

(2008) 05 OHC CK 0048

In the Orissa High Court

Samir Kumar Biswal and Others, Subhakanta Patnaik and
Others, Bijaya Kumar Sinha and Another and Naresh Chandra
Mohanty

APPELLANT

Vs

Chief General Manager, Mahanadi Coal Fields and Others

 Budhadeb Biswal and Others and Prafulla Ch. Behera
and Others Vs Mahanadi Coalfields Ltd. and Another

RESPONDENT

Date of Decision : 02-05-2008

Acts Referred:

Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 — Section 4

Citation : (2008) 2 OLR 230

Hon'ble Judges : R.N. Biswal, J;B.P. Das, J

Bench : Division Bench

Final Decision : Allowed

Judgement

R.N. Biswal, J.—All the writ petitioners raised substantially similar issues of fact and law and as such all the writ petitions are heard analogously and a common judgment is passed thereon.

2. The common case of all the petitioners numbering 49 is that the Management of the Mahanadi Coalfields sent requisition to the Employment Exchanges in the state to sponsor the names of candidates having requisite qualifications to fill up 38 posts of Mazdoor category-I (I.T.I). Accordingly, names of 664 candidates were sponsored. The petitioners along with many others submitted their bio datas to opp. party No. 1 and after due scrutiny 316 candidates were allowed to appear in the written test held on 29.10.1995, out of whom 287 candidates including the petitioners were called upon to appear the Trade Test. Accordingly they appeared in the Trade Test in different batches during the period 26.12.1995 to 6.1.1996. A merit list comprising 226 I.T.I. candidates who were found suitable in all respects was prepared, out of which only 24 candidates were given appointment. Subsequently, 84 posts were sanctioned. Opp. party No. 1 gave appointment to 51 candidates exclusively those who had taken Apprenticeship Training in the Mahanadi Coalfields, out of the aforesaid merit list.

So, the petitioners met the opp. parties, submitted memorandums and staged Dharana in front of the Office of opp. party No. 1 and when nothing cut ice, they preferred the aforesaid writ petitions with prayer to direct the opp. parties to appoint them as Mazdoor Category-I (ITI).

3. Opp. party Nos. 1 and 2, in their counter affidavit averred that by the end of 1993, 38 vacancies of Mazdoor Category-I (ITI) were notified to the Local Employment Exchanges, in response to which names of 664 candidates were sponsored, out of whom 375 candidates submitted their bio datas. After scrutiny of the bio datas of the respective candidates, 316 candidates were called for written test on 29.10.1994, of whom 289 candidates appeared and all of them were called for Trade Test in different batches within the period 26.12.1995 to 5.11.1996, out of whom 240 candidates secured qualifying marks. These opp. parties specifically stated to have prepared a merit list of 226 candidates to be absorbed in the Mohanadi Coalfields Ltd. Out of 38 vacancies 24 vacancies were filled up from the empanelled candidates and the remaining 14 vacancies could not be filled up due to non-availability of candidates in the trade of Auto Electrician (5 vacancies) and S.C./S.T. categories (9 vacancies). Thereafter 84 numbers of fresh vacancies of Mazdoor Category-I (I.T.I.) in different trades were sanctioned. The Employment Exchange, Talcher was requested vide letter No. 115 dated 6.6.1996 to give permission to fill up those posts from the existing list, but there was no response. Thereafter on basis of the decision *Uttar Pradesh State Road Transport Corporation and another Vs. Uttar Pradesh Parivahan Nigam Shishukhs Berozgar Sangh and others*, . opp. party Nos. 1 and 2 gave appointment, to 51 candidates from the existing list who had their apprenticeship in Mahanadi Coalfields Ltd. Accordingly opp. party Nds.1 and 2 pressed to dismiss the writ petitions. The other opp. parties did not prefer to file any counter affidavit.

4. From the pleadings of the parties, it is clear that a selection list comprising 226 candidates was prepared. Out of 38 vacancies, 24 vacancies were filled up out of the candidates in the selection list. Subsequently 84 posts of Mazdoor Category-I (I.T.I) were sanctioned. Basing on the decision in *U.P. State Road Transport Corporation "(supra)*, 51 candidates exclusively those who had taken apprenticeship training from Mahanadi Coalfields, were given appointment out of the selection list, ignoring some more meritorious candidates who had taken such training from other institutes.

5. Learned Counsel appearing for the opposite party-management submitted that since the Special Employment Exchange Talcher did not permit to fill up the 84 vacancies from the existing selection list, despite request made in black and white, basing on the decision in *U.P. State of Road Transport Corporation (supra)* opp. parties 1 & 2 appointed 51 candidates exclusively those who had taken apprenticeship training in Mahanadi Coalfields Ltd., from the existing merit list. According to his submission, as per the said decision the candidates, who had taken apprenticeship training in Mahanadi Coalfields Ltd., should be preferred to

those who had undertaken such training in other institutions. He further submitted that the so-called merit list having been prepared on 15.2.1996 it remained valid upto 14.2.1997 only. The writ petitions having been filed after that date, the petitioners can not derive any benefit from the said selection list. On the other hand, learned Counsel appearing for the petitioners submitted that deputation of the candidates in different organizations to take apprenticeship training is the look out of the Principal of the concerned Industrial Training Institutions. The candidates have no say therein. The Apex Court in the decision cited {supra} has not stated that the candidates who had undertaken apprenticeship training in M.C.L. would be preferred to those who had undertaken such training in other organizations, even though they are more meritorious. He further argued that even if it is held that the selection list lost its validity after expiry of one year, still then when the opp. party-management, appointed 51 candidates from the said selection list during its validity by adopting the pick and choose method ignoring the more meritorious candidates, the petitioners have every right to challenge the said appointment, even after one year of the preparation of selection list,

6. The Apex Court In the case of U.P. State Road Transport Corporation (supra) held that the following would be kept in mind while dealing with the claim of trainees to get employment after successful completion of their training:

(i) Other things being equal, a trained apprentice should be given preference over direct recruits.

(ii) 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.

(iii) 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 apprentice has undergone training would be given.

(iv) 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 latter. In between the trained apprentices, preference shall be given to those who are senior.

In Para 13 of the said judgment, the Apex Court further held;

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.

While interpreting this para in the decision U.P. Rajya Vidyut Par. App. Wel. Association. and Another Vs. State of Uttar Pradesh and Others, , the apex Court

held that what was mentioned in Para 13 quoted above was in specific factual background of that case and that apprentices are to go through the examination as also the interview, as provided in the Recruitment Rules. But they are entitled to the benefit of the entries (i) to (iv) as mentioned above.

7. Nowhere in the aforesaid decisions, it has been held that an institution would only give appointment to the candidates who have undergone apprenticeship training in that institution and none else. The petitioners along with other candidates numbering 240 were empanelled and the same was approved on 5.2.1996. The judgment in U.P. Road Transport Corporation (*supra*) was reported in the year 1995; much before the empanelment. If it was the intention of the opp. party-management to give appointment to the candidates only those who had undergone apprenticeship training in their institution, they were not expected to empanel the candidates taking such training in other institutions. In the case of U.P. Road Transport Corporation, the dispute was between the trained and untrained candidates. In the present case, all the empanelled candidates were trained apprentices, so, the decision is not applicable to the present case.

8. The panel of 240 candidates was approved on 15.2.1996 for a period of one year. Out of 38 vacancies, 24 vacancies were filled up in order of merit from the said panel. According to the opp. party-management, 14 vacancies 5 Auto Electricians and 9 meant for S.C. & S.T. candidates could not be filled up because of nonavailability of such candidates. On 25.5.1996, 84 posts of Mazdoor Category-I (ITI) were sanctioned. The opp. parties made requisition as required u/s 4(1) of Employment Exchanges (CNV) Act, 1959, read with Rule 4(1) of Employment Exchanges (CNV) Rules 1960, but since the Employment Exchange did not respond to it, they appointed 51 candidates, all who had taken apprenticeship training under MCL ignoring the more meritorious candidates, relying on the decision in U.P. State Road Transport Corporation {*supra*). As stated earlier, when the Employment Exchange did not sponsor the names of candidates to fill up the newly sanctioned 51 posts, the opp. parties ought to have filled up those posts, out of the candidates from the merit list prepared earlier strictly in the order they had been placed in the select list. The opp. party management committed error in not following it. As submitted by learned Counsel for the opp. parties the selection list, which was approved on 15.2.1996 for a period of one year, was valid till 14.2.1997. All the writ petitions having been filed after 14.2.1997, the petitioners cannot derive any benefit from the said list. This submission of learned Counsel for the opp. parties would have been held good had the less meritorious candidates, out of the said list would not have been given appointment during the period of validity of the said list. The petitioners are aggrieved because of giving appointment exclusively to the candidates, who had undergone apprenticeship training under the MCL out of the said merit list ignoring the more meritorious candidates. So, the submission of learned Counsel for the opp. parties that since the petitioners filed the writ petitions after expiry of the validity period of the selection list they cannot derive any benefit out of the said list cannot be accepted. Admittedly if the fresh 51

posts are filled up from out of the candidates in the selection list strictly in order of merit some of the opp. parties who had been given appointment and are continuing in service shall be affected.

9. Hence, it is directed that the opp. party-management shall fill up the 51 posts, subsequently sanctioned, strictly in the order, the candidates have been placed in the selection list and consequentially the opp. parties who would lose their job, would be adjusted in suitable posts in the existing and future vacancies without asking them to face any recruitment test.

10. Accordingly, the writ petition is allowed without cost.

B.P. Das, J.

11. I agree.