

(2000) 05 MP CK 0014

In the Madhya Pradesh High Court

Case No : Writ Petition No. 1331 of 2000

Pramod Kumar Shrivastava and others

APPELLANT

Vs

South Eastern Coalfields Ltd., Bilaspur and others

RESPONDENT

Date of Decision : 11-05-2000

Acts Referred:

Apprentices Act, 1961 — Section 2(aa), 4

Citation : (2001) 1 MPJR 402 : (2001) 1 MPLJ 57

Hon'ble Judges : S.K. Kulshrestha, J

Bench : Single Bench

Advocate : A.G. Dhande, for the Appellant; P.S. Nair, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Kulshrestha, J.

The petitioners in the above petition as also the petitioners in W.P. Nos. 1359/2000 (Rajesh Singh Banafar vs. South Eastern Coalfields Ltd. and three others, 1337/2000 (Rajesh Kumar Tripathi and three others vs. The South Eastern Coalfields Ltd. and another., and 2159/2000 (Jitendra Singh and three others vs. Coal India Ltd. and three others) are trained Apprentices who have challenged the written examination conducted by respondent No. 1, pursuant to the advertisement Annexure-P/5 inviting applications for the post of Mining Sirdar, in which they have appeared and failed, on the ground that they being trained Apprentices could not have been subjected to any written examination for appointment in the vacancy of Mining Sirdar in view of the law settled by the Supreme Court in Uttar Pradesh State Road Transport Corporation and another Vs. Uttar Pradesh Parivahan Nigam Shishukhs Berozgar Sangh and others, .

Sine the claim by the petitioners in the above petitions is being made on identical facts and grounds, reference is being made to the fact stated in W.P. No. 1331/2000.

The respondent South Eastern Coalfields Ltd., an undertaking of the Coal India

Ltd., had invited application vide an advertisement dated 15-5-1999 (Annexure-P/5) for the posts of Mining Sirdar from persons possessing eligibility as laid down therein. It is not disputed that all the petitioners being eligible in terms of the said advertisement had applied for the posts advertised and appeared in the written examination conducted by the respondent and on the basis of the result of the examination they were not called for interview as they failed to secure the prescribed marks. The main thrust of the petitioners in challenging the said examination is that the petitioners, being trained apprentices, could not have been subjected to any written test and should have been considered for appointment directly in view of the law laid down by the Supreme Court in U.P.S.R.T. Corporation (supra).

The Apprentices Act, 1961 was enacted to provide for regulation and control of training of apprentices and for matters connected therewith. As observed by the Supreme Court in U.P.S.R.T. Corporation's case, the object behind the enactment of the Act and the rules framed thereunder was to ensure that the training of the apprentices is streamlined in the backdrop of increasing demand for skilled craftsman in the wake of large scale industrial development of the Country. It has also been observed that the amendment of Act in 1973 by which training of graduate engineers and diploma holders was introduced was for "improving their employment potential" and to solve the immediate unemployment problem and the later amendment in 1986 was made to provide "on the job training" to the products of vocational streams so that adequate competence and skill required for various occupations are acquired leading to "suitable employment or self-employment opportunities" in organised industries etc. Learned counsel has submitted that Section 2(aa) of the Act defines "apprentice" as meaning a person who is undergoing apprenticeship training in pursuance of a contract of apprenticeship and the contract contemplated is required to be entered into in accordance with Section 4 of the Act which prohibits engagement of any person as an apprentice to undergo apprenticeship training in a designated trade unless such person has entered into a contract of apprenticeship with the employer. Learned counsel has referred to Section 3 of the Act to point out that only such persons are imparted training as possess the qualification laid down in Section 3 which includes such standards of education and physical fitness as may be prescribed. The contention of the learned counsel is that once a person successfully completes the training of apprenticeship, it carries with it the assurance that he possesses the requisite qualifications and has acquired sufficient proficiency in the trade concerned and, therefore, it is not permissible to subject him once again to any written examination to assess his suitability for appointment as Mining Sirdar or overman. Learned counsel has pointed out that the fact that the petitioners possess the diploma in Mining and Mines Surveying of the Board of Technical Education as also the certificate of having passed the first aid course and of Gas testing examination coupled with successful completion of apprenticeship by itself makes them entitled to appointment without being further subjected to any test or examination and the appointment

should have been offered by the respondents under the provisions of Section 22 of the Act to the petitioners subject, however, to their entitlement between the trained apprentices.

In the reply filed by the respondents, the respondents have disputed the entitlement of the petitioners on the basis of the decision of the Supreme Court in *U.P.S.R.T. Corporation* (supra), which, according to the respondents, was in the different context of facts relating to appointment in the *U.P.S.R.T. Corporation* which had issued a circular dispensing with the written examination in the case of trained apprentices. The respondents have submitted that in accordance with the said decision, since the trained apprentices have to be given preference over direct recruits and are required to be considered without being sponsored by any employment exchange and are entitled to relaxation in the age-bar to the extent of period for which they have undergone training and to preference as between the apprentices on the basis of seniority, these conditions are being followed in letter and spirit, but merely because they are entitled to preference, other things being equal, the petitioners cannot assume that they cannot be subjected to any written test for gauging their proficiency and suitability specially when none of the petitioners has passed the test as prescribed in Section 21 and obtained certificate of proficiency in the trade from the National Council under sub-section (2) thereof. The respondents have also pointed out that under the Act, there is no obligation whatsoever on the part of the employer to give employment to any apprentice who has successfully completed the period of training nor the apprentice concerned is under any obligation to accept employment under the employer who has imparted training to him unless there is a contract between the employer and the apprentice in this behalf binding the employer to offer employment and the apprentice to accept the same. The respondents have also pointed out that not only the respondent but the other Coal Fields are also holding such written examinations which the trained apprentices are required to clear for being considered for employment.

In *U.P.S.R.T. Corporation* (supra), the Supreme Court has observed that the provisions of the Act are sufficiently indicative of the fact that the training imparted is desired to be result oriented and the trainees are treated as akin to employees but even so Section 22 of the Act states 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 be a condition in the contract in this behalf. But in the background of the principles underlying the provisions of the act, it was directed that while dealing with the claim of trainees to get employment after successful completion of their training it should be kept in mind that other things being equal; trained apprentice should be given preference over direct recruits and as between the trained apprentices, preference shall be given to those who are senior. The directions made in paragraph 12 of the Judgment, read as extracted below:

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 be 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 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.

It is not the case of the petitioners that in holding the said examination, the respondents are committing breach of any of the above directions. The case of the petitioners is that since u/s 22, it is necessary for the employer to offer employment, in case post exists, to the trained apprentices who answer the eligibility laid down by the employer, the respondents cannot subject the petitioner to any written examination for making selection. Section 22 of the Act reads as follows:

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 of remuneration agreed to between the apprentice and the employer.

From a plain reading of Section 22, what is apparent is that the training imparted

to any apprentice does not carry with it the least assurance or guarantee about the employment on completion of training nor is the apprentice obliged to accept such employment unless there is a contract containing the condition that after successful completion of the training, the apprentice shall serve the employer and the employer shall be bound to offer suitable employment to the apprentice. Learned counsel for the petitioner has referred to the contract (Annexure-R/3) in which it is stated, "please note no employment after completion of practical training is guaranteed" and has submitted that the said condition is capable of only a singular interpretation that if vacancies exist, the employment would be offered, otherwise not. Learned counsel has, therefore, submitted that the said condition cannot be construed as meaning that even if there are vacancies, the same would not be offered to the trained apprentices. Reference has been made to the decision of the Delhi High Court in Sanjeev Kumar and other vs. Delhi Transport Corporation, (1999 (4) L.L.N. 745).

Before the claim made by the petitioners is considered, it is necessary to refer to the provisions of Section 21 of the Act, which read as follows:

21. Holding of test and grant of certificate and conclusion of training. - (1) Every trade apprentice who has completed the period of training shall appear for a test to be conducted by the National Council to determine his proficiency in the designated trade in which he has undergone his apprenticeship training.

(2) Every trade apprentice who passes the test referred to in sub-section (1) shall be granted a certificate of proficiency in the trade by the National Council.

(3) The progress in apprenticeship training of every graduate or technician apprentice [technician (vocational) apprentice] shall be assessed by the employer from time to time.

(4) Every graduate or technician apprentice or technician (vocational) apprentice, who completes his apprenticeship training to the satisfaction of the concerned Regional Board, shall be granted a certificate of proficiency by that Board.

It is clear from Section 21 that after completion of the period of training, a trade apprentice is required to appear for a test conducted by the National Council for determination of his proficiency in the designated trade in which he has undergone his apprenticeship training. It is only when he passes the test that he is granted a certificate of proficiency in the trade by the National Council. It is not disputed that none of the petitioners has cleared the test contemplated u/s 21 and obtained a certificate of proficiency in the trade. The completion of training cannot be equated with the proficiency in the trade unless a certificate to that effect has been obtained as required by Section 21 of the Act. In the absence of such a certificate, the completion of training carries no assurance about proficiency in the trade. In such circumstances, the respondents are quite within their right to subject such trained apprentices to a written test to assess whether or not they have acquired sufficient proficiency in the trade concerned. This necessitates the consideration of the argument of the learned counsel for

the petitioners that in view of the decision of the Supreme Court in U.P.S.R.T. Corporation (supra), the trained apprentices cannot be subjected to any written examination. Reference has been made to paragraph 13 of the decision which reads as under:

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.

Dispensing with the requirement of the written test has to be read in the context of the facts of the said case. The direction was issued in the context of the circular letter of 1977 of the Joint General Manager of the Corporation laying down the procedure for selection of apprentices which did not require the apprentices to undergo any written examination for selection. Since in the present case, in condition No. 5 of the notice inviting application (Annexure-P/5) it has clearly been mentioned that if the candidates of Scheduled Caste/ Scheduled Tribes are called for examination/interview, they shall be paid IInd class fare by shortest route, it clearly conveys that written examination had not been dispensed with even in the case of trained apprentices. Even if the matter is examined from another perspective, it is obvious that none of the petitioners can claim proficiency in the trade merely on account of having completed the apprenticeship training as none has obtained the certificate of proficiency as required by sub-section (2) of Section 21. The petitioners have already appeared in the examination and out of 173 such apprentices, 120 have cleared the same and no departure can be made in the case of the petitioners by waiving the requirement of the written examination which has been uniformly adopted even in other Coalfields such as W.C.L., Mahanadi Coalfields Ltd., Central Coalfields and Eastern Coalfields Ltd. One cannot be oblivious of the fact that the post of Mining Sirdar carries with it onerous duties and responsibilities and the respondents are, therefore, entitled to satisfy themselves about the suitability of the persons before appointment. The question of considering the priority in accordance with the judgment in U.P.S.R.T. Corporation (supra) will arise only when the candidates who have successfully passed the examination are considered for appointment. Since the criteria of written examination has been uniformly applied, it cannot be said to be arbitrary or whimsical. The judgment of the Hon'ble Delhi High Court in Sanjeev Kumar and others (supra) merely deals

with the requirement as enumerated in paragraph 12 of the decision of the Supreme Court in U.P.S.R.T. Corporation (supra) and not with any requirement of holding or otherwise of a written test and is, therefore, of no assistance to the petitioners.

The learned counsel has submitted that although it is stated in the contract Annexure-R/3 that no employment after completion of practical training is guaranteed, the condition should be liberally construed in favour of the trained apprentices to mean that if vacancies exist, they would be absorbed. Reference has been made to the decision of the Supreme Court in Narinder Kumar and Others Vs. State of Punjab and Others, . In the case before the Supreme Court, the contract of apprenticeship itself provided that on successful completion of training, the trainee would be absorbed in the department if there were vacancies subject to the condition that during the waiting period, the concerned apprentice shall not be paid any remuneration. The said condition was clearly indicative of the assurance to offer employment on availability of vacancies while in the case of the petitioners, no guarantee had been extended. It is also to be noted that in the present case the respondents are not denying the opportunity to the trained apprentices and the petitioners have in fact appeared at the examination but it is only when they were not successful that they have approached this Court to challenge the action of the respondents on the ground that they could not have been subjected to any written test. Since the respondents are quite justified in holding a written examination especially when the petitioners do not possess the certificate of proficiency u/s 21(2), I do not find any merit in the challenge to the said written examination.

At this stage, it is also necessary to refer to the contention of the learned counsel for the petitioner in W.P. No. 1359 of 2000 that the respondents are violating the rights by reserving posts in excess of the maximum permissible under the law. The contention has been raised on the ground that for making recruitment on 197 posts, only 69 posts have been made available in general category. No such ground has been taken in the petition nor any relief has been claimed on that basis to enable the respondents to demonstrate that reservation is as per permissible limits/roster. The reservation is to be seen as against total number of posts and in the absence of specific challenge about violation of the limit based on the strength of service, the contention does not merit consideration in the present case.

In view of the above discussion, the petitions are dismissed with no order as to costs.