A THE FACTORY MANAGER CIMMCO WAGON FACTORY

v.

VIRENDRA KUMAR SHARMA AND ANR.

JULY 26, 2000

B [S. RAJENDRA BABU AND SHIVARAJ V. PATIL, JJ.]

Labour Laws :

Industrial Disputes Act, 1947 : Sections 2(s) and 10(1).

C

Workman—Determination of—Respondent worked as apprentice for two spells with the Company—Payment of stipend during apprenticeship period—Company under no obligation to provide employment after apprenticeship—No appointment letter issued—However recommendatory D *letters issued by Deputy Manager of Company, who was not competent authority, for appointment of respondent—Suggestion by Deputy Manager to respondent to work in anticipation of securing employment—No salary paid to the respondent—Held in the circumstances claim of the respondent that he was a workman was not established.*

E *Factories Act, 1948 : Section 103.*

Presumption as to employment—Nature and applicability of—Held rebuttable.

Constitution of India, 1950 : Article 226

F

Writ Jurisdiction—Scope of—Findings of fact recorded by Labour Court—Interference with by High Court—Permissibility of.

The State Government of Rajasthan made a reference under Section 10(1) of the Industrial Disputes Act, 1947 regarding validity of the termination G **of service of the respondent. The respondent worked as an apprentice with the appellant-company in two spells. He was paid stipend of Rs. 250 per month during the apprenticeship period. There was a specific clause which provided that after the expiry of the training period, the appellant-company shall not be under any obligation to give employment to the respondent. No appointment letter was issued to the respondent. There was no evidence on record to indicate**

H

that either GPF or ESI were deducted from the salary of the respondent as he was not being paid any salary. However, the Deputy Manager of the Company who was not the appointing authority, had written two letters to the Vice President of the appellant-company recommending the appointment of the respondent. A

Labour Court held that the respondent was not a workman. It held that (i) presumption as to the employment of the respondent that could be raised under Section 103 of the Factories Act, 1948 stood rebutted as no appointment letter was given to the respondent; (ii) the relationship of master and servant did not exist between the appellant and the respondent. The Award passed by the Labour Court was unsuccessfully challenged before a Single Judge of the High Court which dismissed the writ petition filed by the respondent and declined to exercise jurisdiction under Article 226 of the Constitution. He found that not a single document was placed on record from which it could be established that the respondent was a regular employee. On appeal Division Bench quashed the Award passed by the Labour Court and allowed the writ petition of the respondent. The Division Bench relied on two letters written by the Deputy Manager of the Company and held that though no appointment letter was issued to the respondent nor was any payment made to him yet it was established that he was asked to work in the factory by the authorities. Accordingly, it ordered reinstatement of the respondent with direction for payment of 25% of the back wages. Against this decision the company preferred appeal before this Court. The respondent aggrieved by the denial of full back wages also preferred an appeal before this Court. B C D E

Allowing the appeal of the company and dismissing that of the respondent, the Court F

HELD: 1. Having regard to the facts and 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. Consequently, it is difficult to sustain the impugned order which is set aside and the award of the Labour Court is restored. [685-B-C] G

2. The Division Bench of the High Court in the impugned order had relied on two letters written by Deputy Manager to the Vice President of the appellant factory. From a plain reading to these letters it is clear that they are only recommendatory. Further the Deputy Manager was not competent authority to give any appointment. Assuming that the respondent was asked H

to work in the factory in anticipation of securing employment, that too by an officer who was not competent to give appointment, it did not make the respondent workman or regular employee of the appellant company. [684-A-B; D]

3. The Division Bench was not right in raising presumption under Section 103 of the Factories Act, 1948 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. The presumption available under Section 103 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 dispute referred to under Section 10 of the Industrial Disputes Act, 1947. 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 in his favour was not correct. At any rate there were no good reasons sustainable in law to upset the findings of fact recorded by the Labour Court passed 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. [684-D; 685-A-B]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4501 of 1998.

From the Judgment and Order dated 3.12.97 of the Rajasthan High Court in D.B.C.S.A. No. 523/97 in S.B.C.W.P. No. 1384 of 1987.

WITH

Civil Appeal No. 5408 of 1998.

Dr. A.M. Singhvi, S.B. Sanyal, A.K. Singh, Rajendra Singhvi, P.N. Gupta, Ms. Manita Verma and Goodwill Indeever for the appearing parties.

The Judgment of the Court was delivered by

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 : A

> "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 B 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. C 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 D 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 E 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 F 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 G 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.

H

A 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/ B 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.

C 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 D 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 E 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 F 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 G 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 H 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. A

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. B C D E F

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 G H

A 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 B 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:

C "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 D 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 E 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* F *thereunder* to have been at that time employed in the factory."

(Emphasis supplied)

The presumption available under this Section in the first place is rebutable and secondly it is available only for the purpose of the said Act. G 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 H 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. A
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 B
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 C
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. D
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.

T.N.

C.A. No. 4501/98 dismissed.
C.A. No. 5408/98 allowed.