


HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil Writ Petition No. 8182/2005

Indian Oil Corporation Limited, Marketing Division Rajasthan
State Office, IOCL Bhawan, Ashok Chowk, Adarsh Nagar, Jaipur -
Through Its Senior Hr Manager.

----Petitioner

Versus

1. Shri Narendra Singh Shekhawat

2. Central Government Industrial Tribunal Cum Labour
Court, Jaipur.

----Respondents

Connected With

S.B. Civil Writ Petition No. 8178/2005

Indian Oil Corporation Limited, Marketing Division Rajasthan
State Office, IOCL Bhawan, Ashok Chowk, Adarsh Nagar, Jaipur -
Through Its Senior Hr Manager.

----Petitioner

Versus

1. Shri Ram Kishan Meena

2. Central Government Industrial Tribunal-Cum Labour
Court, Jaipur.

----Respondents

S.B. Civil Writ Petition No. 8184/2005

Indian Oil Corporation Limited, Marketing Division Rajasthan
State Office, IOCL Bhawan, Ashok Chowk, Adarsh Nagar, Jaipur -
Through Its Senior Hr Manager.

----Petitioner

Versus

1. Shri Chanda Ram Meena

2. Central Government Industrial Tribunal Cum Labour
Court, Jaipur.

----Respondents

For Petitioner(s) : Ms. Sukriti Kasliwal with
Mr. Vikram Singh Rathore
For Respondent(s) : Mr. Kunal Rawat
Ms. Radhika Maharwal

HON'BLE MR. JUSTICE ANOOP KUMAR DHAND

Order

RESERVED ON :: 26.07.2023
PRONOUNCED ON :: 18.08.2023
REPORTABLE

1. Since common question of law and facts are involved in all these petitions, hence with the consent of counsel for the parties the matters are taken up for final disposal and all these petitions are decided by this common order.

2. Counsel for the petitioner/Corporation submits that the respondents were never engaged as workmen rather they were engaged as 'apprentice' and a contract of apprenticeship was executed between the parties for 11 months and during these 11 months apprenticeship training was provided to the respondents and after completion of the said period the agreement came to an end. Counsel submits that the respondents do not fall within the definition of workmen, hence the Labour Court was not having any jurisdiction to entertain the claim petition filed by the respondents. Counsel submits that as per Section 18 of the Apprentices Act, 1961 the provisions of labour law are not applicable. Counsel submits that several documents were submitted on the record before the Industrial Tribunal to show that the respondents were engaged as apprentice and after

completion of their term of 11 months, the contract came to an end. Counsel submits that the documentary evidence produced by the petitioner Corporation was not taken into consideration by the Tribunal and the impugned award has been passed directing the petitioner to reinstate back the respondents in service with continuity and 50% back wages. Counsel submits that once this fact was established on the record by the Tribunal that the respondents were not engaged as workmen then there was no occasion or reason available with the Tribunal to treat them as workmen, hence under these circumstances the Tribunal has committed an error in passing the impugned award. In support of her contentions, she has placed reliance upon the following judgments:

- 1. Hanuman Prasad Choudhary and Ors. Vs. Rajasthan State Electricity Board and Ors.** reported in **1985 (2) WLN 219.**
- 2. U.P. State Electricity Board vs. Shiv Mohan Singh Ors.** reported in **2004 (8) SCC 402.**
- 3. U.P.S.E.B. vs. Presiding Officer, Kanpur and Ors.** reported in **2018(1) LLN 314 (All).**

3. Counsel submits that under these circumstances, interference of this Court is warranted and the impugned award passed by the Labour Court is liable to be quashed and set aside.

4. Per contra, learned counsel for the respondents workmen opposed the arguments raised by the counsel for the petitioner Corporation and submitted that the respondents have established the fact that their services were taken by petitioner as petrol filler and they were discharging the duties of workmen. Counsel submits that unfair practice was used by the petitioner

Corporation for taking an agreement of apprentice from the respondents. Counsel submits that no training was provided to the respondents and straightaway all works were taken from them which comes within the purview of definition of workmen, hence the industrial Tribunal has not committed any error by treating the status of the respondents as workmen and the Tribunal has not committed any error in entertaining the claim petition filed by them. Counsel submits that finding of fact has been recorded by the Tribunal after appreciating the evidence available on the record. Counsel submits that by exercising the powers contained under Article 226 of the Constitution of India, this Court has a limited scope to interfere on the finding of fact recorded by the Tribunal, hence interference of this Court is not warranted and the petitions filed by the Corporation are liable to be dismissed. In support of his contentions, he has placed reliance upon the following judgments:

1. Central Inland Water Transport Corporation Limited and Anr. vs. Brojo Nath Ganguly and Anr. reported in **1986 (3) SCC 156.**

2. Jeetubha Khansangji Jadeja vs. Kutchh District Panchayat (Civil Appeal No.6890/2022).

5. Counsel submits that in view of the submissions made hereinabove, the petitions filed by the petitioner be dismissed.

6. Heard and considered the submissions made at the Bar and perused the material available on the record.

7. The legal issue which needs to be adjudicated in these petitions is as to whether the provisions of Apprentices Act, 1961 (for short, 'Act of 1961') or the provisions of the Industrial

Disputes Act, 1947 (for short, 'Act of 1947') will apply in the present set of the petitions?

8. The undisputed fact is that Jaipur Employment Exchange sponsored the name of the respondents for 11 months training at Company Owned & Company Operated (for short, 'COCO') Retail Outlet Training of the petitioner Indian Oil Corporation Limited (for short, 'IOCL'). An apprenticeship agreement was executed between the parties with the following terms and conditions.

- "1. Your training shall be for the period of 11 months effective from the date of joining on Jaipur COCO, Jaipur.
2. The continuation of your training during the aforesaid period shall be subject to your being physically fit and fulfilling the eligibility prescribed.
3. Your training shall be governed by the COCO Retail outlet training scheme of IOC.
4. You will have to undergo both theoretical and practical training to be imparted in pursuance of the said scheme.
5. You shall report for training at the stipulated time failing which you will not be considered for further training.
6. Your training period shall be 8 hrs. per day which will be stipulated by IOC and the same will be liable for change at the discretion of the IOC.
7. You will be required to undergo training in shifts as per the training programme.
8. You shall endeavor as a trainee to give your utmost performance and full attention in respect of training activities and programs. Any negligence or serious lapses on your part shall render you liable to discontinue your training without any notice.
9. You will appear for necessary tests to be conducted from time to time and obtain minimum marks for passing the test. You will not remain absent excepting emergent or unforeseen

circumstance without prior permission from the competent authority.

10. During the training you will be paid Rs.1664/- per month as stipend. You will be eligible for eleven days leave during the training period of eleven month.

11. During the period of training there shall not be any employer-employee relations between you and IOC. You will not be entitled to any other facilities of regular employees or any other allowances or benefits.

12. You will strictly observe the rules and regulations which are made applicable to you during training period or which are come into force from time to time.

13. The IOC shall not absorb you on your completion of you training. However, on successful completion of your training period, a certificate to that effect will be issued to enable you to get employment outside the IOC.

14. You will be responsible for any loss or damage caused to the property of IOC which will be recoverable from you.

15. IOC reserves the right to terminate or discontinue you during the course of training on unsatisfactory performance or any behaviour detrimental to the discipline and order.

16. You will be liable for disciplinary action for any serious act of misconduct during the period of training, which may result in discontinuation of your training.

17. You may leave the training on 1 month's notice or stipend in lieu thereof.

18. You will be required to certify in the enclosed duplicate copy of this letter that-

a) You will comply with the terms and conditions as given in the letter and which may be amended from time to time by IOC.

b) You have not attended any such programme in IOC either under existing scheme or under any other previous scheme of the Company.

c) You agree and confirm to be governed by the terms and conditions of the enclosed training scheme

of IOC. You also confirm that you have understood the contents of this enclosed training scheme, which you will sign and submit on Non-Judicial stamp paper of Rs.20/-."

9. The aforesaid terms and conditions were accepted by the respondents and accordingly the Apprentice agreement was executed for 11 months training. After completion of 11 months, their Apprenticeship came to an end automatically.

10. Thereafter, the respondents raised an industrial dispute before the Industrial Tribunal Cum Labour Court, Jaipur (hereinafter referred to as, 'the Tribunal') under Section 10 of the Act of 1947. Challenging the validity of their termination order on the ground that there was violation of Section 25F and Section 25H of the Act of 1947. It was pleaded before the Tribunal that the respondent Narendra Singh and Chanda Ram were engaged by IOCL as labourer on 02.06.2000 while the respondent Ram Kishan was engaged on 07.12.2001 and they continued to work for more than 240 days but their services were terminated on 21.05.2001 and 07.12.2002, respectively without following the mandate of Section 25F of the Act of 1947. It was pleaded and prayed by them before the Tribunal that their termination order be declared as null and void and they be reinstated back in service with back wages.

11. The petitioner IOCL submitted reply and denied their relationship as employer-employee. It was pleaded that the respondents were kept on training under a Training Scheme for a period of 11 months with a specific terms and conditions that they would not be absorbed on completion of their training. It was also pleaded that training certificates were issued to them on completion of their training to enable them to get employment

elsewhere. It was also pleaded that after accepting the terms and conditions, they had undertaken the training for 11 months. Hence, the respondents are not workmen as defined under Section 2(s) of the Act of 1947. In support their contentions, the petitioner submitted affidavit by MW-1 Giyalal Senior H.R. Manager and submitted documents on the record.

12. Discarding the plea taken by the petitioner IOCL, the Tribunal held that the respondents falls within the definition of workmen as defined under Section 2(s) of the Act of 1947 and they have completed over 240 days of actual service under the employment of IOCL in a calendar year. Hence, the termination of their services amounts to violation of Sections 25F and 25H of the Act of 1947. Accepting all the claims filed by the respondents, their termination order were declared as illegal and unjustified, and the petitioner IOCL has been directed to reinstate them back in service with their continuity with 50% back wages.

13. The case of the petitioner IOCL is that in view of the provisions contained under the Act of 1961, the respondents could not be treated as 'Workman', as the provisions of the Act of 1947 are not applicable. On the contrary, the case of the respondents is that as per Section 2(s) of the Act of 1947 'Workman' means any person includes an Apprentice employed in any industry, hence, the provisions of the Act of 1947 are applicable in this case and the Tribunal has rightly invoked its power by passing the award in favour of the respondents.

14. The findings recorded by the Tribunal is under the teeth of the provisions contained under Section 2(aa) read with Section 2(r) of the Act of 1961, which defines the terms 'Apprentice' and

'Worker' who is employed for wages in any kind of work but does not include an Apprentice.

15. The relevant provisions of the Apprentices Act, 1961 and the Industrial Disputes Act, 1947 are required to be taken into consideration.

Apprentice Act, 1961

"2.(aa) **"apprentice"** means a person who is undergoing apprenticeship training in pursuance of a contract of apprenticeship;

2.(aaa) **"apprenticeship training"** means a course of training in any industry or establishment undergone in pursuance of a contract of apprenticeship and under prescribed terms and conditions which may be different for different categories of apprentices;

18. Apprentices are trainees and not workers-

Save as otherwise provided in this Act,-

(a) every apprentice undergoing apprenticeship training in a designated trade in an establishment shall be trainee and not a worker; and

(b) the provisions of any law with respect to labour shall not apply to or in relation to such apprentice.

22. Offer and acceptance of employment-

(1) Every employer shall formulate its own policy for recruiting any apprentice who has completed the period of apprenticeship training in his establishment.

(2) Notwithstanding anything in sub-section (1), where there is a condition in a contract of apprenticeship that the apprentice shall, after the successful completion of the apprenticeship training, serve the employer, the employer shall, on such completion, be bound to offer suitable employment to the apprentice, and the apprentice shall be bound to serve the employer in that capacity for such period and on such remuneration as may be specified in the contract.

Provided that where such period or remuneration is not, in the opinion of the Apprenticeship Adviser,

reasonable, he may revise such period or remuneration so as to make it reasonable, and the period or remuneration so revised shall be deemed to the period of remuneration agreed to between the apprentice and the employer.

Industrial Disputes Act, 1947:

2(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 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 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.

16. There is conflict between Section 18 of the Act of 1961 and Section 2(s) of the Act of 1947. The Act of 1961 is a special enactment which provides provisions relating to Apprentice. Therefore, the provisions of Apprentices Act, 1961 would prevail over the provision of the Act of 1947. Hon’ble Apex Court in the case of **Yakub Abdul Razak Memon v. State of Maharashtra (2013) 13 SCC 1** has held that where there are two statutes providing for over-riding effect on the other law for the time being

in force, the provision of the Special Act/Statue would prevail over the general law.

17. Since the Act of 1961 is a special law and the Act of 1947 is a general law, hence the provision of the Special Act i.e. Act of 1961 would prevail over the provisions of the Act of 1947.

18. Section 18 of the Act of 1961 clearly excludes the applicability of the labour laws in relation to apprentice, meaning thereby the provisions of the Act of 1947 are not applicable in the matters dealing with the apprenticeship. As the Act of 1947 is a general law whereas the Act of 1961 is a special statue and thus it would prevail over the general law as Section 18(3) clearly provides for non applicability of such labour laws in the matters covered under the Act of 1961.

19. The controversy with regard to the applicability of labour law i.e. Act of 1947 in the matters relating to Apprentice and the dispute arising therein under the Act of 1961 has been set at rest by the Apex Court and the same is no more *res integra*, as in the case of **U.P. State Electricity Board v. Shiv Mohan Singh and Ors.** reported in **(2004) 8 SCC 402** and it has been held by the Hon'ble Apex Court in Para No. 51, 56 and 87 reads as under:

"51. Therefore, now going back to the basic question that in the light of the aforesaid statutory provisions whether non- registration of the contract can render the contract void or illegal and what is the result thereof. From the scheme of things it is more than apparent that the Apprentices Act, 1961 is a complete code in itself and it lays down the conditions of the apprentices, what shall be their tenure, what shall be their terms and conditions and what are their obligations and what are the obligations of the employer. It also lays down that the apprentices are trainees and not workmen and if any dispute arises then the settlement has to be done by

the Apprenticeship Adviser as per Section 20 of the Apprentices Act, 1961 and his decision thereof is final. Now, under the scheme of these things, it clearly shows that the nature and character of the apprentice is nothing but that of a trainee and he is supposed to enter into a contract and by virtue of that contract he is to serve for a fixed period on a fixed stipend. This will not change the character of the apprentice to that of a workman under the employer where he is undergoing the apprentice training. Sub-section (4) of Section 4 only lays down that such contract should be registered with the Apprenticeship Adviser. But by non-registration of the contract, the position of the apprentice is not changed to that of a workman. It is more than clear from the scheme of the Act, the apprentice is recruited for the purpose of training as defined in Section 2(aa) of the Apprentices Act, 1961, that an apprentice is a person who is undergoing apprenticeship training in pursuance of a contract of apprenticeship and the apprenticeship training has been defined under Section 2(aaa). That clearly speaks that an apprentice is to undergo apprenticeship training in any industry or establishment under the employer in pursuance of the contract and in terms of the conditions pertaining to that particular trade. Section 6 lays down that what shall be the period of training and Section 7 very clearly shows that the contract of apprenticeship shall terminate on the expiry of the period of apprenticeship training. Therefore, it is more than clear that the nature and character of the apprentice is that of a trainee only and on the expiry of the training there is no corresponding obligation on the part of the employer to employ him which is also very clear from the provisions of Section 7 that the apprenticeship training shall terminate on the expiry of the period of training. It further makes clear that by virtue of Section 18 that the apprentice trainees are not workers. It clearly lays down that if an apprentice trainee is undergoing apprenticeship training in a designated trade in an establishment, he shall be a trainee and not a worker. It further contemplates that the provisions of labour laws shall not apply in relation to such apprentice. In this connection reference to definition of workman given in Section 2(r) also emphasis that it will not include apprentice. Section 20 also lays down that how a dispute arising under this Apprentices Act, 1961 can be settled. The authority for resolving such a dispute has been given to the Apprenticeship Adviser. Therefore, any dispute which arises with the apprentice and the employer then remedy has been

provided under this Act and not by way of resorting to the Labour Court. Therefore, throughout the Act stress has been laid that the apprentices are never being treated as workers. Simply because the contract has not been registered with the Apprenticeship Adviser, that will not change the nature and character of the apprentices. It is true that Sub-section (4) of Section 4 lays down that the contract of apprenticeship should be registered with the Apprenticeship Adviser so that the Apprenticeship Adviser can monitor and keep a record thereof. Just because the contract of apprenticeship is not registered that will not render the contract as invalid resulting in change of status of an apprentice to that of a workman. Section 21 further lays down that after the completion of the training of the apprentice, an incumbent will have to appear for a test to be conducted by the National Council to determine his proficiency in the designated trade in which he has undergone his apprenticeship training. Therefore, had there been an intention of the Legislature to confer them the status of a workman then all the provisions would not have been warranted at all. Section 22 makes it abundantly clear that at the end of the apprenticeship training, it is not obligatory on the part of the employer to offer an employment to an apprentice who has completed the period of apprenticeship . It is only if the terms of the contract of the apprenticeship lays down a condition that on successful completion of an apprenticeship training, an employer will offer him an employment then it is obligatory on the part of the employer to do so. If there is no such condition stipulated in the apprenticeship contract then the employer cannot be compelled to offer employment to such apprentice. At the same time, it is not obligatory on the part of apprentice to serve that employer if there is no such stipulation to this effect. So it is mutual thing & it depends on the terms of contract. The survey of all these provisions of the Acts and the Rules as mentioned above, makes it clear that the character & status of apprentice remains the same & he does not become workman and labour laws are not attracted.

56. It is also necessary to mention here that the definition of the word 'workman' as given in Section 2(z) of the U.P. Industrial Disputes Act, 1947 and Section 2(s) of the Industrial Disputes Act, 1947. Both the definitions includes apprentice. But the expression appearing in Section 2 (z) of the U.P Industrial Disputes Act and Industrial Disputes Act 1947 are not applicable to the apprentices appointed under the Apprentices Act, 1961. The Apprentices Act

is a code in itself and it clearly stipulates that in Section 2(aa) apprentice means a person who is undergoing apprenticeship training in pursuance of contract of training and the workers are employed for wages for work done by them. Section 18 clearly mentions that the apprentices are not workmen and "the provisions of any law with respect to labour law shall not apply or in relation to such apprentices". Therefore, reading of definition of apprentice in Sections 2(aa) and 2(r) read with Section 18 of the Apprentices Act leaves no manner of doubt that this Act which is special Act it does not cover the workman and it precludes the application of any other labour laws, i.e. U.P. Industrial Disputes Act & Industrial Disputes Act, 1947. When both these Acts are not applicable then labour court/industrial Tribunal will not have any jurisdiction to entertain any dispute arising therefrom. The application of the U.P. Industrial Disputes Act 1947 and the Industrial Disputes Act 1947 automatically stand excluded.

87. Section 2(z) of the U.P. Industrial Disputes Act, 1947 defines 'Workman' to mean "any person (including an apprentice) employed in any industry to do any skilled or unskilled, manual, supervisory, technical or clerical 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,..." A workman includes apprentice in terms of the said provision."

20. The similar issue come before the Allahabad High Court in the case of **Uttar Pradesh State Electricity Board v. Presiding Officer, Kanpur and Ors.: writ-C No. 4943/1997**, decided on 22.08.2017 reported in **(2017) 155 FLR 343** and it was decided in Para No. 10 to 12 as under:

10. A Bench of three Hon'ble Judges of Supreme Court in U.P. State Electricity Board v. Shiv Mohan Singh, AIR 2004 SC 5009 [LQ/SC2004/1151], held that therefore a combined reading of the sections as well as Rules makes it clear that apprentices are only persons undergoing training and during that training they are entitled to get a particular stipend, they have

to work for fixed hours and at the end of period of training they have to appear in the test and a certificate is issued to them. There is no obligation on the part of the employer to give them any employment whatsoever. The position of the apprentice remains as an apprentice trainee and during the period of training they will not be treated as workmen. Only obligation on the part of the employer is to impart them training as per provisions of the Act and Rules and to pay them stipend as required under Rule 11 and beyond that there is no obligation on the part of the employer to accept them as his employees and give them the status of workmen. There is no relation of master and servant or employer and employee.

In the background of the provisions of the four enactments, the main question which has been agitated by learned Counsel for the appellant is that if an incumbent is appointed as an apprentice/trainee and even if a contract of such apprenticeship has not been registered, then also he does not cease to be an apprentice and his position does not become that of a workman. As against this, learned Counsel for the respondents has strenuously urged before us that non-registration of the contract of apprenticeship under sub-section (4) of section 4 of the Apprentices Act, 1961, with the Apprenticeship Adviser would result in the breach of the contract and the status of an incumbent is changed from apprentice to that of a workman. Therefore, the question arose that whether registration of the contract under sub-section (4) of section 4 is mandatory or directory and, in case it is mandatory, then what is the effect, if it is directory, then what is the effect thereof.

Therefore, now going back to the basic question that in the light of the aforesaid statutory provisions whether non-registration of the contract can render the contract void or illegal and what is the result thereof. From the scheme of things it is more than apparent that the Apprentices Act, 1961 is a complete code in itself and it lays down the conditions of the apprentices, what shall be their tenure, what shall be their terms and conditions and what are their obligations and what are the obligations of the employer. It also lays down that the apprentices are trainees and not workmen and if any dispute arises then the settlement has to be made by the Apprenticeship Adviser as per section 20 of the Apprentices Act, 1961 and his decision thereof is final. Now, under the scheme of these things, it clearly shows that the nature and character of the apprentice

is nothing but that of a trainee and he is supposed to enter into a contract and by virtue of that contract he is to serve for a fixed period on a fixed stipend. This will not change the character of the apprentice to that of a workman under the employer where he is undergoing the apprenticeship training. Sub-section (4) of section 4 only lays down that such contract should be registered with the Apprenticeship Adviser. But by non-registration of the contract, the position of the apprentice is not changed to that of a workman.

It is neither in doubt nor in dispute that an "apprentice" within the meaning of the provisions of the said Act would per se not be a workman within the meaning of section 2(z) of the U.P. Industrial Disputes Act. It is further not in dispute that in terms of section 18 of the Act the apprentices being trainees and not workers would not be entitled to the benefits of provisions of any labour laws.

Similar view has been taken in Mukesh K. Tripathi Vs. LIC, (2004) 8 SCC 387 [LQ/SC/2004/997], and Haryana Power Generation Corpn. Ltd. V. Harkesh Chand, (2013) 2 SCC 29 [LQ/SC/2013/18]. In Dhampur Sugar Mills Ltd. V. Bhola Singh, (2005) 2 SCC 470 [LQ/SC/2005/157], it has been held that in terms of the provisions of the Apprentices Act, 1961, a trainee or an apprentice has no right to be absorbed in services. It is trite that if the provisions of the Apprentices Act apply, the provisions of the labour laws would have no application.

11. In present case, respondent-2 in his written statement has admitted that he was engaged as an apprentice on the post of 'Boiler Attendant' from 9.3.1982 to 8.3.1985, at River Side Power House, of U.P. State Electricity Board. Under section 12(1)(c) of Apprentices Act, 1961, he was under obligation to obey the orders of employer. If during this period, he worked in all the three shifts of duties of 'Boiler Attendant', then also his position from an apprentice will not be changed as the workman in the absence of any other contract of service. After completion of apprentice training on 8.3.1985, respondent-2 remained silent up to 31.12.1992. It is only when award of Adjudication Case Nos. 3 and 4 of 1990 were passed, then respondent-2 also raised present dispute on 31.12.1992.

12. The dispute under Apprentices Act, 1961 cannot be an industrial dispute as provisions of Labour Laws will not apply in view of section 18 (b) of Apprentices Act, 1961. Reference of an industrial dispute for

adjudication to Labour Court and its award is illegal and without jurisdiction."

In the result, the writ petition is succeeds and is allowed. Award of Labour Court is dated 24.5.1996 (published on 23.7.1996), passed in Adjudication Case No. 89 of 1995, is set aside.

21. Even this issue came before this Court also in the matter of **Hanuman Prasad Choudhary and ors. Vs. Rajasthan Electricity Board and ors.** reported in **1985(2) WLN 219** and it was held in para 11 to 15 and 18 as under:-

"11. In my opinion the definition of "workman" as contained in Section 2(s) of the Industrial Disputes Act cannot be read in isolation and while construing the said provision, one cannot lose sight of the provisions contained in Section 18 of the Apprentices Act. The provisions of Section 2(s) of the Industrial Disputes Act were substituted by the Industrial Disputes (Amendment) Act, 1956. The Apprentices Act was enacted by Parliament thereafter. In Section 18 of the Apprentices Act, it has been expressly laid down that save as otherwise provided in the said Act, every apprentice undergoing apprenticeship training in a designated trade in an establishment shall be a trainee and not a worker. The said Section further lays down that the provisions of any law with respect to labour shall not apply to or in relation to such apprentice. This would show that in Section 18 of the Apprentices Act the Parliament has unequivocally declared that a person who is an apprentice under the Apprentices Act is not a worker and the provisions of any law in respect of labour shall not apply to such a person. Industrial Disputes Act is undoubtedly a law with respect to labour in as much as it has been enacted for the investigation and settlement of industrial disputes and for certain other purposes mentioned therein. This would imply that in view of Section 18 of the Apprentices Act, provisions of the Industrial Disputes Act would not apply to the persons who are apprentices under the Apprentices Act. It would thus appear that there is apparent conflict between the provisions of Section 2(s) of the Industrial Disputes Act and Section 18 of the Apprentices Act in as much as Section 2(s) postulates that an apprentice is a workman to whom the provisions of the Industrial Disputes Act would be applicable whereas Section 18 of the Apprentices Act declares that an apprentice governed by the

Apprentices Act is not to be treated as a workman and the provisions of the Industrial Disputes Act would not be applicable to him. In my view this conflict between the provisions of Section 2(s) of the Industrial Disputes Act and Section 18 of the Apprentices Act can be resolved by applying the principle of harmonious construction so that each provision may operate without encroaching on the field of the other.

12. Apprentices Act is not an exhaustive Act to cover all types of apprentices because in view of the definition of the term 'apprentice' as contained in Section 2(aa) of the Apprentices Act, it is applicable only to persons who are undergoing apprenticeship training in pursuance of the contract of Apprentices executed under Section 4 of the said Act. It is possible to visualise persons who may be engaged as apprentices but who are not covered by the Apprentices Act. In this connection reference may be made to the Rajasthan State Electricity Board Technical Workman Service Regulations, 1975. In the said Regulations the term 'workman' has been defined in Regulation 3(i) to include an apprentice. Regulation 5 contains the classification of the various types of workman governed by these Regulations and in clause (vi) of Regulation 5, the apprentice has been defined as under:

(vi) Apprentice: A learner, who is or is not paid an allowance during the period of his training including an Apprentice under the Apprenticeship Act, 1961.

13. This would show that an apprentice who is a workman under the said Regulations would include a person who may not be an apprentice under the Apprentice Act. In that view of the matter, it can be said that for the purpose of Section 2(s) of the Industrial Disputes Act a person who is designated as Apprentice but is not governed by the Apprentice Act would be workman governed by the provisions of the Industrial Disputes Act. But an apprentice who is governed by the provisions of the Apprentices Act, would not be workman under Section 2(s) of the Industrial Disputes Act and would not be governed by the provisions of the Industrial Disputes Act.

14. Apart from the aforesaid principle of harmonious construction, the conflict between the provisions of Section 2(s) of the Industrial Disputes Act and Section 18 of the Apprentices Act can also be resolved by applying the principles of statutory interpretation that the operation of a prior general law may be curtailed by a subsequent particular law. Industrial Disputes Act is a general law applicable to all categories of

workmen whereas the Apprentices Act is a particular law enacted with special reference to apprentice, The definition of workman in Section 2(s) of the Industrial Disputes Act was enacted in 1956 whereas the Apprentices Act was enacted in 1961. Section 2(s) of the Industrial Disputes Act is thus prior to the general law and Section 18 of the Apprentices Act is a subsequent particular law. The provisions of Section 18 of the Apprentices Act will, therefore, prevail over the provisions contained in Section 2(s) of the Industrial Disputes Act relating to apprentices and an apprentice governed by the Apprentices Act cannot be regarded as a workman under Section 2(s) of the Industrial Disputes Act.

15. It is true that in the Employee State Insurance Corporation and Anr. v. The Tata Engineering & Locomotive Co. Ltd., and Anr. (supra) the Supreme Court has referred to the inclusive definition of workman contained in Section 2(s) of the industrial Disputes Act and has pointed out that apprentice has been expressly included in the said definition. But in the said case the Supreme Court has not considered the definition of Section 2(s) of the Industrial Disputes Act in conjunction with the provisions of Section 18 of the Apprentices Act. In that case the Supreme Court was primarily concerned with the question as to whether an apprentice could be regarded as an 'employee' under Section 2(9) of the Employees State Insurance Act, 1948. The aforesaid decision cannot be read as laying down that inspite of the provisions of Section 18 of the Apprentices Act, an apprentice governed by the Apprentices Act is to be treated as a workman under Section 2(s) of the Industrial Disputes Act. It must, therefore, be concluded that an apprentice governed by the Apprentice Act is not a workman for the purpose of the Industrial Disputes Act and the provisions of the Industrial Disputes Act would not be applicable to him.

18. Since the Petitioners were not workmen under Section 2(s) of the Industrial Disputes Act. they cannot invoke protection of Section 25F of the said Act and the impugned orders cannot be assailed on the ground that the same were passed in contravention of the provisions of Section 25F of the Industrial Disputes Act. The first contention urged by Shri Kuhad is, therefore, rejected."

22. Bare perusal of the record indicates that all the respondents have executed Apprenticeship Contract/agreement for 11 months by reading the terms and conditions mentioned therein from their naked open eyes. Hence, they are bound by the same and they are estopped to challenge the same after expiry of their term as Apprentice. Now, they cannot claim themselves as 'Workmen' to invoke the jurisdiction of the Labour Court under the provision of the Act of 1947 as the same was not applicable in their case as per Section 18 of the Act of 1961.

23. Hon'ble Apex Court in the case of **State of Maharashtra and ors. Vs. Anita and anr.** reported in **2016 (8) SCC 293** has held that looking to the nature of the appointment having duly accepted the term of it, the candidate is estopped from challenging the nature of appointment at the end of his service.

24. It is well established principle of law and it is a well know fact that in a given case Court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of interpretation when the language of the apprenticeship agreement is plain and unambiguous. It cannot add or subtract the words to the same or read something into which is not there. It cannot rewrite or recast the apprenticeship agreement of respondents. When the apprenticeship agreement executed by the respondents indicates that they were engaged as 'Apprentice' then with stretch of no imagination the respondents can be treated as 'Workman'.

25. Considering the facts and circumstances of this case, this Court is of the considered opinion that the State Government was not competent to make a reference under Section 4(K) of the Act of 1947 and the Tribunal has miserably failed while making the

award when specific plea was raised about the maintainability of the proceedings in view of the fact that it does not have the jurisdiction to decide the dispute in view of Section 18 of the Act of 1961.

26. The dispute under the Act of 1961 cannot be treated as industrial dispute as the provisions of the labour law are not applicable in view of Section 18 of the Act of 1961. Reference of the industrial dispute for adjudication to the Tribunal and its award is illegal and without jurisdiction.

27. Resultantly, all these petitions succeeds. Awards passed by the Tribunal are quashed and set aside.

28. No order as to costs.

(ANOOP KUMAR DHAND),J

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