

CWP-17600-2018 (O&M) & connected cases -1-

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

110(3 cases) CWP-17600-2018 (O&M)
Date of Decision: 09.01.2024

Dharam Pal and others ...Petitioners

Versus

National Fertilizers Limited and another ...Respondents

With

CWP-21650-2018

Sushil Kumar and others ...Petitioners

Versus

National Fertilizers Limited and another ...Respondents

And

CWP-28394-2018

Pardeep Bhardwaj and others ...Petitioners

Versus

National Fertilizers Limited and another ...Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Raman Sharma, Advocate for the petitioners
(in CWP No.17600 of 2018 & CWP No.21650 of 2018)

Mr. Sandeep S. Majithia, Advocate for the petitioners
(in CWP No.28394 of 2018)

Mr. Ashwani Talwar, Advocate for the respondents
(in all the petitions)

JAGMOHAN BANSAL, J. (Oral)

1. As the issue involved is common, with the consent of contesting parties, all the captioned petitions are taken up together. For the sake of brevity and convenience, facts are borrowed from *CWP No.17600 of 2018*.

2. The petitioners through instant petition under Articles 226/227 of the Constitution of India are seeking directions to the respondents to consider case of the petitioners for the appointment on regular posts in terms of judgment of Hon'ble Supreme Court in ***U.P. State Road Transport Corporation v. UP Parivahan Nigam Shishukhs Berozgar Sang and others, AIR 1995 SC 1115***.

3. The petitioners joined respondent-National Fertilizers Limited as apprentice in terms of Apprenticeship Act 1961 (for short '**1961 Act**'). The petitioners from 1999 to 2001 underwent three years training. It was an intensive training. The respondent-organization on completion of training did not appoint the petitioners in any section of the respondent. The respondent-organization vide advertisement dated 18.05.2018 (Annexure P-3) invited applications for the post of Junior Engineering Assistant Grade-II for its different manufacturing units. In the advertisement, minimum eligibility criteria was prescribed. As per the prescribed criteria, an applicant was required to have either degree of B.Sc. or regular three years diploma in Engineering. The petitioners are neither holding degree of B.Sc. nor three years diploma in Engineering. On account of lack of minimum prescribed qualification, the petitioners could not apply for the advertised post.

4. Learned counsels for the petitioners submit that as per paragraph 12 of the judgment of Supreme Court in ***U.P. State Road Transport***

Corporation (supra), every employer is duty bound to give preference to trained apprentice over direct recruits. The petitioners are trained apprentices, thus, respondent-organization was duty bound to give preference to the petitioners over other candidates. The respondent-organization intentionally in the advertisement has prescribed criteria which petitioners cannot comply with. The intent of the respondent-organization was to deprive the petitioners an opportunity to participate in the selection process. The petitioners are ready to work as labour/*majdoor* with the respondent.

5. *Per contra*, learned counsel for the respondents submits that Section 22 of the 1961 Act specifically provides that it shall not be obligatory on the part of an employer to provide employment to any apprentice who has completed the period of training nor shall it be obligatory on the part of apprentice to accept any employment with the employer. The respondent-organization has relaxed age criteria for the apprentices, however, qualification cannot be compromised because it was a conscious decision of the management to have B.Sc. graduates or three years diploma holders in Engineering. The petitioners cannot impose education qualification as per their suitability upon the respondent-organization.

6. I have heard the arguments of learned counsels for the parties and perused the record with their able assistance.

7. The conceded position emerging from the record is that the petitioners completed their apprenticeship in 2001 and respondent-organization advertized post in 2018 i.e. after 17 years from the date of completion of apprenticeship by the petitioners. The petitioners are neither B.Sc. qualified nor hold three years diploma in any branch of the Engineering.

The respondent-organization has granted age relaxation to the apprentices, however, no relaxation in the qualification has been granted.

8. From the additional affidavit filed by the respondent-organization, it comes out that respondent on account of change of technology and closure of its partial manufacturing unit has decided to make appointment of manual labour as less as possible. The respondent vide its recruitment policy dated 03.08.1999 has decided to make maximum appointments of B.Sc./Diploma holders. The respondent-organization has further decided that job of attendants/helpers or *majdoors* in future would be carried out by Junior Engineering Assistant Grade-II. The respondent-organization every year is imparting training to approximately 200 persons having matriculation plus ITI qualifications. The respondent-organization, even on 31.01.2020, was having 256 apprentices possessing qualification of matriculation plus ITI. The respondent-organization cannot grant job to everyone who has been imparted training by it.

9. Section 22 of the 1961 Act provides that it shall not be obligatory on the part of the employer to offer employment to any apprentice who has completed the period of his apprenticeship training nor it shall be obligatory on the part of the apprentice to accept an employment with employer. Section 22 of the Act reads as:

“22 Offer and acceptance of employment. –

(1) It shall not be obligatory on the part of the employer to offer any employment to any apprentice who has completed the period of his apprenticeship training in his establishment, nor shall it be obligatory on the part of the apprentice to accept an employment under the employer.

(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 be the period or remuneration agreed to between the apprentice and the employer.

10. In the contract executed between the parties, there was no condition that employer would offer suitable employment to the apprentices.

11. The petitioners completed their apprenticeship in 2001. The respondent-organization issued impugned advertisement in 2018. The petitioners never raised their claim of employment during 2001 to 2018 meaning thereby there was acquiescence on their part of action of respondent of relieving them on completion of apprenticeship. The respondent-organization has consciously prescribed qualification criteria. It is settled proposition of law that Courts cannot ask any employer to alter or lay down qualification criteria. It is the employer who has to decide strength of its workers and their qualification because it is the employer who has to get its work done and pay the remuneration. The entire claim of the petitioners is based upon judgment of Apex Court in ***U.P. State Road Transport***

case apprentice should be offered job. The Court has not held that employer can be asked to prescribe eligibility criteria as per suitability of the apprentices. The mandate of Section 22 of 1961 Act is very clear.

12. In the wake of aforesaid facts and findings, this Court is of the considered opinion that present petition being bereft of merit deserves to be dismissed and accordingly dismissed.

13. Pending applications, if any, shall also stand disposed of.

14. The dismissal of present petitions would not inhibit the respondent-organization from considering the petitioners, if at any time they are found suitable.

(JAGMOHAN BANSAL)
JUDGE

09.01.2024
Mohit Kumar

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No