

Arvind Gautam Vs. State of U.P. and Others

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Court : Allahabad

Decided On : May-27-1999

Reported in : 1999(3)AWC2093; (1999)2UPLBEC1397

Judge : D.S. Sinha, ;M. Katju and ;Alok Chakrabarti, JJ.

Acts : [Constitution of India](#) - Article 16

Appeal No. : C.M.W.P. No. 23076 of 1998

Appellant : Arvind Gautam

Respondent : State of U.P. and Others

Advocate for Def. : S.C.

Advocate for Pet/Ap. : R.C. Pathak, Adv.

Judgement :

M. Katju, J.

1. This Full Bench has been constituted by Hon'ble the Chief Justice on a reference made by one of us (Hon'ble M. Katju. J.) by order dated 20.7.1998 in Writ Petition No. 23076 of 1998 and upon the reference made in Writ Petition No. 24009 of 1998 by order dated 27.7.1998.

2. We have heard learned counsel for the parties. The question referred to us relates to the interpretation of the judgment of the Hon'ble Supreme Court in U. P. State Road Transport Corporation and another v. U. P. Parivahan Nigam Shishuksh Berozgar Sangh and others. AIR 1995 SC 1115.

3. A perusal of the reference order indicates that the questions which fall for consideration are as follows :

(1) to examine and decide whether the directives of the judgment of Supreme Court in the case of U. P. State Road Transport Corporation v. U. P. Parivahan Nigam Shishuksha Berozgar Sangh and others, JT 1995 (2) SC 26, should be confined to U.P.S.R.T.C. alone or they are applicable to all departments or all corporations.

(2) to reconsider the judgment of the Division Bench in Vivek Guptrishi v. State of U. P. and another. Writ Petition No. 37922 of 1997, decided on 12.11.1997.

(3) to consider the matter in the context of Article 16 of the Constitution, and

(4) to decide whether the circular dated 12.9.1996 has proceeded on a misconception.

Re : Question No. 1

4. A perusal of the Judgment of the Apex Court clearly indicates that the law relating to apprentices have been considered in detail in the said judgment and the general proposition in respect of all apprentices has been considered and decided therein. The findings of the Apex Court on the basis of discussion relating to various sections of the Apprentice Act have been recorded in paragraph 12 of the said Judgment which reads as follows :

'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. Hargopal*, AIR 1987 SC 1227, 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 concerned service rule. 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 concerned training institute 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.'

5. A question has been raised as regards exemption of apprentice trainee from competitive test for direct recruitment as referred to in paragraph 13. The initial expression in paragraph 13 of the said judgment clearly indicates that the said observations in paragraph 13 were in the specific factual background of the 'cases in hand' in the said proceeding. Specific affidavits have been considered in the said paragraphs. A perusal of the directives in paragraph 12 of the said Judgment makes it clear that the only benefits apprentices are held to be entitled to exemption from recommendation by the employment exchange and relaxation as regards age bar to the extent of the period of their apprenticeship.

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.

7. Such a view gets support from the judgment of this Court in the case of *Manoj Kumar Mishra v. State of U. P. and others*. 1997 (2) AWC 654, wherein the claim of apprentice trainees as regards exemption from competitive examination fell for

consideration. The relevant findings in the said judgment are as follows :

'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 Writ Petition No. 1489 of 1991. Bhartiya Mazdoor Sangh v. I.T.I. Ltd., decided on 4.7.76 wherein a direction has been issued to consider the case of the petitioners in the light of the aforesaid observation 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 conditions 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 6.10.89 of Allahabad High Court.'

8. A similar view was also taken by another learned single Judge in the case of Askand Kumar Srivastava v. State of U. P. and others, 1999 (2) AWC 1017 and we agree with, the same.

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 V, 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.

Re : Question No. 2

10. In view of the above answer to the main question referred, the law laid down in the case of Vivek Guptrishi v. State of U. P. and others (supra) does not require separate answer as the same actually meant considering the law followed therein and it is seen that the said matter was disposed of following the directions of the Apex Court in the aforesaid case.

Re : Question No. 3

11. The question regarding Article 16 of the Constitution as referred to in the referring judgment does not require separate consideration as it has already been held hereinabove that apprentice trainees are also required to participate in competitive examination or test as may be provided by the rules of the concerned employer 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-apprentice candidates from being discriminated vis-a-vis apprentice trainees.

12. The possibility of fake or concocted apprenticeship certificates need not be considered here, as those are individual cases to be considered on complaints and need not be discussed while general propositions are being considered.

Re ; Question No. 4

13. In view of the answer to above question No. 1, the circular dated 12.9.1996 having directed to follow directions contained in paragraph 12 of the said judgment of the Apex Court, is held to have not proceeded on any misconception, but it must

be read in the light of the observations made above.

14. This writ petition and the connected writ petitions are disposed of accordingly.

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