
(2006) 06 CAL CK 0008
In the Calcutta High Court
Case No : W. P. No. 14939 (W) of 2002

Md. Elias Khan

APPELLANT

Vs

Steel Authority of India Ltd. and Others

RESPONDENT

Date of Decision : 08-06-2006

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : 110 CWN 918

Hon'ble Judges : Arun Kumar Mitra, J

Bench : Single Bench

Advocate : Kalyan Bandopadhyay, Debjani Sengupta and Sandipan Banerjee, for the Appellant; N.C. Bhattacharya, Amitava Roy and Kanchan Roy, for the Respondent

Final Decision : Allowed

Judgement

Arun Kumar Mitra, J.—The writ petition relates to a claim for absorption as Trade Apprentice in Durgapur Steel Plant.

FACTS IN BRIEF

A publication was announced in the newspaper on 15th October 1993. This was for recruitment, of Trade Apprentice under Durgapur Steel Plant. In that advertisement qualification was prescribed as Madhyamik passed with Group of Science and the age, of the claimants was declared to be 18 to 23 years as on 1st September. 1993.

2. Pursuant to the said advertisement the petitioner made an application and as he was registered under the local Employment Exchange the Employment Exchange also sponsored his name and many other names for the said post.

3. Interview was taken and the petitioner was selected for being appointed as Trade Apprentice. The petitioner was intimated to report to the Durgapur Steel Plant Main Hospital for medical examination on 2nd December. 1993. The

petitioner was assured that he will be given appointment after medical examination. The petitioner appeared for medical examination on stipulated date and time but he was declared medically unfit for doing the job in the "Works Area". The petitioner however, declared fit for working in "Non-Works Area". The petitioner had got poor vision and he was not given any letter of appointment.

4. According to the petitioner out of 60 candidates selected for appointment as Trade Apprentice one Sri Ranjit Kumar Mondal. respondent no. 7 herein was also declared medically -unfit. The petitioner was declared medically unfit for poor vision and Sri Ranjit Kumar Mondal. respondent no. 7 herein was declared medically unfit for colour blindness.

5. During the next year i.e. in 1994, two other Candidates, viz., Debdas Mondal and Partha Chatterjee, respondent no. 8 and 9 herein were also declared medically unfit on the ground of colour blindness. The said two candidates were also declared to be fit for work in the Non-Works Area".

6. The petitioner had got poor vision in the right eye and the left eye was perfectly all right. The case of the petitioner along with other medically unfit candidates were sent to Durgapur Steel Plant Hospital for second time. All of them including the petitioner and the concerned respondent nos. 7, 8 and 9 were sent to Durgapur Steel Plant Hospital and declared fit for doing job in the "Non-Works Area".

7. In pursuance of the said report, out of four candidates including the petitioner, three candidates viz. Ranjit Kumar Mondal, Debdas Mondal and Partha Chatterjee were allowed to join in the Durgapur Steel Plant on 19th November, 1994 as Trade Apprentice. According to the petitioner he became surprised when he was not given appointment and he was left out.

8. According to the petitioner from reliable sources he came to know that a similar candidate Utpal Das who was also working as Trade Apprentice since 1991 was finally absorbed by the concerned authorities of Durgapur Steel Plant and he was also a candidate of poor vision. Therefore, according to the petitioner, the poor vision was not a bar for his appointment in the steel plant. Some other candidates viz., Ujjal Ghosh, Baburam Sharma and Kajal Saha were coloured blind candidates and had undergone training as Trade Apprentice in the Durgapur Steel Plant and finally absorbed in the said Plant.

9. The petitioner being aggrieved filed a writ petition. The said writ petition was numbered as C.O. No. 22326(W) of 1995. The said writ application came up for hearing before His Lordship the Hon'ble Justice Dipak Prakash Kundu (As His Lordship then was) and His Lordship delivered judgment on 8th October, 1996 and directed the Steel Plant authorities to engage the petitioner within a period of two weeks from date and His Lordship further directed that the said engagement of the petitioner would be in connection with Trade Apprenticeship letter No. TRG/20(3)/93 dated 3rd September, 1993.

10. Pursuant to the said judgment and order the petitioner was served with an appointment letter intimating him to report for training to the Office of Deputy General Manager (Human Resource Development). Durgapur Steel Plant on 22nd October, 1996. Since then the petitioner was engaged as a Trade Apprentice and he has been working there along with other candidates.

11. All India Trade Test was conducted by the National Council for Vocational Training every year - first in the month of April, 1999 and second in the month of October-November, 1999 and unless and until a candidate is allowed and/or permitted to appear in the said trade test to qualify for file same he cannot get any employment in the said Company where he has been serving as an Apprentice under the Apprenticeship Act, 1961.

12. According to the petitioner the said All India Trade Test for the month of April-May, 1999. had already been completed and the said test was going to be held for the month of October-November, 1999 and the petitioner came to know about this from the Office of the Regional Director.

13. According to the petitioner, as per the said judgment and order dated 8th October, 1996 the petitioner was required to be engaged in connection with the Training Department's letter dated 3rd September, 1993 but as the petitioner reported for training on 22nd October, 1996 the petitioner had to complete his training in the year 1999.

14. According to the petitioner 53 candidates joined Durgapur Steel Plant as Trade Apprentice under the Apprenticeship Act and in pursuance of the judgment and order dated 8th October, 1996 the authorities of Durgapur Steel Plant engaged the petitioner under Apprenticeship Act, 1961. Sri Subrata Sarkar and Sri Kisholoy Amrit also joined as Apprentices.

15. According to the petitioner through a letter dated 22nd July, 1999 issued by the Assistant General Manager(HRD), Durgapur Steel Plant, the Regional Director. Government of India was intimated that 56 Trade Apprentices of September, 1996 batch were undergoing training at the Durgapur Steel Plant and was due to appear in the 71st All India Trade Test in the month of October-November and out of them 53 candidates had joined on 30th September, 1996. In the said letter it was also stated that two other candidates were also undergoing training with 53 candidates. In the same letter said Office of the Assistant General Manager finally requested the Regional Director to allow the petitioner and two other candidates viz., Subrata Sarkar and Kisholoy Amrit to sit for the 71st Trade Test.

16. Subsequently, the petitioner came to know that the Government of India had expressed its inability to allow the petitioner and two other candidates viz., Subrata Sarkar and Kisholoy Amrit to sit in the said Trade Test.

17. Being dissatisfied, the petitioner moved the writ petition and Hon''ble Justice Basudeva Panigrahi (as His Lordship then was), upon hearing the learned counsel

for the parties directed the respondent authorities to allow the petitioner to appear in the Trade Test but His Lordship directed that the result of such Trade Test is not to be published without the leave of the Court.

18. According to the petitioner in the meantime Subrata Sarkar and Kisholoy Amrit also filed a writ application before this High Court and obtained an order to appear in the Trade Test. The result of 53 candidates was published and in pursuance of the same 53 candidates were absorbed in Durgapur Steel Plant. Subsequently, thereafter the result of Subrata Sarkar and Kisholoy Amrit was published and they were also absorbed.

19. The said matter being W. P. No. 17126(W) of 1999 came up for hearing before Hon''ble Justice Prabir Kr. Samanta and after exchange of affidavits, by a judgment and order dated 12th July. 2000 His Lordship disposed of the writ petition by directing the authorities to publish the result of the petitioner and to provide him all the benefits as are permissible under the provisions of the law as per the result of the petitioner in Trade Test. Even after passing of the said judgment and order, 55 candidates out of 56 were given appointment and the petitioner was the only person who was left out.

20. The petitioner, immediately after passing the Trade Test approached the authorities of Durgapur Steel Plant to absorb him alike but the concerned authorities sat tight over the matter.

21. Being aggrieved, the petitioner again moved a writ petition. The said writ petition was disposed of by Hon''ble Justice D.K. Seth upon hearing the learned counsel for both the parties and upon perusal of the affidavits exchanged by and between the parties. His lordship further directed that the vision of the petitioner might be examined by a third agency being the Burdwan Medical College and Hospital. Burdwan Medical College and Hospital was also requested to take a decision as regards the vision of the petitioner and on the basis of the said report of Burdwan Medical College and Hospital, the candidature of the petitioner should be considered for appointment and if the concerned authorities found any difficulty in giving appointment to the petitioner they should disclose specific reasons therefore and communicate the reason to the petitioner.

22. Pursuant to the said judgment and order dated 28-11-2001. vision of the petitioner was examined in Burdwan Medical College and Hospital and it was categorically stated that the petitioner was visually fit to perform normal duties. The petitioner has annexed the xerox copy of the medical report as annexure "P-4" to the writ petition.

23. The Durgapur Steel Plant authorities challenged the said order dated 28th November. 2001 before the Hon''ble Division bench of this Court by preferring an appeal and a stay application and the Hon''ble Division bench disposed of the said appeal and the application by observing that the petitioner was eligible for any post in the "Non-Works Area" of the said Plant and after making such observation their Lordship directed the concerned authorities of Durgapur Steel

Plant to comply with the order passed by the learned Single Judge within a period of one month from the date of receipt of the order passed by the Hon"ble Division Bench. Xerox copy of the said order has been made annexure "P-5".

24. The General Manager, I/C (P & A). Steel Authority of India. Durgapur Steel Plant being the concerned respondent No. 5 herein by a letter bearing No. PL-1/10/42/TA/2002/196 dated 11th September, 2002 intimated the petitioner that there was no scope to appoint the petitioner either in the Works" or in the "Non Works" Area. The concerned authorities in order to justify their stand stated that the petitioner is a Trade Apprentice in the trade of Plumbing which falls under the Category "B" and the petitioner is found fit for Category "C" post in the "Non-Works" Area where there is no requirement of skill of the petitioner as Plumber and the petitioner has annexed the said letter as annexure "P-6" to the writ petition.

25. The petitioner alleged on a similar occasion the respondent authorities had not given appointment to the handicapped candidates. In fact even after passing of the order by the Hon"ble Division Bench after taking the plea that they have no requirement of any candidate in the "Non-Works" Area and immediately after filing of contempt application before the Hon"ble Division Bench many candidates were given appointment in the "Non-Works" Area of the said Plant and the handicapped candidates were deprived even after passing of the order by the Hon"ble Division Bench. The Hon"ble Division Bench issued a Rule for contempt against the respondent authorities and after the issuance of the said Rule the concerned authorities submitted before the Court that they will give appointment to those handicapped candidates and prayed for appointment before the Hon"ble Division Bench.

26. The petitioner was candidate of batch of 1994 Trade Apprentice Candidates and he was declared to be appointed as Trade Apprentice alongwith the said batch on the ground of poor vision and in the selfsame batch three other candidates viz., Sri Ranjit Kumar Mondal. Sri Debdas Mondal and/Sri Partha Chatterjee being the coloured blind candidates were taken as Trade Apprentices. After completion of their Trade Apprenticeship they were all given appointment in Durgapur Steel Plant as regular employees but the petitioner had not appointed as Trade Apprentice in pursuance of the order of this High Court dated 8th October, 1996 and he was allowed to join as a Trade Apprentice in Durgapur Steel Plant and after completion of the training and after passing All India Trade Test along with 55 candidates, all the said candidates were given appointment as regular employees in Durgapur Steel Plant but only the petitioner was left.

27. Finally, in pursuance of the judgment and order dated 28th November. 2001 passed by Hon"ble Justice D.K. Seth the petitioner was examined medically in Burdwan Medical College & Hospital and he was declared fit to perform normal duty and finally, the concerned authorities of Durgapur Steel Plant preferred appeal before the Hon"ble Division Bench of this High Court where the Hon"ble Division Bench entrusted the Medical Board of the Durgapur Steel Plant and

directed them to conduct examination of the petitioner and thereafter they submitted a medical report before the Hon"ble Division Bench declaring the petitioner medically fit for doing job in the "Non-Works" Area of the said Plant and the Hon"ble Division Bench was pleased to observe that the petitioner could be appointed in the "Non-Works" Area of the said Plant and directed them to comply with the order of the learned Single Judge within one month and the concerned authorities passed a reasoned order dated 11th September, 2002 observing that the petitioner being fit for "Non-Works" Area was not required by the authorities concerned and as such his candidature could not be considered. This order is impugned in this writ petition.

28. The respondent authorities filed opposition and in the said opposition they admitted that Employment Exchange sponsored the name of the petitioner and the petitioner was accordingly engaged as Trade Apprentice in 1993. Pursuant to his selection for engagement as Trade Apprentice he was advised to report to the DSP Main Hospital on 2nd December, 1993. In that examination he was found unfit due to poor vision and therefore, letter of engagement as Trade Apprentice was not issued to the petitioner. Three other candidates of 1994 batch viz., Sri Ranjit Kumar Mondal, Sri Debdas Mondal and Sri Partha Chatterjee were declared unfit due to colour blindness. These 4 candidates were once again referred to DSP Main Hospital to verify whether they were fit for "Non-Works" Area. On the basis of said medical examination three candidates viz., Sri Ranjit Kumar Mondal, Sri Debdas Mondal and Sri Partha Chatterjee excluding the writ petitioner joined in 1994 as Trade Apprentice for "Non-Works" Area.

29. The writ petitioner filed a writ petition in 1995, The Hon"ble Court on 8th October, 1996 directed the respondent No. 2 to engage the writ petitioner as Trade Apprentice under the Apprenticeship Act, 1961 within two weeks and as such engagement of the petitioner was made. In pursuance of the said order the writ petitioner was allowed to report for Apprenticeship training on 22 October, 1996 and he completed his training 21st October, 1999. As per the instructions of the Apprenticeship authority, the candidates who were joined prior to 15th October, 1996 were allowed to appear for the 71st All India Trade Test scheduled to be held on November, 1999. The writ petitioner, Sri S. Sarkar and Sri Kisholoy initially, were not permitted to appear since they joined on 22nd October, 1996, 2nd December 1996 and 7th December. 1996 respectively.

30. The above three candidates filed in September/November. 1999 writ petitions in the High Court and accordingly, as per High Court's order (Hon"ble High Court allowed all the writ petitions) they were allowed to join.

31. Then the said three writ petitions were disposed of on 19th June, 2000 and in terms of the order passed by the High Court their results were published for training. In disposing of the writ petition filed in September. 1999 by the writ petitioners, the Hon"ble High Court directed the authority to publish the result of the writ petitioners and directed all such benefits to the writ petitioners as admissible under the provisions of law and as per the result of the writ petitioner

in the trade test. The Hon"ble Court further made it clear that the petitioner should be provided with similar benefits as have already been given to the two other persons i.e. Kisholoy Amrit and Subrata Sarkar on the basis of their results. In this connection the respondents stated in the opposition that initially, Sri Subrata Sarkar and Sri Kisholoy Amrit were medically examined on 19th September, 1994 and 31st October, 1994 and were found unfit. They were re-examined on 27th November, 1996 and 2nd December, 1996 and were found fit. On successful completion of training and having passed All India Trade Test, Kisholoy Amrit and Subrata Sarkar were treated at par with other 53 candidates of Trade Apprentice of 1990 batch and they were absorbed in the "Works-Area" of Durgapur Steel Plant.

32. The petitioner had completed training on 21st October, 1999 and also passed trade test. As per medical report dated 2nd October, 1993 he was declared unfit but declared fit for the "Non-Works" Area on 17th November, 1994. No Trade Apprentice from 1996 batch who was unfit for "Works" Area has been given benefits of absorption in Durgapur Steel Plant.

33. In compliance with the order dated 12th July, 2000 passed by the Hon"ble High Court, the petitioner was sent for medical examination once again to examine his suitability for the "Works" Area. Since Kisholoy Amrit and Subrata Sarkar were medically re-examined after their initial medical examination when they were declared fit and on being found fit they were allowed to continue Apprenticeship training and were subsequently appointed in "Works" Area in Durgapur Steel Plant, the Hon"ble High Court directed that the petitioner should be provided with similar benefits as has been given to the other two persons on the basis of their results.

34. The respondents in their affidavit stated that to ascertain physical fitness of the petitioner herein he was sent for medical examination once again and he appeared in the medical examination on 25th January, 2001. In the said medical examination the petitioner was found unfit for the "Works" Area. Since the Trade Apprentice are absorbed in the "Works" Area as there is no recruitment of such technically trained personnel in the "Non-Works" Area, the petitioner could not be considered for absorption.

35. The respondents in the opposition further stated that Kisholoy Amrit and Subrata Sarkar have been absorbed in the "Works" Area only when they are found medically fit in medical reexamination. The candidate, who is medically unfit due to poor vision cannot be appointed in the "Works" Area due to safety reason of not only for himself but for others.

36. The petitioner being aggrieved filed another writ petition being W.P. No. 5438 (W) of 2001. On the said writ petition the Hon"ble Justice Dilip Kumar Seth directed the respondent authorities to request Burdwan Medical College to constitute a Medical Board for medical examination of the petitioner as to whether he has perfect vision in one eye and is capable of doing job in "Works"

Area. It was further directed that the respondent authorities should consider the case of the petitioner in the "Works" Area or "Non-Works" as the case may be. Such decision was to be taken within three weeks from the date of receipt of medical report. It was further directed that in case DSP finds difficulty in giving appointment to the petitioner, DSP must disclose the specific reason thereof and communicate the reason to the petitioner.

37. Against this order the respondents preferred appeal being MAT No. 46 of 2002 before the Hon"ble Division Bench of this High Court and Hon"ble Appeal Court presided over by Hon"ble the Chief Justice passed an order for examination of the petitioner again.

38. The writ petitioner was accordingly examined by the duly constituted Medical Board of DSP on 04-05-2002. The writ petitioner was found unfit. for "Works Area" and fit for "Non-Works" Area. Medical report was placed before the Hon"ble Appeal Court and after considering the report the Appeal Court by an order dated 15-07-2002 directed the respondents to comply with the order dated 28-11-2001 passed by the learned Single Judge.

39. The General Manager (P&A) being the respondent No. 2 accordingly considered the case of the petitioner by letter dated 11-09-2002. The decision of the competent authority was communicated to the writ petitioner in terms of the order dated 15-07-2002 and the order dated 28-11-2001. It was found that there is no scope to appoint the petitioner either in "Works" or "Non-Works" Area. He said consideration and appellate order has been annexed to the affidavit-in-opposition (Xerox copy) and has been marked annexure "R-3" and this is impugned in the writ petition. In the said communication R-3 it was stated that as the petitioner was a Trade Apprentice in the trade of plumbing which falls under Category "B" in the said regulation for medical examination of candidates for appointment in SAIL. In the medical examination. Md. Elias Khan has been found fit only for category C posts in the non-works area listed in above para, which does not include any post on which his skill in plumbing trade can be utilized in the interest of work of the company. Moreover, there is no requirement of manpower in any post listed in the said category-C. In fact this is thrust area for reduction of manpower in our ongoing effort to optimize manpower in DSP as per corporate strategy.

40. In any event the respondents slated that the petitioner has no legal right to enforce his claim and to writ petition is liable to be dismissed particularly when by a reasoned order the case of the writ petitioner was considered in terms of the order of the Hon"ble Appeal Court as well as Trial Court.

41. Thereafter the respondent authorities took a plea that SAIL is now a days a loss making sector (especially in Durgapur Steel Area). The respondents then again stated that the Steel Authority of India, a loss making public sector is still in severe cash crunch and has taken a policy decision of downsizing the manpower by offering VRS to 2500 employees. The last VRS was given to about

4000 workers. For the survival of the Company such decision was extremely necessary as the likely loss in the current year is going to be upwards of Rs. 1500 cores and in that view of the situation there is no scope to appoint the writ petitioner either in "Works" or "Non-Works" Area.

42. Thereafter in different paragraphs of the affidavit-in-opposition the respondents denied the allegations made in the writ petition.

43. The writ petitioner filed a reply to the affidavit-in-opposition and reiterated his stand taken in the writ petition. In the said reply the xerox copy of the Division Bench Judgment presided over by Hon"ble the Chief Justice A.K. Mathur has also been annexed being marked as "P-1".

44. Now, on this backdrop of facts it is to be decided whether the petitioner is entitled to absorption as Trade Apprentice whether in "Works" or "Non-Works" Area or not.

SUBMISSION

45. On the above facts the learned counsel for the petitioner submitted that all the candidates were absorbed excepting the petitioner. The learned counsel submitted that because of poor vision the petitioner was disqualified but on the same reason two other persons were found not fit but they were absorbed. It is not stated in the opposition also that the appointment of those two persons is a mistake. Actually, that was done under Court's order, they said but the authorities did not say that they suffered by this Court order and did not provide appointment.

46. The learned counsel for the petitioner said that in the facts and circumstances of the case in view of the Division Bench judgment and in view of the medical report the petitioner should have been absorbed as Trade Apprentice.

47. The learned counsel for the respondents submitted that in such a case there is no scope of judicial review and in this context the learned counsel relied on 1995 Vol. (1) SCC 332 (Transport Commissioner, Madras-5 vs. A. Radha Krishna A. Moorthy).

48. The learned counsel for the respondent authorities further submitted that there is no vacancy either in "Works" or "Non-Works" Area and in the absence of vacancy the Court cannot direct the authorities to create supernumerary post.

49. The learned counsel for the respondent authorities also submitted that the two candidates viz. Kisholoy Amrit and Subrata Sarkar were given appointment in pursuance of the Court's order and the petitioner on the one hand being unlit and on the other there being no vacancy, could not be absorbed.

DECISION

50. Now, without the controversy of the citations produced by both the sides let me examine the factual position. Initially, in 1996, 56 candidates were allowed to

participate in the trade test held in the month of October, 1999 and from that batch 53 candidates were absorbed as Trade Apprentice; the petitioner was excluded. The petitioner moved the High Court and Hon"ble Justice D.K Seth by order dated 28-11-2001 directed the respondent authorities to get the petitioner examined by Burdwan Medical College & Hospital, Burdwan and directed the authorities to request the Burdwan Medical College & Hospital to constitute the Medical Board to examine the petitioner within one month from the date of receipt of the communication. In pursuance of the said judgment and order dated 28-11-2001 vision of the petitioner was examined in Burdwan Medical College & Hospital and it was observed by the said Medical Board that the petitioner is fit to perform normal job. The authorities however, preferred appeal against the said judgment and order passed by Hon"ble Justice D.K. Seth and the Appeal Court gave direction to examine the petitioner by a Medical Board of the Durgapur Steel Plant Hospital and the said report was submitted before the Appeal Court where the Medical Board stated that the petitioner is eligible for any post in the "Non-Works" Area. The Appeal Court clearly observed that in that view of the report the incumbent is eligible for "Non-Works" Area. The Appeal Court thereafter directed the authorities to comply with the order passed by the learned Single Judge.

51. The position, therefore, up to the appeal stage is that the petitioner is eligible to be placed in "Non-Works" Area and not that the petitioner is unfit for all types of job. Now, two other candidates Kisholoy Amrit and Subrata Sarkar are placed in the same position though Appeal Court did not pass any order in their favour inasmuch as Appeal Court was not moved by the authorities insofar as those two incumbents are concerned.

52. Now, three candidates remain in the field out of 56 candidates-one is the petitioner and the other two is Kisholoy Amrit and Subrata Sarkar. Now, if the authorities in terms of Hon"ble Justice Seth's order considered the claim of the petitioner and passed an order to the extent that there is no vacancy either in "Works" or "Non-Works" Area then how can they absorb the two other candidates viz., Kisholoy Amrit and Subrata Sarkar? The fact remains that two other candidates were absorbed and in that event the authorities took a plea that it was done in view of the Court's order. The authorities did not explain as to why they suffered the Court's order in case of two candidates but why they ignored the Division Bench observation where it was observed that the petitioner is eligible for "Non-Works" Area. It is not also a case of the respondent authorities that mistake has been committed in case of those two candidates and/or they were appointed illegally and naturally, the petitioner could not be a perpetuatee of mistake or illegally. It is clearly a case of arbitrariness and high-handedness on the part of the respondent authorities.

53. One time the respondent authorities also took the plea that Steel Plant is sick and VRS is being offered to so many employees. Assumingly, that is so, out of 56 candidates 55 were absorbed and in one case the industry became sick ? Had it

been a case that all the 56 employees were discarded then there would have been no grievance. But here Medical Board of the Durgapur Steel Plant found the petitioner eligible and fit for "Non-Works" Area and the other two candidates were also of poor vision. The two candidates were absorbed and the petitioner was discarded. Articles 14 and 16 of the Constitution come into play. Arbitrariness is the base of this decision of the authorities.

54. On behalf of the authorities a decision has been sought to be cited regard scope of judicial review reported in 1995 Vol. (1) SCC 332 (supra) but in the instant case the authorities acted in clear violation of the provisions of Articles 14 and 16. The judicial review must have to be done and there is enough cope. The authorities treated the "equal" as "unequals" here and the Court should not remain a silent spectator. The authorities in a discriminatory manner absorbed two candidates out of three and more so out of 56 candidates 55 were absorbed but the petitioner was the exception for no reason at all.

55. However, the authorities were taking the plea that there is no vacancy, of course. Normally, when there is no vacancy the Court does not interfere and direct the authorities to create a vacancy or supernumerary post but in such a case where there is patent illegality the Court should not shut its eyes. The general proposition that the Court will not come forward to create a supernumerary post is not a guard and not hard and fast and if the Court finds that patent illegality has been committed and any person has been ousted point blank and his ouster violates the provisions of Articles 14 and 16 of the Constitution then the Court must exercise its power to judicial review and in such a case Hon"ble Apex Court in 2006 Vol. (2) SCC 747 (State of Karnataka & Ors. vs. C. Lalitha) observed in the same line. In that case also the Hon"ble Apex Court found that arbitrariness is ex facie. The Apex Court interfered and directed the authorities to- create a supernumerary post.

56. Therefore, it can be a conclusion that normally the Court would not interfere with the administration of the public body but if Court finds that for any reason whatsoever illegality has been committed (as in the instant case) the Court must assert its position and put the wrong thing to right track. In the present case, in the facts and circumstances I find that illegality is galore and the consideration of the authority suffers from vindication, bias or mala fide and in such case i don"t think that this Court also be a silent spectator.

57. Therefore, I direct the authority concerned to absorb the petitioner as Trade Apprentice belonging to that particular batch where 55 candidates were given appointment out of 56. Such absorption is to be made within a period of three months from the communication of the order without considering the age bar.

58. Since the petitioner had suffered for a long time, the date in his case is peremptory in nature.

59. The writ petition is, thus allowed.

60. There will be no order as to costs. Urgent xerox certified copy, if applied for, will be given to the parties as expeditiously as possible upon usual undertaking.