

(2003) 11 AHC CK 0050

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 15220 of 1999

Abdul Rafiq Khan

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 13-11-2003

Acts Referred:

Allahabad High Court Rules, 1952 — Rule 2

Citation : (2004) 2 UPLBEC 1533

Hon'ble Judges : R.B. Misra, J

Bench : Single Bench

Advocate : R.R. Shukla, H.N. Shukla, R.K. Gupta and Rishi Kant Rai, for the Appellant; S.S. Sharma, S.C., for the Respondent

Final Decision : Dismissed

Judgement

R.B. Misra, J.—Heard Sri R.K. Gupta, learned Counsel for the petitioner and Sri S.S. Sharma, learned Standing Counsel.

2. In this petition prayer has been made for issuance of writ of mandamus commanding the respondents to appoint the petitioner to the post of Tracer forthwith in the department of Irrigation.

3. According to the petitioner, petitioner is an Intermediate and holding the certificate of Draftsman (Civil) and he belongs to minority community. On the basis of certificate issued by Tehsildar, Charkhari to the effect that petitioner is a backward class person and is also physically handicapped, has obtained certificate of draftsman (Civil). After getting the certificate of draftsman (Civil) the petitioner worked from May, 1989 to September, 1989 in the office of the respondent No. 3 i.e. Executive Engineer, Irrigation Construction Division, Charkhari, Mahoba and for several other period, which has been referred in Para 5 of the writ petition, and after obtaining "apprenticeship training" from the office of Executive Engineer, Irrigation Construction Division, Charkhari, Mahoba the petitioner is claiming appointment to the post of Tracer on the ground that he

is qualified and is in possession of minimum qualification for appointment to the post and has successfully completed apprenticeship training. According to petitioner not appointing the petitioner to the post of Tracer is illegal in view of the judgment of the Supreme Court reported in Uttar Pradesh State Road Transport Corporation and another Vs. Uttar Pradesh Parivahan Nigam Shishukhs Berozgar Sangh and others,

4. Counter affidavit has not been filed, however, with the consent of the parties matter is decided finally at this stage only in view of the Sccond proviso to Rule 2 of Chapter XXII of the Allahabad High Court Rules, 1952.

5. According to the petitioner in view of the decision of the Supreme Court in Swaran Lata Vs. Union of India and Others, a prson who appeared in the selection but was not selected cannot turn back and challenge the selection.

6. In order to examine the force of the contention of the petitioner it is relevant to mention Paras 12 and 13 of the judgement of U.P. Parivahan Nigam Shishukshu Berozgar Sangh, (supra):

"Para 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 (UOI) and Others Vs. N. Hargopal and Others, , 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 year wise. The persons trained earlier would be treated as senior to the persons trained later. In between the trained apprentice, preference shall be given to those who are senior.

Para--13. In so far as the cases at hand are concerned, we find that the Corporation filed an additional affidavit in C.A. Nos. 4347-4354 of 1990), as desired by the Court) on 20th October, 1992 giving position regarding vacancies in the posts of conductors and clerks. If such posts be still vacant, we direct the Corporation to act in accordance with what has been stated above regarding the entitlement of the trainees. We make it clear that while considering the cases of the 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. It is apparent that before considering the cases of the trainees, the requirement of their names being sponsored by the employment exchange would not be insisted upon. In so far as the age requirement is concerned, the same shall be relaxed as indicated above."

7. The question was referred before the Full Bench of the High Court in respect of interpretation whether the judgment of the Supreme Court in *U.P. Parivahan Nigam Shishukshu Berozgar Sangh (supra)* was confined to the UPSRTC alone or the judgement was applicable to all the departments or all the Corporations and this Court Full Bench is (1999) 2 UPLBEC 1397, *Arvind Gautam v. State of U.P. and Ors.*, has indicated in its judgement as below :

"6. In our view the express "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 judgement of this Court in the case of *Manoj Kumar Mishra v. State of U.P. and Ors.*, reported in 1997 (2) AWC 654 : (1997) 2 UPLBEC 1374, where in 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 4.7.1976 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 6.10.1989 of Allahabad High Court."

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 Shishukshu Berozgar Sangh (supra), is not confined to UPSRTC alone but they are applicable to all departments and corporations, but the directives in Paragraph 13 of the said judgment apply strictly to persons whose cases came up for consideration before the Apex Court in the said matter, and not to others."

8. The Supreme Court in 2000 (86) FLR 88; U.P. Rajya Vidyut Parishad Apprentice Welfare Association and Anr. v. State of U.P. and Ors., had again tested the verdict of their decision of this Court Full Bench in Arvind Gautam (supra) and has held as below :

"2. A question had arisen before the Allahabad High Court in a later case as to whether the direction that the trainees need not undertake examination was applicable only to the petitioners in the case before this Court or whether Para 13 had laid down any general principle that apprentices need not take the examination.

The Full Bench held that what was mentioned in Para 13 was in the specific factual background of the "cases on hand" and that the apprentices are to go through the examination as also the interview as provided in the Recruitment Rules. The Full Bench had also approved the judgment in the case of Manoj Kumar Mishra v. State of U.P. and Ors., which took a similar view in regard to the interpretation of Para 13 of the judgment of this Court mentioned above.

3. We are, therefore, of the opinion that the view taken in Manoj Kumar Mishra's case, as also the view taken by the Full Bench in Arvind Gautam's case (supra) is a correct one and that apprentices have to go through the procedure of examination interview and that they are however entitled to the benefits of entries (i) to (iv) laid down in Transport Corporation case."

9. Similar view has been taken by this Court (Hon'ble Mr. Justice R.B. Misra) in the order dated 20.10.2003 passed in Civil Misc. Writ Petition No. 50852 of 1999; decided on October 20, 2003, Ram Kishore Sahu v. Hindustan Aeronautics Ltd., Kanpur and Anr., [Reported (2004) 2 UPLBEC 1550].

10. I have heard learned Counsel for the parties. I find that law is well settled that one, who is in possession of minimum qualification and also has acquired apprenticeship training, desires for being appointed to the post, such claimant/

applicant has to participate in the open selection along with others and only when he acquires the same marks viz-a-viz. other candidates then he shall be considered for preference. Here, the petitioner without any participation in the selection process has come to this Court for claiming appointment, therefore, such relief cannot be granted to him.

11. In view of the above observations writ petition is dismissed.