

(1998) 11 AHC CK 0027

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 35906 of 1998

Manik Lal Bharitya

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 25-11-1998

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1999) 1 UPLBEC 197

Hon'ble Judges : S.R. Singh, J

Bench : Single Bench

Advocate : Virendra Kumar Srivastava, for the Appellant; N.B. Singh, S.C., for the Respondent

Judgement

S.R. Singh, J.—Heard the learned Counsel for the petitioner and Sri N.B. Singh, appearing for Opp. Parties 3, 4, and 5.

2. Relief which the petitioner has sought in the Instant petition, is for a writ of mandamus commanding the respondents to consider the petitioner for appointment on the post of wire-man in the Establishment in the light of the directions embodied in the decision of the Apex Court in the case of U.P. State Road Transport Corporation v. U.P. Parivahan Nigam Shisuksha Berozgar Sangh and Ors. (1995) 1 UPBEC 320 (SC) and the consequent G.O. 9890/23-4-96 Sankhya B-1070/Ka-1/1996 Lucknow, dated Sept. 12, 1996 (Annexure 3 to the petition). Sri N.B. Singh appearing for respondents 3, 4 and 5 raised certain objections having the complexion of preliminary objections and canvassed that the petition is had maintainable against the private party.

3. Having heard the learned Counsel for the parties on the question of maintainability of the writ petition and regard being had to the decision in Pukhraj Mantri v. U.P. Co-operative Spinning Mill Federation Ltd. (1992) 1 UPLBEC 664, and the cases referred to therein, I am persuaded to the view that the preliminary objection is bereft of any substance. There is an element of public interest involved in the functioning of the respondents. 3 to 5. I, therefore,

hold that fee petition is maintainable.

4. The next objection that has been brought to bear is that the petitioner has an alternative remedy and should be relegated to approach the Labour Court under the provisions of the Industrial Disputes Act. Suffice it to say that alternative remedy is not an absolute bar and regard being had to the nature of the relief claimed herein, I do not feel inclined to dismiss the petition on ground of alternative remedy.

5. The next objection raised by Sri N.B. Singh is to the effect that the petition filed twelve years after the training is not maintainable. This submission too does not commend to me for acceptance inasmuch as the petitioner, who has received the apprentice training, is still unemployed and unless he has cross the rubicon of age prescribed, he has a recurring cause of action.

6. The petitioner is a trained apprentice and claims being entitled to be considered for appointment on the basis of decision of the Apex Court report in JT 1995 (2) SC 26 : (1995) 1 UPLBEC 320 (SC), U.P.S.R.T.C. and Anr. v. U.P. Parivahan Nigam Shisuksha Berozgar Sangh and Ors., in which the substance of what has been held is that other things being equal a trained apprentice should be given preference over direct recruits and for this purpose, trainee would not be required to get this name sponsored by any Employment Exchange. It has been further held that in case age bar operates as an obstacle in the way of the trainee, the same would be relaxed in accordance with what is provided in this regard in the concerned Service Rules and if the Rules are reticent on this aspect, the relaxation to the extent of the period for which the apprenticeship had undergone training, would be given. The persons trained earlier are to be given precedence over those, who have been trained later and for this purpose training institute would maintain a list of person trained year wise. In this view of the matter, no specific direction can be given in favour of an individual approaching the Court except that his case be considered in accordance with the above directions as and when occasion arise for appointment.

7. The petition is accordingly disposed of with the above, directions/observations.