

HIGH COURT OF GUJARAT (D.B.)

BALLKHAN DOSKHAN JOYA

Versus

GUJARAT ELECTRICITY BOARD

(**Overruled by:** [U P STATE ELECTRICITY BOARD](#)

Versus

[SHIV MOHAN SINGH, 2004 LawSuit\(SC\) 1178 \)](#)

Date of Decision: 09 January 2001

Citation: 2001 LawSuit(Guj) 1

Hon'ble Judges: [D M Dharmadhikari](#), [P B Majmudar](#)

Eq. Citations: 2001 1 CLR 478, **2001 3 GLR 2666**, 2002 1 LLJ 761, 2002 92 FLR 914, 2001 4 GCD 2672

Case Type: Letters Patent Appeal; Special Civil Application

Case No: 121 of 2000; 546 of 1995

Subject: Labour and Industrial

Editor's Note:

Apprentices Act, 1961 - Sec 2(99), 3, & 18 - Industrial Disputes Act 1947 - Sec 2(S) as amended in 1984 - Appointment - Work charge - Helper - Terminated the contract of apprenticeship has not been registered - Definition clause (S) of Sec 2 ID Act expressly includes an apprentice - Completed more than 240 days of continuous service - Non observance of mandatory condition precedent in Sec 25.f of ID Act makes termination of workman illegal - Held, impugned order passed by learned single judge is quashed and set aside - Appeal allowed

Acts Referred:

[Industrial Disputes Act, 1947 Sec 2\(s\)](#)

[Apprentices Act, 1961 Sec 2\(GG\), Sec 18, Sec 3](#)

Final Decision: Appeal allowed

Advocates: [B G Jani](#), [Mulia](#), [R C Jani](#)

[Cases Cited in \(+\): 1](#)

[Cases Referred in \(+\): 1](#)

Cases Overruled (+): 1

D. M. DHARMADHIKARI, C.J.

[1] This Letters Patent Appeal by the employee of the Gujarat Electricity Board has been preferred against the order of the learned single Judge dated 29-2-2000 passed in Special Civil Application No. 546 of 1995 (reported in 2000 (2) GLR 1522), whereby the Award of reinstatement of the employee with 25% of back wages passed by the Labour Court on 15-10-1994 has been set aside.

[2] Necessary facts giving rise to the appeal are as under :-The respondent-Board, by an order issued on 30-7-1979, appointed the

appellant on work charge establishment on the post of Helper and he joined the post on 6-8-1979. The appointment was for a period of 190 days and his services were terminated on 29-11-1979. The employee was then inducted as an Apprentice Lineman on 19-2-1981 and his services were informally terminated or discontinued on 27-11-1981 on the ground that the contract of apprenticeship sent to the Apprenticeship Adviser in accordance with Sec. 4(5) of the Apprentices Act, 1961 has not been registered. The employee then approached the Labour Court under the provisions of the Industrial Disputes Act, stating that the informal termination of his service is contrary to the provisions of the I. D. Act as he was not given any notice nor retrenchment compensation. The Labour Court, after recording the evidence of the parties, came to the conclusion that even though the contract of apprenticeship was not registered by the Apprenticeship Adviser, the employee would be deemed to be a workman within the definition of I. D. Act and in absence of observance of formalities required under the I. D. Act, termination of his service is illegal. The Labour Court, therefore, granted relief of reinstatement in service to the employee, but awarded only 25% back wages.

[3] The employer then challenged the Award of the Labour Court in this Court under Art. 227 of the Constitution of India. The learned single Judge allowed the writ petition of the employer and set aside the Award of the Labour Court. In the opinion of the learned single Judge, even though the contract of apprenticeship was not registered, because the employee was not fulfilling the prescribed educational qualification for being appointed as an apprentice, the status of such apprentice can be termed only as a trainee. Such a person cannot be deemed to be a workman, within the meaning of the I. D. Act. The reasoning of the learned single Judge is that to find out the nature of employment and the status of the employee, what is to be seen is the intention of the employer in giving employment as disclosed from the terms of the contract of the employment and the subsequent conduct of the parties.

[4] In this Letters Patent Appeal, learned Counsel appearing for the employee has mainly criticised the reasoning of the learned single Judge. It is submitted that the learned single Judge erred in holding that although the apprenticeship contract was not registered and the provisions of the Apprenticeship Act were not applicable, the employee cannot get protection from the provisions of the I. D. Act, because his relationship with the employer would be only of an apprentice or trainee and not a workman. It is stated on behalf of the employee that being in service from 19-2-1981 to 27-11-1981, the employee has completed more than 240 days of uninterrupted service, and therefore, the provisions of Sec. 25-F of the Act were clearly breached to justify grant of relief of reinstatement to the workman by the Labour Court.

[5] Learned Counsel appearing on behalf of the employer-Board made an effort to support the order of the learned single Judge and relied on the decision of the Supreme Court in the case of the Employees State Insurance Corporation & Anr. v. Tata Engineering & Co., AIR 1976 SC 66.

[6] After hearing the learned Counsel for the parties and perusing the judgment of the learned single Judge, we have formed opinion that this Appeal deserves to be allowed. It is not in dispute that the employee was given second opportunity to serve in the Board only by appointing him as an apprentice. After issuing the appointment order as an apprentice, the contract of apprentice was sent to the Apprentice Adviser. Section 3 of the Apprentices Act states that a person shall not be qualified for being engaged as an apprentice to undergo apprentice training in any designated trade unless he is fourteen years of age and satisfies such standards of education and physical fitness as may be prescribed. In the Apprentice Rules as per the Schedule appended to them, for appointment to the post of Lineman, the prescribed qualification is that the candidate must have passed 8th standard examination of the new course. The 8th Standard examination of new course 10+2+3 is not equivalent to 8th Standard examination of old course. The apprenticeship contract was, therefore, not registered only on the ground that the 8th Standard examination pass of the old course is not equivalent to 8th Standard examination pass of the new course. Section 18 of the Apprentices Act states that every apprentice undergoing apprenticeship training in a designated trade in an establishment shall be a trainee and not a worker and the provisions of any law with respect to labour shall not apply to or in relation to such apprentice. The provisions of Sec. 18, as held by the learned single Judge, are not attracted in the case of the present appellant, because, for want of registration of his apprenticeship contract, he cannot be treated to be an apprentice undergoing apprenticeship training. Apprentice has been defined under Sec. 2(aa) to mean a person who is undergoing apprenticeship training in pursuance of a contract of apprenticeship.

[7] The other question that arises is that if the provisions of Sec. 18 are not attracted to the employment of the appellant, as he was not undergoing an apprenticeship training pursuant to an apprenticeship contract, whether the provisions of other labour laws would be applicable to such employment. In the above respect, the learned single Judge has also noticed the definition of workman contained in Sec. 2(s) of the I. D. Act. The definition clause (s) of Sec. 2 of the I. D. Act expressly includes an apprentice. Section 2(s) reads as under :-2. Definitions :- In this Act, unless there is anything repugnant in the subject or context, -

... ..

(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 -

(i) who is subject to the Air Force Act, 1950 (XLV of 1950) or the Army Act, 1950 (XLVI of 1950), or the Navy Act, 1957 (LXII of 1957); or

(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. (Emphasis supplied)

The definition of workman in I. D. Act, as it stands, was introduced by amendment on 21-8-1984 and at that time the Apprentices Act, 1961, containing Sec. 18 in its provisions, was in existence. The Central Legislature was, therefore, fully alive to the situation that an apprentice, undergoing an apprenticeship training under an apprenticeship contract duly registered, would be only a trainee and not a workman, to which other laws in respect of labour shall not apply. Therefore, in including, in the definition of workman, apprentice as well, the legislative intention appears to be obvious that such apprentices, who are not undergoing apprenticeship training under a duly registered apprenticeship contract, envisaged

by the Apprentices Act, and to whom provisions of Sec. 18 of the said Act are not applicable, would, nonetheless, be included in the definition of workman under the I. D. Act and would get all the protection of labour laws. The learned single Judge may be right in his reasoning that even after non-registration of the contract of apprenticeship, the appellant would only be a 'trainee', or an 'apprentice', as intended by the parties and he would not be an 'employee' or a 'workman', within the meaning of the Apprentices Act. Even if, as stated by the learned single Judge, the appellant, as a result of non-registration of contract of apprenticeship, is deemed to be a 'trainee' or an 'apprentice', he would, nonetheless, be covered within the definition of 'workman' under Sec. 2(s) of the I. D. Act.

[8] In considering the claim of a workman for reinstatement against illegal termination of his services, it is not merely the label given to the employment which is decisive, but what is to be ascertained is the actual nature of work and contract of employment. The Labour Court, which recorded the evidence, has come to a finding of fact that, in the first phase of his employment, the appellant worked as helper on work charge basis and after his induction as Apprentice Lineman, he continued to work on the same post with the same duties. The learned Counsel appearing on behalf of the Board argued that there is no difference between the nature of work of Lineman and Helper. It may be so, but status of an employee, appointed as a Lineman, with requisite qualifications and expertise, is different from employee, who is just helping him. The facts revealed before the Labour Court were that between the period 19-2-1981 and 27-11-1981, the appellant, virtually, served as Helper and not as an Apprentice. It is not in dispute that by service between 19-2-1981 to 27-11-1981 the employee had completed more than 240 days of continuous service. The provisions of Sec. 25-F require that the services of a workman, who has completed 240 days' continuous service, can be terminated only after service of one month's notice in writing or payment in lieu of notice and also only on payment of retrenchment compensation. Non-observance of mandatory condition precedent in Sec. 25-F of the I. D. Act makes the termination of service or retrenchment of the workman illegal.

[9] In fact, this is an unfortunate case for the employee, because, after the Award of the Labour Court, by order issued, although late, on 1st November, 1999, the Board reinstated the appellant to the post of Helper on a sanctioned regular post. It is only after the learned single Judge set aside the Award of the Labour Court that the services of the employee have again been terminated on the success of the writ petition of the employer.

[10] For the reasons stated by us above, the order of the learned single Judge cannot be sustained. Consequently, we allow this appeal and set aside the judgment of the learned single Judge dated 29-2-2000. As a consequence thereof, the Award of the

Labour Court, Kalol dated 15-10-1994 is restored. In the circumstances, we leave the parties to bear their own costs.

