

Pramod Kumar and ors. Vs. Bharat Coking Coal Ltd. and ors.

Pramod Kumar and ors. Vs. Bharat Coking Coal Ltd. and ors.

SooperKanoon Citation : sooperkanoon.com/523492

Court : Jharkhand

Decided On : Sep-04-2008

Reported in : [2009(1)JCR240(Jhr)]

Judge : R.R. Prasad, J.

Appellant : Pramod Kumar and ors.

Respondent : Bharat Coking Coal Ltd. and ors.

Disposition : Application dismissed

Judgement :

ORDER

R.R. Prasad, J.

1. This writ application was filed for issuance of a writ in the nature of mandamus directing the respondents to appoint the petitioners on the posts of Junior Overman and Mining Sirdar which posts have been advertised to be filled up vide. Advertisement No. 1762 (NEE) published in the Employment News dated 6.1.2007.

2. Learned Counsel appearing for the petitioners submits that the petitioners are diploma holders in Mining and Mines and were appointed as Trainee Apprentice under the Apprentices Act, 1961 in different Collieries of B.C.C.L. and after

completion of the training, all the petitioners were granted Overman's Certificate of Competency under the Mining Act and Coal Mines Regulations, 1957 and that after completion of the Apprenticeship training, the respondents made advertisement calling for the applications for the selection on the post of Junior Overman and Mining Sirdar whereby the maximum age prescribed was 30 years and there was no provision for relaxation of age for the trained apprentices nor the trained apprentices have been exempted from appearing in the written test, though in view of the decision rendered in a case of U.P.S.R.T.C. v. U.P. Parlvahan Nigam Shishukhs Berojgar Sangh reported in 1995 SCC 387, trained apprentices should have given preference over the direct recruits and that they were entitled to have age relaxation and, therefore, the petitioners made representation before the Authorities to exempt them from taking written test and also for age relaxation but the respondents by ignoring the decision of the HonTse Supreme Court did not do anything and as such there was no remedy left with the petitioners than to approach this Court.

3. A counter affidavit has been filed on behalf of the respondents stating therein that as per the advertisement prescribed minimum age limit of general candidate was 18 years, whereas maximum age was 30 years as on 31.12.2006 and for the post of Junior Overman eligibility was of having valid Overmanship Certificate of Competency issued by the Director General of Mines Safety, Dhanbad with valid First Aid and Gas Testing Certificate and this eligibility was fixed as per the provisions of the Coal Mines Regulations. 1957, whereby diploma holders in Mining are required to take practical training for a period of one year in any Underground Mines for appearing in Overmanship Certificate of Competency Examination conducted by the Director General of Mines Safety, Dhanbad but the petitioners had no requisite qualification and moreover the petitioners were over age and that the process of the selection was duly carried out and the appointments on the posts advertised have already been filled up and under these situations, this writ application is fit to be dismissed.

4. Having heard learned Counsel appearing for the parties, it does appear that when the respondents advertised the post of Overman and Mining Sirdar to be filled up, the petitioners did not apply presumably for the reasons that they were

over age and will have first claim over the posts advertised on the basis of the decision rendered by Hon'ble Supreme Court in the case of U.P.8.R.T.C., (supra).

5. In the said case, the Hon'ble Supreme Court on a consideration of the fact that a nation gets the benefit of time, money and energy spent on the trainees, which would be so when they are employed in preference to non-trained direct recruits and also by giving due consideration to a circular of the State Government stipulating therein that where the apprentices are available direct recruitment should not be made laid down certain guidelines which are as follows:

(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 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.

6. But these criterias were confined to the parties who have been arrayed as respondents in the aforesaid case. However, the Hon'ble Supreme Court in the matter of recruitment of the apprentice trainee other than who were the parties has observed that while considering the cases of trainees for giving employment in suitable posts, what has been laid down in the Service Regulations of the Corporation shall be followed, except that the trainees would not be required to appear in any written examination, if any provided by the Regulations and that requirement of their names being sponsored by the Employment Exchange would

not be insisted upon. Thus, it is apparent that the Service Regulations of the Corporation in the matter of appointment of apprentice need to be followed but where there is stipulation regarding age limit that needs to be relaxed and that apprentice need not to be sponsored by the Employment Exchange.

7. In the instant case, the petitioners, as per the counter affidavit, were not having requisite qualification as required, as they have no valid Overmanship Certificate of Competency issued by Director General of Mines Safety, Dhanbad with valid First Aid and Gas Testing Certificate. That apart, the petitioners never applied on the post which was advertised and the process of the selection is over and now the persons have even been appointed on the post of Junior Overman and Mining Sirdar.

8. In that event, the petitioners are not entitled to get any relief and hence this writ application stands dismissed.