

(2010) 07 SHI CK 0219
In the High Court Of Himachal Pradesh
Case No : C.W.P. (T) No. 4839 of 2008

Amar Singh

APPELLANT

Vs

Himachal Pradesh State Electricity Board and Others

RESPONDENT

Date of Decision : 21-07-2010

Acts Referred:

Apprentices Act, 1961 — Section 2, 22, 22(1), 22(2), 3
Apprenticeship Rules, 1992 — Rule 10, 11, 12, 7, 8

Citation : (2011) 1 LLJ 34

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rajiv Sharma, J.—Petitioner has undergone the training in the trade of Electrician at Industrial Training Institute with effect from August, 1979 to July, 1981. He was issued National Trade Certificate vide Annexure P-2. Thereafter Petitioner was sent for apprenticeship training with Respondent No. 3 with effect from December 27, 1982 to December 26, 1984. He was granted the provisional National Apprenticeship Certificate vide Annexure P-3.

2. Mr. Lalit K. Sharma has strenuously argued that since the Petitioner has completed apprenticeship with effect from December 27, 1982 to December 26, 1984, Respondents were required to offer appointment to the Petitioner.

3. Ms. Anjula Khajuria has vehemently argued that as per the agreement entered between the Petitioner and the Board on November 11, 1982, it was not obligatory on the part of the employer to offer any employment to the Petitioner though he had successfully completed the apprenticeship.

4. I have heard the learned Counsel for the parties and have perused the pleadings carefully. It is admitted case of the parties that the Petitioner has completed training from the Industrial Training Institute, Mandi and passed the prescribed Lineman test in the trade of Electrician and was also issued National

Trade Certificate.

5. It will be apt at this stage to take note of salient features of Apprenticeship Act, 1961 (hereinafter referred to as "the Act" for brevity sake). Section 2(aa) defines the "apprentice" to mean a person who is undergoing apprenticeship training in pursuance of a contract of apprenticeship. Expression "apprenticeship training" has been defined u/s 2(aaa). Section 3 prescribes the qualifications for being engaged as an apprentice. Section 4 whereof provides that no person shall be engaged as an apprentice to undergo apprenticeship training in a designated trade unless such person or, if he is minor, his guardian has entered into a contract of apprenticeship with the employer. Section 7 provides that the apprenticeship contract can be terminated. Section 22 deals with offer and acceptance of employment. It reads thus :

22. Offer and acceptance of employment-

(1) It shall not be obligatory on the part of the employer to offer any employment to any apprentice who has completed the period of his apprenticeship training in his establishment, nor shall it be obligatory on the part of the apprentice to accept an employment under the employer.

(2) Notwithstanding anything in Sub-section (1), where there is a condition in a contract of apprenticeship that the apprentice shall, after the successful completion of the apprenticeship training, serve the employer, the employer shall, on such completion, be bound to offer suitable employment to the apprentice, and the apprentice shall be bound to serve the employer in that capacity for such period and on such remuneration as may be specified in the contract.

Provided that where such period of remuneration is not, in the opinion of the Apprenticeship Adviser, reasonable, he may revise such period or remuneration so as to make it reasonable, and the period or remuneration so revised shall be deemed to the period of remuneration agreed to between the apprentice and the employer.

6. The Central Government has also framed the rules called the "Apprenticeship Rules, 1992". Rule 7 provides for period of apprenticeship training. Rule 8 provides for compensation for termination of apprenticeship and Rule 10 provides for maintenance of record of work by apprentices. Rule 11 deals with payment of stipend to apprentices. The hours of work have been stipulated under Rule 12 and there is a provision for grant of leave to apprentices. In the instant case, the apprenticeship contract was entered between the Petitioner and the Respondent-Board on November 11, 1982. The period of training was one year. Condition No. 5 of the agreement reads thus :

It shall not be obligatory on the part of the employer to offer any employment to the apprentice on completion of period of his apprenticeship training in his establishment, nor shall it be obligatory on the part of the apprentice to accept

any employment under the employer.

7. A bare perusal of condition No. 5 stipulated in Annexure R-II dated November 11, 1982 makes it abundantly clear that it was not obligatory on the part of the Board to offer employment to the Petitioner on completion of period of his apprenticeship training. Rather, it was also not obligatory on the part of trainee to accept employment under the employer. Plain reading of Section 22 suggests that it is not obligatory on the part of the employer to offer any employment to any apprentice who has completed the period of his apprenticeship training in his establishment. However, Sub-section (2) of Section 22 provides that where there is a condition in a contract of apprenticeship that the apprentice shall, after the successful completion of the apprenticeship training, serve the employer, the employer shall, on such completion, be bound to offer suitable employment to the apprentice and the apprentice shall be bound to serve the employer in that capacity for such period and on such remuneration as may be specified in the contract. However, in the instant case, there is no such condition in the contract of apprenticeship that after successful completion of the apprenticeship training, the Petitioner was to be offered suitable employment by the Respondent-Board.

8. Their Lordships of the Hon'ble Supreme Court in *Narinder Kumar and Others Vs. State of Punjab and Others*, have held that u/s 22(1), it is not obligatory on the part of the employer to offer any employment to any apprentice, who has completed the period of his apprentice training in his establishment, however, this provision is subject to the non obstante clause in Sub-section (2) of Section 22. Sub-section (2) leaves no doubt that despite the provision contained in Sub-section (1), the employer is under obligation to offer suitable employment to the apprentice if the contract of apprenticeship contains a condition that the apprentice shall serve the employer after the successful completion of the training. Their Lordships have held as under *Narinder Kumar and Others Vs. State of Punjab and Others*, at p. 338 :

3. Section 22(1) of the Apprentices Act, 52 of 1961, provides that it shall not be obligatory on the part of the employer to offer any employment to any apprentice who has completed the period of his apprenticeship training in his establishment nor shall it be obligatory on the part of the apprentice to accept an employment under the employer. This provision is, however, subject to the non obstante clause in Sub-section (2) of Section 22 which reads as follows :

Notwithstanding anything in Sub-section (1), where there is a condition in a contract of apprenticeship that the apprentice shall, after the successful completion of the apprenticeship training, serve the employer, the employer shall, on such completion, be bound to offer suitable employment to the apprentice, and the apprentice shall be bound to serve the employer in that capacity for such period and on such remuneration as may be specified in the contract.

(The proviso to this Sub-section is not relevant for our purpose).

4. This Sub-section leaves no doubt that, despite the provision contained in Sub-section (1) the employer is under an obligation to suitable employment to the apprentice if the contract of apprenticeship contains, a condition that the apprentice shall serve the employer after the successful completion of the training. Indeed, when such an offer is made, the apprentice on his part is bound to serve the employer in the capacity in which he was working as an apprentice.

9. Their Lordships of the Hon''ble Supreme Court in Uttar Pradesh State Road Transport Corporation and another Vs. Uttar Pradesh Parivahan Nigam Shishukhs Berozgar Sangh and others, have held that Section 22 of the Apprenticeship Act, 1961 postulates that it shall not be obligatory on the part of the employer to offer any employment to any apprentice who has completed the period of his apprenticeship training in his establishment unless there is a condition in the contract to the contrary. Their Lordships have further held that for a promise to be enforceable, the same has to be clear and unequivocal. There were memos issued by the Directorate of Training and Employment of the State of U.P. dated September 21, 1977 and the Government of India vide letter dated August 31, 1978. In the communication addressed by the Directorate of Training and Employment, it was stipulated that fullefforts should be made to provide the trainees with service. Now, as far as the Government of India's decision is concerned, it has been desired that other things being equal trained apprentices should be given preference in case of employment. Their Lordships have taken into consideration the entire scheme of the Act and two memos mentioned hereinabove and have held as under Uttar Pradesh State Road Transport Corporation and another Vs. Uttar Pradesh Parivahan Nigam Shishukhs Berozgar Sangh and others,

8. On the strength of these provisions, the contention advanced is that the High Court could not have directed to give employment to the trainees. Reference to the impugned judgment, however, shows that while giving the direction the Court was conscious of what has been provided in Section 22 of the Act; even so, the direction was given on the basis principally of doctrine of promissory estoppel as already noted. As to this view taken by the High Court, we state that, according to us, the direction in question could not have been given because of this principle, despite what was given out by the Joint General Manager of the Corporation in his Circular letter dated 1977 referred in the judgment.

9. We have said so as reference to that Circular shows that all it has done is to lay down the procedure for the selection of the apprentices, which did not require the apprentices to undergo any written examination for selection and their routing through employment exchange was done away with. Something was said about the age also. No promise of employment can be read in this Circular which is of December 21, 1977. We would say the same about the Memo of the Directorate of Training and Employment of the State of U.P. dated September 21, 1977 as it falls short of any promise of employment, because what it says is that full efforts should be made to provide the trainees with service. In this Memo,

what had been stated in para 2 of the Government of India's letter dated August 31, 1978 had been quoted in which it was mentioned that the scheme of training had been introduced to promote chances of employment of educated employed persons; and that if employers would not provide employment to the qualified apprentices the same would amount to destruction of developed human resources. It is because of this that the Government of India expressed the desire that "other things being equal trained apprentices should be given preference in case of employment.

10. For a promise to be enforceable, the same has, however, to be clear and unequivocal. We do not read any such promise in the aforesaid three documents and we, therefore, hold that at the call of promissory estoppel, the direction in question could not have been given by the High Court. But then, we are left in no doubt that the Government of India did desire that preference should be given to the trained apprentices and it is because of this that the State Government stated in its letter No. 735/38-6-16 (T)-79 dated November 12, 1979 that where such apprentices are available, direct recruitment should not be made. Indeed, the Government of India in its letter dated March 23, 1983 even desired reservation of 50 per cent vacancies for apprentice trainees.

It is in these circumstances that the Hon'ble Supreme Court has issued four directions contained in para 12, which read thus *Uttar Pradesh State Road Transport Corporation and another Vs. Uttar Pradesh Parivahan Nigam Shishukhs Berozgar Sangh and others*, at p. 858 :

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 apprentices, preference shall be given to those who are senior.

10. The matter is required to be considered from another angle. The Respondent-Board has framed the Recruitment and Promotion Regulations in respect of Line Staff (Operation Wing). The posts of Linemen are to be filled up 25% by direct

recruitment and 75% by promotion. In the instant case, Petitioner was not entitled to seek employment in view of the express provision contained in para 5 of the agreement, Annexure A-2 dated November 11, 1982. The Petitioner at the most was required to be given some preference at the time when the Board decided to fill up the posts of Linemen by way of direct recruitment. It has come in the reply of the Respondent-Board that the Petitioner has already been engaged as Pump Operator by the Irrigation and Public Health Department since April 21, 1988. Petitioner had completed apprenticeship training on December 26, 1984. He has made the last representation only on August 21, 1987. Thereafter the petition was filed in the year 1998. The petition is also liable to be dismissed on the ground of delay and laches. Accordingly, in view of the observations made hereinabove, there is no merit in the petition and the same is dismissed. However, there shall be no order as to costs.