

(2014) 07 AHC CK 0179

In the Allahabad High Court

Case No : C.M.W.P. No. 2084 of 2011 & Civil Misc. Writ Petition No. 2084 of 2011

Satya Prakash

APPELLANT

Vs

U.P. Rajya Vidyut Utpadan Nigam Limited

RESPONDENT

Date of Decision : 01-07-2014

Acts Referred:

Citation : (2014) 105 ALR 631 : (2014) 6 AWC 6334

Hon'ble Judges : Manoj Kumar Gupta, J

Bench : Single Bench

Advocate : Arun Kumar Gupta, Advocate for the Appellant; A.K. Mehrotra and N.K. Mishra, Advocate for the Respondent

Judgement

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Manoj Kumar Gupta, J.—By means of this writ petition, the petitioner seeks a writ of mandamus commanding the respondents to appoint him on one of the posts of Junior Engineer (Thermal), in pursuance of the selection held on basis of advertisement dated 19.10.1992 and a writ of certiorari quashing the order dated 28.10.2010, passed by the General Manager, Thermal Plant-B Anpara, District Sonbhadra, respondent No. 3, rejecting the claim of the petitioner for appointment on the post aforesaid, on the ground that the petitioner does not possess three years experience of having worked in a project of minimum generating capacity of 200 MW, which is essential for appointment to the said post. Briefly stated, the facts giving rise to the instant writ petition are that an advertisement was published in the news paper Dainik Jagran dated 19.10.1992 for appointment on 93 posts of Supervisor (Thermal) at Anpara-B, Thermal Project, Anpara, Sonbhadra. The petitioner made application on 1.11.1993 pursuant to the said advertisement and was called for interview held on 30.6.1994. The selection and appointment to these posts was subject-matter of consideration in special appeal No. 139 of 2001 Ashok Kumar Singh v. State of U.P. and others decided on 21.4.2008. Therein, it was held that if any person, lower in merit than the petitioner of that case, has been appointed, then he also

becomes entitled for being given appointment. It appears that one Sudhir Kumar, who secured 53% marks was offered appointment as Junior Engineer (Thermal), while the petitioner herein, who had secured 59% marks was denied the appointment. He therefore, placing reliance on the Division Bench Judgment of this Court in Special Appeal No. 139 of 2001 approached this Court by way of writ petition No. 31961 of 2000. In the said writ petition, the respondents came up with the case that there is division of posts in 4 streams viz, Electrical, Mechanical, Electronics and Instrumentation. The petitioner had applied as Junior Engineer (Electrical), while Sudhir Kumar who had obtained 53% marks was appointed as Junior Engineer (Mechanical). It was contended that no candidate has been appointed as Junior Engineer (Electrical) having less than 60% marks. However, the aforesaid stand of the respondents was repelled by this Court in its judgment dated 15.2.2010 on the ground that the advertisement does not make any bifurcation between the posts of Junior Engineer (Mechanical) and Junior Engineer (Electrical) and accordingly, direction was given to provide appointment to the petitioner. Aggrieved by the said order, U.P. Rajya Vidyut Uptandan Nigam Ltd. carried the matter in special appeal No. 501 of 2010, in which this Court held that though there is division of posts between four different streams but for the additional reasons as recorded therein, the judgment of the Writ-Court was upheld with the modification that the case of the petitioner shall be considered by the respondents subject to fulfilment of the condition regarding experience required for appointment on the said post. Such liberty was given to the respondents in view of their contention before the Special Appellate Court that the petitioner does not possess three years requisite experience. Pursuant to the said judgment, the impugned order has been passed by the respondent No. 3 on 28.10.2010 holding that the petitioner does not possess three years requisite experience and is thus not entitled for appointment on the post of Junior Engineer (Thermal) (Electrical); aggrieved thereby, the present writ petition has been filed.

2. Parties have exchanged their affidavits and they stated that they do not intend to file any further affidavits. With their consent, this writ petition was heard and is being decided finally, as per Rules of the Court.

3. The main question which crops up for consideration before this Court is whether the petitioner possess the requisite experience of 3 years for appointment to the post in question. For deciding the question, four ancillary issues arises for consideration, on the basis of pleadings of the parties and submission made by them, which are as under:

"(I) Whether 3 years experience is to be reckoned with reference to the last date for making application or experience gained subsequently, can also be taken into consideration?

(II) Whether the petitioner has produced two or three different certificates alongwith his application?

(III) Which of the certificates filed by the petitioner were to be considered for reckoning 3 years of experience? Whether the certificates filed on 30.6.1994, the date of interview, or alongwith the representation dated 11.10.2010 can also be taken into consideration?

(IV) Whether authorities were justified in passing the impugned order, without getting the certificate dated 1.4.1993 verified?"

4. Learned Counsel for the parties have addressed the Court on the aforesaid aspects at length and I have considered their submissions and perused the record.

5. Issue No. 1.--It was common ground between the parties that the last date for submission of the application form was 1.11.1993, on which date the petitioner filed his application. One of the essential requirement for appointment to the post was three years experience in a project of minimum generating capacity of 200 MW, Relevant conditions in this regard as contained in the advertisement is reproduced below:

At the end of the advertisement, one of the instructions to the candidates was that in their interest, they may file attested copies of all the certificates alongwith the application and bring the original at the time of interview. Relevant part in this regard is reproduced below:

6. Thus, a conjoint reading of the aforesaid stipulations in the advertisement demonstrates that the candidates should possess three years experience of having worked in a Power Project of not less than 200 MW capacity and since the experience certificates in this regard were required to be filed alongwith the application, therefore, the only logical conclusion is that the candidate should possess such qualification on the date of filing of application, last date for which, admittedly, was 1.11.1993. The only option available to the candidate was that alongwith the application, he could file true attested copies and produce the original certificates at the time of interview. The necessary corollary of the aforesaid discussion is that the candidate should possess requisite experience on the date of submission of the application form. Issue No. 1 is decided accordingly.

7. Issue No. 2.--According to the specific case taken in paragraph 26 of the writ petition, the petitioner had filed only two experience certificates alongwith the application form. Details of these experience certificates are as under:

"(a) Certificate dated 30.4.1990 for the period 30.8.1989 to 2.4.1990 (7 months 4 days experience).

(b) Certificate dated 1.4.1993 for the period 3.4.1990 to 1.4.1993 (experience about 3 years)."

On the other hand, the plea taken in the impugned order and the counter-affidavit is that the petitioner had produced apart from aforesaid two certificates, a third certificate dated 29.6.1994 for period 29.6.1992 to 29.6.1994

(experience about 2 years). The respondents, in the impugned order have also taken into consideration all the three certificates, though the certificate dated 1.4.1993 has not been relied upon on the ground that its original was not produced at the time of interview.

8. Indisputably, the interview was held on 30.6.1994 and it becomes apparent from the pleadings made in the writ petition and the counter-affidavit that the third certificate dated 29.6.1994, which was issued only one day prior to the date of interview i.e., 30.6.1994 appears to have been filed before the respondents on the date of interview on 30.6.1994 (also admitted by the petitioner in para 6 of the rejoinder affidavit). There is sufficient force in the contention of the petitioner that the experience certificate dated 29.6.1994 could not have been filed alongwith the application form for which last date was 1.11.1993. It is therefore, held that alongwith the application form, the petitioner had filed only two experience certificates dated 30.4.1990 and dated 1.4.1993 and the third certificate dated 29.6.1994 was filed on 30.6.1994, at the time of interview. Issue No. 2 is decided, accordingly.

9. Issue No. 3.--The advertisement clearly provides for filing of the experience certificate, alongwith the application form. The only relaxation is that its true attested copy can be filed with the application form and the original was to be produced at the time of interview. It necessarily follows that experience certificates, which have not been filed alongwith the application form, but at some later stage, like at the time of interview or alongwith representation cannot be taken into consideration. Accordingly, I am of the opinion that the case of the petitioner for appointment to the post, is to be decided only in reference to the experience certificates dated 30.4.1990 and 1.4.1993, which alone were admittedly filed alongwith the application. Issue No. 3 is decided accordingly.

10. Issue No. 4.--Perusal of the impugned order shows that as regards experience certificate dated 30.4.1990, which is for the period 30.8.1989 to 2.4.1990, for 7 months and 4 days, there is no dispute between the parties. The aforesaid certificate stands verified and was duly taken into consideration.

11. The main dispute revolves round the certificate dated 1.4.1993. The case of the respondents is that its original was not produced at the time of interview and therefore, no reliance can be placed upon it. The aforesaid contention of the respondents has been strongly refuted by the learned Counsel for the petitioner. It is submitted that the experience certificate dated 1.4.1993 was produced in original at the time of interview and has been wrongly ignored from consideration by the respondents, who were acting in a vindictive manner. According to the petitioner, the said certificate dated 1.4.1993 is Annexure-2 (pg 25) to the writ petition. Thereby, Sri B.P. Singh, Site In-charge of N.T.P.C./V.S.T.P.P., Site VI-14 Vindhyanagar, Sidhi (M.P.) had certified that the petitioner had worked in Vindhyachal Super Thermal Power Project, Vindhyachal, District Sidhi (M.P.) for period between 3.4.1990 and 1.4.1993 as a Supervisor.

12. On the other hand, learned Counsel for the respondents contended that the original certificate was not produced at the time of interview. In this regard, he has placed reliance on the notings made by the Co-ordinator of the Selection Committee at the time of interview, relevant part whereof in relation to the petitioner has been filed as Annexure-C.A.-1. It is a check list giving the details of the documents produced at the time of interview. Under Item No. 12, it is clearly mentioned as under : Anand Vishal Engineering Services from 3.4.1990 to 1.4.1993. For this original certificate not put upon 30.6.1994. Sd/- At the end, the comment is to the following effect: "wants to submit his experience certificates."

13. Specific assertion has been made in this regard in para 5 of the counter-affidavit. In para 6 of rejoinder affidavit though there is general denial, but it has not been specifically denied that at the time of interview a check list was duly prepared. There is also no explanation regarding endorsement made on the certificate dated 1.4.1993, filed at page 28 of the counter-affidavit, which indicates that its original was not filed at the time of interview.

14. Interestingly, the said certificate of experience dated 1.4.1993 filed alongwith the counter-affidavit at page 28 is a document typed on a manual type-writer. However, alongwith the writ petition, the petitioner has brought on record a computer typed certificate of the same date, by the same authority, and for the same period. It is on the letter head of the company bearing mobile number of the Head Office and the branch office of Anand Vishal Engineering Services. In the counter-affidavit in paragraph 7, it is categorically asserted that the mobile services were introduced for the first time on 31.7.1995, in Calcutta. Thus, it was not possible to issue a certificate on 1.4.1993 on the letter head of the company bearing its mobile numbers. Consequently, the certificate in question is a manipulated, anti-dated document. In para 8 of the rejoinder affidavit, there is virtually no denial to specific assertions made in this regard in para 7 of the counter-affidavit. It can thus safely be concluded that the certificate of experience dated 1.4.1993, filed at page 25 of the writ petition, is a forged and a manipulated document prepared subsequently and was not before the authorities either as part of the application or at the time of interview.

15. The experience certificate dated 1.4.1993 which seems to have been filed by the petitioner before the authorities alongwith his application, is the one filed at page 28 of the counter-affidavit and upon which, as noted above, there is an endorsement that its original was not produced at the time of interview. Similar endorsement finds place on the bottom of the check list prepared at the time of interview filed at page 27 of the counter-affidavit. It appears that in order to conceal the endorsement made by the authorities on the said certificate, it was not filed alongwith the writ petition, but another computer printed certificate prepared subsequently was enclosed at page 25 of the writ petition. In view of the discussion made above, I am of the opinion that the findings in the impugned order that the original of the certificate dated 1.4.1993 was not produced at the

time of interview, is based on material evidence on record and said findings cannot be said to be illegal or perverse, to warrant interference by this Court.

16. However, the learned Counsel for the petitioner submitted that even if the said certificate dated 1.4.1993 was not produced in original at the time of interview, still the Court while deciding special appeal No. 501 of 2010 had directed the authorities to verify the correctness of the experience certificates and thus, it was incumbent upon the authorities to have carried out the said exercise. It was further contended that the authorities have acted in great haste in passing the impugned order without getting the certificate verified by the concerned department. For the said purpose, reliance has been placed on the letter dated 28.10.2010, whereby, the authorities themselves called for verification report from CISF, Vindhyachal Super Thermal Power Project but without waiting for the verification report, proceeded in great haste, in passing the impugned order. Reliance has been placed on the order passed by this Court on 28.2.2013, whereunder this Court permitted the petitioner to implead CISF, Unit Vindhyachal Super Thermal Power Project, Vindhyanagar, through its Senior Commandant, as respondent No. 4 to the writ petition and required the said respondent to explain its stand regarding verification of the experience certificates filed by the petitioner before this Court. It is contended that the CISF had already verified the correctness of the experience certificates dated 30.4.1990, but with regard to the certificate dated 1.4.1993 and 29.6.1994, it had expressed its inability to verify their correctness, on the plea that it does not have in its possession, the relevant records for the said period. It is contended that in the aforesaid facts and circumstances, these certificates were got verified by the Issuing Agency, namely Anand Vishal Engineering Services, as is evident from the letter of CISF dated 12.11.2010, Annexure-2 to the supplementary affidavit. It is, thus, contended that in such circumstances, it was not open to the respondents to ignore the said certificate. On the other hand, the learned Counsel for the respondents placed reliance on the subsequent order of this Court dated 28.2.2013, wherein this Court noted the contention of Counsel for the respondents that the verification by the Private Agency itself, cannot be taken into consideration and thus permitted the petitioner to bring on record the Gate Pass for the said period to substantiate that during this period, he had worked as Supervisor. In compliance of the said order, the petitioner has brought on record, certain Gate Passes filed as Annexure-SRA-1. It is submitted that these Gate Passes were duly produced before the CISF which refused to verify the authenticity of the same and had filed an affidavit before this Court stating that it is primarily a security agency and does not have in possession any record for the said period to enable it to verify the correctness and authenticity of these Gate Passes. Thus, from the sequence of events that followed before this Court, it transpires that the certificate dated 1.4.1993 nor the Gate Passes for the said duration have been verified by any independent agency. In such circumstances, the question arises as regards the true import of the direction given by this Court while deciding special appeal No. 501 of 2010.

17. The relevant part of the judgment dated 11.8.2010 in special appeal No. 501 of 2010 is reproduced below:

"The question as to whether the experience as claimed to be possessed by the respondent No. 1 is in accordance with the advertisement or not, has not been considered by the appellant and the candidature of the respondent No. 1 has not been rejected on any such ground. In view of this and in view of the Certificates, which have been brought on record, we find it necessary that the appellant will have to consider the availability of the said experience to the respondent No. 1 in accordance with the advertisement and thereafter proceed to finalize his candidature in accordance with the decision taken by the Board.

We, therefore, modify the order of the learned Single Judge dated 15.2.2010 impugned herein to the extent that the case of the respondent No. 1 shall be considered by the appellant and thereafter in case the respondent No. 1 is found to be possessed of the experience required for the said post, the appellant shall act accordingly to offer appointment to the respondent No. 1.

It shall be open to the appellant to verify the correctness or otherwise of the experience certificate of the respondent No. 1 within 4 weeks from the date of production of a certified copy of this order is produced before the appellant-General Manager, Thermal Plant-B, Anpara, Sonbhadra."

It is evident from perusal of the judgment given in special appeal that a specific plea was taken by the respondents that the petitioner does not possess the requisite experience and it was in the aforesaid background that the Special Appellate Court granted liberty to the respondents to go into the question regarding fulfilment of the requisite experience and for which purpose, it was made open to the authorities to verify the correctness or otherwise of the experience certificate. A perusal of the observations made in this regard in the judgment dated 11.8.2010 would show that it had never been the intent of the Court to override any condition of the advertisement. It was never meant, while permitting the respondents to verify the correctness of the experience certificate, that the condition in the advertisement that the experience certificates are required to be annexed with the application, has been relaxed. It was also never intended that that even if the original certificate was not produced at the time of interview, the respondent will still have to consider such certificate by getting its correctness verified. The direction by the appellate-Court only gives liberty to the respondents to go into the question regarding fulfilment of the criteria of experience and for which purpose the respondents were well within their right to consider only such certificates which have been filed as per the stipulations in the advertisement. Only such certificates which were filed alongwith the application and original whereof were produced at the time of interview, were open for being considered for reckoning the experience subject to verifying the correctness of such experience certificates. This Court had not found any illegality in the finding recorded in the impugned order that the original of the experience certificate dated 1.4.1993 was not produced at the time of interview and therefore, such

certificate could not be considered. Thus, even if the respondents have proceeded to pass the impugned order, without awaiting the result of verification, it had neither caused any prejudice to the petitioner, nor will have any impact on the validity of the impugned order.

18. Further, as noted above, the correctness of the aforesaid certificate dated 1.4.1993 has not been verified by CISF, from whom the verification report was called for by the respondents. The verification by the private agency issuing such certificate cannot be taken to be conclusive, in view of the specific challenge laid to its authenticity by the respondents. In such view of the matter, it is not safe to place reliance on such certificate, in directing the respondents to reckon three years experience for giving appointment to the petitioner on the post in question.

19. As regards the third certificate dated 29.6.1994, though it could not have been considered as it was not filed alongwith the application and also on account of the fact that it relates to certain period after the last date for the submission of the application form, but nonetheless, it was considered by respondent No. 3 for the limited extent in holding that the experience thereunder, even if counted, would not add upto the experience of 3 years required for selection to the post in question. Issue No. 4 is decided accordingly. In view of the totality of the facts and circumstances of the case and the discussion made above, there is no illegality in the impugned order. The writ petition lacks merit and is dismissed. Petition Dismissed.