

(2022) 06 DEL CK 0013

In the Delhi High Court

Case No : Civil Writ Petition No. 6811 Of 2022, Civil Miscellaneous Application
No. 20673, 22487 Of 2022

Shiwang Tripathi And Ors

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 03-06-2022

Acts Referred:

Constitution Of India, 1950 — Article 14, 16
Apprentices Act, 1961 — Section 20, 22, 22(1), 22(2)

Citation : (2022) 06 DEL CK 0013

Hon'ble Judges : Rekha Palli, J

Bench : Single Bench

Advocate : Ajit Kumar Sinha, Govind Jee, Parul Dhurve, Anju Gupta, Roshan Lal,
Sudhanshu Batra, Zorawar Singh, Vivek Kishore

Final Decision : Dismissed

Judgement

Rekha Palli, J

1. The 97 petitioners, who are working as accounts apprentices with the respondent no.2 company/National Insurance Company Limited, having been appointed pursuant to the selection conducted in terms of an advertisement issued on 01.11.2018, have approached this Court seeking a direction to the said respondent to regularize their services as Administrative Officer (Scale I) with all service and consequential benefits, including seniority.

2. The brief factual matrix as necessary for adjudication of the petition may be noted hereinbelow.

3. Upon an advertisement being issued by the respondent no.2 on 01.11.2018 for recruitment of 150 accounts apprentices on 'All-India' basis, the petitioners have applied for the said post. The advertisement, besides specifying the eligibility conditions for recruitment, also provided that the period of apprenticeship would be two years (twenty-four months), which period was

extendable at the discretion of the respondent company. The selected apprentices were to be paid a stipend of Rs.25,000/- per month (all inclusive) and medical coverage in the first year, and Rs.30,000/- per month (all inclusive) along with medical coverage in the second year. All the selected candidates were required to furnish an apprentice bond undertaking therein that if they were to leave the services of the respondent company within one year, they would be liable to pay the bond amount of Rs.1 lakh (Rupees One Lakh) to the said company.

4. The petitioners upon being successful in the selection process, which included a written examination and interview, were issued appointment letters on 06.06.2019, pursuant to which they were posted at different locations across the country. Their performance during their apprenticeship training at the respondent company was duly appreciated by their superior officers from time to time and, on 22.06.2021, their period of apprenticeship was, with the approval of respondent's Board, extended till 31.12.2021. On 31.12.2021, this period of apprenticeship was once again, with the approval of the Board, extended for a further period of six months i.e., till 30.06.2022.

5. As the extension letter dated 31.12.2021 specified that it was the final extension being granted to the Accounts Apprentices, the petitioners apprehending termination of their services after 30.06.2022, submitted representations to the respondents seeking their absorption as Administrative Officers (Scale I). However, since no steps were taken by the respondent company to regularize their services, the petitioners have approached this Court by way of the present petition.

6. In support of the petition, learned senior counsel for the petitioners Mr. A.K. Sinha has made the following submissions:

(i) He submits that the petitioners having been appointed as Accounts Apprentices after undergoing a comprehensive selection process in terms of the advertisement dated 01.11.2018 issued by respondent no.2, wherein they were assured that in case there were vacancies for the post of Administrative Officer (Scale I), they would be considered for absorption, subject to their performance being satisfactory, and only on this stipulation contained in the advertisement, the petitioners left their erstwhile service(s) to join the respondent company. He submits that once the vacancies of Administrative Officer (Scale I) are available with the respondent company, and the performance of the petitioners have been found to be 'Outstanding', with recommendations having been made by the Divisional/Senior Divisional Managers that they deserved to be absorbed as permanent accounts officers in the respondent company, the respondents cannot now be permitted to wriggle out of the assurance given to the petitioners at the time of their initial appointment, when they were asked to furnish a surety bond to serve the company during the period of their apprenticeship. This, he contends clearly shows that not only was an assurance given by the respondents to absorb the petitioners, but that the petitioners were also under a similar

obligation to serve the company in case they were selected for absorption. Now that the twin conditions for the said absorption, one being the requirement of accounts apprentices, and the second being the competence of the petitioners, are met, the respondents cannot refuse to absorb the petitioners against the available 402 vacancies of Scale I, as declared by the respondent company vide notice dated 12.04.2022. In support of his submissions, Mr. Sinha relies on the decisions in *Narender Kumar and Ors. v. State of Punjab* and *Ors.* [(1985) 1 SCC 130] and *Sanjay Kumar and Anr. v. Union of India and Anr.* [(1994) II LLN 339].

(ii) Mr. Sinha then submits that since the Chairman-cum-Managing Director of the respondent company has himself, on 03.06.2021, approached the Department of Financial Services, Ministry of Finance seeking relaxation of the bar imposed on fresh recruitment, so that all the 150 Accounts Apprentices, including the petitioners, could be absorbed in the cadre of Scale I officers, the respondents cannot now contend that they do not require the services of the petitioners. He submits that in the said communication, the respondent's Chairman has specifically stated that the company is reeling under a severe shortage of manpower in view of steady retirements as well as the absence of any fresh recruitments having been carried out for the past several years, absorption of the Accounts Apprentices, including the petitioners, as Scale I Officers would enable the company to leverage their continued presence and achieve the desired level of improvement in the quality of accounts. Moreover, it was pointed out that since the respondent company was already spending a sum of Rs.38.15 lakhs as monthly stipend for 127 Accounts Apprentices, their absorption would entail an additional expenditure of only Rs.43.30 lakhs per month, which expense was substantially lesser than the amount which would be payable as salaries, if the respondent company were to opt for an open-market recruitment.

(iii) He further contends that once the respondents had, on their own, extended the period of apprenticeship from two years to three years, it was evident that there was a requirement of these accounts personnel, who though discharging the duties of Administrative Officers (Scale I), were being continued as Accounts Apprentices by the respondents. By relying on a previous advertisement issued for appointment of Administrative Officers (Scale I) on 27.12.2015, when 363 Administrative Officers were recruited by the respondent company, he submits that the nature of duties of administrative Officers prescribed therein are similar to those being discharged by the Accounts Apprentices, including the petitioners, which makes it evident that they are akin to regular employees. The petitioners were, therefore, always made to believe that they would be absorbed as Scale I Officers in the respondent company, and this period of apprenticeship would in fact be treated as probation period.

(iv) He submits that the respondents' decision to restructure its organization on the basis of the 'Request for Proposal' ("the RFP") of the General Insurance Council (GIC) dated 02.05.2022, was taken much later, after the petitioners were

appointed and therefore, the same cannot be a ground to absorb the petitioners as regular employees in the Scale I cadre, which obligation was created much before issuance of the RFP, i.e., when the advertisement and appointment letters were issued. It is his case that, once the respondent company had given an implied assurance that the Accounts Apprentices would be absorbed as Scale I cadre officers upon completion of their apprenticeship training, the respondent company could not escape from its responsibility of seeing it through by bringing on record a fresh fact of the proposed restructuring. In support of his submission, he has placed reliance on the decision of the Apex Court in *Mohinder Singh Gill And Another Vs. The Chief Election Commissioner, New Delhi And Others*, [(1978) 1 SCC 405],

(v) Mr. Sinha finally submits that once similarly placed Actuarial Apprentices, who were appointed in the year 2018 in view of advertisement dated 06.06.2017, had been absorbed as Scale I officers by the respondent company as recently as on 08.04.2022, the respondents cannot take the plea that on account of any alleged restructuring, they cannot absorb the existing Accounts Apprentices as Scale I officers.

7. Per contra, Mr. Sudhanshu Batra, learned senior counsel for the respondent nos.2 & 3, opposes the petition by not only raising an objection to the maintainability of the petition on the ground of the petitioners having an alternative efficacious remedy under Section 20 of the Apprentices Act, 1961 ("the Act") but also on merits, by urging that the petitioners, who were appointed as apprentices by clearly informing them that there was no obligation on the respondent company to absorb them, cannot claim that they must be absorbed even if the respondent company has neither any requirement of any Administrative Officer (Scale I), nor finds it appropriate at this stage to incur any further financial liabilities.

8. In support of his plea that the petitioners do not have any right to seek absorption, Mr. Batra makes the following submissions:-

(i) By placing reliance on Section 22 (1) of the Act, Mr. Batra contends that the Act clearly envisages a discretion to the employer to formulate its own policy for recruitment of any apprentice, who has completed the period of apprenticeship in its establishment. He submits that once the respondent company has taken a considered decision not to absorb the accounts apprentices, its decision is not amenable to judicial review, especially when the said decision is bona fide and is based on the recommendations for restructuring made by the General Council of Insurance, which recommendations are applicable to all similarly placed insurance companies.

(ii) Mr. Batra then submits that the advertisement, pursuant where to the petitioners were appointed by the respondent company, in itself made it clear that it was not obligatory on the company to absorb the apprentices upon completion of their apprenticeship training. He also contends that neither the

appointment letter, nor the surety bond furnished by the petitioners, cast any such reciprocal obligations on the petitioners to serve the respondent company after the completion of their period of apprenticeship. He submits that the petitioners had exercised their own discretion in continuing with their apprenticeship training instead of looking for alternate career opportunities, even though this was specifically suggested in the communication issued by the Board on 04.02.2022, while granting the second and last extension to the petitioners. He, therefore, contends that not only was there no obligation on the respondents to absorb the petitioners, but there was also no clause in any of the documents, which in any manner curtailed the right of the petitioners to refuse the respondents' offer of absorption. Once there was no such clause either in the advertisement or in the appointment letter, the decisions in Narender Kumar (Supra) and Sanjay Kumar (Supra) relied upon by the petitioners, which contains a mandatory condition of absorption after the completion of the apprenticeship period, are wholly inapplicable to the facts of the present case.

(iii) Mr. Batra then submits that the petitioners' reliance on the letter dated 03.06.2021 of the Chairman of the respondent company is also wholly misplaced. He submits that merely because the Chairman at one stage wrote to the Ministry of Finance to relax the bar on fresh recruitment so as to absorb the accounts apprentices, the same cannot create any estoppel against the respondents from taking a considered decision not to fill the post at all. He submits that not only was the communication issued by the Chairman without any approval by the Board, but even otherwise, once the respondent company has now decided not to carry out fresh recruitment for these posts in order to carry out the necessary restructuring, the petitioners cannot claim that they must be absorbed. It is for the respondents to take a considered decision as to what steps it should take for its organizational efficiency and, therefore, the mere likelihood of availability of 402 vacancies in Scale I upon promotion of the existing Scale I officers to Scale II, does not oblige the respondents to carry out any direct recruitment to these posts.

(iv) Mr. Batra submits that the petitioners' plea that, once their period of apprenticeship has been extended from two years to three years, it must be presumed that they are now akin to regular employees and the period of apprenticeship be treated as probation period is also misconceived. He submits that a perusal of the communication dated 04.02.2022 clearly shows that the second extension was given to the petitioners only in order to prevent an abrupt termination of their apprenticeship during the COVID-19 pandemic and to grant them ample time to look for an alternate job opportunity.

(v) Mr. Batra then submits that the comparison with the Actuarial Apprentices sought to be made by the petitioners is also misplaced. He submits that not only do the Accounts Apprentices and Actuarial Apprentices fall in different categories, but even otherwise, unlike the availability of qualified accounts personnel, there is an acute shortage of qualified actuarial personnel. In the light of this difference

between these two categories, the decision of the respondents not to absorb the Accounts Apprentices and instead make fresh appointments later, if the need so arises, cannot be said to be arbitrary or discriminatory.

(vi) By relying on the decisions of the Supreme Court in *The Employees State Insurance Corporation and Another. Vs. The TATA Engineering and Locomotive Co. Ltd. and Another* [(1975) 2 SCC 835], and in *U.P. State Electricity Vs. Shiv Mohan Singh and Another* [(2004) 8 SCC 402)], Mr. Batra finally submits that an apprentice can never be considered as employed for work of the company and as per the scheme of The Apprentices Act 1961, there is no obligation on an employer to offer employment to him/her, except when there is a specific condition contained in the contract to that effect. He, therefore, prays that the writ petition be dismissed.

9. Having considered the submissions of learned senior counsel for the parties and perused the record, I find that it is the common case of the parties that the petitioners were appointed only as accounts apprentices and not as regular Scale I employees. The petitioners, by relying on section 22(2) of the Act, contend that having undergone the apprenticeship, which was extended from two years to three years by the respondent company, they are entitled to be absorbed as Scale I officers, as they were given an impression at their time of the appointment in June 2019, that they would be so absorbed, subject to the availability of vacancies and their performance being up to the mark. On the other hand, the respondents contend that there was never any assurance of any kind given to the petitioners that they would be necessarily absorbed as officers of the Scale I cadre.

10. Before dealing with the rival conditions of the parties, I may first note Section 22 of the Apprentices Act, 1961, which is the basis of the petitioners' claim that the respondents are obliged to absorb them as Scale I officers, when neither the availability of vacancies, nor the performance of the petitioners is in question. The said section reads as under:

"22. Offer and acceptance of employment :

(1) Every employer shall formulate its own policy for recruiting any apprentice who has completed the period of apprenticeship training in his establishment.

(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 the period of remuneration agreed to between the apprentice and the employer.”

11. What emerges from a perusal of the aforesaid provision is that Section 22 (1) of the Act gives the employer the freedom to formulate its policy for recruitment of apprentices and therefore, there is generally no obligation on an employer to absorb the apprentices. However, Section 22(2) of the Act makes an exception and deals with a situation where the apprenticeship contract incorporates a condition making it mandatory for the apprentices to serve the employer after the successful completion of the training; in such a situation, there is indeed an obligation on the employer to offer suitable employment to the apprentice after the completion of the apprenticeship period. The moot question in the present case would, therefore, be as to whether there is any such condition in the contract between the parties, which would fall within the ambit of Section 22(2) of the Act.

12. As already noted, while the petitioners contend that both the advertisement and the appointment letter contained such a condition, the respondents urge otherwise. In order to determine this issue, it would be apposite to note the relevant extracts of the advertisement as also the appointment letter. Para nos. 1 and 2 of the advertisement refer to the service conditions and the apprentice bond, and are therefore relevant for the purposes of determining the issue at hand. The same read as under:

1. Service Conditions

- The service conditions will be applicable as per the conditions laid down in the Board Resolution approving the recruitment of 150 Accounts Apprentice, subject to the relevant rules & regulations under ; National Apprentices Act, 1961; and amendments thereon, framed by Central Government in this regard.

Selected candidates on appointment may be posted or transferred to any place in India as may be decided by the Company.

- The period of apprenticeship shall be TWO YEARS (Twenty four months), which may be extended at the discretion of the Company.
- It shall not be obligatory on the part of the Company to offer any employment to any Apprentice who has completed the period of Apprenticeship in the Company. The Company reserves its rights to decide for absorption of suitable candidates (who have completed the period of Apprenticeship, as per stipulated terms & conditions) as Scale I Officers, based on the requirements of the Company & conditions prevailing at that time.

2. Apprentice Bond

The selected candidates will be subject to a Bond period of ONE year and if the apprentice leaves the service of the Company before 1 year the bond amount of

Rs. 1 lakh only (Rupees One Lakh only) shall be paid by such apprentice to the Company. The recruited Apprentices shall be required to submit an apprentice bond.

13. A reference may now be made to the para nos.1 to 4 of the appointment letter dated 06.06.2019, which are also relevant to examine whether the contract between the parties fall within the ambit of Section 22(2) of the Act. The same read as under:

1. Your appointment shall be as an Accounts Apprentice for a period of TWO YEARS (Twenty Four Months) from the date of your reporting at the place mentioned in item No. 5 herein below. But the Company reserves the right to transfer your services to any place in India as per requirement. The Apprentice period may be extended by the Company at its discretion.

2. Your appointment in the Company as Accounts Apprentice will be on a monthly stipend of Rs.25,000/- for 1 st year and Rs.30,000/- for 2 nd year.

Reimbursement of individual Standard Mediclaim Premium will be allowed only for the Policy Sum Insured of Rs.3,00,000/- issued by any PSU General Insurer other than National Insurance Company Limited. No other allowances are admissible.

3. Your appointment shall be subject to a Bond period of ONE year. During the BOND period, if the apprentice leaves the service of the Company, a bond amount of Rs.1 Lakh only (Rupees One Lakh only) shall be paid by such apprentice to the Company.

4. During the period of apprentice or the extended period of apprentice, you shall be liable to be discharged from the service of the company without any notice and without assigning any reason thereof.

14. Having carefully considered the provisions of the advertisement dated 01.11.2018, I am unable to find any clause either containing any assurance to the petitioners that all the apprentices would be necessarily absorbed as Scale I officers upon completion of their apprenticeship, or any obligation on the apprentices to serve the respondent after completion of the apprenticeship as envisaged under Section 22(2) of the Act. On the other hand, the last para of the service conditions set out in the advertisement, clearly stated that it was not obligatory on the part of the respondent company to offer any employment to any apprentice after completion of their apprenticeship. The respondent company had, in fact, clearly reserved its right to decide whether to absorb any suitable candidate as Scale I Officer; which decision was to be based not only on the requirements of the respondent company but also on the conditions prevailing at the time of completion of the apprenticeship. Similarly, the clause relating to the apprenticeship bond, as contained in the advertisement, also referred only to a bond limited to the period of apprenticeship, which was initially fixed as two years, though with a provision for extension at the discretion of the respondents.

The bond was clearly to bind the apprentice only during the period of apprenticeship, and did not contain any such obligation on the apprentice to serve the respondent in case they were selected for absorption. Thus, looked at from any angle, there was absolutely nothing in the advertisement which brings the petitioners' case within the exception referred to in Section 22(2) of the Act, or would in any manner, oblige the respondents to absorb these Account Apprentices.

15. Now coming to the clauses of the appointment letter dated 06.06.2019; the appointment letter too, unfortunately for the petitioners, does not contain any promise or even any assurance from the respondents to absorb them. The same also does not cast an obligation on the apprentices to compulsorily serve the respondents in case of their being offered absorption as Scale I Officers. On the other hand, clause 3 of the appointment letter specifies a bond period of only one year. This clearly shows that the bond was only applicable during the first year of the apprenticeship period, and there was absolutely no provision for any bond whatsoever after the completion of the apprenticeship period. Thus, even as per the apprenticeship bond furnished by the petitioners, there was no reciprocal obligation on them to serve the respondent company after the completion of their apprenticeship period.

16. In the light of this factual position, I am not persuaded to accept the petitioners' plea that they have a right to claim absorption in terms of section 22(2) of the Act. The said provision clearly envisages a mandatory condition in the apprenticeship contract, which binds the apprentice to serve the employer after completion of the apprenticeship training. This condition, as noted hereinabove is found missing, both in the advertisement as also in the appointment letter. I have also considered the decisions in *Narender Kumar and Ors. v. State of Punjab and Ors.*, (1985) 1 SCC 130 and *Sanjay Kumar and Anr. vs. Union of India and Anr.*, (1994) 2 LLN 340, relied upon by the petitioners, and find that the common thread running through these decisions is the existence of a clause in the apprenticeship contract, which conveys a binding obligation upon the employees to absorb the apprentices on the successful completion of their training period. In the present case, no such obligation has been created under any of the documents forming the contract between the parties. These decisions are therefore, not applicable to the facts of the present case. On the other hand, I find that the decisions in *Narender Kumar* (supra) and *Sanjay Kumar* (supra) relied upon by the petitioners succinctly explain the difference between an apprentice and a regular employee. The petitioners were admittedly taken in as apprentices, and merely because their apprenticeship was extended in accordance with the advertisement, they cannot claim that they are akin to regular employees, or that the period of apprenticeship should be treated as a probation period.

17. Now coming to the petitioners' plea that once the the Chairman-cum-Managing Director has, vide his letter dated 03.06.2021 issued to the

Department of Financial Services, Ministry of Finance, written with the approval of the Board, sought permission for absorption of the accounts apprentices in the cadre of Scale 1 officers, the respondents cannot now be permitted to take a contrary stand, or urge that on account of restructuring, they do not propose to make any direct recruitment to the post of Administrative Officer (Scale I). In support of this plea, the petitioners have heavily relied on the decision of the Apex Court in Mohinder Singh Gill (supra). I am however, unable to agree. Once there was no obligation whatsoever on the respondents to absorb the petitioners, the mere fact that at one stage, the respondent company thought that it would be beneficial to absorb these apprentices, cannot be construed as any estoppel against the respondents from taking a plea that they do not now deem it appropriate at this stage to either absorb the apprentices, or to fill up the post of Administrative Officers (Scale I) through direct recruitment.

18. Learned senior counsel for the respondent has further stated at the bar that on account of the proposed restructuring as per the recommendations of the General Insurance Council, the respondents do not even intend to resort to any direct recruitment for the post of Administrative Officer (Scale I) against the vacancies which are likely to accrue after promotion of the existing Scale I officers to Scale II. Once there was no clause either in the advertisement, or in the appointment letter, which created any obligation on the respondents to absorb the petitioners, or any reciprocal obligation on the petitioners to serve the respondents after the completion of their apprenticeship period, this solitary communication by the Chairman, which was only a request to the Ministry of Finance, for grant of relaxation to make fresh recruitment, which relaxation has also not been granted till date, cannot clothe the petitioners with any right to seek absorption. Thus, once there was no obligation on the part of the respondents to absorb the petitioners, there can be no question of any estoppel against the respondents in explaining as to why they are not taking any steps to absorb the petitioners.

19. I may now also deal with the petitioners' plea regarding the alleged discrimination vis-à-vis the Actuarial Apprentices. The petitioners have vehemently urged that once the Actuarial Apprentices have been absorbed as regular employees, the non-absorption of the petitioners who are working as Accounts Apprentices into the respondent company, is wholly discriminatory and is therefore violative of Articles 14 and 16 of the Constitution. This plea, though attractive at the first blush, needs to be rejected for two reasons. Firstly, as pointed out by the respondents, there is an acute shortage of trained actuarial personnel as compared to accounts personnel, as trained accounts personnel are readily available for employment; secondly and more importantly, it is not as if there is any bar in law, which would prevent an employer from absorbing any category of apprentices as it deems fit. The respondents have explained that, keeping in view the shortage of trained actuarial apprentice personnel, a considered decision has been taken to absorb the Actuarial Apprentices engaged by the respondent company. However, keeping in view the availability of

sufficient number of trained accounts personnel, no such decision to absorb the Accounts Apprentices was deemed appropriate. This certainly cannot be said to be discriminatory or arbitrary.

20. For all the aforesaid reasons, even though petitioners may indeed have an impeccable service record, as is reflected in the positive reviews given by their superior officers in their performance reports, once the respondents have taken a categorical decision neither to absorb the Accounts Apprentices, nor to fill up these posts of Administrative Officer (Scale I) through direct recruitment anytime in the near future, this Court cannot grant any relief to the petitioners.

21. In the light of my aforesaid conclusions, I do not deem it necessary to deal with the respondents' objection regarding maintainability of the writ petition having not found any merit in the petitioners' claims.

22. The writ petition, alongwith the pending applications, is dismissed in the aforesaid terms.