**THE HON'BLE SRI JUSTICE M.GANGA RAO**

**WRIT PETITION No.2122 OF 2001**

**ORDER:**

Petitioners-Management of Kesoram Cements, Basanth Nagar, filed this Writ Petition aggrieved by the Award dated 18.09.2000 passed in I.D.No.169/1999 by the first respondent-The Industrial Tribunal-cum-Labour Court, Godavarikhani, as published through G.O.Rt.No.2388 dated 21.11.2000 whereby the second respondent-workman was directed to be reinstated into service as Electrician and he shall be paid full pay and allowances as admissible to a regular Electrician of the petitioner Factory from the date of filing of the petition i.e.12.11.1999 and that apart the petitioners shall pay an amount of Rs.1,000/- to the workman towards costs of the petition.

The second respondent-Workman was taken as apprentice under the Apprenticeship Act, 1961 from 17.03.1993 to 16.03.1994 in the petitioner Factory as he passed ITI Examination. Thereafter, the workman was taken as trainee electrician to undergo training for a period of two years from 11.05.1994 to 10.05.1996 in the petitioner's factory. During that period, the workman was paid a consolidated stipend/allowance of Rs.700/- per month for the first year and Rs.750/- per month for the second year. At the request of the father of the workman, who was the former employee of the petitioner Factory, the workman was permitted to undergo training for a further period of two years from 24.02.1997 to 23.02.1999. During that period, he was paid stipend/consolidated pay of Rs.1400/- per month in the first year and Rs.1600/- per month for the second year. The workman's

training was come to an end by the end of the second year as per the terms and conditions. The workman also worked from May, 1999 to August, 1999. His name was registered with Employees' State Insurance Corporation on 24.02.1997 with No.52-1542072 and the Employer Code No.52-1035-46 was given in the record. Provident Fund account was also opened in the name of the workman with account No.AP/3442/3182 for the year 1997-98 and an amount of Rs.447/- was paid by the petitioner Factory towards contribution. The workman was also allotted No.700423 in Loco Shed department and was designated as Auto-Electrician. Thereafter, the workman was stopped from attending duty. Thereupon, the workman raised I.D.No.169/1999 before the Labour Court under Section 2-A (2) of the Industrial Disputes Act, 1947 as amended by A.P. Amendment Act, 1987. The Labour Court having considered the evidence before it i.e.Exs.W.1 to W.12 and Ex.M.1, came to the conclusion that the workman underwent training for one year as apprentice under the Apprenticeship Act in the petitioner's Factory from 17.03.1993 to 16.03.1994. After that, he was given employment from 11.05.1994 to 10.05.1996, 16.06.1996 to 20.06.1996 and from 24.02.1997 to 23.02.1999 but designated as 'trainee'. From 24.12.1997, the workman was continuing as Trainee Electrician, but the petitioner extracted the work of Electrician from the workman along with regular employees. Thereafter, the workman was engaged as trainee Electrician under the guise of Certified Standing Orders of the Company from 11.05.1994 to 10.05.1996. The Labour Court on appreciation of material before it, held that once the workman has undergone training under the Apprenticeship Act, he can be

considered as a skilled worker as he is ready to do the job. But, the workman was continued as a trainee under the guise of further training as per Certified Standing Orders of the Company. The said act of continuing the workman as a trainee is nothing but unfair labour practice and oppression of the workman at the hands of employer. The Labour Court having held that the second respondent herein is a workman as defined under Section 2 (s) of the I.D.Act and dispute between the petitioner and the second respondent was an industrial dispute as defined under Section 2 (k) of the I.D.Act, the application of the second respondent under Section 2-A (2) of the I.D. Act is maintainable. The Labour Court having held that the workman was illegally terminated from service, directed the petitioner's Company to reinstate the workman into service as Electrician and he shall be paid full pay and allowances admissible to a regular Electrician of the petitioner Company from the date of filing of the petition till his reinstatement and he shall also be paid Rs.1,000/- towards costs of the petition. Being aggrieved by the same, the present writ petition came to be filed.

The short point which falls for consideration of this Court in this writ petition is 'whether the Labour Court was justified in holding that the workman, who was engaged as trainee electrician after completion of apprenticeship training under the provisions of Apprenticeship Act, 1961, in the petitioner's Company is a workman within the meaning of Section 2(s) of the I.D. Act and consequently whether the workman is entitled to reinstatement with continuity of service and back wages and other service benefits?'

The Labour Court on appreciation of the evidence before it with regard to the factual aspects of the case held that the workman underwent training for one year as apprentice under the Apprenticeship Act in the petitioner's Company from 17.03.1993 to 16.03.1994. After that he was engaged from 11.05.1994 to 10.05.1996, 16.06.196 to 20.06.1996 and from 24.02.1997 to 23.02.1999. The Labour Court rightly held that the engagement of the workman as trainee, even after completion of apprenticeship for a period of one year is nothing but unfair labour practice though as per the Certified Standing Orders of the petitioner Company, even though the workman has not alleged unfair labour practices in the petition against the petitioner Company. The workman is entitled to be reinstated into service because he was removed from service illegally, without any charge or enquiry, contrary to the provisions of the I.D.Act.

Ms.G.Sudha, learned counsel appearing for the petitioner Company, would contend that originally the workman was engaged as an apprentice under the provisions of the Apprenticeship Act for a period of one year. Thereafter, he was taken as a trainee at the request of the father of the workman, who was the former employee of the Company, under the Certified Standing Orders of the petitioner Company, and he was paid consolidated pay towards stipend. Hence, the second respondent would not come within the meaning of Section 2 (s) of the I.D. Act and there is no dispute existing as defined under Section 2 (k) of the I.D. Act, which gives rise to the workman to file application under Section 2-A (2) of the I.D. Act before the Labour Court, as there was no retrenchment/ dismissal as enunciated in Section 2-A (2) of the I.D.Act. As per

the contract agreement, petitioner training was ended. Hence, at best, it would come within the meaning of Section 2 (oo) and 2 (bb) of the I.D.Act on account of his contractual tenure is over. In such a case, the provisions of Section 25(F) of the said Act also have no application to the workman's case, for which, she relied on ***State of Karnataka vs. M.L.Kesari***[1], ***Secretary, State of Karnataka vs. Uma Devi***[2], ***National Small Industries Corporation Limited vs. V.Lakshminarayanan***[3], ***U.P.State Electricity Board vs. Shiv Mohan Singh***[4], ***M/s.Bharat Iron Works vs. Bhagubhai Balubhai Patel***[5], ***The Factory Manager, CIMMCO Wagon Factory vs. Virendra Kumar Sharma***[6], ***Dhampur Sugar Mills Ltd. vs. Bhola Singh***[7] and ***Mukesh K.Tripathi vs. Senior Divisional Manager, LIC***[8]. The sum and substance of the decisions is that the persons engaged on contractual employment, apprentice, under Section 18 of the Apprentice Act, 1961, are not workman, the provisions of the I.D.Act would have no application.

She would further contend that the petitioner was initially taken as apprentice under the provisions of the Apprenticeship Act for a period of one year. After completion of the apprenticeship, he was engaged on different spells as Electrician Trainee under the Certified Standing Orders of the Company. The Labour Court grossly erred in holding that the workman comes within the meaning of Section 2 (s) of the I.D. Act as he was fit to be engaged as an Electrician after completion of the apprentice training even

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[1] (2010) 9 SCC 247
[2] (2006) 4 SCC 1
[3] (2007) 1 SCC 214
[4] (2004) 8 SCC 402
[5] AIR 1976 SC 98
[6] 2000 (5) Supreme 632
[7] (2005) 2 SCC 470
[8] (2004) 8 SCC 387

though he was engaged as trainee under Certified Standing Orders of the Company. She would further contend that the Labour Court grossly erred in holding that the petitioner's Company has adopted unfair labour practice in engaging the workman as a trainee for different spells and thereafter disengaged him from services on the pretext of completion of training period as per the agreement. She would further contend that the Labour Court also erred in directing the petitioner Company to reinstate the workman as Electrician and he shall be paid full pay and allowances on par with regular Electricians of the Company for which Labour Court has no power or authority to order regularization of services of the workman when there is no permanent post or workman was not engaged against the permanent post and the Labour Court cannot create the post of Electrician for the workman. In considered view of this Court and in the facts and circumstances of the case, such contention is untenable.

Per contra, Sri K.V.Rajasree, learned counsel for the second respondent-workman, would contend that the Labour Court on appreciation of the evidence on record before it, had rightly came to the conclusion that engagement of the petitioner, after completion of apprenticeship for one year under the provisions of the Apprenticeship Act and subsequent engagement as an Electrician Trainee even under the guise of the Certified Standing Orders of the petitioner's Company. Workman's engagement would come within the meaning of workman as defined in Section 2 (s) of the I.D.Act. His name was registered with the Employees State Insurance on 24.02.1997 with No.52-1542072 with employer Code No.52-1035-47 which mentions address of the workman as

Keshoram Cements, Basant Nagar. The workman's name was also registered with the Office of the Provident Fund with account No.AP/3442/3182 for the year 1997-98 and an amount of Rs.477/- was paid by the petitioner's Company towards contribution and the workman was also allotted Number '744423' in Loco Shed department of the petitioner Company and was designated as Auto-Electrician which fulfils the meaning of workman as defined under Section 2 (s) of the I.D. Act and his disengagement comes within the meaning of retrenchment as defined under Section 2 (oo) of the I.D. Act. The Labour Court having considered all the evidence on record before it, held that the petitioner's Company has adopted unfair labour practice in engaging the petitioner as Electrician Trainee after completion of one year apprenticeship training under the provisions of the Apprenticeship Act. In view of the nature of duties attended by the workman, he comes within the meaning of workman as defined under Section 2 (s) of the I.D. Act in relation to the industrial dispute as defined under Section 2 (k) of the I.D.Act. The engagement of services of the petitioner under the agreement as trainee *per se* is illegal and amounts to unfair labour practice as held by the Labour Court. The conclusions of the Labour Court could not be said to be illegal, arbitrary or perverse warranting interference of this Court under Article 226 of the Constitution of India. The finding of the Labour Court that the workman was engaged as a Trainee Electrician and designated as such for the purpose of depriving the benefits under various provisions of labour laws, the petitioner Company termed his engagement as Trainee under the Certified Standing Orders of the Company only,

the same could not be allowed to be perpetrated to deprive the workman the benefits under various provisions of welfare legislations meant for workman, could not be said to be perverse or contrary to the evidence available on record. The definition of the workman as defined under Section 2 (s) of the I.D. Act excludes only the apprentice under the provisions of the Apprenticeship Act and the provisions of the section includes other apprentices and trainees worked as skilled and unskilled labour in the establishment and the dispute would come within the meaning of Industrial Dispute which entitles the second respondent/workman to invoke Section 2-A (2) of the I.D.Act as his disengagement amounts to retrenchment/dismissal/discharge from service.

Section 2 (s) of the I.D. 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-
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> 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
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> (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."

In the facts and circumstances of the case, in considered view of this Court, as can be seen from the abovesaid provision of law, workman means any person including an apprentice. Hence, the second respondent/workman comes within the meaning of workman as defined under Section 2(s) of the I.D.Act. Further, the workman has established his engagement as electrician in the petitioner's Company with registration of his name in Employees' State Insurance Corporation with No.52-1542072 through the petitioner's Company, whose employee Code in ESI records was 52-1035-46. Further, a Provident Fund Account was also opened in the name of the workman with A/c.No.AP/3442/3182 for the year 1997-98 wherein the name & address of the petitioner's Company finds a mention in the records of the Office of the Provident Fund and even the petitioner's Company also made a contribution of an amount of Rs.447/- in relation to the second respondent-workman.

Further, from the evidence available on record, there is no dispute that the petitioner Company has engaged the second respondent/workman and extracted the work similar to that of the regular employees of the petitioner Company. Hence, the Labour Court rightly held that the petitioner Company has engaged the workman for different spells, called him as a trainee electrician to

deprive him the benefits given to the workman under the provisions of various labour welfare legislations and only for that purpose the petitioner's Company called the petitioner as a trainee under the guise of Certified Standing Orders of the Company. Hence, engagement of the workman as trainee in perpetuity under the Certified Standing Orders of the Company, comes within the meaning of workman as defined under Section 2 (s) of the I.D. Act as it includes apprentice and excludes only apprentice under the provisions of Section 18 of Apprenticeship Act, 1961, as held by the Hon'ble Supreme Court of India in ***National Small Industries Corporation Limited (3 supra)***. Hence, the termination of the second respondent/workman after availing his services for a long period is nothing but unfair labour practice under Section 2 (ra) of I.D.Act.

For the reasons stated supra, this Court finds that there is no error of fact or error of law in the impugned award passed by the Labour Court, warranting interference of this Court under Article 226 of the Constitution of India.

Accordingly, the Writ Petition is dismissed.

Miscellaneous petitions pending in this petition, if any, shall stand closed. There shall be no order as to costs.

**(M.GANGA RAO, J)**

24th August, 2018
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