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W.P.Nos.33573 to 33580 of 2014



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 30.06.2023

Delivered on : 27.07.2023

CORAM

THE HONOURABLE MR. JUSTICE V. LAKSHMINARAYANAN

W.P.Nos.33573 to 33580 of 2014

W.P.No.33573 of 2014:

D.Sathiya Narayanan

... Petitioner

Vs.

1.Presiding Officer,
Labour Court,
Cuddalore.

2.The Management,
Lottee India Corporation Limited,
Nellikuppam,
Cuddalore District.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records from the 1st respondent, quash the Common Award passed by the 1st respondent Labour Court in I.D. Nos.22 to 30 of 2013 dated 26.2.2014 in so far as I.D. No.22 of 2013 concerning the



petitioner and consequently direct the 2nd respondent to reinstate the petitioner with full back wages continuity of service and all other attendant benefits with costs.

For Petitioners : Mr.Balan Haridass

For Respondents : Mr.G.Anand
for M/s.T.S.Gopalan and Co.,
for R2

COMMON ORDER

These batch of Writ Petitions raised an interesting question. The petitioners before me are the workmen and the 2nd respondent is the management. The petitioners were appointed by the management as Trainees on 28.04.2010 for a period of one year. The order of appointment is a standard feature. The relevant portions are extracted below:

APPOINTMENT AS TRAINEE

With reference to your application and the interview you had with us, we have pleasure in offering you an appointment as a TRAINEE in our factory at Nellikuppam with effect from May 3, 2010 subject to the following terms and conditions:

1. Your training will be initially for a period of One Year during which you will be paid a Stipend of Rs.2,800/-(Rupees Two Thousand Eight Hundred only)



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per month.

a) In addition to the stipend as above, you will be paid a Conveyance Allowance of Rs.100/- (Rupees One Hundred only) per month and an Attendance Bonus of Rs.100/- (Rupees One Hundred only) per month. The Attendance Bonus will be payable only if you attend to training for a minimum number of 24 days in the month. In case you do not attend the training for a minimum of 24 days, no Attendance Bonus will be payable.

2. During this period of training, your performance including attendance would be carefully reviewed. On completion of one year training, your training is liable to be extended for further period(s) at the sole discretion of the Management without assigning any reason whatsoever on the terms and conditions as deemed fit by the Company. On completion of stipulated period of training, you will automatically stand relieved from Training unless advised in writing to the contrary.

4. The Company has the right to terminate your training at any time before completion of your training period without assigning any reason whatsoever.

5. The Company is in no way liable or expected to offer you any employment in our factory at the expiry of training period. However, at its discretion, the Company may consider offering you employment after your training period, should you display the required aptitude and ability and if there is vacancy.

6. You will not be considered as an employee/workman of the Company during the period of training.

8. Your training is subject to termination by 15 days notice on either side or payment in lieu thereof, except in the event of indiscipline or gross negligence on your part, in which case your appointment will be subject to immediate termination without payment in lieu of notice.



10. You will be subject to such rules and regulations made by the Company at present or has been introduced or amended or extended from time to time as applicable to trainees of your category.

11. This appointment is subject to your medical fitness as assessed by the Medical Officer authorised by the Company and you will be permitted to join duties on appointment only after the Company receives the report on your Medical Fitness and you have been advised accordingly.

14. During the period of training, you will not be permitted to hold any office of profit.

15. Your progress, aptitude and skill and other relevant factors shall be assessed at the end of the year or at the end of such periods as may be necessary and unless you show consistent progress and satisfaction, your training will be terminated at any time.

16. You will be eligible for one day's leave for every 20 days of actual attendance in the previous year. This leave will be credited to you after completion of your One year training.

17. If you remain absent without sanction of leave in writing for more than 8 days continuously, you will automatically cease to be a trainee of the Company and your name will be removed from the rolls without any further reference to you.

If the above mentioned terms and conditions are acceptable to you, please sign on the duplicate copy of this offer and the declaration and return to us indicating your acceptance of the terms and conditions of appointment."



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2.The relevant portions of this appointment order are Clause 2 and Clause 6 of the same. As per the appointment order, the petitioners were appointed as Trainees for a period of one year. At the end of the training period, the workmen were directed to be automatically relieved *"unless advised in writing"* to the contrary. Clause 6 would also say that during the period of training, the workmen would not be considered as an employee or workman of the Company.

3.It is the claim of the petitioners that they were terminated from service on 02.05.2011. According to the petitioners, when they completed their one year training on 28.04.2011 and having been terminated on 02.05.2011, they are entitled to be treated as workmen under Section 2(s) of Industrial Disputes Act (hereinafter referred to as the Act) and consequently, entitled to the benefits of 25(F) of the Act.

4.Mr.Balan Haridass, learned counsel appearing for the petitioners would submit that on 27.04.2011, they had completed one



year of service and therefore, the termination on 02.05.2011 is contrary to Section 25(F) of the Act. He would urge that the petitioners are entitled to be reinstated into service. He would draw my attention to Para 7 of the counter and would state that as per the model standing orders, the petitioners were not treated as Trainees but as apprentices and that the apprentices are a class of workmen under the model standing orders. So, denying this employment, amounts to retrenchment. He would further submit that no training was provided to the petitioners and that they were doing the regular duty of the workmen and that the so called training letter was only sham and nominal when the petitioners were all the time were doing the same work as the regular employees.

5.He adds the reason why the petitioners were ousted from service was, on account of the fact that, the Company entered into Contracts with the third party manufacturing units at Nellikuppam and at Chennai for improving the production. Therefore, this amount to rationalization of workmen under Schedule IV(9)(A) of the Act.



Finally, he would argue that as the workmen having completed 240 days of service from the date of their appointment, the finding of the Labour Court to the contra deserves to be set aside and the petitioners are entitled to be reinstated into service.

6.Per contra, Mr.G.Anand, learned counsel appearing for the 2nd respondent/management would submit that there is no dispute that the apprentices are also workmen but that position will not apply in the present case because from 28.04.2010 to 27.04.2011, the petitioners were only trainees and from 28.4.2011 to 03.05.2011, they are, even if treated as workmen, have not completed 240 days in service. He would state that there is no separate process of training, as what was being done by the petitioners, was only cooking, baking and wrapping of sugar boiled confectionery. He would state that there is no specialized training required for this purpose and the training is "on the job". He would further state that there is no rationalization of work as the management did not appoint any new workman to the post which the writ petitioners had been appointed. He would also argue that the



petitioners have not completed 240 days. He would rely upon Section 2(o)(o)(bb) in order to substantiate his case.

7.The Labour Court came to a conclusion that the petitioners had been terminated at the end of the period of their training, but had ordered payment of compensation of Rs.25,000/-. Challenging the same, the present Writ Petition has been filed.

8.I have heard both sides at length and have carefully perused the records.

9.The factum of the appointment of the petitioners as trainees is not in dispute. The petitioners accept that as per the terms of the contract, they were appointed for a period of one year. They had accepted to the fact that they will not be considered as employees and workmen of the Company during the period of Training. In order to get over this aspect, the learned counsel for the petitioners would submit that no training was given to the petitioners. I have to agree



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with the submissions of the learned counsel for the petitioners that it is open to the Court to pierce the veil of the contract projected by the Company to come to the conclusion as to whether there was any training undergone or not. Unfortunately, for the learned counsel for the workmen the workmen have not given any evidence to show that there was no training at all and they had performed the work of the regular workmen.

10.The nature of the work executed by the petitioners were cooking, baking and wrapping of chocolates. For a confectionery company, which uses mechanization for the production of these products, the training as submitted by the learned counsel for the respondents would be "on the job". The workmen could have given evidence to show that there was no training at all. However, they have not let in any convincing evidence.

11.It is here knowing that he is facing difficulty, Mr.Balan Haridoss would submit that having completed five days more than the



stipulated period of one year, they would have to be treated as workmen as they have completed 240 days.

12.The Standing Orders no doubt contemplates classifications of apprentices as "workmen". This is for the purpose of treating institutions, which use the garb of apprentices as workmen, while carrying out the regular operations. It is not unknown of the Companies employing persons by paying them wages of apprentices but getting the regular work done through them for which otherwise they have to pay the higher wages. If a person is terminated during the course of training, he is not entitled to any benefits under the Industrial Disputes Act. The Apprentices Act, 1961, has a category of persons who are referred to the industry by the Board. These persons are not treated as the workmen by virtue of the Apprentices Act itself. It is not in dispute that the petitioners were directly appointed by the Company as Apprentices/Trainees. Therefore, the said Act does not apply to the facts of the present case.



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13.Mr.Anand would bring it to my notice that if a person is terminated within the contractual service then the Company is entitled to take the benefit of the exception carved out under Clause (bb) of Section 2(oo) of the Industrial Disputes Act. He would rely upon the Judgments of the Supreme Court in **National Small Industries Corporation Limited v. V. Lakshminarayanan [(2007) 1 SCC 214]**.

The Court in Para 25 of the said Judgment held as follows:

"25.Even if it is accepted that the respondent was a workman within the meaning of the 1947 Act, on account of his contractual tenure, his case would come within the exception of Clause (bb) of Section 2(oo) thereof. In such a case also , the provisions of Section 25-F of the said Act would have no application to the respondent's case."

14.A careful reading of the said provision would show that if a person's contractual tenure is not extended within the course of the contract of training, then, the said Judgment will be applicable. If he



completes the training and thereafter, he is terminated, applying the judgment of the Supreme Court, he will be entitled to the benefits 25(F) of the Act. In this particular case, the petitioners had completed the training on 27.04.2011. This is as per Clause 2 of the said Contract of Trainee. In case, the company wanted to extend the contractual tenure, it would have specifically stated so. That not having been done, the petitioners would have to be treated as workmen from the date of their appointment as trainees. The trainees are in the state of a cocoon which metamorphosis into a butterfly on completion of one year. The management had the option to extend it and to prevent such metamorphosis, but however, they did not do so. The management had the option to prevent such metamorphosis but did not exercise their right. Therefore, on completion of training on 27.04.2011, from 28.04.2010, the petitioners would have to be treated as workmen. I am not in agreement with the argument of the learned counsel for the respondents that the petitioners would have to undergo a further period of 240 days from 27.04.2011, in order to be treated as a workmen.



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15.As seen from the model standing orders as well the Section 2(s) of the Act, the petitioners even during the period of training have been treated as workmen. Therefore, to have a further stipulation that only after a period of one year from the date of completion of training they will become workmen is not acceptable to me. They were as trainees entitled to certain benefits till 27.04.2011. Thereafter, since the option of extending their tenure was not exercised by the management, they bloomed into workmen from 28.04.2010. The Labour Court had not looked into this angle of the case.

16.It is on record that the Company has closed down its operations in Nellikuppam and that no new persons were appointed. It has also been admitted by the workmen that in their places, no one else had been appointed. This points out the fact that the Company had not terminated them on grounds of victimization or rationalization. I would therefore hold that the compliance of Section 25(F) was necessary and that has not been done in the present case.



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17. Now coming to the relief that have to be granted, in the light of the change of circumstances, I am of the view that if the compensation granted is enhanced to Rs.75,000/- from Rs.25,000/- it would meet the ends of justice.

In the result, this Writ Petition is allowed. The petitioners will be treated as workmen. The compensation granted by the Labour Court from Rs.25,000/- is enhanced to Rs.75,000/- (Rupees seventy five thousand only) to the petitioners. No costs.

27.07.2023

Index : Yes / No
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mps

To

The Presiding Officer,
Labour Court,
Cuddalore.



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V. LAKSHMINARAYANAN, J,

mps

Pre-delivery Orders in
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