

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 4166 OF 2008

SANTOSH KUMAR TRIPATHI & ORS.

Appellant (s)

VERSUS

U.P.POWER CORPORATION & ORS.

Respondent(s)

Date: 15/06/2009 This Appeal was called on for pronouncement of judgment today.

For Appellant(s) Mr. E.C. Vidya Sagar,Adv.

For Respondent(s) Mr. Sunil Kumar Jain,Adv.
Mr. A.S. Pundir, Adv.
Mr. Pradeep Misra ,Adv
Mr. Surya Kant ,Adv
Mrs K.Sharda Devi ,Adv
Mrs.K. Sarada Devi ,Adv

Hon'ble Mr. Justice Aftab Alam pronounced the judgment of the Bench comprising Hon'ble Mr. Justice B. Sudershan Reddy and His Lordship.

There is no merit in this appeal and it is, accordingly, dismissed.

Following the dismissal of the appeal, all the impleadment applications and other interlocutory application, if any, stand dismissed.

(R.K. Dhawan)
Court Master

(Vinod Kulvi)
Court Master

(Signed non-reportable judgment is placed on the file)

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4166 OF 2008

Santosh Kumar Tripathi & Ors.

... Appellants

Versus

U. P. Power Corporation & Ors.

... Respondents

JUDGMENT

AFTAB ALAM, J.

1. This appeal by special leave is at the instance of a number of appellants who, more than eleven years ago, had done a term of apprenticeship in different trades with the Uttar Pradesh State Electricity Board under the provisions of the Apprentices Act, 1961. On completion of the period of apprenticeship they claimed absorption as Junior Engineers and on different posts of Operating Staff on the basis of their apprentice training in the respective trades suitable for the posts. The Board did not accede to their claim and instead issued an advertisement on October 17, 1998 inviting applications for filling-up the vacancies of Junior Engineers, Sub-station Officers, Fitters, Draftsman Mechanical, Machinists, Lineman, Plumbers, Instrument Mechanic, Wireman, Diesel Mechanic, Boiler Operators, Electricians and similar other posts. The appellants moved the Allahabad High Court seeking a direction in their favour and asking the Board to consider them for appointment on the respective posts relating to the different trades in which they had received training as apprentices, ignoring the age bar and giving them preference over candidates who were not trained apprentices.

2. Here, it may be noted that a three-Judge Bench of this Court had rendered the decision on January 12, 1995 in U. P. State Road Transport Corporation vs. U. P. Parivahan Nigam Shikshuk Berojgar Sangh, AIR 1995 SC 1115 and in paragraph 13 of the judgment it was observed as follows:

"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."

3. In 1998 when the appellants moved against the advertisement dated October 17, 1998, the issue was alive before the Allahabad High Court as to whether the exemption from appearing in any written examination as directed by this Court in U. P. State Road Transport Corporation was of general application and would apply to all apprentices for employment in all the different departments and organisations. The writ petition filed by the appellants was, therefore, tagged to another case being Civil Misc. Writ Petition No.

23076 of 1998, Arvind Gautam vs. State of U. P. & Ors. and the matter was referred for hearing before a Full Bench. The Full Bench took the view that the direction given in paragraph 12 of the Supreme Court judgment in U. P. State Road Transport Corporation was indeed of general application but the exemption from appearing in the written examination as directed in paragraph 13 of the judgment was meant only for the persons who were before the Supreme Court in that appeal and to no others. The case of the appellants was also before the Full Bench and since no one appeared in support of the writ petition the Full Bench disposed it of on May 27, 1999 by passing the following order:

"The case has been called out.

Learned counsel for the petitioner is not present.

The controversy involved in this petition is identical to the one raised in Civil Misc. Writ Petition No.23076 of 1998, Arvind Gautam vs. State of U.P. & Ors., decided and disposed of by this Bench by the order of date.

Thus, this writ petition also is decided and disposed of in terms of and subject to the decision of the date rendered in the case of Arvind Gautam vs. State of U.P. & Ors. (Supra)."

4. The appellants then came before this Court in Civil Appeal Nos. 1838-1839 of 2001. In those appeals a three-Judge Bench of the Court upheld the Full Bench decision of the Allahabad High Court in Arvind Gautam and agreed that the exemption from appearing in the written examination allowed by the decision in U. P. State Road Transport Corporation was only for the respondents in that case. The Court further held that the question whether or not the apprentices were required to appear in the written examination would depend upon the statutory Rules and Regulations governing the recruitments in question. The Court further held that in the case of the appellants the High Court had not examined the relevant Rules concerning the recruitments to find out whether or not appearing in a written test, even for an apprentice, was essential to the selection process. This Court, accordingly, remitted the matter to the High Court vide.

Judgment and order dated March 14, 2001 observing as follows:

"Insofar as recruitment to different other posts are concerned, the High Court has not applied its mind to different provisions dealing with the matter of recruitment to different posts, and therefore in fitness of things, we think it appropriate to remit all the matters to the High Court where the High Court would go into the relevant provisions as well as the relevant advertisement for filling up of different posts and then decide the question as to whether in a given case the requirement of written examination is, provided in any regulation so that even apprentice could be compelled to appear in the same or there is no such provision in which case apprentices may not be required to undertake the said examination, though they will have to undergo the process of selection otherwise. Without applying mind to the specific provision of the recruitment to different posts, the aforesaid problem cannot be solved. It is in these circumstances, we remit all the matters to the High Court for being re-considered in the light of the observations made by us."

5. By the time the matter came up before the High Court for reconsideration another advertisement was issued in 2001 and vacancies were filled up on that basis. Further, following its unbundling and reorganization the U. P. State Electricity Board was replaced by the Uttar Pradesh Power Corporation. A Division Bench of the High Court hearing the writ petition on remand noted the developments taking place since the matter had first come before it and then, as directed by this Court, proceeded to diligently and very thoroughly examine the relevant Rules and Regulations concerning the recruitments in question. It found that the recruitments were to be made under the U. P. State Electricity Board (Limitation of Functions) Regulations, 1978 that defined "Commission" in Clause 2(ii) as the Electricity Service Commission Uttar Pradesh State Electricity Board. Clause (iii) of the Regulations provided that the Commission shall be consulted for different purposes, including direct recruitment to the posts of Junior Engineer, Operating Staff cadre etc. Sub-clause (2) of Clause 3 read as under:

"The Commission will examine, interview, select and recommend suitable candidates in accordance with the criteria prescribed in the relevant Regulations and if there are no Regulations in order of merit. Actual appointment orders will be issued by the appointing authority concerned."

6. In light of the above provision the High Court took the view that the recruitment Regulations provided for a written examination and hence, it was a condition precedent for all candidates, apprentices not excluded, to appear in the examination and to qualify for appointment. Apart from the aforesaid provision the High Court also took into consideration a vast amount of other materials for coming to its conclusion.

7. Mr. Sunil Gupta, Senior Advocate, appearing for the appellants assailed the judgment of the High Court and submitted that the expression "examine" occurring in the Regulation could not have meant a written examination and not at least for the apprentices. The High Court has considered this submission in some detail and has rejected it giving reasons with which we are in full agreement. Mr. Gupta also submitted that the judgment of the High Court coming under appeal was contrary to the spirit of the three-Judge Bench decision of this Court in U. P. State Road Transport Corporation and it also overlooked the observations made in the remand order passed by this Court asking the High Court to reconsider the matter.

8. We have heard Mr. Gupta at some length but we are unable to accept his submissions.

9. On hearing Mr. Gupta and on going through the High Court judgment and the other materials on record, we find that the High Court has taken the correct view of the matter that does not call for any interference. There is no merit in this appeal and it is,

accordingly, dismissed.

10. Following the dismissal of the appeal, all the impleadment applications and other interlocutory applications, if any, stand dismissed.

.....J.
[B. Sudershan Reddy]

.....J.
[Aftab Alam]

New Delhi,

June 15, 2009.