

PETITIONER:
THE FACTORY MANAGER, CIMMCO WAGON FACTORY

Vs.

RESPONDENT:
VIRENDRA KUMAR SHARMA AND ANOTHER

DATE OF JUDGMENT: 26/07/2000

BENCH:
S. Rajendra Babu, J. & Shivaraj V. Patil, J.

JUDGMENT:

Shivaraj V. Patil, J.
Civil Appeal No. 4501 of 1998 is directed against the order dated 3-12-1997 made by the High Court of Rajasthan in D.B. Civil Appeal No. 523/97. Briefly stated, the facts, which are necessary and relevant for the disposal of this appeal, are the following.

At the instance of the respondent, the State Government referred the dispute under Section 10(1) of the Industrial Disputes Act, 1947 vide Notification No. S.P.I.(i) (884) L.C/83 dated 1.2.84 to decide -

"whether the termination of service of labourer Shri Virendra Kumar by the Manager, CIMCO Limited, Bharatpur, was proper and legal? If not, what relief the labourer was entitled?"

The contesting respondent claimed that he was appointed as an apprentice by the appellant from 10.9.79 to 21.9.80. After the expiry of the said period, he was on regular service between 22.9.80 to 21.12.80. As there was lock-out in the factory from 7.10.80 to 8.2.81, he was asked by the appellant not to come for work. After the lock-out was over, the respondent worked as General Clerk in the assembly shop of the appellant from 9.2.81 to 30.6.82. Thereafter he worked in the vacancy of Shri K.G. Venkatesan till April, 1983. He was given Rs.250/- per month from 22.9.80 to 30.6.82 and when he demanded salary for the period between 1.7.82 to April, 1983 he was told that his case had been recommended for approval of the higher officers. He was told by the appellant orally not to come for work from 16.6.1983 on the ground that his services were already terminated. It was his further case that he had continuously worked from 9.2.81 to 15.4.83. Hence he was entitled to become permanent worker.

The appellant resisted the claim of the respondent by filing written statement. It was admitted that the respondent had been appointed as an apprentice between 10.9.79 and 22.9.80 at the request of his father who was already serving in the appellant factory. It was pointed out that between the periods 11.8.81 to 10.12.81 and 11.12.81 to 30.6.82 the respondent had been an apprentice as per Exbts. M2 and M1 respectively. It was stated that neither the respondent was employed by any competent authority in the establishment of the appellant nor he had been paid salary. It is clear from condition no. 5 in Exbts. M1 and M2 that the appellant was not obliged to give job to the respondent after the completion of apprenticeship. The Labour Court after considering the rival contentions, in the light of

the evidence brought on record, held that the respondent was not a workman. It also held that presumption that could be raised under Section 103 of the Factories Act, 1948 (for short the 'Act') stood rebutted as no appointment letter was given to the respondent; he was neither paid any salary or wages and that the relationship of master and servant did not exist between the appellant and the respondent. In view of the conclusions arrived at, the Labour Court passed the award holding that the respondent was not entitled to any relief from the appellant.

The respondent challenged the validity and correctness of the said award in the High Court of Rajasthan in S.B. Civil Writ Petition No. 1384/87. The learned Single Judge did not find any good ground to disturb the award passed by the Labour Court, exercising jurisdiction under Article 226 of the Constitution of India. Consequently, the writ petition was dismissed on 6.3.97. The respondent took up the matter in appeal in D.B. Civil Appeal No. 523/97. The Division Bench of the High Court by the impugned order dated 3.12.97 allowed the appeal, set aside the order of the learned Single Judge and allowed the writ petition quashing the award of the Labour Court. Hence this appeal is brought before us by the appellant.

The learned counsel for the appellant urged that the Division Bench of the High Court failed to see that the respondent was only an apprentice for short period in two spells; that too with a clear understanding that the appellant was not bound or obliged to give him job in the establishment; he was only taken as apprentice at the request and persuasion of his father to train him, who was already an employee in the appellant factory; he was only paid stipend of Rs. 250/- per month; neither there was any appointment order issued nor any salary was paid to the respondent by the appellant; the documents placed on record clearly show that he was only an apprentice and the letters relied on by him given by the officer, who was not the appointing authority, contained only recommendations. The learned counsel added that the presumption raised by the Division Bench under Section 103 of the Act was clearly erroneous and the said provision has no application to the case of the respondent.

On the other hand, the learned Senior Counsel for the respondent argued in support and justification of the impugned order. He laid stress on the two letters dated 22.1.83 and 7.5.83 written by one Shri S.G.Goyal, Dy. Manager to the Vice-President of the appellant factory and argued that the respondent was regularly employed by the appellant. Under the circumstances, according to the learned Senior Counsel, the learned Single Judge of the High Court was right in quashing the award passed by the Labour Court and granting relief.

The facts that are not in dispute are that the respondent was taken as an apprentice for the given periods in Exbts. M1 and M2 referred to in the award. He was paid a monthly stipend of Rs. 250/- during the apprenticeship period. Annexures M1 and M2 contained a clause that after the expiry of the training period, the appellant company shall not be under obligation to give employment to the respondent. The respondent had signed Exbts. M1 and M2 after carefully going through the terms and conditions contained in them. There was no appointment letter issued to the respondent and no material was placed before the Labour Court to show that any salary was paid to the respondent at any time apart from the stipend of Rs.250/- per month.

The Labour Court in the award, on analysis and appreciation of the evidence brought before it, refused to grant any relief to

the respondent. It is stated in the award that the respondent worked between 22.9.79 and 21.8.80 and from 11.8.81 to 30.6.82 as only an apprentice as per Exbts. M1 and M2. Shri Goyal, the Dy. Manager, had admitted that the respondent worked as a Co-ordinator with the appellant which is clear from Exbts W7 and W8. These two letters revealed that he had recommended for the appointment of the respondent. The Labour Court had also noticed that the respondent had neither been employed by a competent authority nor was he paid salary. It was also noticed that the respondent was neither under any compulsory obligation to undergo training nor he could be compelled to do so. May be, the respondent did not give up training and continued working as a Co-ordinator in anticipation of being provided employment as his father was also an employee in the factory. There was no evidence on record to indicate that either GPF or ESI were deducted from the salary of the respondent as he was not being paid any salary. Having regard to the evidence placed on record, the Labour Court held that the respondent was not a workman. As regards the presumption to be drawn under Section 103 of the Act, the Labour Court observed that such a presumption was put to an end by the facts of the case as the respondent was not given any appointment letter; he was neither paid any salary or wages and that the master and servant relationship did not exist between the parties. As per clause 5 of Exbts. M1 and M2, the appellant was not bound to give employment to the respondent. It may be added here that the letter Exbt. W-6 (Annexure R1/8 produced in this appeal) written by the respondent himself shows that his services came to an end on 30.6.82. If that be the case, his claim that he continued in the service as a regular employee till April, 1983 is not acceptable.

The learned Single Judge looking to the award passed by the Labour Court has observed that the respondent was continued as an apprentice for a period of two years in the appellant company and beyond that his services were not extended by the appellant. The learned Single Judge did not find any illegality, impropriety or perversity in the award. The learned Single Judge also proceeded to say that not a single document was placed on record from which it could be established that the respondent was a regular employee. In this view, the learned Single Judge declined to exercise jurisdiction under Article 226 of the Constitution of India and dismissed the writ petition.

The Division Bench of the High Court in the impugned order referred to Exbts. W7 and W8 to hold that the respondent was a workman. From a plain reading of these letters, it is clear that they are only recommendatory. It is also brought on record, as observed by the Labour Court that Shri Goyal was not competent authority to give any appointment. The Division Bench in the impugned order has stated thus:

"Though it is true that no appointment letter has been issued to the writ petitioner, nor any payment was made to the writ petitioner, but still it is the established fact that he was asked to work in the factory by the authorities."

Assuming that the respondent was asked to work in the factory in anticipation of securing employment, that too by an officer who was not competent to give appointment, did not make the respondent workman or a regular employee of the appellant company. We have no hesitation to say that the Division bench was not right in raising presumption under Section 103 of the Act in order to say that the respondent was a workman in relation to an industrial dispute for the purposes of any proceedings under the Industrial Disputes Act, 1947. Section 103 of the Factories

Act, 1948 reads as under :-

"103. Presumption as to employment - If a person is found in a factory at any time, except during intervals for meals or rest, when work is going on or the machinery is in motion, he shall until the contrary is proved, be deemed for the purposes of this Act and the rules made thereunder to have been at that time employed in the factory."

(Emphasis supplied)

The presumption available under this Section in the first place is rebuttable and secondly it is available only for the purpose of the said Act. It is also not the case of the respondent that this presumption is made available in relation to an adjudication of a dispute referred to under Section 10 of the Industrial Disputes Act, 1947. Section 103 of the Act is included in Chapter X under the heading "Penalties and Procedure" which chapter deals with general penalty for offences, liability of owner of premises in certain circumstances, enhanced penalty after previous conviction etc. The Act provides for the health, safety, welfare, and other aspects of worker in factories. It was enacted to consolidate and amend the law regulating labour in factories. The presumption under Section 103 of the Act as already noticed above is to be raised for the purpose of the said Act. Even otherwise on the material placed on record when it was factually established that the respondent was not a workman, raising a presumption under Section 103 of the Act in his favour was not correct. At any rate there were no good reasons sustainable in law to upset the finding of fact recorded by the Labour Court based on the evidence placed on record after proper appreciation of the same and more so when the award of the Labour Court was affirmed by the learned Single Judge. Having regard to the facts, circumstances of the case and in the light of the evidence placed on record, it is not possible to accept that there was any unfair labour practice as observed in the impugned order. Thus in view of what is stated above, we find it difficult to sustain the impugned order. Hence the appeal is allowed. The impugned order is set aside and the award of the Labour Court is restored.

The Division Bench of the High Court while directing reinstatement of the respondent in service had ordered payment of 25% of the back-wages. The respondent aggrieved by denial of full back-wages, has filed Civil Appeal No. 5408/98. In the light of the conclusions arrived at by us in Civil Appeal No. 4501/98, this appeal is dismissed. There shall be no order as to costs.