

Askand Kumar Srivastava Vs. State of U.P. and Others

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Court : Allahabad

Decided On : Feb-04-1999

Reported in : 1999(2)AWC1017; [1999(82)FLR1]; (1999)2UPLBEC1389

Judge : D.K. Seth, J.

Acts : [Apprentices Act, 1961](#) - Sections 3 and 4; Uttar Pradesh State Electricity Board (Procedure and Conduct of Business) Regulations, 1978 - Regulations 17 and 30; Uttar Pradesh State Electricity Board Accounts (Officers) Service Regulations, 1984 - Regulation 17

Appeal No. : C.M.W.P. No. 3177 of 1999

Appellant : Askand Kumar Srivastava

Respondent : State of U.P. and Others

Advocate for Def. : S.P. Mehrotra, Adv.

Advocate for Pet/Ap. : Ashish Kumar Srivastava and ;S.S. Tripathi, Advs.

Judgement :

D.K. Seth, J.

1. Mr. S. S. Tripathi, learned counsel for the petitioner contends that since the petitioner had been an apprentice in U. P. State Electricity Board sometimes in

1988-89 for the full term and was granted a successful apprenticeship completion certificate, he is eligible and entitled to be considered for being appointed in the post, in which he had obtained training through apprenticeship, without being required to be sponsored through employment exchange and without being required to appear in the examination or selection test for such recruitment together with relaxation of age. In the proposed selection advertised by the Electricity Service Commission. U. P. State Electricity Board, no provision has been made for the petitioner. On the other hand, in terms of the said advertisement, the petitioner was also required to undergo the process of selection test. In support of his contention. Mr. Tripathi had relied on the decision in the case of U. P. State Road Transport Corporation and another v. U. P. Parivahan Nigam Shishukhs Berozgar Sangh and others, AIR 1995 SC 1115. Mr. Tripathi submits that in the said judgment In paragraph 13 thereof, it was pointed out that such trainees would not be required to appear in the written examination even if provided in the regulations and that they need not be sponsored by the employment exchange and that their age is liable to be relaxed. He had also relied on paragraph 3 of the said judgment to contend that the Apprentice Act has provided for specific provisions in order to increase employment potential of the candidates by imparting vocational training to them. If a particular training is given to a candidate, in that event, the same should not be allowed to be wasted and the money spent thereon should be well utilised by giving such trainees employment in preference to others.

2. Mr. S. P. Mehrotra, learned counsel for the respondents on the other hand, contends that in paragraph 12 of the decision in the case of U. P. State Road Transport Corporation (supra), principles have been laid down, which are silent about the question of exemption from appearing in the written examination. While referring to paragraph 13 of the said judgment, Mr. Mehrotra points out to the expression used therein and submits that the said observation was made in respect of the cases at hand, with which the Apex Court was concerned at that point of time. It was in fact an exception permitted in view of peculiar facts and circumstances of the said case, on the basis whereof the said decision was rendered. The observation made in paragraph 13 of the Judgment cannot have general application in respect of other organisations. According to him, the

expression 'Corporation' used in the said judgment, had referred to U. P. State Road Transport Corporation as has been Indicated in paragraph 2 of the said judgment. He then contends that this decision on earlier occasion came up for Interpretation by this Court in the case of Manoj Kumar Mishra u. State of U. P. and others, 1997 (2) AWC 654, in the Lucknow Bench, in which the very contention which is being advanced by Mr. Mehrotra in the present case. according to him, has since been upheld. He relied on the observations made in paragraph 6 of the said judgment to support his contention. He further relies upon an unreported decision in the case of Ajai Kumar Pandey u. State of U. P. and others. Writ Petition No. 1296 of 1996, disposed of on 18.12.1996 by a Division Bench of this Court which had also noted the decision in the case of U. P. State Road Transport Corporation (supra). According to Mr. Mehrotra. the decision in the case of Ajay Kumar Mishra (supra), also supports his contention which he points out from the penultimate paragraph of the said judgment. He had also relied on relevant regulations providing for such recruitment which will be referred to hereinafter.

3. I have heard both Mr. Tripathi and Mr. Mehrotra, learned counsel for respective parties, at length.

4. Admittedly, in the present case, the petitioner had obtained training as an apprentice from 5th May. 1988 till 4th May, 1989. The recruitment is sought to be made in January 1999, for which advertisement was published in a weekly issue of a newspaper for the week 2-8, January, 1999. In clause 6 of the said advertisement, provision with regard to apprentice trainees have also been provided for to the extent that other thing being equal, they will be given preference and they will not be required to be sponsored through employment exchange and that there should be relaxation of age to the extent as has been provided in various decisions of the Apex Court and the High Court.

5. In this background, let us examine the legal position as would appear from the present case.

6. It is an admitted position that the posts advertised can be filled up through direct recruitment, the process whereof is to be conducted by the Electricity Service

Commission. U.P.S.E.B. (hereinafter referred to as the Service Commission) according to the procedure laid down in Electricity Service Commission, U. P. State Electricity Board (Procedure and Conduct of Business) Regulations. 1978. These Regulations in Part VI, Regulation 30, provides for examination and conduct of examination. There had been several regulations providing as to how such examination is to be conducted, how programme and centres are to be selected, how invigilators are to be appointed, and how answer books are to be collected and dispatched to the examiners and how tabulation is to be made. It is also not disputed by Mr. S. S. Tripathi that the posts are to be filled up by the Electricity Service Commission in the manner as prescribed in 1978 Regulations, but he contends that in view of the decision in the case of U. P. State Road Transport Corporation (supra), the petitioner is not required to appear in the examination. Mr. Mehrotra had referred to Regulation 17 of the U. P, State Electricity Board Accounts (Officers) Service Regulations 1984 in order to draw analogy for the present case, and submitted that the Accounts Officers were required to be recruited through competitive examination and interview. Though he contends that the post which is being advertised is not a post of officer within the scope and ambit of said U. P. State Electricity Board Accounts (Officers) Service Regulations, 1984. but it is a post within the scope and ambit of 1978 Regulations and to be filled up by Electricity Service Commission as is apparent from paragraph 3 of the Electricity Service Commission, U. P. State Electricity Board (Limitation of Functions) Regulation. 1978. wherein the post of Accountant/Assistant Accountant in clause 'C' sub-paragraph (i) has been referred to for being consulted with the Commission. The post having fallen within the scope and ambit of the 1978 Regulations. Regulation 30 thereof is clearly attracted.

In paragraph 12 of the decision in the case of U. P. State Road Transport Corporation (supra), the principle that has to be followed in the matter of giving preference to apprentice trainees, is laid down in the following manner :

'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 :

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

(ii) 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. Hargopal* AIR 1987 SC 1227, would permit this.

(iii) 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 concerned service rule. If the service rule be silent on this aspect, relaxation to the extent of the period for which the apprentice has undergone training would be given.

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

7. A perusal of the above quoted paragraph shows that four principles have been laid down. If other things are equal, then apprentice is to be given preference and such apprentice would not be required to be sponsored by any employment exchange and that their age would be relaxed to the extent of the period during which they undergone training and that a list of trained apprentices yearwise is to be maintained for giving preference to the seniors. These principles set down two exceptions, namely, that they would not be required to be sponsored through employment exchange and that there shall be relaxation of age to the extent of period during which they had undergone training while it was provided for preference to them when other things being equal. These very principle indicate that in respect of other requirements, such trainees are to be treated equally with the outsiders and only when in the competition it was found that they stand equally with the outsiders, then they would be eligible and entitled for preference. It was nowhere provided in the said judgment that they would be exempted from appearing in the selection test or written examination. While the Apex Court had specifically exempted these persons from the requirement of being sponsored through employment exchange, consciously it has not exempted them from the requirement of selection test or written examination. When a particular condition is

being exempted and it is silent about others, then it cannot be presumed that it has also exempted from other requirements as well.

8. Paragraph 13 of the decision in the case of U. P. State Road Transport Corporation (*supra*) which has been capitalised by Mr. Tripathi, cannot be read out of context, it has to be interpreted in the context in which the observation has been made. A judgment has to be interpreted in its entirety. It cannot be segregated without reference to its context. The expression used in paragraph 13 of the said decision, 'in so far as the cases at hand are concerned', itself indicates that the observation made in paragraph 13 were based on the facts and circumstances of the case which was under consideration before the Apex Court. In fact, the principle laid down in paragraph 12 as being applied in the facts and circumstances of the said case has since been reflected in paragraph 13 thereof. The trainees in that case were exempted from the requirement of written test because of peculiar facts and circumstances as was observed in paragraphs 8 and 9 thereof where it was mentioned that the Corporation, namely, U. P. State Road Transport Corporation had issued a circular exempting apprentices from appearing in the written test while providing for their absorption in the vacancies.

9. The above judgment was interpreted in the above light in the decision in the case of Manoj Kumar Mishra (*supra*) as shall be apparent from paragraph 6 of the said judgment where same observations were made as is apparent from the contents of paragraph 6 of the said judgment which reads as under :

'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. The Apex Court has nowhere ruled that the relevant provisions for holding an examination for making selection with regard to direct recruits is ultra vires or the same would not apply to a person who has completed apprenticeship training. 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. Learned counsel for the petitioners has, however, placed reliance on two decisions, namely *Mohd. Waseem v. State*, 1996 (14) LCD 82, and *In Bhartiya Mazdoor Sangh v. I.T.I. Ltd.*, Writ Petition No. 1489 of 1991, decided on 4.7.1996, wherein a direction has been issued to consider the case of the petitioners in the light of the aforesaid observations made by the Supreme Court and a further direction has been issued that they will not be required to appear in any written examination. If any, provided under the Rules governing the condition of service of regular employees. With profound respects and utmost humility, I am unable to agree with the aforesaid direction of the learned single Judge that the petitioners would not be required to appear in any examination. A careful reading of the judgment of the Supreme Court would show that no such observation was made while dealing with the claim of trainees to get employment. No doubt there is such an observation in paragraph 13 of the reports but that paragraph specifically dealt with the cases in which U. P. State Road Transport Corporation had preferred appeals against the judgment dated 6.10.1989 of Allahabad High Court. Paragraph 13 of the judgment as in JT 1995(2) SC 26, begins as follows :

'in so far as the cases at hand are concerned we find that the Corporation filed additional affidavit in.....'

The facts of the cases which went to appeal to the Supreme Court were entirely different. The Corporation (U.P.S.R.T.C.) in its meeting dated 27.8.1977 had resolved that those apprentices who had been given training by it will get preference in the matter of appointment. On the basis of the aforesaid resolution, the Joint General Manager (Administration and Personnel) issued a circular dated 21.9.1977 laying down the procedure for selection of apprentices as general clerk/working clerk/junior clerk in the Corporation and mentioning that these apprentices will not be required to appear at the written test and at the time of interview, ten marks will be given to every trained apprentice towards his experience. On 10.1.1978 the Joint General Manager wrote to all the Regional Managers to consider the apprentices in the light of the circular dated 21.9.1977,

by giving them preference. Thereafter, the persons who were trained as apprentices were appointed as and when vacancies occurred and many appointments were made without holding written test. However, subsequently some of the apprentices who had been imparted training by the Corporation were not given appointments and they filed writ petitions on the ground that the Corporation having given assurance to appoint them after completion of apprenticeship training and they having acted upon the said assurance and completed the training, the Corporation could not resile from its assurance and was consequently found to give them employment. The plea based on promissory estoppel was accepted and the writ petitions were allowed. These facts would be clear from the judgment of this Court which is in 1990 (1) UPLBEC 326. In appeal the Supreme Court took the view that the doctrine of promissory estoppel could not be applied and the judgment of the High Court was modified accordingly. The observation that the trainees would not be required to appear in any written examination was made only with regard to those whose matter was up for consideration in appeal before the Court and has to be confined to the facts of that case alone in view of the resolution of the Corporation dated 22.8.1977 and the circular issued by the Joint General Manager on 21.9.1977. This observation cannot have any general application. It may be pointed out here that in *Gangaram v. State of U. P.*, Special Appeal No. 77 (S/S) of 1995, decided on 23.5.1995. a Division Bench (Hon'ble Brijesh Kumar and A. P. Singh, JJ.), did not issue any such direction that a person who has completed apprenticeship training will not be required to appear in any examination.'

10. Thus, it appears that a particular scheme formulated by the U. P. Road Transport Corporation was the foundation for the observation made in paragraph 13 by the Apex Court in the decision *U. P. Road Transport Corporation's case* (supra), which is a distinguishing feature preventing general application of paragraph 13 in respect of other organisations wherever there are apprenticeship. Paragraph 12 of the said Judgment is independent of paragraph 13. Paragraph 13 is only an exception carved out of the principles laid down in paragraph 12. Exceptions cannot be a rule that can be applied in respect of every organisations. If the exception was also the intention of the Apex Court, in that event, the same would have been included in paragraph 12 and it would not have been necessary

to incorporate such exception in a different paragraph indicating a particular context having regard to the facts and circumstances as mentioned in paragraphs 8 and 9 of the said decision.

The Division Bench in the case of Ajai Kumar Pandey (*supra*) while considering the decision in the case of U. P. State Road Transport Corporation (*supra*) was of the view that such apprentices are not entitled to direct appointment without selection process and where the Commission has advertised the post and the post is to be filled up through examination, in such a case there cannot be exemption from securing appointment through the procedure provided for selection by the Commission.

The only exemption can be asked for at the stage of selection and interview is the exemption from the requirement of being sponsored through employment exchange and relaxation in age to the extent of period of training. Once this exemption is allowed and the selection had taken place, only at the stage of finalisation of list or grant of appointment, the question of preference would arise if other things are equal. There cannot be any question of other things being equal unless such candidate is allowed to contest the selection.

11. In that view of the matter, having regard to the observations made above, I am unable to agree with the contention of Mr. S. S. Tripathi. I do not find any infirmity in the advertisement so published since impugned in this writ petition. Therefore, I am not inclined to Intervene in the process of selection by the Electricity Service Commission as proposed.

12. However, the case of the petitioner, if he applies, may be considered in the light of the observations made above to the extent that he need not be required to be sponsored through employment exchange and he is entitled for relaxation of age as provided in paragraph 12 of the judgment in U. P. State Road Transport Corporation's case (*supra*). The respondents may consider the case of the petitioner if he applies in terms of paragraph 6 of the advertisement having regard to the observations made above and only after the result of the selection or examination is declared and other things are equal, the petitioner would be entitled to preference, at the stage of appointment, over direct recruits.

13. With the above observations, this writ petition is finally disposed of. There will be no order as to costs.

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