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Court : Kerala

Decided On : Aug-14-2002

Reported in : [2003(96)FLR410]

Judge : K. Thankappan, J.

Acts : Apprentices Act, 1961 - Sections 22

Appeal No. : O.P. No. 24502 of 2000

Appellant : Bindhu

Respondent : State of Kerala

Advocate for Def. : K.G. Josemon, Government Pleader

Advocate for Pet/Ap. : Thottathil B. Radhakrishnan, Adv.

Disposition : Petition dismissed

Judgement :

K. Thankappan, J.

1. Petitioner approaches this Court to have a direction to the 1st respondent to appoint the petitioner in the post of Asst. Engineer (Civil) in preference to the candidates in the ranked list prepared by the Kerala Public Service Commission and also to quash Exts. P13 to P15. The petitioner is a Civil Engineering graduate.

Sheclaims preference in appointment to the post of Asst. Engineer (Civil) on the basis of her apprenticeship training qualification and Ext. P1 contract of apprenticeship.

2. The Kerala Public Service Commission invited application to the post of Asst. Engineer (Civil) in the Public Works and Irrigation Departments by Ext. P5 notificationdated 27.12.1994. As per Ext. P5 notification the qualification prescribed for the post is a Degree of B.Sc. Engineering (Civil) or equivalent qualification, recognised by the Kerala Government. The age limit to apply for the post was mentioned in the application. The claim of the petitioner is that as she satisfies all the educational qualifications to the post of Asst. Engineer (Civil) she is eligible to be appointed as Asst. Engineer (Civil) in preference to the candidates whose names appeared in the select list. According to the petitioner, since she has undergone apprenticeship training under the provisions of the Apprentices Act, 1961 (Act 52 of 1961) and also the Apprenticeship Rules, 1991, she should have been appointed to the post. Under the Special Rules of Kerala Engineering Subordinate Service Rules a ratio of 6:3:1 has been fixed for appointment to the post between Engineering Graduates, Diploma holders and Certificate holders. The petitioner claims that as per Ext. P1 contract of apprenticeship entered into between the petitioner and the employer namely, the Irrigation Department of the Government of Kerala and she has completed the apprenticeship training, she should get a preference in appointment. So, she sent several representations evidenced by Exts. P6 to P1 1 acknowledgement cards requesting to appoint her in any of the post of Asst. Engineer (Civil) as a direct recruitee. As her representations were not considered by the respondents, she filed O.P. No. 4965/2000 and by Ext. P12 judgment dated 23.12.2000 this Court has directed the respondents to consider and pass orders on the representations within a specified time. The respondent has rejected the claim of the petitioner by Exts. P13 to P15 orders and these orders are under challenge in this Original Petition.

3. Learned counsel for the petitioner submits that the rejection of the representations evidenced by Exts. P13 to P15 are irregular and illegal. The learned counsel further submits that as per Ext. P1 contract of apprenticeship the respondents are bound to appoint the petitioner in preference to the candidates in

the select list prepared pursuant to Ext. P5 notification. It is submitted that as the petitioner has undergone apprenticeship training, the respondents are bound to appoint her as Asst. Engineer (Civil) in accordance with the terms and conditions contained in Ext. P1 contract of apprenticeship. Even though clause 5 of Ext. P1 shows that there is no obligation on the part of the employer to offer employment to the petitioner on completion of the apprenticeship, the respondents cannot estop from the legal duty to offer employment to the petitioner in the light of the decision reported in U.P. State Road Transport Corporation and Anr., v. U.P, Parivahan Nigam Shishukhs Berozgar Sangh and Ors., AIR 1995 SC 1115. The learned counsel further submits that the respondents ought to have considered the money spent by the employer in. giving apprenticeship training to the petitioner and also the preferential claim of the petitioner as a person who had undergone apprenticeship training imparted by the Irrigation Division of State Irrigation Department. It is submitted that the petitioner being a registered apprentice with the employer she is not expected to file any separateapplication for employment pursuant to Ext. P5 notification. Hence, Exts. P13 to P15 are not valid and the rejection of the claim of the petitioner is irregular and illegal.

4. A counter affidavit has been filed for and on behalf of respondents 1 and 2. Relying on the counter affidavit learned Government Pleader submits that the post of Asst. Engineers in the Irrigation Department is filled up through the Kerala Public Service Commission on reporting vacancies as and when arises in the department. The method of recruitment to the post in the Government Departments including the Irrigation Department is governed by the provisions of the Special Rules namely, the Kerala Engineering Subordinate Service Rules. As the Special Rules does not contain any provision for giving preference to an apprentice who has undergone apprenticeship training, the petitioner is not entitled for any preference to the post of Asst. Engineer. A quota is prescribed under the Special Rules for both direct recruitees and promotees and a ratio is fixed between Engineering Graduates, Diploma holders and Certificate holders. Learned Government Pleader further submits that Ext. P1 apprenticeship contract itself contained clause 5 to the effect that it is not obligatory on the part of the employer to offer any employment to the apprentice or the apprentice is not under any obligation to accept any employment offered by the employer. The selection to the

post of Asst. Engineer (Civil) in the department is only through a process of selection and by a method of recruitment as prescribed by the Special Rules and for this purpose notifications are being issued by the Public Service Commission and hence, the rejection of the representation of the petitioner by Exts. P14 and P15 are legal and sustainable in law.

5. Having considered the arguments of the counsel on both sides and having perused the materials placed on record, prima facie this Court feels that Exts. P13 to P15 do not require any interference by this Court under Art. 226 of the Constitution of India. Admittedly, the petitioner has not applied to the post of Asst. Engineer in pursuance of Ext. P5 notification issued by the Kerala Public Service Commission. She was also not qualified at that time. The appointment to the post of Asst. Engineer is being made from the ranked list prepared by the Public Service Commission from among the qualified hands. Unless and until her name is included in the ranked list, she cannot claim any preference. The judgment relied on by the petitioner reported in AIR 1995 SC 1115 (supra) is not helpful for the petitioner as in that case certain percentage of vacancies were reserved for apprentice trainees. That apart the method of appointment is different and the recruiting agency is also different as that of the present case. Hence, the judgment of the Apex Court as such is not applicable to the factual position of the case in hand.

6. Before parting with this judgment in the light of the arguments advanced by the learned counsel for the petitioner it could be examined whether under the provisions of the Apprentices Act, 1961 a preference for appointment 10 any post of technical incharacter or engineering in nature be given to an apprentice trainee who has completed the training course successfully. In the decision reported in AIR 1995 SC 1115 (supra) the Apex Court has observed 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) Forthis, a trainee would not be required to get his name sponsored by any employment exchange.

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 listof the persons trained year wise. 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.'

7. As per Sub-section (aa) of Section 2 'apprentice' means a person who is undergoing apprenticeship training in pursuance of a contract of apprenticeship. Sub clause (aaa) defines 'apprenticeship training' as a course of training in any industry or establishment undergone in pursuance of a contract of apprenticeship and under prescribed terms and conditions which may be different for different categories of apprentices. Sub-section (q) of Section 2 defines 'trade apprentice' as an apprentice who undergoes apprenticeship training in any such trade or occupation as may be prescribed.

8. The definitions contained in the Act would indicate that a system of training in different trades giving under the post of engineering works or technical works of an establishment or an industry and if such trainees are trained by giving stipend or lump sum grant, such apprentices would get an advance training of the trades which may entitle them to get a preference for appointment in the post as and when such posts were arisen. To have a preference in appointment for an apprentice, the Act provides certain formalities such as registration, advising and also reservation of such post in the categories. The Honourable Supreme Court has considered various provisions of the Act and also the circumstances under which a preference would be granted to such apprentices as and when such posts to be filled up. As per Section 22 of the Apprentices Act it is not obligatory on the part of the employer who had imparted training to such apprentice to offer any employment to such trainees and it is also stipulated in the section that the

trainees are not under the obligation to accept an employment under the employer. The Supreme Court has taken a view that if it is found having equal in the matter of appointment to various posts, the apprentice must have got preference.In this context, it is also to be noted that in the State of Kerala the public employment is regulated by Special Rules or by General Rules of Recruitment and also separate agency for selecting candidates for appointment. After the introduction of Kerala Public Service Commission (Consultation) Regulation, 1957 and allied rules it is left to the employer-department to report the vacancies to the Public Service Commission and get a ranked list prepared by the Public Service Commission. The system of appointment in the public service is also either by direct recruitment or by promotion basing on the particular rules of each department. In the light of the view expressed by the Supreme Court as and when the Government or any department has imparted training to the apprentices and keeping a register of such trained apprentices it may be appropriate for such department to consider in granting a preference to such trainees by reserving a definite percentage of vacancies to be filled up by such qualified trainees. This is a mutter to be considered by the Government in the light of the judgment of the Supreme Court.

9. In view of the above discussion, the Original Petition is devoid of merit and it is dismissed.

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