Apex Court in the matter of ***D.K. Yadav Vs. J.M.A. Industries***² to submit that it is settled law that Certified Standing Orders have statutory force which do not expressly exclude the application of the principles of natural justice.

The counsel further submitted that the Government was justified, therefore, in opining that the Certified Standing order is applicable to respondent no.4 and respondent no.4 having appointed the petitioner as a trainee, from time to time was, therefore not a workman and upon expiry of the duration of training, his services were correctly terminated.

The counsel for respondent no.4 in addition to the judgments referred above also relied upon the judgment of the Apex Court in the matter of the ***The Secretary, Indian Tea Association Vs. Ajit Kumar Barat & Ors.***³.

10. The counsel for the petitioner to persuade this court to accept the petitioner's view point, relied upon 5 judgments of the Apex court, which are as under :

1. ***Ram Avtar Sharma Vs. State of Haryana***⁴
2. ***Sultan Singh Vs. State of Haryana & Anr.***⁵
3. ***Telco Convoy Drivers Mazdoor Ssangh & Anr. Vs. State of Bihar & Ors.***⁶

2 1993(II) CLR 116

3 2000(84) FLR 984

4 (1985) 3 SCC 189

5 (1996) 2 SCC 66

6 AIR 1989 SC 1565

4. ***Abad Dairy Dudh Vitran Kendra Sanchalak Mandal Vs. Abad Dairy***⁷
5. ***Sarva Shramik Sangh Vs. Indian Oil Corporation Limited***⁸

11. Having considered the judgments referred to and relied upon by the opposing counsels, one thing is clear is that Standing Orders have statutory force and constitute the terms and conditions of service/employment in an industrial establishment.

The judgments also establish that an order issued under Section 10 of the Industrial Disputes Act is an administrative order and the Government is entitled to go into the question whether industrial dispute exists or is apprehended and it will only be a subjective decision on the basis of material on record. It is clear that for a government to make a reference under Section 10 of the Act, an industrial dispute should exist or should be apprehended and an industrial dispute under clause (k) of Section 2 of the Industrial Disputes Act means, *inter-alia*, a dispute or difference between employers and employers or between employers and workmen or between workmen and workman. Before making a reference under Section 10, the Government has to form an opinion whether an employee is a workman and thereafter has to consider whether an industrial dispute exists or is apprehended. In the present case, we find, that the approach of the

7 1999 SCC (L & S) 1079

8 (2009) 11 SCC 609

government was right as the pre-conditions were not satisfied, no reference can be made.

12. It is also clear that if a detailed investigation was required or there were voluminous evidence sought to be adduced by the parties to decide the question -whether the petitioner was a workman or not, then the issue requires detailed examination and can be satisfactorily adjudicated upon only by a tribunal. But it is not so in the present case. The only document required to be considered was letter dated 2nd July 2011 and the letter dated 1st December 2011. It is not disputed by respondent no.4 that the petitioner did, in fact, work on the shop floor. In fact, clause 9 of the offer letter dated 2nd July 2011 expressly provides that the petitioner will undergo training in all areas of the Company both on the job and external training and his performance will be assessed and evaluated. Clause 14 of the said letter of offer also mentions that the petitioner will be required to work in shifts. Therefore, no detailed investigation or voluminous evidence was to be adduced to conclude “as to whether the petitioner was a workman or not”, to be adjudicated by a Tribunal.

13. In the matter of ***Prem Kakar Vs. State of Haryana & Anr.***⁹, the Apex

9 1976(3) SCC 433

Court has held that the order of the Government acting under Section 10(1) read with Section 12(5) of the Industrial Disputes Act, 1947 is an administrative order and not a judicial or quasi-judicial one and only if it appears from the reasons given that the Government took into account any irrelevant or foreign consideration that the court may in a given case interfere. Paragraph 9 of the said judgment reads as under :

9 In State of Bombay V. K.P. Krishnan & Ors. entertaining an application for a writ of mandamus against an order made by the appropriate Government under section 10(1) read with s. 12(s) of the Act the court does not sit in appeal over the order and is not entitled to consider the propriety or the satisfactory character of the reasons. If it appears from the reasons given that the appropriate Government took into account any consideration irrelevant or foreign, then the court may in a given case consider the case for a writ of mandamus.

(emphasis supplied)

14. In that case also, the appellant had contended that the question whether the appellant was a workman or not was a disputed question of fact and law which can be decided only by an appropriate Labour Court. The appellant also had submitted that if the dispute in question raises question of law, the government should not give a final decision on the question and reference should be made to the Labour Court. Paragraph 5 of the said

judgment of Premkumar (supra) reads as under :

“5. The appellant contended that the question whether the appellant was a workman was a disputed question of fact and law which could be decided only by an appropriate Labour Court. The appellant also submitted that if the dispute in question raises questions of law the appropriate Government should not give a final decision on the question. In short, the appellant's contention is that the issue whether the appellant is a workman or not could only be decided by the Labour Court and, therefore, reference should have been made.”

(emphasis supplied)

15. The facts in the present case are also identical. The stand of the petitioner is that he was a workman and as that was a disputed question of fact and law, the matter should have been referred to the Labour Court.

16. As held by the Apex Court in Prem Kumar (supra) and the Indian Tea Association (supra), the Court may interfere and issue a writ of mandamus only if it appears that the reasons given by the government in its opinion shows that the government took into account any consideration irrelevant or foreign. It is also clear that, while considering ‘whether to issue a writ of mandamus or not, the Court does not sit in appeal and is not entitled to consider the propriety or the satisfactory character of the reasons given by the Government.

17. Therefore, the point that we need to consider is whether in the impugned order dated 12.02.2014, the government took into account any consideration, irrelevant or foreign.

18. The opinion of the Government is reflected in a communication dated 12th February 2014, Exh.'K' to the petition. The counsel for respondent no.4 has provided an english translation of the said communication and the counsel for the petitioner did not notice anything wrong in this translation. It would be better if the said communication, which is not very long, is reproduced. The same is as under :

“ **Exh. K**

*O.No.DCL/ID/Vokks/3590
Office of the Dy. Commissioner
of Labour,
Pune District, Pune.
Bungalow No. 05,
Pune-Mumbai Road,
Shivajinagar, Pune 411005,
Date : 12.2.14*

*To,
Shri Nilesh Shivaji Sapkal
Saint Tukaram Nagar,
Near Prajwalit Mitra Mandal,
Bhosari, Pune 411039.*

*Sub, : Volkswagen India Pvt. Ltd.,
M.I.D.C. Industrial Area Phase 3, Mhalunge,
Kharabwadi, Pune regarding industrial
dispute in respect of reinstatement under*

Section 2A of the Industrial Disputes Act, 1947.

With reference to the above mentioned subject, you have raised the dispute of reinstatement under section 2A of the Industrial Disputes Act, 1947 by your letter dated 7/07/2013 and in this case Government Labour Officer cum Conciliation Officer, Pune has submitted his failure report to the undersigned. In this connection, both parties have been called for discussions from time to time before the undersigned. By considering the concerned documents on the record in respect of the said case and arguments of both the parties following points are seen.

The Certified Standing order is applicable to the above mentioned establishment and in this connection, the management has appointed you as a Trainee Technician from time to time on temporary basis for various stages in compliance of the terms and conditions mentioned in the appointment letter and you have agreed to the terms and conditions mentioned in the appointment letter. As mentioned in the said appointment letter, after expiry of the duration of your training, your services are terminated.

By taking into consideration the above mentioned facts and circumstances, my opinion is that, it is not just and proper to refer the said dispute before the Hon'ble Labour Court for adjudication under Section 12(5) of the Industrial Disputes Act, 1947.

sd/-

*(Ratnadip R. Hendre)
Dy.Commissioner of Labour
Pune District, Pune*

*Copy forwarded for information :
Manager, Volkswagen India M.I.D.C. Industrial Area,
Phase 3, Mhalunge, Kharabwadi, Pune.”*

19. In the impugned order, the government has very correctly stated that

the Certified Standing order is applicable to respondent no.4. The government has considered the offer letter of respondent no.4 in which it is expressly mentioned that the petitioner was being appointed only as a trainee and what was expected from him during the training period etc. We do not find anywhere the government having considered any irrelevant or foreign material to come to a conclusion that there existed no industrial dispute because the petitioner was not a workman.

20. As mentioned earlier, we are not sitting in appeal over the impugned order and we are not entitled to consider the proprietary or statutory character of the reasons given by the government.

21. The issue in this matter is only to consider whether the action of the government was proper or not. We cannot be influenced by other factors as to whether the petitioner will not have any other remedy etc. The petitioner, may, if he is so advised, approach any forum including the Labour Court directly and the said forum, we are sure, will consider the claims of the petitioner in accordance with law, including on jurisdiction. It is also necessary to note that many trainees, who were in the same position as the petitioner, have also been absorbed by respondent no.4 in regular employment upon successful completion of the training period.

22. In the circumstances, we do not think that it is a matter that requires any interference by this Court. The petition stands dismissed. Rule is discharged.

23. In the facts and circumstances of the case, we are not awarding any costs.

(K.R. SHRIRAM, J.)

(ANOOP V. MOHTA, J.)