

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3631 of 2014

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M/s. Hindustan Coca Cola Beverages Pvt. Ltd. having its bottling plant at E-1, Industrial Area, Patliputra, Patna-890013 and registered office at 13, Abdul Fazal Marg, New Delhi, through Mr. Ranjan Kumar, Zonal Head, Legal, power of attorney holder on behalf of the company duly authorised to represent the petitioner company.

.... Petitioner

Versus

1. The State of Bihar, through the Secretary, Department of Labour
2. The Deputy Labour Commissioner-cum-Conciliation Officer, Combined Labour Building, Patna
3. Sri Om Prakash, Vill+P.O.- Guljarpur, P.S.- Sahar, Dist.-Bhojpur
4. M/s. Joginder Rai & Enterprises through its Proprietor Jogender Rai S/o Sri Chabi Rai R/o Village -Manas Naya Panapur, P.O.- Manas Naya Panapur, P.S.-Danapur, District- Patna.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Alok Kumar Sinha, Advocate
Mr. Kumar Manish, Advocate

For the Respondent no.3 : Mr. Sanjay Kumar, Advocate

For the Respondent no.4 : Mr. Satyabrata Verma, Advocate

For the Respondent-State : Mrs. Binita Singh, SC-8

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT
Date: 09-10-2017

The petitioner has filed this writ petition for setting aside the order of reference dated 13.01.2012 whereby the Government of Bihar has referred the dispute existing between the



petitioner-Management and their ex-workman, Sri Om Prakash,
Ex-trade Fitter (respondent no.3).

2. The notification dated 13.01.2012 referring the
dispute for adjudication reads as under:-

“Notification

Patna, Dated-13.1.12

S.O. Whereas the Government of Bihar is of opinion that Industrial dispute exists between Management Hindustan Coca-Cola Beverages (Pvt.) Ltd. & their workman Shri Om Prakash, Ex. Trade Fitter, Vill.+ P.O.-Guljarpur, P.S.-Sahar, Dist.-Bhojpur regarding the matter specified in Annexure ‘A’ annexed hereto;

And, whereas, the Governor considers it desirable to refer the said dispute for adjudication;

Now, therefore in exercise of the powers conferred by clause (c) of Sub-Section-(01) of Section-10 of the Industrial disputes Act, 1947 the Governor of Bihar is pleased to refer the said dispute for adjudication to the Labour Court, Patna constituted by the State Government.

In exercise of the powers conferred by Sub-Section 2(A) of Section-10 of the said Act, the Governor of Bihar is further pleased to specify a period of three months from the date of receipt of this notification within which the, Labour Court, Patna shall submit its award to this dispute to the State Government.



Annexure-‘A’

“Whether termination from 11.11.2009 of Shri Om Prakash, Trade Fitter by Management Hindustan Coca-Cola Beverages (Pvt.) Ltd. E-1, Industrial Estate, Patna-13 is justified ?

No.3/D- 112/2011 L.R-263

By order of the Government of Bihar,

(Parmanand Jha)

Spl. Secretary to Govt.”

3. The contention of the petitioner is that since there exists no industrial dispute between the petitioner-Management and Mr. Om Prakash, the reference made by the State Government is bad in law. He contends that Mr. Om Prakash was an employee of M/s. Joginder Rai & Enterprises, which is a registered contractor under the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 for the work of loading and unloading and was working for the petitioner-company. The respondent no.3 was working as an employee of said M/s Joginder Rai & Enterprises since 1st June, 2009 and worked till November, 2009. He was getting his wages against the work done by him by M/s. Joginder Rai & Enterprises. Being the employee of M/s. Joginder Rai & Enterprises, the amount of P.F. and E.S.I. of respondent no.3 was also deducted from his wages by M/s. Joginder Rai & Enterprises.



4. The contention of the petitioner is that since there is no relationship of master and servant between the petitioner and the respondent no.3, the very reference to the labour court is unsustainable in law.

5. The contesting respondent no.3 has filed his counter affidavit. In his counter affidavit, the contention of respondent no.3 is that he was appointed as Fitter (Apprentice) with effect from 28.04.2008 and, in this connection, a letter was issued to him. He was offered apprenticeship training. He worked from April, 2008 till April, 2009 as apprentice, which is a continuous service for 240 days and this gives him a cause of action to raise the dispute under the provisions of Industrial Disputes Act, 1947 before the competent authority for making reference, which is under challenge in this petition. In support of his contention, he has annexed Annexures-R-3/A/1 and R-3/D/1.

6. On perusal of Annexure- R-3/A/1, it would be evident that the respondent no.3 worked as apprentice from 28.04.2009 to 27.04.2009 under the Apprentices Act, 1961. Annexure- R-3/D/1 is a certificate issued by the Manager-HR of the petitioner-company on 04.02.2009. The said certificate would also make it manifest that the respondent no.3 was working as apprentice under the Apprentices Act, 1961 since 28.04.2008.



7. Mr. Alok Kumar Sinha, learned counsel for the petitioner submitted that even on admitted case of the respondent no.3, the dispute would not have been referred by the State as industrial dispute to the labour court as apprentices under the Apprentices Act, 1961 are trainees and not workers. He contended that for the purpose of Section 2(s) of the Industrial Disputes Act, 1947 a person, who is designated as apprentice, but is not governed by Apprentices Act, 1961 may be a “workman” governed by the provisions of Industrial Disputes Act, 1947 but an apprentice, who is governed by the provisions of Apprentices Act would not be a “workman” under Section 2(s) of the Industrial Disputes Act, 1947 and would not be governed by provisions of Industrial Disputes Act, 1947. In support of his submission, he has placed reliance on the ratio laid down by the Supreme court in **U.P. State Electricity Board Vs. Shiv Mohan Singh & Ors. [(2004) 8 SCC 402]** and in **Haryana Power Generation Corporation Ltd. and Ors. Vs. Harkesh Chand & Ors. [(2013) 2 SCC 29]**.

8. On the other hand, Mr. Sanjay Kumar, learned counsel appearing for the respondent no.3 submitted that it is true that the respondent no.3 was working as apprentice under the Apprentices Act, but it is equally true that he had worked for more than 240 days continuously at the disposal of the petitioner and, thus,



it would give him a cause of action to raise the dispute under the provisions of Industrial Disputes Act, 1947.

9. The State being represented through Smt. Binita Singh, learned Standing Counsel No.28 submitted that the plea taken by the petitioner can also be pleaded before the Labour Court and the Labour Court may appreciate the arguments made by the parties and decide the issue. She submitted that prior to referring the dispute to the Labour Court, a conciliation proceeding was initiated by the Deputy Labour Commissioner-cum-Conciliation Officer, Patna for bringing about a fair and amicable settlement of the dispute. Thereafter, many rounds of talk were held by fixing different dates. Both the management and the workman took part in the conciliation proceeding. But, since no settlement could be arrived at, subsequently, upon consideration of entire facts and circumstance, the Deputy Labour Commissioner-cum-Conciliation Officer, Patna submitted a report under Section 12(4) of the Industrial Disputes Act, 1947 on 08.10.2011. After considering the entire facts and circumstances, the Government opined that an industrial dispute exists between the management and the workman and, therefore, in exercise of powers under Section 10(1C) read with Section 10(2A) of the Industrial Disputes Act, 1947, the Government referred the dispute for adjudication to the Labour Court for a direction to submit



its award within a period of three months.

10. I have heard learned counsel for the parties and perused the record.

11. From the stand of the respondent no.3 in his counter affidavit, it is explicitly clear that he was an apprentice in the petitioner-company from 28.04.2008 to 27.04.2009 under the Apprentices Act, 1961

12. Section 18 of the Apprentices Act, 1961 reads 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.”

13. After considering the question as to whether an apprentice is a workman within the meaning of provisions of the said Act or not in **Hanuman Prasad Chaudhary & Ors. Vs. Rajasthan State Electricity Board [1986 Lab IC 1014]**, the Supreme Court held:-

“An apprentice governed by the Apprentices Act is not to be treated as a workman for the purpose of Industrial dispute and the provisions of the



Industrial Disputes Act would not be applicable to him”.

14. The Supreme Court further held:-

“This would show that an apprentice who is a workman under the said Regulations would include a person who may not be an apprentice under the Apprentices Act. In that view of the matter, it can be said that for the purpose of Section 2(s) of the Industrial Disputes Act a person who is designated as Apprentice but is not governed by the Apprentices Act would be 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 workman under Section 2(s) of the Industrial Disputes Act and would not be governed by the provisions of the Industrial Disputes Act.**”

(emphasis mine)

15. In **U.P. State Electricity Board Vs. Shiv Mohan**

Singh (supra), the Supreme Court in para 56 observed as under:-

“56. 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 and Section 2(s) of the Industrial Disputes Act, 1947 includes apprentice. But the expression appearing in Section 2 (z) of the U.P Industrial Disputes Act and Industrial Disputes Act 1947 are not applicable to the



apprentices appointed under the Apprentices Act, 1961. The Apprentices Act is a code in itself and it clearly stipulates that in Section 2 (aa) apprentice means a person who is undergoing apprenticeship training in pursuance of contract of training and the workers are employed for wages for work done by them. Section 18 clearly mentions that the apprentices are not workmen and "the provisions of any law with respect to labour law shall not apply or in relation to such apprentices". Therefore, reading of definition of "apprentice" in Sections 2(aa) and 2(r) read with Section 18 of the Apprentices Act leaves no manner of doubt that this Act which is special Act does not cover the apprentices and it precludes the application of any other labour laws, i.e. U.P. Industrial Disputes Act & Industrial Disputes Act, 1947. **When both these Acts are not applicable then the Labour Court/Industrial Tribunal will not have any jurisdiction to entertain any dispute arising therefrom. The application of the U.P. Industrial Disputes Act 1947 and the Industrial Disputes Act 1947 automatically stand excluded."**

(emphasis mine)

16. Again, in **Haryana Power Generation Corporation Limited and Ors. Vs. Harkesh Chand and Ors.** (supra), the Supreme Court held in paragraphs 24 and 28 as under:-

"24. Be it noted, in the said case, in paragraph 51, it



has been laid down that the 1961 Act is a complete code in itself and it lays down the conditions of the apprentices, their tenure, their terms and conditions and their obligations and what are the obligations of the employer. It also lays down that the apprentices are trainees and not workmen and if any dispute arises, then the settlement has to be made by the Apprenticeship Advisor as per Section 20 of the Apprentices Act, 1961 and his decision thereof is final. The nature and character of the apprentice is nothing but that of a trainee and he is supposed to enter into a contract and by virtue of that contract, he is to serve for a fixed period on a fixed stipend and that does not change the character of the apprentice to that of a workman under the employer where he is undergoing the apprenticeship training. Sub-section (4) of Section 4 only lays down that such contract should be registered with the Apprenticeship Adviser, but by non-registration of the contract, the position of the apprentice is not changed to that of a workman. **From the scheme of the Act, the apprentice is recruited for the purpose of training as defined in Section 2(aa) of the Apprentices Act, 1961 and from the language employed in Sections 6 and 7, 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.

25. xx xx xx xx

26. xx xx xx xx

27. xx xx xx xx

28. We have referred to the aforesaid pronouncements solely for the purpose that an apprentice does not have a statutory right to claim an appointment and the employer is not under any statutory obligation to give him employment. However, if the terms of the contract of apprenticeship lay down a condition that on successful completion of apprenticeship an employer would offer him an employment, then it is obligatory on his part to do so. In the absence of such a condition, there is no obligation. It depends on the terms of the contract. In the case at hand, as the letter of appointment would show, the employer had only stated that on successful completion of the training, the apprentice may be appointed as Plant Attendant/Technician Grade-II. Thus, it was not a mandatory term incorporated in the agreement casting an obligation on the employer to appoint him.”

(emphasis mine)

17. Thus, in view of the settled law that the apprentice remains as an apprentice and during the period of training, he cannot be treated as “workman” under the Industrial Disputes Act, 1947 or



the said trainee under the statutory provisions of the Apprentices Act, 1961 ever creates a master servant relationship or an employee employer relationship. Section 18 of the Apprentices Act, 1961 clearly mentions that apprentices are not “workman” and as a result thereof labour law shall not be applied to the apprentice covered under this Act.

18. In such circumstance, there cannot be any second thought of the matter that the application of provisions of Industrial Disputes Act, 1947 automatically stand excluded and, as a consequence thereof, the concept of continuous service for 240 days has got no applicability in any manner whatsoever in the present case. The respondent no.3 being an apprentice under the Apprentices Act, 1961 cannot have any protection under the Industrial Disputes Act, 1947.

19. Thus, in the present case, no cause of action ever arose under the Industrial Disputes Act and, in such view of the matter, the impugned order of reference cannot be sustained, as existence of employer employee relationship is a *sine qua non* for raising a dispute under Section 2(k) of the Industrial Disputes Act, 1947.

20. In that view of the matter, the impugned order of reference dated 13.01.2012 issued by the State Government, as



contained in Annexure-A to the present petition, is set aside.

21. The application stands allowed.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21.10.2017
Transmission Date	NA

