



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

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W.P.(MD) No.11220 of 2014

S.Simon Peter

... Petitioner

-vs-

The Management
Bharat Heavy Electrical Limited
Thiruchirappalli

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the Respondent to appoint the petitioner in the post of Welder to be filled up by the Respondent, as per their Employment Notification No.294 dated 01.04.2012.

For Petitioner : Mr.N.Rahamadullah
For Respondent : Mr.A.V.Arun

ORDER

The relief sought for in the present Writ Petition is for a direction to direct the respondent to appoint the writ petitioner in the post of Welder.

2.The main ground raised in the present writ petition is that the writ petitioner is fully qualified for appointment to the post of Welder and he had already undergone apprenticeship training in Bharat Heavy Electricals Limited, Tiruchirappalli. In view of the fact that the writ petitioner had undergone apprenticeship training in the same organization, he must be given preference for appointment.

3.The apprenticeship training is given by various Government organizations and private companies. The apprenticeship training would not confer any right on the candidate to seek appointment and it is to be made strictly in accordance with the Recruitment Rules in force. The similar issue was already adjudicated by the Honourable Division Bench of this Court, by Judgment dated 10.02.2015, in W.A.(MD) Nos.1047 to 1062 of 2018. The relevant portion of the said Judgement is extracted hereunder:

"5.1. The existence of Apprenticeship Agreements signed by the parties is not in dispute. As the appellant has produced agreements signed in the year 1989, it may be safely be inferred as to their existence, covering all the cases. Thus, the adverse inference drawn by the Division Bench has no application. There is also no specific denial to the existence of the agreements and hence, we



proceed further on the premise that the agreements were entered into between the parties.

5.2. Clause 5 of the agreement absolves the appellants on its obligation to offer any employment to an apprentice and correspondingly such apprentices are not obliged to accept any employment. Being the signatories to the contracts the private respondents cannot resile. If the said clause is read in consonance with Section 22(1) of the Apprentices Act, then, the only conclusion that can be arrived is the non-availability of legal right to seek absorption, regularisation and preference as a matter of right. The Supreme Court of India in *Chairman/M.D., Mahanadi Coal Fields Ltd., and others vs. Sadaship Behera and others*, ((2005) 2 SCC 396), while considering the purport of Section 22(2) of the Apprentices Act, has observed as follows:

11. Learned counsel appearing for the appellants has placed particular reliance upon the decision reported in (2005) 2 SCC 396 = 2005 (1) LLJ 870 (*Chairman/M.D., Mahanadi Coal Fields Ltd., and others vs. Sadaship Behera and others*), wherein it was observed :-

"6. There is another aspect of the matter which deserves consideration. The whole stand of the writ petitioner (Respondent 1 in this appeal) was that he had undergone apprenticeship training with Mahanadi Coalfields Ltd. and, therefore, he was entitled to be appointed on the post of welder. The Apprentices Act was enacted in the year 1961 and as the preamble shows that it is an Act to provide for the regulation and control of training of apprentices and for matters connected therewith. Section 2(aa) defines an "apprentice" and it means a person who is undergoing apprenticeship training in pursuance of a contract of apprenticeship. Section 2(aaa) defines "apprenticeship training" and it 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 4 provides

no person shall be engaged as an apprentice to undergo apprenticeship training unless he has entered into a contract of apprenticeship with



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the employer and the training shall be deemed to have commenced on the date on which the contract of apprenticeship has been entered into. It further provides that every such contract shall be sent by the employer to the Apprenticeship Adviser for registration. Sections 6 and 7 lay down that the period of apprenticeship training shall be specified in the contract of apprenticeship and the same shall terminate on the expiry of the period of apprenticeship. Rule 6 of the Apprenticeship Rules, 1991 (hereinafter referred to as "the Rules") mandates that the contract shall be sent by the employer for registration within three months of date on which it was signed. Sub-rule (3) of Rule 6 provides that the obligation of the employer and that of the trade apprentice shall be as specified in Schedule V or VI, as the case may be. Clause (10) of Schedule V which relates to the obligation of the employer reads as follows:

"(10) It shall not be obligatory on the part of the employer to offer any employment to the apprentice on completion of 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."

7. These provisions show that apprentice is a person who is undergoing a training in pursuance of a contract of apprenticeship duly registered with the Apprenticeship Adviser and the employer who is imparting training is under no obligation to offer any employment to such a person. The legislature has made the aforesaid position clear by making a specific provision in this regard namely Section 22 of the Act and sub-section (1) thereof lays down that 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. Sub-section (2) however provides that notwithstanding anything in sub-section (1) where there is a condition in a contract of apprenticeship that an apprentice shall, after successful completion of 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



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remuneration as may be specified in the contract. Thus the provisions of the Act and the Rules made thereunder show that in absence of any condition in the contract which is entered into between the employer and the apprentice at the time of commencement of his apprenticeship training and which is registered with the Apprenticeship Adviser to the effect that the apprentice shall serve the employer, an apprentice cannot claim any right to get an employment on successful completion of his training. It is not the case of Respondent 1 that in the contract of apprenticeship there was any condition that after completion of training he would serve the employer and in absence of such a condition, the employer namely the appellants are not bound to offer any employment to them. In the absence of any legal right inhering in the writ petitioner (Respondent 1 herein) no writ of mandamus could be issued commanding the appellants to give an appointment to him on the post of welder."

5.3. Taking into consideration of the law governing the field, the Division Bench, in the judgment referred to supra, has held as follows:

17. The respondents in the appeals and the petitioners in the writ petitions had completed their apprenticeship long back (at least a decade and a half and even earlier). The Management has produced before this Court in its typed set a model form of contract of Apprenticeship training to bolster his claim that Section 22(1) of the Apprentices Act is applicable rather than Section 22(2). The model form, which has been produced by the Management, also contains an enclosure where there is a reference to the main provisions of the apprenticeship rules relating to contract of apprentices with training. Clause 4 of the Annexures, which is part of the contract of apprenticeship training (available at Page No.5 to 8 of the typed set produced in the appeal) indicates that it shall not be obligatory on the part of the employer to offer any employment in his establishment nor shall it be obligatory on the part of the Apprentice to accept an employment under the employer. If this model form could be considered as the contract of apprenticeship training, obviously the Management would be justified in its challenge



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to the order of the learned single Judge inasmuch clause 4 of the document clearly excludes any special contract and makes it clear that it shall not be obligatory on the part of the employer to offer any employment. 5.4. By applying the ratio laid down above to the facts of the case, the only conclusion that could be drawn is that Section 22(1) of the Apprentices Act would govern the cases and therefore, the private respondents cannot as a matter of right claim the relief sought for.

5.5. Submissions have been made on the settlement arrived at under Section 12(3) of the Industrial Disputes Act between the Unions and the appellants. A perusal of the settlement would show that it dealt with the cases of NMRS and their absorption in a phased manner. There is absolutely no reference to the status of an apprentice. Those NMRS were working on the relevant date as against the private respondents before us. Hence, we are of the considered view that the settlement has been arrived at on the fact situation, which has no bearing on the cases on hand. We may note, the private respondents herein were discharged from the services many years before the filing of the writ petitions.

5.6. We also take note of the fact that many of the private respondents did not have the age and qualification even at the time of filing the writ petitions. Much water had flown under the bridge thereafter. Some of them tried to get the appointment by participating in the selection process subsequently in pursuant to the orders passed by this Court, by which, certain relaxation was also given. Unfortunately success eluded them. We also do not find any acceptable reason for approaching the Court belatedly. Though the question of delay and laches is not one of law than that of practice and prudence, the continued unexplained silence of the private respondents, in our considered view also, deserves to be taken note of while exercising the extraordinary discretionary jurisdiction under Article 226 of the Constitution of India. A feeble attempt made taking umbrage under the ban on recruitment cannot be accepted as it is neither factually established nor there is any material to show that it prevented further course of action till the filing of the writ



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petitions. The writ petitions are filed on a span of seven years. In view of the foregoing

reasons, we are unable to accept the reasoning of the learned single Judge.

6. In the result, the orders passed by the learned single Judge are hereby set aside and the writ appeals stand allowed. Consequently, the writ petition is dismissed. No costs.

4. In view of the fact that the issue in this regard has already been settled by the Honourable Division Bench of this Court, no further consideration is required in respect of the grounds raised in the present Writ Petition.

5. Accordingly, the Writ Petition stands dismissed. No costs.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar(CS)

TO

The Management
Bharat Heavy Electrical Limited
Thiruchirappalli

Myr

W.P. (MD) No.11220 of 2014

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