



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2513 OF 2022**

Vithal Atmaram Gawade
At and Post Gunvare (Ghule Wasti)
Tal. Phaltan, Dist. Satara – 415 523.

... Petitioner

versus

M/s. Dream Plast India Pvt. Ltd.
C-23, MIDC Baramati, Dist. Pune,
Pin 412 133.

... Respondent

Mr Nitin A. Kulkarni with Mr. Avinash Belge, for Petitioner.
Mr. Vikas H. Shekdar with Mr Madbe for Respondent.

CORAM: N.J.JAMADAR, J.

RESERVED ON : 18 APRIL 2023

PRONOUNCED ON : 17 JULY 2023

JUDGMENT :

1. Rule. Rule made returnable forthwith. With the consent of the learned counsel for the parties, heard finally.
2. By this Petition under Article 226 and 227 of the Constitution of India, the Petitioner takes exception to an Award dated 8 March 2021 passed by the Labour Court at Pune in Reference IDA No.229 of 2014 whereby the Reference as to whether the services of the Petitioner were illegally terminated and whether the Petitioner was entitled for reinstatement with continuity of service and/or consequential benefits, came to be answered in the negative.
3. Shorn of superfluities, the background facts can be stated as under :

3.1 The Petitioner was appointed with the Respondent Company as a Trainee Engineer – Mould Maintenance under an appointment order dated 7 January 2013. Initially the term of appointment was of six months. The Petitioner claims, post completion of the said period of six months, the Respondent did not extend the training period. On the contrary, in accordance with the terms of employment, the Petitioner came to be confirmed in the service of the Respondent.

3.2 The Petitioner claimed, during the period 7 January 2013 to 25 November 2013, the Petitioner rendered more than 240 days of service. Yet the Respondent illegally terminated the services of the Petitioner without adhering to the mandate contained in Section 25-F of the Industrial Disputes Act, 1947 (the ID Act, 1947). Neither retrenchment compensation nor notice pay was given to the Petitioner.

3.3 The Petitioner, thus, raised an industrial dispute. As the conciliation proceedings failed, the Appropriate Government referred the industrial dispute for adjudication to the Labour Court.

3.4 The Petitioner filed a statement of claim. The Respondent company resisted the claim on the ground that the Petitioner was not a workman within the meaning of Section 2(s) of the ID Act, 1947 and the services of the Petitioner were terminated on account of unsatisfactory performance during the training period itself. The Respondent alleged that the Petitioner had committed misconduct and in accordance with the terms of the employment, the Petitioner's services were lawfully

terminated with effect from 20 November 2013 vide letter dated 20 October 2013. It was also contended that the Petitioner was mainly performing duties which were of administrative, supervisory and managerial in nature.

3.5 The parties adduced evidence before the Labour Court. By the impugned Award dated 8 March 2021, the learned Presiding Officer, Labour Court was impelled to answer the Reference in the negative holding that the Petitioner was appointed as a trainee for a period of six months and the services of the Petitioner were terminated vide notice dated 20 October 2013 with effect from 20 November 2013 in conformity with the conditions of appointment. It was, thus, held that the Petitioner was not a workman within the meaning of Section 2(s) of the ID Act, 1947 and, therefore, the compliance of the provisions contained in Section 25-F of the ID Act, 1947 was not warranted. Hence, this Petition.

4. I have heard Mr Kulkarni, learned Counsel for the Petitioner and Mr. Shekdar, learned Counsel for the Respondent at some length. The learned Counsel took the Court through the pleadings and material before the Labour Court.

5. Mr. Kulkarni, learned Counsel for the Petitioner would urge that the termination of the services of the Petitioner was plainly illegal as the provisions contained in Section 25-F of the ID Act, 1947 were not complied with. It was further submitted that the Petitioner upon the completion of the training period became a permanent employee. Thus, the Petitioner could not have been terminated without

following the mandate of Section 25-F of the ID Act, 1947. The fact that the Respondent did not place on record copy of the termination letter to substantiate its claim that the Petitioner was a trainee, was also pressed into service.

6. Mr. Shekdar, learned Counsel for the Respondent submitted that indisputably the appointment of the Petitioner was as a trainee and the Petitioner worked in that capacity for not more than 10 month. In this backdrop, according to Mr. Shekdar, the industrial dispute sought to be raised by the Petitioner on the assumption that he was a permanent employee was wholly misconceived. It was submitted that the termination of the services of a trainee does not attract the provisions contained in Section 25-F of the ID Act. To buttress this submission, the learned Counsel for the Respondent placed strong reliance on a decision of the Delhi High Court in the case of Nitya Nand Sinha V/s. HL Promoters Pvt. Ltd. And Anr.¹

7. The fate of the Petition hinges upon the determination of the questions : what was the nature of appointment ? Was the Petitioner appointed for a fixed term, as a trainee ? For an answer, of necessity, recourse is required to be made to, first, the appointment order, and, then, the evidence adduced by the parties.

8. The appointment order dated 7 January 2013 incontrovertibly records that the Petitioner came to be appointed as a Trainee Engineer – Mould Maintenance

1 WP© 9843 of 2018 dt. 4 Dec 2019

subject to the terms and conditions incorporated in the annex appended thereto. The terms and conditions of the employment, inter alia, provided that the designation of the Petitioner would be Trainee Engineer – Mould Maintenance and the nature of employment would be ‘at will’. However, the Petitioner and the Company were at liberty to terminate the employment in accordance with the terms contained therein. Clause 13(a) provided that either of them may terminate the employment with a notice of one month or payment in lieu thereof.

9. It would be contextually relevant to note that the parties are ad-idem on the point that the initial term of appointment was six months. The Petitioner conceded in the cross-examination in no uncertain terms that he joined the Respondent company on 7 January 2013 as a trainee. His appointment was for a term of six months.

10. In the light of the aforesaid facts and evidence, the question as to whether the Petitioner satisfied the description of a ‘workman’ under Section 2(s) of ID Act, 1947 wrenches to the fore. It is trite, a trainee or probationer is not a workman within the meaning of Section 2(s) of ID Act, 1947 and the services of the trainee or probationer can be terminated within the training or probation period until such person is confirmed in service, in the absence of contrary statutory prescription. Termination of service of a trainee or probationer does not amount to retrenchment within the meaning of Section 2(oo) of the ID Act, 1947.

11. Section 2(oo) of the ID Act, 1947 reads as under :

“2(oo) Retrenchment means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include -

(a)

(b)

(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman stipulation in that behalf contained therein; or

(c)”

12. A profitable reference in this context can be made to a decision of **Escorts Limited V/s. Presiding Officer and Anr.**². Adverting to the definition of Retrenchment under Section 2(oo) of the ID Act, 1947, the Supreme Court enunciated that clause (bb) excludes from the ambit of the expression ‘retrenchment’ as defined in the main part of Section 2(oo) termination of the services of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein.

13. In the context of the facts of the said case, where the services of a person appointed for a specific period were terminated, the Supreme Court held that since the services of the workman were terminated as per the terms of the contract of employment, it does not amount to retrenchment under Section 2(oo) of the Act and the Labour Court was in error in holding that it constituted retrenchment and was

² (1997) 11 SCC 521

protected by Sections 25-F and 25-G of the Act.

14. In the said case, the Supreme Court drew support from a three Judge Bench judgment of the Supreme Court in the case of **M. Venugopal V/s. Divisional Manager, LIC**³ wherein it was expounded that once Section 2(oo) is not attracted, there is no question of application of Section 25-F. The termination of the services of the Appellant therein, during the period of probation, was held to be in terms of the order of appointment read with regulations of the Corporation. It was further held that, even under general law, the services of a probationer can be terminated after making an overall assessment of the performance during the period of probation and no notice is required to be given before termination of such service.

15. In the context of the facts of the case, a useful reference can also be made to a judgment of the Supreme Court in the case of **Kalyani Sharp India Ltd. V/ s. Labour Court No.1 and Anr.**⁴ wherein the Respondent therein was employed as a trainee technician in the establishment of the Appellant for a period of one year from the date of joining. The appointment letter further provided that the management may withdraw the facility of providing training without assigning any reason and the Respondent would be considered for regular employment on satisfactory completion of the training period.

16. Following the aforesaid pronouncement in the cases of **Escorts Ltd.**

3 (1994) 2 SCC 323

4 (2002) 9 SCC 655

(Supra) and M.Venugopal (supra), the Supreme Court held that the Respondent's services were lawfully terminated during the training period, and set aside the award passed by the Labour Court of reinstatement in service with full backwages. The observations in paragraph No.6 are material and, hence, extracted below :

“6. The order of employment itself clearly sets out the terms thereafter which makes it clear that the facility of providing training to him could be put to an end to at any time without assigning any reason whatsoever and his services could be regularised only on satisfactory completion of his training. If these clauses are read together it is clear he was under probation during the relevant time and if his services are not satisfactory, the same could be put an end to. It is clear that the respondent had been appointed as a Trainee Service Technician and for a period he had to undergo the training to the satisfaction of the appellant and if his work was not satisfactory during that period the facility could be withdrawn at any time and he would be regularised only on completion of his training. Thus the respondent's services were terminated before expiry of the probationary period. In such a case question of issue of notice before terminating the service as claimed by the respondent does not arise. Escorts' case (supra) Is identical with the present case. Following the said decision and for the reasons stated therein these appeals are allowed. The order made by the High Court affirming the award made by the Labour Court is set aside and the claim made by the respondent is dismissed.”

17. The aforesaid enunciation of law governs the facts of the case at hand with equal force. Mr. Kulkarni, learned Counsel for the Petitioner attempted to salvage the position by canvassing a submission that the termination letter dated 20 October 2013 was not placed on record to substantiate the claim of the employer that the

services of the Petitioner were terminated in accordance with the terms of employment.

18. I am afraid, the aforesaid submission advances the cause of the Petitioner. The learned Presiding Officer, Labour Court recorded a finding that the Petitioner had neither denied in the statement of claim, nor in the Affidavit of Evidence that he had received the notice dated 20 October 2013 and, thus, the termination was in conformity of the terms of the appointment order. At any rate, the twin facts that the Petitioner was appointed as a trainee and for a term of six months are indubitable.

19. In the aforesaid view of the matter, the learned Presiding Officer, Labour Court, committed no error in answering the Reference in the negative. Resultantly, the impugned Award does not warrant interference in exercise of writ jurisdiction. Hence, the Petition deserves to be dismissed.

20. Thus, the following order :

ORDER

- (i) The Writ Petition stands dismissed.
- (ii) Rule discharged.
- (iii) No order as to costs.

(N.J.JAMADAR, J.)