
(1985) 02 DEL CK 0044

In the Delhi High Court

Case No : Civil Writ Petition No. 1522 of 1983

Naresh Chander and Others

APPELLANT

Vs

Hindustan Insectisides Ltd.

RESPONDENT

Date of Decision : 22-02-1985

Acts Referred:

Citation : (1985) 51 FLR 93 : (1988) ILR Delhi 306

Hon'ble Judges : S.B. Wad, J;Rajinder Sachar, J

Bench : Division Bench

Advocate : Urmila Kapoor, Nishi Puri, Rajender Dhawan, O.C. Mathur, R.C. Beri and Meera Mathur, for the Appellant;

Judgement

S.B. Wad, J.

(1) The petitioners are apprentices under the Apprentices Act, 1961 who have successfully completed three years training with Respondent M/s. Hindustan Insecticides Ltd. They have undergone this training in the various designated trades for which they were selected. They have also passed the examination conducted by the National Council for training vocational trades, Ministry of Labour, Government of India in April, 1979. They are awarded National Apprenticeship Certificate. The apprenticeship training was received by them in the Delhi-unit of Hindustan Insecticides Ltd. M/s. Hindustan Insecticides Ltd. are the Government company and are an instrumentality of State. The Delhi unit of the said company has framed recruitment and promotion rules for industrial workers. It is an admitted position that the training received by the petitioners is equivalent to the trade requirements of Grade III employees of the respondent company. Grade III employment includes the Operators, Electricians, Welders, Masons, Fitters, Painters, Mechanics etc. The grievance of the petitioners is that the recruitment rules of the respondent-company guarantee employment to the trained apprentices. The petitioners joined the apprentices training in 1976 and successfully completed it in 1979 but none of the trained apprentices has been appointed to Grade III posts or even considered for such an appointment. The

petitioners pray for a mandamus for directing the respondent-company to appoint in them to the said Grade Iii posts in the respondent-company. The original Apprentices Act, namely, Act Xix of 1850 was passed for providing apprenticeship training to orphans and poor children. The Act was further amended in 1973 to extend the apprenticeship training facilities to Graduate Engineers and Diploma-holders. The training programmes are to be drawn in accordance with standards and syllabi drawn up by expert bodies.

(2) From this history of the legislation it is clear that the need for skilled craftsman is a national need in the large scale industrial development under the Five Year Plans. The Plans are approved by the Parliament. The Parliament has, Therefore, found it necessary to pass an appropriate legislation for that purpose. The Act establishes a National Council, State Councils, State Apprenticeship Councils, the All India Council for implementing the apprenticeship programmes. It also provides for the apprenticeship advisors at the Centre and State level. Section 8 of the Act provides inter alias for the powers to the Central Government to issue statutory notifications for determining the ratio of trade apprentices to workers in each designated trades. It is an admitted fact that in the present case the ratio was one apprentice for seven workers. The Act then lays down the obligations of the employer and the obligations of the apprentices in the efficient conduct of the training programme. Section 21 provides for the grant of certificate after holding test to apprentices after conclusion of the training. The Act does not oblige the employer or the apprentices to offer or to accept any employment after the conclusion of the training. Section 22 which provides for the offer and acceptance of employment reads :

"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 or 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 be the period or remuneration agreed to between the apprentice and the employer."

The Act also then makes a provision for resolution of disputes between the apprentice"s and employers. It also lays down penal provisions to meet the cases of breach of the provisions of the Act by the employers.

(3) The provisions of the Act and particularly Section 22 patently show that an

employer is not bound to offer an employment to an apprentice after the training. Thus there is no statutory duty for the employer, nor a statutory right in the apprentice to get the employment. However, sub-section (2) of Section 22 makes an exception to the general rule. If the contract of apprenticeship entered under the Act between the apprentice and the employer provides that the apprentice shall serve the employer after the training, then it is the statutory duty of the employer to give suitable employment to the apprentice and it is the statutory duty of the apprentice to accept such employment. The counsel for the petitioners frankly admitted that the apprenticeship contract entered into in the present case does not expressly state that the apprentice must serve the employer after training. Section 22 of the Act recently came for interpretation at the hands of the Supreme Court in *Narinder Kumar and Others Vs. State of Punjab and Others*, . The petitioners in that case had received apprentice training. They received a certificate of their completion of training from the Technical Training Institute, Punjab State Electricity Board, Patiala. The petitioners claimed employment in the Punjab State Electricity Board. The apprenticeship contract provided : It should be clearly understood that you shall be on stipendiary training for a period of one year and on successful completion of this training, you shall be absorbed in the department if there are vacancies." The Supreme Court held that the State of Punjab was bound to offer employment to the petitioner. The court further held that the said term in the contract created reciprocal rights and obligations to the parties. The Supreme Court further held :

"WE are also of the opinion that, apart from the implications arising out of Section 22(2) of the Apprentices Act, paragraph 2 of the letters of appointment creates a binding obligation upon the employer to absorb the apprentices in the department on the successful completion of the training period, provided there is a vacancy in which the apprentices can be appointed. It would be contrary both to the letter and spirit of paragraph 2 of the letters of appointment to hold that, even if there is a vacancy in which an apprentice can be appointed after the successful completion of his training, the employer is free not to appoint the apprentice and fill that vacancy by appointing an outsider. Such a reading of the assurance contained in paragraph 2 will also frustrate the very object of the provision made by the legislature in Section 22(2) of the Act. The object of that provision is to guarantee, to the extent of the existence of vacancies, that the apprentices will not be rendered jobless after they complete their training."

(4) But the argument of the petitioners is that the respondent-company is a Government company and an instrumentality of a State. It cannot act arbitrarily and contrary to its own rules of recruitment. It is pointed out by the petitioners that none of the apprentices who have successfully completed their training has been offered employment by the respondent-company so far. For appreciating this argument, it is necessary to refer to the recruitment rule regarding appointment to Grade Iii posts. The rule is as follows : Sl.Designa- Basic Prescribed Source of Appoint- No. corporation Pay Qualifications recruitment ing

Scale Authority 35. Operator Rs. 305- matriculate with By appoint- Genl. Gr. Iii 7-312-8- one year's ment of existing Manager. 400-10-500 experience in apprentices on operation of completion of Chemical plants training in the Co. Or after which re- Passed Upper remaining vacancies Primary or 7th to be filled in by standard (class) promotion by or equivalent seniority subject with 5 years ex- to suitability from patience in Un-skilled Labourers, position of Laboratory Chemical plants. Attendants working in Production and Development and Planning Depart- ment.

(5) It is clear from the said rule that the appointments are to be made from the apprentices of on completion of their training in the company and if the number of vacancies exceeds that of the trained apprentices the remaining vacancies should be filled by promotion from un-skilled labourers and Laboratory Attendants. down by the Company. This is in contrast to the pleasure of the company to make appointments at its free will. Admittedly, these Recruitment Rules are followed in all the appointments made by Company. The rules were obviously found necessary so as to avoid ad holisms or whimsicality in the matters of appointment. Existence of rules declared before hand is a best guarantee against arbitrariness. Recruitment Rules publicly declared is a notice to the prospective employees of equality of opportunity in the matters of employment. The Constitution and the well-established principles of Administrative law cast this duty on the State and all instrumentalities of State. As trained apprentices under the Apprentices Act the petitioners have legitimate expectation and interest to seek employment and a legal remedy against an instrumentality of a State. There is a corresponding duty cast on all instrumentalities of the State not to act arbitrarily and in violation of Articles 14 and 16 of the Constitution. The respondent-company has admitted that none of the apprentices trained under the Apprentices Act have been offered employment by the company so far. There is thus breach of constitutional duty enjoined by Articles 14 and 16 of the Constitution. Denial of opportunity to the apprentices to seek employment in terms of the Recruitment Rules is unconstitutional and illegal. Section 22(2) creates a duty against an employer of offering employment where the contract provides for the same. Apprentices Training under the Act is given in all schedule trades in private sector as well as in public sector. Where a person works as an apprentice under the Act in a private company or establishment his rights and duties will be regulated only by the contract. But where the apprentices training is in a Government company or a Corporation, as instrumentalities of the State, they must abide by the constitutional obligations of acting fairly and justly. They cannot act according to their sweet will. If they do so the exercise or the non-exercise of the power of appointment would be arbitrary and vocative of Articles 14 and 16. The contention of the petitioners is, Therefore, upheld.

(6) The next submission of the counsel for the respondents is that the said recruitment rules apply only to the apprentices selected by the company on its own and not to the apprentices trained under the Apprentices Act. Our attention

was drawn to the words "existing apprentices" for this interpretation by the learned counsel for the company. He had submitted that the company had its own scheme of training apprentices and with that end in view the special recruitment rules were made. In the counter-affidavit filed by the respondent-company it was admitted that the company had discontinued its scheme after 1967. At the time of the arguments the counsel, however, submitted that the statement was partly incorrect and that the company scheme was in fact continued after 1967. But after probing the matter further the counsel had to admit that in no case the company scheme continued after 1975. We are here concerned with the petitioners who joined the apprentices training in 1976. Thus admittedly the company's scheme was not in existence at that time. The Act came into operation in 1961 and for the first time the respondent-company took apprentices under the Apprenticeship Act in 1976. It is not explained by the respondent-company as to why the scheme under the Apprenticeship Act was not implemented for about 15 years after the Act was passed. It may be noted that no amendment to the Recruitment Rules, particularly in regard to the apprentices under the Apprentices Act, was made by the company. The Recruitment Rules continued as operative not only in regard to the appointment to Grade III employees but to all other employees also. Thus when the petitioners joined the respondent-company as apprentices the present recruitment rules were operative. Since the company had discontinued its own scheme and had not made any further changes in the rules, it must be presumed that the company intended to make the rules applicable to apprentices under the Apprenticeship Act. Another argument advanced by the counsel for the respondent was that the word "existing" connotes the apprentices on the date when the recruitment rules were issued. The word "existing" is used not only in the context of apprentices but in regard to other employees in the said recruitment rules. The absurdity of the interpretation suggested became obvious when appointment in relation to such existing employees was discussed at the time of the arguments. It literally meant that no appointments could be made of the persons who did not have the existing employment at the time of the issuance of the rules. The contention of the Respondent-company is without any merit. The apprentices under the Apprenticeship Act fall within the category of existing apprentices mentioned in the rules. We also note that the said Recruitment Rules are not statutory regulations and, Therefore, cannot be construed by literal interpretation.

(7) The counsel for the petitioner has further submitted that in April, 1980 the Ministry of Labour, Government of India, had issued instructions to all the establishments where trainees under the Apprenticeship Act are trained that preference should be given to the framed apprentices in the matter of employment. The said instructions are annexed as Annexure "G" with the petition. The grievance of the petitioners is that in spite of the directives from the Ministry of Labour the respondent-company did not offer employment to any of the trained apprentices. The reading of the said annexure shows that the apprentices who are trained in various establishments were agitating before the

Government of India for not offering them employment after successful completion of the training. In fact, it shows that they had also restarted to hunger strike in front of the labour Ministry. The said letter of Ministry of Labour has referred to the Prime Minister's directive for giving preference in matter of employment to trained apprentices. The letter states :

"PRIME Minister feels that they have a valid point and there is no use of continuing the scheme if it does not lead to employment."

The letter further directed the establishments in the following terms:

"IT is also requested that you play kindly send the list of the total number of trained apprentices from your organisation awaiting employment and the number of vacancies that are existing at present and that are likely to arise during the year 1980. This information may kindly be sent on top priority. It is also requested that you may kindly indicate as to how many of the trained apprentices can be absorbed immediately and how many of them can be absorbed during the year 1980."

On May 28, 1980 the Ministry of Labour sent a further directive to all the establishments "to fill up at least 50 per cent of the direct recruitment vacancies by trained apprentices." It may be noted that in suite of the directions of the Prime Minister and the Ministry of Labour the respondent-company did not offer any employment to the trained apprentices. On 12th June, 1982 some of the trained apprentices made a representation to the Prime Minister, the Labour Minister and the Managing Director of the respondent-company making the grievance that the directives of the Ministry were not being implemented by the respondent-company. They again made a representation to the respondent-company on 11-5-1983 against the failure of the respondent-company in this regard. The apprentices further stated :

"THAT instead of appointing the undersigned apprentices to the said posts of skilled workman grade Iii you have promoted unskilled workers to the said posts. 1423 HCD/89-8 This action is not in confirmity with your recruitment rules. Under the said rules the unskilled workers can be promoted only after the initial appointment of the existing apprentices who have completed their training in your company." On May 23, 1983 the Ministry directed that necessary action should be taken to ensure that the trained apprentices are absorbed in industries up to a minimum 50 per cent of direct recruitment vacancies. As an instrumentality of the State the respondent-company was bound to comply with the said instructions of Government of India.

(8) Counsel for the respondent has, however, submitted that they had promoted unskilled workmen in the vacancies that have arisen from time to time because of the understanding with the trade union of the unskilled workers. The counsel further submitted that the unskilled workers are working in the company for much longer periods and they made bona fides appointments feeling that that was a first chance of promotion for the unskilled workmen. The counsel has also

referred to the minutes of the discussion with the unions' representatives and the management representatives of 29-10-1982. The minutes are furnished as an E additional document by the company. The minutes show that there was some agreement between the union and management on 17-9-1981 and the trade union was seeking the implementation and modifications. It was agreed between the union and the management that the records of notes of observation would be treated as a settlement signed outside conciliation and filed before the Conciliation Officer for registration. The original agreement dated 17-9-1981 is, however, not produced. It may at once be stated that the respondent-company had no authority to enter into any settlement with the union representatives of the unskilled workers contrary to their own recruitment rules and the directives of the Ministry of Labour issued from time to time. It appears that the unskilled workers being in a large number and organized in a trade union, could influence on the respondent-company to bypass its own rules and the instructions of Government of India. The apprentices being in smaller number and not organized in a trade union had to resort to the representations and hunger strike from time to time. The earliest of such efforts by the apprentices was in 1980. The first settlement between the management and the trade union of the unskilled workers, it appears, was recorded on 17-9-1981, that is, much after the representations of the apprentices and the directives issued by the Labour Department of Government of India, in April and May, 1980. The counsel for the petitioner pointed out that because of the non-implementation of its own rules and directives of the Government by the respondent-company some of them were required to register themselves as unskilled workmen so as to explore a chance of getting an employment. Towards the end of the arguments when the counsel for the petitioners was concluding her reply, an application was moved on behalf of the unskilled workers to implead them as party respondents with an opportunity to plead their case. This petition was filed in July 1983 and the said workmen had ample opportunity to get themselves impleaded at the earlier stage. Moreover, the counsel for the respondent-company had elaborately adverted to the claims of the unskilled workmen. The petition is primarily directed against the failure of the respondent-company to implement its own recruitment rules and the directions of the Central Government. Considering all these aspects of the matter we rejected the application of the unskilled workmen for impleading them as parties at such a late stage.

(9) The apprentices training on systematic and regular basis was a felt need by Government of India for the rapid industrial development under the Five Year Plans. The Prime Minister felt that the scheme was not worth pursuing if no employment could be given to the trained apprentices. Modern industry is highly sophisticated and complex. Need for trained and qualified technicians is emphasised by various economic experts and the Planning Commission. This is particularly so in the public sector undertakings through Corporations and Government Companies. The Nation has sunk thousands and of crores of rupees in the public sector undertakings with an object of producing surplus profits for

making them available for other vital development schemes. After thirty years of planning it is now realised at all hands that running of public sector undertakings has to be primarily on the economic dictates. The other objectives of the public sector undertakings, namely, to control the means of production and the social objective of providing employment are also important. We are here concerned not only with the proper utilisation of the trained and skilled technicians but also with the social objectives of providing employment to such technicians. Modernisation of industries is not only a need for the Communist China but for developing countries including India. The real problem is how to balance the interest of the multitude of unskilled labour seeking employment and proper utilisation of the trained technicians in the industrial growth of the country. The directions of the Government of India to recruit at least 50 per cent of the available vacancies from the trained apprentices is an effort to strike a balance between the said conflicting claims. This directive commits us as a guarantee against arbitrariness in matters of employment in public sector.

(10) What, would be the appropriate and just order on the facts of this case ? From the information furnished by the respondent-company we find that 44 appointments to Grade Iii posts were made from the unskilled workmen in preference to apprentices from May 1979 till October 1982. In terms of the recruitment rules all these vacancies should have been filled from the trained apprentices, assuming that the equal number was available. We have already held that the action of the respondent-company in not offering the employment to apprentices after their completion of training was arbitrary and illegal. If our finding is to be strictly implemented at least some of the 44 unskilled workmen might lose their jobs and the trained apprentices would have to be appointed in their place. But there is an equitable solution possible to this problem so as not to disturb the existing position. The respondent-company should consider and appoint equal number of apprentices to all the vacancies that have fallen vacant or created a new from October 1982 so as to make their number equal to that of the unskilled workmen who are appointed in their place. Till the time the number of apprentices appointed to Grade Iii is not equal to number of unskilled workmen promoted no further promotion of the unskilled workmen should be made. Thus if our judgment is made applicable prospectively from October 1982 and not from 1979 when the apprentices had become entitled to appointment without much disturbance in the existing position a just solution can be reached. After ratio of 50:50 in the grade Iii employment is reached between the apprentices and the unskilled workmen further appointments should be made strictly according to the 50 : 50 formula as the vacancies arise.

(11) For the reasons stated above, the writ petition is allowed to the extent indicated above. The petitioners are entitled to costs of Rs. 1,000. The rule is made absolute.