

(2000) 04 AHC CK 0126
In the Allahabad High Court
Case No : Special Appeal No. 436 of 1999

Rajendra Singh and others	Vs	APPELLANT
Uttar Pradesh State Electricity Board and others		RESPONDENT

Date of Decision : 09-04-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 152, 2(2)
Constitution of India, 1950 — Article 141

Citation : (2000) 3 AWC 2006 : (2000) AWC 2006 : (2000) 86 FLR 155 : (2000) 2 UPLBEC 1741

Hon'ble Judges : Shitla Prasad Srivastava, J;G.P. Mathur, J

Bench : Division Bench

Advocate : Prakash Padia and R.G. Padia, for the Appellant; S.C. and S.P. Mehrotra, for the Respondent

Final Decision : Dismissed

Judgement

G.P. Mathur, J.—Having failed before the learned single Judge to get any relief in the writ petition filed by them, the appellants have preferred the present special appeal.

2. According to the case set up in the writ petition, the appellant Nos. 1 to 27 completed their apprenticeship training of lineman while appellant Nos. 28 to 50 completed their apprenticeship training as sub-station operator. In January 1999, an advertisement was issued by the U. P. State Electricity Board (for short, the UPSEB) inviting applications for the post of lineman. sub-station operator (technical grade-II) and labour. The advertisement (Annexure-110 to the writ petition) laid down that the applicants should be registered with employment exchange and, for the purpose of selection, a written examination will be held. The appellants claim that in pursuance to the advertisement, they made applications for the posts in question. The main grievance of the appellants is that having undergone apprenticeship training, the requirement regarding registration with employment exchange and competing in the written test ought

not to have been there. The principal relief claimed in the writ petition was that a writ of mandamus be issued directing the respondents to consider the case of the writ petitioners on preferential basis for appointment on the post of lineman/sub-station operator/labour on the basis of their apprenticeship training given to them by the UPSEB without compelling them to either get their names registered in the employment exchange or to appear in the written examination.

3. The learned single Judge did not accept the plea of the appellants that they are not required to be registered with the employment exchange or to appear in the written examination which is to be held by the UPSEB for the purpose of making the selection. He directed the respondents to follow the principle laid down in C.M. Writ Petition No. 3177 of 1999 (Askand Kumar Srivastava v. State of U. P.), decided on 4.2.1999.

4. The learned counsel for the appellants has contended that the Apex Court in Uttar Pradesh State Road Transport Corporation and another Vs. Uttar Pradesh Parivahan Nigam Shishukhs Berozgar Sangh and others, issued directions with regard to the appointment of trained apprentices which laid down that a trained apprentice would not be required to get his name sponsored by any employment exchange and that he would not be required to appear in any competitive test and, therefore, the advertisement issued by the respondents, which provided for sponsoring of the name by an employment exchange and holding of a competitive test, is illegal. In order to appreciate the contention raised, it is necessary to reproduce the directions issued in the aforesaid case, and they are as follows :

"(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 any 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 yearwise. 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."

5. The aforesaid decision of the Supreme Court came up for consideration before one of us (G. P. Mathur, J.) in Manoj Kumar Misra v. State of U. P. and others 1997 12 AWC 654. and it was held as follows :

"The claim of the petitioners that they are not required to appear in any competitive examination or test which is held for making selection on the post on

which they want to be appointed, cannot be sustained as no such direction has been given by Supreme Court. If the relevant service rules or Government Orders issued in this regard provide for holding of a competitive examination or test, the petitioners have to appear in the said examination or test and compete with other candidates. The Apex Court has nowhere ruled that the relevant provisions for holding an examination for making selection with regard to direct recruits is ultra vires or the same would not apply to a person who has completed apprenticeship training. In fact, the very first direction which provides that other things being equal, a trained apprentice should be given preference to other direct recruits, shows that he has to appear in the competitive examination or test otherwise his comparative merit cannot be judged. Learned counsel for the petitioners has, however, placed reliance on two decisions, namely, Mohd. Waseem v. State. 1996 (14) LCD 82, and in Writ Petition No. 1489 of 1991. Bhartiya Mazdoor Sangh v. I.T.I. Ltd., decided on 4.7.1996, wherein a direction has been issued to consider the case of the petitioners in the light of the aforesaid observation made by the Supreme Court and a further direction has been issued that they will not be required to appear in any written examination, if any, provided under the Rules governing the conditions of service of regular employees. With profound respects and utmost humility, I am unable to agree with the aforesaid direction of the learned single Judge that the petitioners would not be required to appear in any examination. A careful reading of the judgment of the Supreme Court would show that no such observation was made while dealing with the claim of trainees to get employment. No doubt there is such an observation in paragraph 13 of the reports but that paragraph specifically dealt with the cases in which U. P. State Road Transport Corporation had preferred appeals against the judgment dated 6.10.1989 of Allahabad High Court."

6. In the latter part of the Judgment, the observations made in paragraph 13 of the judgment of the Supreme Court in the U. P. State Road Transport Corporation (supra) were explained as under :

"The observation that the trainees would not be required to appear in any written examination was made only with regard to those whose matter was up for consideration in appeal before the Court and has to be confined to the facts of that case alone in view of the resolution of the Corporation dated 22.8.1977 and the circular issued by the Joint General Manager on 21.9.1977. This observation cannot have any general application."

7. The same question was subsequently considered by a Full Bench in Arvind Gautam v. State of U. P. and others 1999 (2) ALR 739, which framed four questions for decisions, and question No. 1 was to consider and decide : Whether the directives of the Supreme Court in the case of U. P. State Road Transport Corporation v. U. P. Parivahan Nigam Shishukhas Berojgar Sangh and others (supra) should be confined to the U. P. State Road Transport Corporation alone or they may be made applicable to all departments or all corporations. The Full Bench approved the above-quoted observations in Manoj Kumar Misra's case

(supra), and answered question No. 1 in the following words :

"Hence the answer to question No. 1 is that the directives of the aforesaid judgment of the Supreme Court as contained in paragraph 12 of the said judgment in the case of U. P. State Road Transport Corporation v. U. P. Pariuahan Nigam Shishukhas Berojgar Sangh and others (supra), is not confined to UPSRTC alone but they are applicable to all departments and corporations, but the directives in paragraph 13 of the said judgment apply strictly to the persons whose cases came up for consideration before the Apex Court in the said matter, and not to others."

8. The controversy whether an apprentice trainee is required to appear in a competitive test has, therefore, been set at rest by the Full Bench and the appellants cannot claim that they should be given appointment without their competing in the entrance test. The question of giving any preference to the appellants over direct recruits can arise only if they secure equal marks in the competitive test, and not otherwise.

9. In *Mitragshu Roy Choudhary and others v. Union of India and others* JT 1999 13 SC 117. the Supreme Court had an occasion to consider the case of apprentices who were claiming appointment in the railway service. It was held that as there was no guarantee or promise for employment while sending the appellants to undergo apprenticeship training, they could not have the right to be appointed under the Act in view of the specific legal provision u/s 22 of the Act. It was further held that the appellants of the said case and similarly situated persons could not claim appointment as a matter of right for the posts in the railways on account of their having undergone apprenticeship training.

10. Sri R. G. Padia next urged that in view of the decree dated 2.5.1996 passed by the Supreme Court In Civil Appeal No. 764 of 1993 (*U. P. State Electricity Board v. Hari Om Sharma*), it is not open to the State Electricity Board to require the apprentices to be sponsored through the employment exchange or to appear in a written test. The learned single Judge has gone into this question in considerable detail and has held that the decree in the aforesaid appeal had not been correctly drawn and had been prepared on the basis of the Judgment delivered on 12.1.1995 in the case of *U. P. State Road Transport Corporation* (supra). He has further held that the preparation of decree is a purely ministerial Act and if the same did not conform to the judgment, it would not be binding and, consequently, no advantage could be taken from the same If there is any deviation between the judgment and the decree. Learned single Judge also observed that the respondents could apply for correction of the decree u/s 152 of the CPC as there was a clerical mistake in its preparation. We are in agreement with the view taken by the learned single Judge. Apart from what the learned single Judge has said, it may be added that writ petitioners (appellants in this appeal) were not party to Civil Appeal No. 764 of 1993 before the Supreme Court. "Decree" has been defined u/s 2(2) of CPC and it means the formal expression of an adjudication which, so far as regards the Court expressing it.

conclusively determines the rights of the parties with regard to all or any of the matter in controversy in the suit and may be either preliminary or final. The appellants not being party to the appeal before the Supreme Court. their rights have not been determined by the decree passed in Civil Appeal No. 764 of 1993 and. therefore, they cannot take any advantage of the name. The law declared by the Supreme Court is no doubt binding under Article 141 of the Constitution. The law declared in the case of U. P. State Road Transport Corporation (supra), has been considered and explained by this Court in Manoj Kumar Misra v. State of U. P. (supra) and also in, Arvind Gautam (supra), and the same is binding upon everyone. As held in the aforesaid decisions, the appellants cannot claim any legal right that they should not be required to appear in any examination or competitive test which may be held by the respondents for making selection for the posts which have been advertised.

11. For the reasons mentioned above, we find no merit in the special appeal which is hereby dismissed. The respondents will follow the principles laid down by this Court in the cases of Manoj Kumar Misra (supra), and Arvind Gautam (supra), while making the selections in question.