

(2003) 10 AHC CK 0192

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 50852 of 1999

Ram Kishore Sahu

APPELLANT

Vs

Hindustan Aeronautics Ltd. and Another

RESPONDENT

Date of Decision : 20-10-2003

Acts Referred:

Allahabad High Court Rules, 1952 — Rule 2

Citation : (2004) 2 UPLBEC 1550

Hon'ble Judges : R.B. Misra, J

Bench : Single Bench

Advocate : Akhilesh Misra and Sanjay Misra, for the Appellant; Bharti Sapru and S.C., for the Respondent

Final Decision : Dismissed

Judgement

R.B. Misra, J.—Heard Sri Sanjay Mishra learned Counsel for. the petitioner as well as Ms. Bharti Sapru learned Counsel for the respondents Hindustan Aeronautics Ltd., Kanpur in short called "HAL".

2. With the consent of the parties, this case is being heard and decided in view of Second Proviso to Rule 2 of Chapter XXII of the Allahabad High Court Rules, 1952.

3. In this petition prayer has been made for quashing the written tests held for the selection to the post of Fitter on 10.7.1999 and 14.7.1999 by the respondent No. 1 i.e. the General Manager, "HAL".

4. It appears that petitioner has passed High School and had completed the Fitter Training Course from Training Institute, Kanpur. The petitioner had also completed apprenticeship for Fitter from the "HAL"/respondent No. 1 itself in the year 1989 and has passed the Trade test of the Fitter held from 21.4.1989 to 28.4.1989. It appears that the petitioner was registered with the Employment Exchange Directorate/Officer, Kanpur Nagar. The petitioner applied for appointment to the post of Fitter and was allocated Roll. No. 525 for appearing in

the written test along with other candidates on 10.7.1999, however, was not declared successful. According to the petitioner he was not to appear in the selection but in the light of the apprenticeship training imparted to him he was to be declared selected to the post of Fitter in view of the decision of Uttar Pradesh State Road Transport Corporation and another Vs. Uttar Pradesh Parivahan Nigam Shishukhs Berozgar Sangh and others, According to the petitioner in view of Paragraphs 12 and 13 of above case the petitioner was to be given appointment directly to the post of Fitter without undergoing the selection process.

5. Counter-affidavit has been filed on behalf of the respondents stating that there is no violation of Rules. The respondents were not under obligation to declare the result on the basis of the marks secured by the petitioner and the petitioner was not to be allowed to be selected automatically besides that the petitioner appeared in the said examination and he was found unsuccessful.

6. According to the petitioner in view of the decision of the Supreme Court in Swaran Lata Vs. Union of India and Others, a person who appeared in the selection but was not selected cannot turn back and challenge the selection.

7. In order to examine the force of the contention of the petitioner it is relevant to mention Paras 12 and 13 of the judgement of U.P. Parivahan Nigam Shishukshu Berozgar Sangh (supra).

"Para 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 thing beings 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 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 appearance 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 apprentice, preference shall be given to those who are senior.

Para--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."

8. The question was referred before the Full Bench of this High Court in respect of interpretation whether the judgement of the Supreme Court in U.P. Parivahan Nigam Shishukshu Berozgar Sangh (supra) was confined to the UPSRTC alone or the judgment was applicable to all the department s or all the Corporations and this Court Full Bench in Arvind Gautam Vs. State of U.P. and others, , has indicated in its judgment as below :

"6. In our view the express "other things being equal" in Paragraph 12 and absence of exemption from competitive test in the said Paragraph, leads to the conclusion that all persons (including the apprentices) have to appear in the competitive test, as may be prescribed in respect of the particular selection, and if after the competitive test any apprentice trainee gets equal marks than a non-apprentice candidate, then only preference is to be given to the said apprentice trainee.

7. Such a view gets support from the judgment of this Court in the case of Manoj kumar Mishra v. State of U.P. and Ors., reported in (1997) 2 AWC 654 : (1997) 2 UPLBEC 1374, where in the claim of apprentice trainees as regards exemption from competitive examination fell for consideration. The relevant findings in the said judgment are as follows.

"6.The clam 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 no where 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 of 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 4.7.1976 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."

9. 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. Parivahan Nigam Shishukshu Berozghar Sangh, (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 persons whose cases came up for consideration before the Apex Court in the said matter, and not to others."

9. The Supreme Court in (2000) 86 FLR 88, U.P. Rajya Vidyut Parishad Apprentice Welfare Association and Anr. v. State of U.P. and Ors., had tested the verdict of the decision of this Court Full Bench in Arvind Gautam (supra) and has held as below :

"2. A question had arisen before the Allahabad High Court in a later case as to whether the direction that the trainees need not undertake examination was applicable only to the petitioners in the case before this Court or whether Para 13 had laid down any general principle that apprentices need not take the examination.

The Full Bench held that what was mentioned in Para 13 was in the specific factual background of the "cases on hand" and that the apprentices are to go through the examination as also the interview, as provided in the Recruitment Rules. The Full Bench had also approved the judgment in the case of Manoj Kumar Mishra v. State of U.P. and Ors., which took a similar view in regard to the interpretation of Para 13 of the judgment of this Court mentioned above.

3. We are, therefore, of the opinion that the view taken in Manoj Kumar Mishra's case, as also the view taken by the Full Bench in Arvind Gautam's case (supra) is a correct one and that apprentices have to go through the procedure of examination interview and that they are however entitled to the benefits of entries (i) to (iv) laid down in Transport Corporation case."

10. In view of the above foregoing analysis and references, it appears that the holder of apprenticeship training shall have to appear in the selection process along with other candidates and if he secures marks equivalent to the candidates participated in the selection, who had not been imparted apprenticeship training

then viz-a-viz that candidate, the question of giving preference could arise. The candidate by virtue of possessing the apprenticeship training cannot claim that he has to be given direct appointment to any post. Here the petitioner, appeared and participated in the selection process and has failed, and in view of the above observations, the petitioner is not entitled to any relief, therefore, writ petition is dismissed.