Employees' State Insurance ... vs Tata Engineering & Co. Locomotive ... on 8 October, 1975

Equivalent citations: 1976 AIR 66, 1976 SCR (1) 199, AIR 1976 SUPREME COURT 66, 1975 2 SCC 835, 1976 LAB. I. C. 1, 1976 (1) SCJ 463, 1976 2 SCR 199, 1975 2 LABLN 498, 1976 (1) LABLJ 81, 31 FACLR 387, 48 FJR 206, 1976 (1) SCWR 190, 1976 UJ (SC) 879, ILR 1976 KANT 403

Author: P.K. Goswami

Bench: P.K. Goswami, A. Alagiriswami, N.L. Untwalia

PETITIONER:
EMPLOYEES' STATE INSURANCE CORPORATION AND ANR.

Vs.

RESPONDENT:
TATA ENGINEERING & CO. LOCOMOTIVE CO.LTD. AND ANR.

DATE OF JUDGMENT08/10/1975

BENCH:
GOSWAMI, P.K.
BENCH:
GOSWAMI, P.K.
ALAGIRISWAMI, A.
UNTWALIA, N.L.

CITATION:
1976 AIR 66 1976 SCR (1) 199
1975 SCC (2) 835

ACT:
Employees State Insurance Act, 1948 -Sec. 2(9)-An apprentice whether an employee.

HEADNOTE:
The appellant contended before the Industrial Tribunal that the apprentices to which the Employees State Insurance Act, 1948 applies. The factory employs besides regular employees, two sets of apprentices. Graduate apprentices for a period of two years and Trade apprentices for the duration of 3 years. The graduate apprentices receive stipend of Rs. 250/- per month for the first year and Rs. 300/- per month during the second year. The trade apprentices receive

stipend of Rs. 2/- Rs. 2.50 and Rs. 3.00 per diem during the first, second and third years of the apprenticeship respectively. No further emolument is paid to the apprentices. A deed of apprenticeship is signed by the company, the apprentice and the surety by which the company agrees to provide to the apprentice necessary training in its factory and that after the apprentices successfully pass the examination after the training is completed they would be considered for absorption as skilled worker although the Company is not under a legal obligation to offer them employment. Another term provides that the apprentices would during the period of apprenticeship diligently and faithfully serve the Company and to the utmost power and skill attend to the Company's business. The apprentices give a bond for serving the Company for 5 years after their training is successfully completed.

The appellant contended before the Industrial Tribunal that the apprentices are employees within the meaning of the Act. The Tribunal did not accept the appellant's contention. The High Court rejected the writ petition filed by the appellant. On an appeal by certificate under Art. 133(1) (a) and (b) of the Constitution it was contended by the appellant that the words "serve the Company" appearing in the apprenticeship agreement introduce a relation of master and servant.

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HELD : (1) The word "apprentice" is not defined in the Act. In ordinary acceptation of the term apprentice a relationship of master and servant is not established in law. The dictionary meaning does not accept such a relationship. The heart of the matter or the dominant object in apprenticeship is the intent to impart on the part of the employer and to accept on the part of the other person learning under certain agreed terms. Such a person remains a learner and not an employee. The fact that certain payment is made does not convert the apprentice into a regular employee. An examination of the provisions of the entire agreement leads us to the conclusion that the principal object with which the parties enter into the agreement of apprenticeship was offering by me employer an opportunity to learn the trade or craft and the other person to acquire such knowledge. [201F, 202D-F]

(2) The Apprentices Act, 1850, defines an apprentice as a person who is undergoing apprenticeship training in a designated trade in pursuance of a contract of apprenticeship. Whenever the legislature intends to include an apprentice in the definition of a worker it has expressly done so, for instance, while defining a worker under s. 2 of the Industrial Disputes Act, 1947. The very next year while passing the Employees State Insurance Act, 1948, the Legislature did not choose to include apprentice while defining the word employee. Such a deliberate omission on the part of the Legislature can be only

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attributed to the well known concept of apprenticeship which the Legislature assumed and took note of for the purpose of the Act. The apprentices are not given the wages as defined by s. 2(22) of the Act. The apprentices are not covered within the definition of the employees under s. 2(9) of the Act. They are not entitled to the daily allowances and other allowances to which the regular employees are entitled. The apprentice is, therefore, not an employee within the meaning of s. 2(9) of the Act. [202G-H, 203-B-D, 204-B-C]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2113 of 1969.

From the Judgment and order dated the 3rd May, 1966 of the Patna High Court at Patna in Misc. J. Case No. 289 of 1964.

G. L. Sanghi, S. P. Nayar and Girish Chandra, for the Appellant.

M.C. Bhandare, O.C. Mathur, D. N. Mishra and J.B. Dadachanji for respondents.

The Judgment of the Court was delivered by GOSWAMI, J. Is an apprentice an "employee" under the Employees State Insurance Act, 1948 ? That is the question raised in this appeal by certificate under article 133(1)

(a) & (b) of the Constitution from the judgment of the Patna High Court by which it refused to interfere with the order of the Industrial Tribunal passed under section 73B of the Employees' State Insurance Act, 1948 (briefly the Act).

The respondent is a public limited company having its registered office at Bombay and its factory at Jamshedpur in the State of Bihar. The Act is applicable to the company's factory. Besides regular employees in the company, there are two sets of apprentices, namely, graduate apprentices for a period of two years and trade apprentices for the duration of three years. The graduate apprentices receive stipend of Rs. 250.00 per month in the first year and Rs. 300.00 per month during the second year. The trade apprentices receive stipend at the rate of Rs. 2.00, Rs. 2.50 and Rs. 3.00 per diem during the first, second and third year of the apprenticeship respectively. No other emoluments except the daily allowance or the monthly stipends are paid by the company to the apprentices. A deed of apprenticeship is signed by three parties, namely, the apprentice, his surety and the company and it contains the terms and conditions of apprenticeship From the said terms and conditions which are common for both sets of apprentices except for the quantum of stipends and the duration, it appears that the company agrees to provide the apprentice a combined theoretical and practical training in its factory for the respective period above mentioned and the apprentice also binds himself to serve the company for the purpose of the said training for the said period. Clause (7) of the agreement provides that if the apprentice successfully passes the

examination after training he will be considered for absorption as skilled worker although the company is under no legal obligation to offer him employment. There are other conditions in the agreement with regard to matters of discipline during the apprenticeship.

Our attention was particularly drawn to the following provisions in the agreement:

> "12. In consideration of the company having agreed to give the Apprentice training in its Works (Automobile Division) and to pay the apprentice the aforesaid daily allowance or stipend, the apprentices and the surety as the father or guardian of the apprentice jointly and severally covenant with the company as follows:-
>
> (i) That the apprentice will during the whole of the said term of three years of training diligently and faithfully serve the company and to the utmost power and skill attend to the company's business at such places and times as the company or its representatives shall direct.
>
> * * * * *
>
> (v) The apprentice shall immediately on the satisfactory completion of his training for the full term of three years serve the company for a period of five years, if so required by the company on such conditions as the company may offer having regard to his personal qualifications or acquirements and complying with the Rules & Regulations as are contained in the Works Standing Orders of the company".

Without citing all the terms and conditions of the agreement, it is apparent that an apprentice is not in the regular employment of the company.

It is, however, submitted on behalf of the appellants that the words "serve the company" in clause 12(i), which are repeated in clause (v), introduce a relationship of master and servant thus constituting apprentice an employee as ordinarily understood. We attach no special significance to the use of the words "serve the company" in the above clauses.

The word 'apprentice' is not defined in the Act, nor is it specifically referred to in the definition of 'employee' by either inclusion or exclusion. We are unable to hold that in ordinary acceptation of the term apprentice a relationship of master and servant is established under the law. Even etymologically, as a matter of pure English, "to serve apprenticeship means to undergo the training of an apprentice" (Chamber's Dictionary). According to the Shorter Oxford English Dictionary apprentice is "a learner of a craft; one who is bound by legal agreement to serve an employer for a period of years, with a view to learn some handicraft, trade, etc. in which the employer is reciprocally bound to instruct him".

Stroud's Judicial Dictionary puts it thus:

> "In legal acceptation, an apprentice is a person bound to another for the purpose of learning his Trade, or Calling; the contract being of that nature that the master teaches and the other serves the master with the intention of learning".

While dealing with the nature of the relationship of master and servant in comparison with other relationships in Halsbury's Laws of England, Third edition, Volume 25, the following passage appears at para 877, pages 451-452:

> "By a contract of apprenticeship a person is bound to another for the purpose of learning a trade or calling, the apprentice undertaking to serve the master for the purpose of being taught, and the master undertaking to teach the apprentice. Where teaching on the part of master or learning on the part of the other person is not the primary but only an incidental object, the contract is one of service rather than of apprenticeship; but, if the right of receiving instruction exists, a contract does not become one of service because, to some extent, the person to whom it refers does the kind of work, that is done by a servant, or because he receives pecuniary remuneration for his work."

The heart of the matter in apprenticeship is, therefore, the dominant object and intent to impart on the part of the employer and to accept on the part of the other person learning under certain agreed terms. That certain payment is made during the apprenticeship, by whatever name called, and that the apprentice has to be under certain rules of discipline do not convert the apprentice to a regular employee under the employer. Such a person remains a learner and is not an employee. An examination of the provisions of the entire agreement leads us to the conclusion that the principal object with which the parties enter into an agreement of apprenticeship was offering by the employer an opportunity to learn the trade or craft and the other person to acquire such theoretical or practical knowledge that may be obtained in the course of the training. This is the primary feature that is obvious in the agreement.

Now coming to the legislative history of our country on the subject, it is interesting to note that more than hundred years back we had the Apprentices Act, 1850 and its preamble says "For better enabling children, and especially orphans and poor children brought up by public charity, to learn trades, crafts and employments, by which, when they come to full age, they may gain a livelihood.....". Learning of craft or trade was the essence of the said legislation. This Act was repealed by section 38 of the Apprentices Act, 1961. The object of 1961 Act is to provide for the regulation and control of training of Apprentices in trades and for matters connected therewith. By the definition clause under this Act, namely, section 2(a) "'apprentice' means a person who is undergoing apprenticeship training in a designated trade in pursuance of a contract of apprenticeship". It is, therefore, inherent in the word 'apprentice' that there is no element of employment as such in a trade or industry but only an adequate well-guarded provision for training to enable the trainee after completion of his course to be suitably absorbed in earning employment as a regular worker. The fact that a trainee may have been absorbed in the company where he is undergoing the training, is not relevant for the purpose of comprehending the content of term.

Again we find that where the legislature intends to include apprentice in the definition of a worker it has expressly done so. For example, the Industrial Disputes Act, 1947, which is a piece of beneficial labour welfare legislation of considerable amplitude defines 'workmen' under section 2(s) of that Act and includes apprentice in express terms. It is significant that although the legislature was aware of this definition under section 2(s) under the Industrial Disputes Act, 1947, the very following year while passing the Employees' State Insurance Act, 1948, it did not choose to include apprentice while defining the word 'employee' under section 2(9) of the Employees' State Insurance Act, 1948. Such a deliberate omission on the part of the legislature can be only attributed to the well-known concept of apprenticeship which the legislature assumed and took note of for the purpose of the Act. This is not to say that if the legislature intended it could not have enlarged the definition of the word 'employee' even to include the 'apprentice' but the legislature did not choose to do so.

Even then the question is whether such an apprentice is an employee within the meaning of the term under section 2(9) of the Act. If the answer is yes, he will be governed by the Act and the appellants' claim for charging the company with liability for payment of special contribution under Chapter VA of the Act in respect of the apprentice will be justified.

We may, therefore, turn to the definition of 'employee' under section 2(9) of the Act. So far as is material, section 2(9) reads as follows:-

> " 'employee' means any person employed for wages in or in connection with the work of a factory or establishment to which this Act applies and-
>
> (i) who is directly employed by the principal employer in any work of, or incidental or preliminary to or connected with the work of, the factory or establishment, whether such work is done by the employee in the factory or establishment or elsewhere....."

It is clear that in order to be an employee a person must be employed for wages in the work of a factory or establishment or in connection with the work of a factory or establishment. Wages is defined under section 2(22) and "means all remuneration paid or payable in cash to an employee, if the terms of the contract of employment, express or implied, were fulfilled and included any payment to an employee in respect of any period of authorised leave, lockout, strike which is not illegal or layoff and other additional remuneration, if any, paid at intervals not exceeding two months, but does not include....."

From the terms of the agreement it is clear that apprentices are more trainees for a particular period or a distinct purpose and the employer is not bound to employ them in their works after the period of training is over. During the apprenticeship they cannot be said to be employed in the work of the company or in connection with the work of the company. That would have been so if they were employed in a regular way by the company. On the other hand the purpose of the engagement under the particular scheme is only to offer training under certain terms and conditions. Besides, the apprentices are not given wages within the meaning of that term under the Act. If they were regular employees under the Act, they would have been entitled to additional remuneration such as daily allowance and other allowances which are available to the regular employees. We are, therefore,

unable to hold that the apprentice is an employee within the meaning of section 2(9) of the Act.

Incidentally we may note that section 18 of the Apprentices Act, 1961, provides that-

> "save as otherwise provided in this Act, every apprentice undergoing apprenticeship training in a designated trade in an establishment shall be a trainee and not a worker...."

The concept of apprenticeship is, therefore, fairly known and has now been clearly recognised in the Apprentices Act. Apart from that, as we have noticed earlier, the terms and conditions under which these apprentices are engaged or not give any scope for holding that they are employed in the work of the company or in connection with its work for wages within the meaning of section 2(9) of the Act. The appeal, therefore, fails and is dismissed. There will be, however, no order as to costs.

P.H.P. Appeal dismissed.