

Nanhey Singh and Others Vs. State of U.P. and Others

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Court : Allahabad

Decided On : Feb-06-2015

Judge : The Honourable Chief Justice Dr. Dhananjaya Yeshwant Chandrachud, & The Honourable Mr. Justice Suneet Kumar

Appeal No. : Special Appeal Defective No. 110 of 2015

Appellant : Nanhey Singh and Others

Respondent : State of U.P. and Others

Judgement :

The fifty two appellants had come up in writ jurisdiction before the learned Single Judge assailing an order dated 8.5.2014 of the third respondent who is the Managing Director of the Uttar Pradesh Power Corporation Ltd. Lucknow. The third respondent had rejected the claim of the appellants seeking preference for appointment to Class-III posts/technical grade-II (T.G.-II), Fireman, Lineman etc. and an advertisement dated 6.9.2014 issued by the fourth respondent (Secretary, Vidhyut Sewa Ayog Uttar Pradesh Power Corporation Ltd.) for not granting preference to the appellants in the vacancies offered. The appellants also sought a direction to the respondents to give a preference to apprentice trainees in the selection process as well as in age pursuant to the directions of the Supreme Court in U.P. State Road Transport Corporation and others vs. U.P. Parivahan Nigam Shikshak Berozgar Sangh (AIR 1995 SC 1115). The learned Single Judge dismissed the writ petition by an order dated 24.11.2014 which is assailed in the

special appeal.

The appellants contended that they had completed their ITI in different trades and had undertaken apprentice training in various departments of the respondents under the Apprentice Act, 1961 (the Act). After completing the training the appellants claimed to have been engaged on contract basis. Some of them are still working on contract. The appellants claim that the State Council for Vocational Training established in all States by the Ministry of Labour, Government of India, issued certificates to them. The appellants seek compliance of the directions given in U.P. Road Transport Corporation (*supra*) which have been incorporated in various Government Orders and circulars issued from time to time by the respondents including a Government Order dated 12.9.1996. The appellants have also sought parity with the decisions rendered in *Vijay Shankar Sharma vs. State of U.P. and others* (Writ A No. 16154 of 2005) decided on 19.5.2005, *Sherpal and others vs. State of U.P. and others* (Writ A No. 51513 of 2006) decided on 19.11.2012, *Nanhey Singh and others vs. State of U.P. and others* (Writ A No. 41431 of 2009) decided on 26.3.2014.

The learned Single Judge referring to a Full Bench decision rendered in *Arvind Gautam vs. State of U.P. and others* (1999 (2) ESC1394), rejected the claim of the appellants for preference in appointment on class-III posts.

The contention on behalf of the appellants that the respondents be directed to appoint them in the light of the judgments referred earlier, without facing the selection process consisting of a written examination rightly did not find favour with learned Judge. The Government Orders and circulars do not contemplate that apprentice trainees can be appointed without facing the selection process, including a written examination as contemplated in the rules/regulations of the concerned corporations. The Government Orders/Circulars only require that persons who have obtained apprentice training shall be given preference in appointment over other candidates in the event other conditions are the same. The apprentice trainees will have to undergo the written test and must fulfill the conditions for appointment. Section 22 of the Act does not make it obligatory on the part of the employer to offer employment to such apprentice trainees who have

completed the period of apprentice training in the establishment unless there is a condition in the contract to the contrary. The model contract form in Schedule 6 of the Rules reflects what has been stated in Section 22 (I) of the Act.

In U.P. State Road Transport Corporation (supra) the Supreme Court laid down certain guidelines which ought to be kept in mind while dealing with the claim of apprentice trainees in the department. The guidelines as stated in para 12 are extracted below:

"12. In the background of what has been noted above, we state that the following would be kept in mind while dealing with the claim of trainees to get employment after successful completion of their training;

(1) Other things being equal, a trained apprentice should be given preference over direct recruits.

(2) For this, a trainee would not be required to get his name sponsored by any employment exchange. The decision of this Court in Union of India v. N. Hargopal would permit this.

(3) If age bar would come in the way of the trainee, the same would be relaxed in accordance with what is stated in this regard, if any, in the service rule concerned. If the service rule be silent on this aspect, relaxation to the extent of the period for which the apprentice had undergone training would be given.

(4) The training institute concerned would maintain a list of the persons trained yearwise. The persons trained earlier would be treated as senior to the persons trained later. In between the trained apprentices, preference shall be given to those who are senior."

The learned counsel appearing for the appellants relied upon the observations of the Supreme Court as contained in para 13 of the judgment, for appointment without facing the selection process. The observations required that while considering the cases of trainees for employment on suitable posts they would not be required to appear in a written examination, if any, provided in the regulations. This was a direction under Article 142 of the Constitution of India.

The Division Bench of this Court in Manoj Kumar Mishra versus State of U.P. And others ((1997) 2 UPLBEC 1374), rejected a similar claim. The issue before the Court was enunciated in para 3:-

"3. The principal question which requires consideration is, whether an apprentice, who has successfully completed apprenticeship training under the Apprentices Act, gets a right to be appointed on a post straight away without appearing in any competitive examination or test through which selection is made for making appointment on the said post under the relevant service rules or Government Order."

On considering the provisions of the Act as well as the judgments including U.P. State Road Transport Corporation (supra), the Division Bench clarified that there was no settled direction that the apprentice would by-pass the selection process including a written examination. Paragraph 6 of judgment is extracted below:-

"6. The claim of the petitioners that they are not required to appear in any competitive examination or test which is held for making selection on the post on which they want to be appointed, cannot be sustained as no such direction has been given by Supreme Court. If the relevant service rules or Government orders issued in this regard provide for holding of a competitive examination or test, the petitioners have to appear in the said examination or test and compete with other candidates.....In fact the very first direction which provides that other things being equal, a trained apprentice should be given preference to other direct recruits, shows that he has to appear in the competitive examination or test otherwise his comparative merit cannot be judged."

The Full Bench decision of this Court in Arvind Gautam (supra), considered as to whether an apprentice is not required to take a competitive test. Rejecting the case of the apprentice, the Full Bench was of the view that competitive examination has not been exempted by the Supreme Court's judgment in U.P. State Road Transport Corporation (supra). Paragraph 6 and 9 of Arvind Gautam's case (supra) is extracted:-

"6. In our view, the expression "other things being equal" in paragraph 12 and absence of exemption from competitive test in the said paragraph, leads to the conclusion that all persons (including the apprentices) have to appear in the competitive test, as may be prescribed in respect of the particular selection, and if after the competitive test, any apprentice trainee gets equal marks than a non-apprentice candidate, then only preference is to be given to the said apprentice trainee."

9.Hence, the answer to question No. 1 is that the directives of the aforesaid judgment of the Supreme Court as contained in paragraph 12 of the said judgment in the case of U. P. State Road Transport Corporation Vs. U. P. Parivahan Nigam Shishuksha Berozgar Sangh (supra) is not confined to U.P.S.R.T.C. alone but they are applicable to all departments and corporations, but the directives in paragraph 13 of the said judgment apply strictly to the persons whose cases came up for consideration before the Apex Court in the said matter, and not to others."

In paragraph 11, the Full Bench held that: "apprentice trainees are also required to participate in competitive examination or test as may be provided by the rules of the concerned employers in respect of recruitments and when any of them is found equal to a non-apprentice candidate after the selection test then only preference is to be given in such a case to the apprentice trainee. This protects the possibility of meritorious non-appearance candidates from being discriminated vis-a-vis apprentice trainee".

The learned Single Judge in our opinion was justified in rejecting the claim of the petitioners seeking parity based on the judgments rendered in Manoj Kumar Mishra (supra), Vijay Shankar Sharma (supra), Sherpal (supra) and Nanhey Singh (supra) being per-incuriam, as the Full Bench decision in Arvind Gautam (supra) was not noticed in those decisions.

We are not inclined to interfere with the impugned order dated 24.11.2014 of the learned Single Judge dismissing the writ petition.

The special appeal is accordingly, dismissed.

No order as to costs.

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