



ISSN 2278 – 0211 (Online)

Apprentice vs. Workman' in Industry- A Managerial Dilemma

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Abstract:

The Case relates to HRM & Labour Law domain concerning Legal & HR aspects of status of an Industrial Apprentice Vis-à-vis an Industrial Employee (i.e. Workman) in Indian Organizations & entitlements or otherwise to various labour law benefits etc. The law & practice of engaging & training Industrial Apprentices is very much prevalent in Indian Industry particularly the manufacturing sector. Engaging, Training & Managing apprentices in industry is a challenging task of Manager's job profile and the issue(s) relating the legal status of an apprentice vis-à-vis a workman is complex & lacks clarity leading to Managerial Dilemma.

One of the key indicators of healthy Industrial Relations (IR) or Employee Relations (ER) is absence of disputes or grievances between two major partners in Industry i.e. Labour & Management. Cordial, smooth, peaceful and harmonious Industrial Relations (IR) in turn is one of the most vital prerequisite for the success of an industry contributing towards the growth of an economy & national prosperity. The issue relating to legal status of an employee in an industrial organization is an important determinant indicating the state of industrial relations in an organization. The legal status of human resource in an industrial organization i.e. Whether an employee is a workman or a trainee workman (i.e. an apprentice) is a very crucial aspect and a sensitive issue in managing people and in particular handling employee relations in an organization and hence is an important facet of human resource management since it has legal & other HR-IR implications. The subject matter of this case is one such areas having bearing upon the IR/ER in industry in India.

The Case intends to teach the legal and HR related issues & implications relating to the subject matter & valuable learning's for business & corporate managers can be drawn to make efficient & hassle free use the apprentices in their organization and to avoid IR issues, disputes, litigations & controversies relating to the status of an employee (entitled to most of the labour law benefits) vis-à-vis an apprentice (not entitled to most of the labour law benefits). The case aims at clarifying a managerial dilemma about the subject matter.

Keywords: An Apprentice, workmen, legal status, industrial disputes, labour law benefits & facilities, hr issues & implications, remedial measures.

1. Introduction

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2. Research Methodology

The case is compilation of real life events/incidences/facts reported from the case law rulings/judgments of the Supreme Court in India and High Courts from the reported & authentic case law reporters/journals. (References & Citations provided in teaching Notes). The case is based on the library sources i.e. secondary data. The case is purposefully silent about the court rulings (Judgments) to assess participant's ability to reach/draw right conclusions/inferences. The reference to court rulings (Judgments) and the relevant statutory provisions of law will be the part of teaching notes.

2.1. Company Profile

'Mewa' Foods Pvt. Ltd. a company based out of Nagpur, Maharashtra is engaged in production, distribution & sales of food items Viz. Sweets, Snacks, *Namkeens*, Breads & other Bakery items. It has a manufacturing unit located at MIDC area Nagpur. The manufacturing plant works round the clock (24/7) in 3 shifts. The plant is spread over 25 acres of land and employees total 500 employees inclusive of managerial, supervisory & clerical staff of 100 employees. There are 400 operative workmen engaged in production, packaging & quality check departments. The administrative staff, department heads & general manager reports in general shift i.e. 9 AM to 5 PM on week days. The shift supervisors & operative staff (workmen) work in 3 shifts by rotation on weekly basis. The Registered cum Head office of the company is located in Nagpur City.

2.2. HR Department

Manager (HR) of the production plant is responsible for handling industrial/employee relations, dealing & negotiating with the trade unions, complying with labour laws, handling court cases, monitoring facilities & wage & salary administration. The Plant HR Manager is also responsible for recruitment of staff, workmen and engagement of trainees (i.e. apprentices). Designing & implementing training schemes for skill development is also done by HR Manager in consultation with production, packaging & quality check Managers. HR Manager report to General Manager (Plant Administrative Head) and the VP (HR) functionally who is based at Nagpur City Head office of the company.

The following instance created unrest amongst employees & led to strained relations between the management & workmen and also industrial dispute & court litigations. The HR Manager of the plant & the VP (HR) were confused & are in dilemma to resolve the issue(s) which have both legal & industrial relations implications.

The General Manager asked the Plant HR manager to design a training scheme & engage about 50 trainees i.e. apprentices as Job Trainees & Trainee Operators. Job Trainees will be have minimum educational qualification on 10th Std. and Trainee Operators will be 10th Std. pass plus two years ITI (industrial training institute) govt. recognized certificate course The qualifying age for these two categories will be 16 years & 18 years respectively. Both the category of these trainees (apprentices) will undergo training for two years from their joining date. Job Trainees will get a monthly stipend of Rs. 1000/- and will be trained in packaging and labeling. Trainee Operators will be imparted on the job technical & skill training on machines in the production dept & will get a monthly stipend of Rs. 2000/-

Suitable candidates will be considered for regular employment on successful completion of two years training. On absorption (as regular employees) the job trainees will be put in semi-skilled category workmen with minimum wages of Rs. 5000/- per month & other labour law benefits and facilities. Whereas Trainee Operators will be put in skilled category workmen with minimum wages of Rs. 10,000/- per month and other labour law benefits & facilities.

HR Manager in consultation with other Managers designed the training scheme and got it approved from the General Manager & VP (HR). The Company engaged 25 Job Trainees & 25 Trainee Operators. These trainees were engaged through contracts signed & executed under the Apprentices Act 1961. Parents signed the contract in case of those candidates who were below 18 years of age. Although the training agreements were signed as per the format under the apprentices act, the documents could not be sent to govt. authorities under the apprentices act for registration of these apprenticeship contracts.

The management implemented the training scheme & the trainees were imparted theoretical & practical training under supervision of shift supervisors & trained senior workmen. After couple of months the festive season started. Due to the festive season the demand for the food products increased substantially. Also there was huge absenteeism of regular workmen due to festive season. The management decided to put these trainees on regular jobs in place the absenting workmen & asked them to give normal production and at times to work on overtime & even in night shifts to meet the increasing customer demands. These trainees continued to work like regular workmen even after the festive season till the end of their two years training period. They were however not given any wages, benefits or facilities which regular employees get. These trainees were given the monthly stipend as per the apprenticeship agreement although they worked as regular permanent company workmen for all practical purposes.

At the end of two years training period, the trainees whose so called training (performance) was found satisfactory were not offered regular employment by the company & their training was terminated under the pretext that they have completed the training as per the contract and their services in future are no longer required by the company. The trainees whose so called training (performance) was not up to the mark were also asked to quit with the reason that their training was not satisfactory.

This created huge unrest amongst the trainees. The trainees approached the labour unions for help. The labour unions also took up the cause of these trainees and demanded that these trainees be given jobs. The Management refused to concede the demand of the trainees & the unions saying that these trainees were engaged under the apprentices act and had agreed to undergo training as per the terms of the apprenticeship contract further management had not given these trainees any job assurance or commitment of absorption on completion of the training. The management's stand is there is no legal obligation to give permanent jobs to these trainees. The Industrial relations took an adverse turn in the company with agitations & frequent work stoppages. The trainees filed a court case in the labour court saying that they have acquired the status of permanent/regular workman as they have worked for more than one year in the company doing the duties like any other regular workman (and that their so called training was mere an eye-wash) & hence they should be given permanent jobs in the company with all applicable labour law benefits & facilities. The management is opposing the claim on the ground that a trainee engaged under contract of apprenticeship cannot be considered as workman & is not entitled to reinstatement and labour law benefits. However management is in need of trained & experienced manpower to manage its growing business. What should management do? The company management seeks your advice/guidance to overcome its dilemma on the following issues/questions. Answer with reference to relevant Industrial labour law provisions & court rulings.

2.3. Issues

1) Whether Apprentices are Workmen in Industry? 2) Whether registration of an Apprentice under Apprentices Act is Mandatory? 3) Whether apprentices under designated trades can only be registered under Apprentices Act? 4) What is or what should be the legal status of apprentices who are engaged in non-designated trades or who are not registered under Apprentices Act? 5) What is the legal status of apprentices who are appointed under standing orders or employer's own training schemes? 6) Which apprentices would fall in workman category under Industrial Disputes Act 1947 & 7) whether procedure for termination i.e. retrenchment is necessary to be followed in respect of apprentices? Whether apprentices are entitled to labour law benefits & facilities Viz. Minimum wages, ESI, PF, Bonus, Gratuity etc? 8) What are the legal & HR implications (i.e. effect or consequences) of not clarifying the legal status of an apprentice vis-à-vis a workman under industrial employment laws in India?

3. Findings & Conclusions

1. There is no express provision in Apprentices Act 1961 & the Apprentices' Rules that registration of contract of apprenticeship with apprenticeship advisor is mandatory. There is also no specific provision about the effect of non-registration of the contract particularly with regard to the status of an apprentice i.e. whether such a person whose contract is not registered remains an apprentice or is treated as workman. The Apprentices Act 1961 & the apprentices' rules are silent about this aspect. However perusal & analysis of the object, scheme & legal provisions of Apprentices Act & Rules as cited above clearly indicate that registration is compulsory though not expressly provided for. According to the researcher the registration of apprentices is and should be compulsory under the apprentices act.
2. The nature, scope, objectives and scheme of the Apprentices Act & Rules reveals that the said Act & Rules applies only to apprentices under 'designated trades'. Sections 2(e), (k), 3, 3A, 3B, 4(1), 4(5), 8, 18 (a) of the Apprentices Act apply to apprentices in 'designated trade' only. These provisions do not refer to apprentices in non-designated trades. In short the act & rules apply only to designated trades in the fields of engineering, technology and vocational courses. It means it does not apply to & cover trainees which are engaged in fields otherwise than prescribed in the act (i.e. non-designated trades) again it applies only to those trainees who satisfy norms of age, education & physical fitness. [Sec. 3 (a) & (b) with rules 3 & 4]. Section 18 applies to apprentices in designated trades and to such apprentices' labour laws will not apply. It means apprentices in non-designated trades should get the status of workman & should be governed by labour laws. It is only the govt. authority (apprentice advisor) or courts can decide whether a person is engaged in designated trade or not after checking & verifying whether the norms laid down under apprentices act & rules are satisfied or not. Such a duty is put on the Apprentices Advisor. The notifications about the designated trades can be issued by govt. Authorities only. Neither the employer nor the apprentice can decide upon these techno-legal issues.
3. The perusal & scanning of apprentices act & rules reveals that the persons engaged in clerical & management training does not fall in designated trades & hence such trainees will not be covered by apprentices act (& hence should get the status of workman under ID Act) The clerical & management trainees which do not possess any supervisory or managerial powers or authority should be treated as workman u/s 2 (s) of ID Act.
4. Sections 4(1) and 4(4) of Apprentices Act read with Rule No. 4-B & 6 requires that every contract of apprenticeship has to be sent by the employer to apprenticeship advisor for registration within 3 months time from the date of making of a contract for undergoing apprenticeship training in a designated trade.
5. The Hon'ble Apex Court in U.P. State Electricity Board Vs Shiv Mohan Singh 2005 I LLJ 117 SC has treated both registered and unregistered apprentices at par and equal and neither sending of nor registration of the contract of apprenticeship is needed. The apex court judgment is silent about and does not refer to anything about trainees in designated or non-designated trades. It seems that the judgment applies to all trainees (registered or un-registered, designate or non-designated) It only refers to a contract of apprenticeship being simply drafted, drawn & signed under Apprentices Act and even sending of such contract to apprentice advisor (though recommended) is not held to be compulsory. This landmark & epoch making apex court judgment leads to the conclusion that once a contract of apprenticeship is drawn & executed under Apprentices Act irrespective of the fact that whether it is registered or not or even sent for registration or not and irrespective whether the

training imparted is in a designated trade or not still all such trainees or learners will be apprentices and not workers and will not be entitled to labour law benefits in view of section 18 of the Apprentices Act.

6. There are High Court rulings cited above which have held that mere designation as an apprentice, non-registration of apprenticeship contract, apprenticeship training in non designated trades and failure to comply with provisions of Apprentices Act & Rules will lead to the conclusion that such person will be a workman & not an apprentice and the provisions of ID act will apply. The High Court rulings clearly indicate and lay down that an apprentice who is not governed by Apprentices Act will be a workman covered by Industrial Disputes Act. The researcher concurs with the views expressed in these High Court Rulings cited above.
7. Under IESO Act 1946, Rules & Model Standing Orders the Apprentices are clearly classified as Workman (item-1 of schedule u/s 2-A) and the definitions of 'workman' under IESO Act & ID Act are identical (Sec. 2(s) of ID & 2(i) of IESO Act). Further nowhere under standing orders act, rules or model standing orders the nature & scope of the term/expression 'apprentice' is defined. Nor there is any provision of registration of apprentices or apprenticeship scheme under the IESO Act 1946. Hence as soon as person or an apprentice is a workman under ID Act, he will also be a workman under IESO Act and consequently should also be a workman/employee for the purposes of other labour laws i.e. Bonus, Gratuity, ESI, PF, Equal Remuneration & Minimum wages Act.
8. PG (Gratuity) Act & PB (Bonus) Act excludes apprentices for the purpose of receiving the benefit however it is not clear as to which apprentices are excluded. Whether all apprentices are excluded or only apprentices under apprentices act & standing orders are excluded (like that of ESI & EPF Acts) Assuming that apprentices under employer's own scheme and/or under standing orders are excluded for getting gratuity and bonus then this will lead to a controversial issue as these apprentices (under standing orders or under employer's own scheme) would be workman within the meaning of ID Act 1947 (Sec. 2(s)). Such apprentices being workman can claim gratuity & bonus from the employer and if denied will lead to industrial conflicts & disputes. The ER/IR relations will be hampered. Apprentices under standing orders & under employers' own schemes will be & should be workman/employees for all labour law purposes & benefits.
9. Registered apprentices in designated trades under apprentices act would alone qualify for exemption from labour law benefits and facilities in view of section 18 of the act. however such an apprentice would be a workman or a worker for the purposes of Workman Compensation Act 1923 for getting employment injury compensation (Sec. 16) & health, safety, welfare benefits & protections under Factories Act 1948 (Sec. 14), whereas their payment (stipend), hours of working & leave benefits will be regulated by Apprentices Act & rules (Sec. 13 & 15).
10. Employers may misuse/abuse the shortcoming, lacunae in the legal provision and take undue advantage of the Hon'ble SC Judgment in Shiv Mohan Singh's Case to exploit the workmen by A) designating them as apprentices under apprentices act, and B) even appointing them in non-designated trades, C) neither sending/nor registering the contract of apprenticeship and 4) there by denying them their legitimate claims to ESI, PF, Bonus, Gratuity and Minimum Wages etc which may lead to unrest & exploitation of workman (designated as apprentices) adversely affecting the industrial relations. Not clarifying the legal status of apprentices in industry & their entitlements to labour law benefits and facilities might lead to a similar sensitive and explosive situation of contract labour incident at Manesar recently.

4. Suggestions & Recommendations

- 1) Registration of Apprenticeship contract under the Apprentices Act 1961 should be made compulsory. Employer must send for registration the contract of apprenticeship drawn in a prescribed format to apprenticeship advisor within 3 months from the date of its execution. The apprenticeship advisor must communicate the acceptance or otherwise rejection of the contract of apprenticeship to the parties (employer & trainee) within 2 months time from the date of its receipt. In case there is no communication from the apprenticeship advisor within the stipulated time of 2 months then the contract of apprenticeship shall be deemed to have been accepted for registration & shall be treated as registered. The registration shall take effect from the date of commencement of apprenticeship training.
- 2) The apprenticeship advisor shall adjudicate upon the fairness & reasonableness of the terms of contract of apprenticeship and shall ensure that the terms & conditions of the contract of apprenticeship are consistent with and in compliance to the Apprenticeship Act and the Rules and other labour laws. The apprenticeship advisor while exercising the duty as mentioned above shall offer opportunity of hearing to both the parties and shall invite objections if any from concerned parties before registering the contract of apprenticeship.
- 3) The apprenticeship advisor shall register the contract after following above procedure mentioned in point nos. 2 above. A duly registered apprentice in a designated trade under the apprentice act/rules shall not be a workman as defined under sec. 2(s) of ID Act or an 'employee' as defined under any state law dealing with industrial relations/disputes applicable to any industry and the labour laws shall not apply unless specifically/expressly included for any facility or benefit under the said law i.e. section 18 of Apprentices Act shall apply only to registered apprentices in designated trades. Registered-designated apprentices under Apprentices Act shall however continue to get only those labour law facilities & benefits expressly mentioned under the Apprentices Act.
- 4) Apprentices under employers own schemes & under IESO Act (Model/Certified Standing Orders) shall be workman/employees for labour law purposes and shall be entitled to benefits like Bonus, Gratuity, ESI, EPF, Minimum wages, Equal Remuneration etc. The definitions of workman/employee under these laws to be amended accordingly i.e. **except** for registered- designated apprentices under the Apprentices Act all other apprentices/trainees shall be workman/employees for the purposes of raising industrial disputes & claiming labour law benefits.

5) The Apprentices Act is to be suitably amended or apex court judgment needs to be reviewed & modified. Also definitions of workman/employee under PB, PG, ESI, EPF, Equal Remuneration and Minimum wages act to be suitably amended. This will resolve all the status related issues & industrial conflicts about engagement of an apprentice in Industry leading to smooth, cordial, peaceful & harmonious ER/IR Relations. The major two changes suggested to resolve all legal and HR/IR issues and implications is to A) Registered Apprentices in designated trades under Apprentices Act will not be workman and B) All other apprentices will be workman for all labour law purposes i.e. raising industrial disputes & claiming labour law benefits & facilities.

6) In this case the management should absorb those trainees whose performance/training was satisfactory. The Trainees whose performance/training was unsatisfactory should have been terminated before allowing them to complete 240 days of employment/training. It was also necessary that management should have sent the apprenticeship contracts for registration to apprenticeship advisor under the apprentice act & make sure that the apprenticeship contracts are duly registered. In such a case there would have been no issues or difficulty. The training of registered apprentices could have been easily terminated without any hassles.

5. References

The Provisions & Sections of Industrial labour law as mentioned above and the case law (court rulings) as cited below.

- i. ESI Corporation Vs Tata Engg. & Locomotive Co. AIR 1976 SC 66.
- ii. Patel Pravin Kumar Samarth Vs Gujarat State land Development Corporation Ltd. 1993 I LLJ 916- Guj HC.
- iii. U.P. State Electricity Board Vs Shiv Mohan Singh 2005 I LLJ 117 SC.
- iv. Dhampur Sugar Mills Ltd Vs Bhola Singh 2004 (104) FLR 999- SC.
- v. ESI Corporation Bombay Vs Indian Hume Pipe Co. Ltd. 1963 II LLJ 104 Bom-HC.
- vi. National Small Industries Ltd. Vs V. Lakshinarayanan 2007 I LLJ 571- SC.
- vii. Karuna Shankar Tripathi & Others Vs State of UP & others 1992 II CLR 484.
- viii. M/s Tannery and Foot-ware Corporation of India Ltd Vs Labour Court 1994 Lab.I.C.1231.
- ix. Bhaskaran Vs KSE Board 1986 II LLJ 386.
- x. Balkhan Doskhan Joya Vs Gujrat Electricity Board- 2002- I –LLJ 761- Guj HC.
- xi. UP State Electricity Board Vs P.O. Labour Court Kanpur 2003 III-LLJ 88 –Allahabad HC.
- xii. Hanuman Prasad Choudhary Vs Rajasthan State Electricity Board, Jaipur 1986 Lab.I.C. 1014 Raj-HC.
- xiii. National Small Industries Corporation Ltd Vs Labour Court Madras 2005 LIC 3750 Mad-HC.
- xiv. UP State Electricity Board Kanpur Vs 3rd Labour Court Kanpur 2003 III-LLJ 88 Allahabad HC.
- xv. UP State Electricity Board Kanpur Vs 1st Labour Court Kanpur 2003 IV LLJ 1054 Allahabad HC.
- xvi. Ghisilal Vs State Industrial Court 2005 III LLJ 458 MP-HC.