

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.13771 OF 2024

Mandar Ramchandra Devdikar
V/S

....Petitioner

Managing Director,
Walchandnagar Industries Ltd.

....Respondent

Mr. S.R. Ronghe *for the Petitioner.*

**CORAM: SANDEEP V. MARNE, J.
DATE : 07 OCTOBER 2024.**

P.C.:

1. The Petition challenges the Award dated 6 May 2024 passed by First Labour Court, Pune, answering the Reference relating to termination of Petitioner in the negative.
2. I have heard Mr. Ronghe, the learned counsel appearing for Petitioner and have considered the submissions canvassed by him.
3. It appears that the Petitioner initially underwent apprenticeship training course with the Respondent-Company in the year 1996 to 1999 and successfully completed the same. Accordingly, National Apprenticeship Certificate by the National Council for Training Vocational Trades, New Delhi, came to be issued to the Petitioner certifying the period of his training from 15 October 1996 to 14 October 1999. It appears that upon completion of his apprenticeship, Petitioner was offered training in the

Respondent-Company on 20 July 2001 and he continued as a trainee for a considerable period of time. Upon making an application by Petitioner for grant of regular employment with the Respondent-Company, appointment order dated 4 April 2007 was issued appointing Petitioner in the semi-skilled grade on the post of Operator with effect from 1 January 2007. The services of Petitioner were however placed on probation for a period of one year from the date of joining. One day before completion of period of probation, order dated 31 December 2007 was issued discharging the Petitioner for unsuccessful completion of period of probation. Discontinuation of Petitioner became subject matter of Reference before the Labour Court and the Reference has been answered against the Petitioner.

4. Mr. Ronghe could invite my attention to the certified Standing Orders of Respondent-Company relevant part of which reads thus:

“ ३ (२)(ए) कायम कामगार म्हणजे ज्याची कायम स्वरूपाचे कामावर नेमणूक केली किंवा ज्याची नेमणूक मॅनेजरकडून अगर याबाबत मॅनेजरने अधिकार दिलेल्या इसमाकडून लेखी आज्ञेने कायम केली असा कामगार; यामध्ये ज्या कामगाराने सतत २४ महिन्याचे मुदतीत एकूण सहा महिन्याची प्रोबेशनची मुदत या कारखान्याचे त्याच प्रकारच्या अथवा अन्य कामामध्ये पूर्ण केली असेल अशा कामगारांचा समावेश केला जाईल. तसेच कायम कामगाराचे जागी अगर त्याचे रिकाम्याजागी काम करण्यास सांगितलेला अगर नेमला गेलेला शिकाऊ उमेदवार ज्या मुदतीत तो या जागी काम करील त्या मुदतीत वेतन मिळण्यासाठी कायम कामगार समजला जाईल ”

5. Mr. Ronghe would contend that as per certified Standing Order No.3(2)(a), the maximum permissible period of probation could only be six months and that the settled law is that the certified Standing Orders would prevail over private agreement between the employer employee. In support, he has relied upon the judgment of the Apex Court in ***Bharatiya Kamgar Karmachari Mahasangh vs. Jet Airways Ltd.***, AIR Online 2023 SC 561. He also submits that under second schedule to the Industrial Disputes Act, 1947 the Labour Court is vested with jurisdiction to interpret the Standing Orders.

6. It appears that Petitioner accepted condition of his appointment which contemplated probation for a period of one year. Ordinarily therefore Petitioner cannot subsequently take *volte-face* and contend that the period of probation cannot exceed six months as per the Standing Orders. Even if the principle of estoppel is not to be applied to the Petitioner and even Mr. Ronghe's contention about superiority of Standing Orders over the terms and conditions of appointment order is to be accepted, I am unable to read clause 3(2)(a) of Standing Order to mean that there was any fetter on the employer on prescription of period of probation in excess of six months. The Standing Order, to my mind, appears to quite vague which provides for completion of period of probation of six months in continuous service of 24 months. It is difficult to comprehend as to how there can be a period of probation of six months in continues

service of 24 months. I am therefore unable to hold that there was any prohibition on the part of the Respondent-Company in prescribing period of probation in excess of six months. In my view therefore, the term of the appointment order prescribing period of probation of one year would squarely be applicable in the present case.

7. Mr. Ronghe would further submit that no evidence was led by the Respondent-Management about unsatisfactory services of the Petitioner. I am afraid this aspect cannot be gone into by Courts as satisfactory or unsatisfactory completion of period of probation is matter of subjective satisfaction of the employer, in which Courts or Tribunals cannot interfere. Probationer does not have any indefensible right to remain in service or seek confirmation therein. It is the opinion of the employer about satisfactory completion of probation period which would ultimately prevail.

8. Considering the overall conspectus of the case, I am of the view that no case is made out by the Petitioner for interference in the impugned award. The Writ Petition is accordingly **rejected**.

(SANDEEP V. MARNE, J.)

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