

(2004) 11 AHC CK 0154

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition Nos. 34830 of 2003

Dhani Saran Khare

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision: Nov. 14, 2004

Hon'ble Judges: Pankaj Mithal, J

Final Decision: Allowed

Judgement

Pankaj Mithal, J.

The only prayer made in this writ petition is to direct the respondents to consider the candidature of the petitioners for the post of Assistant Boring Technician in the Irrigation department and not to ignore their candidature for the said post on the ground that they do not possess the Diploma in the trade of "Tool Maker" though they are holding two years diploma in "Tool and Die maker" awarded by the National Council for Vocational Training and State Council for Vocational Training from Adarsh Training Institute (ATI) Kanpur.

2. The Chief Engineer, Minor Irrigation Department, respondent No. 3 issued an advertisement inviting applications to fill up 401 posts of Assistant Boring Technicians. The said advertisement was published in the newspaper "Amar Ujala" dated 8.6.2003. Advertisement provided that the candidates must have passed High School of the Board of High School and Intermediate examination U.P., or an examination recognized by the State Government as equivalent thereto and at the same time must possess a certificate of Tubewell mechanic course awarded by the Government Technical Centre, Gorakhpur or certificate equivalent thereto recognized by the State Government or a diploma of two years course awarded by Directorate of Employment and Training U.P., or Industrial Training Institute in any of the following trades which included "Tool maker" apart from other trades. The petitioners applied in pursuance to the aforesaid advertisement. Their applications were duly accepted. They appeared in the written examination held on 22.6.2003 of which the result was declared on 5.7.2003. They successfully qualified the written

examination and as such were called for interview on 7.7.2003. The petitioners also appeared for the interview. However, they were not considered for appointment at this stage on the ground that they are not qualified as they are not holding the diploma in the trade "Tool maker".

3. In the above background, the petitioners have approached this Court by means of this writ petition and have prayed that since they possessed diploma in the trade "Tool and Die maker" they are fully qualified for appointment on the post of Assistant Boring technician and as such their candidature cannot be ignored.

4. I have heard Sri Brijesh Singh and Sri R.B. Singhal, learned Counsel for the petitioners in the aforesaid two writ petitions and the Standing Counsel for the respondents. The record of the petitions have also been perused by me.

5. The only ground for ignoring the candidate of the petitions for the posts of Assistant Boring technician is that they are Diploma Holders in the trade "Tool and Die Maker" and not in the trade of "Tool maker" which is a condition of eligibility for the post.

6. I have considered the submission of the parties. The U.P. Minor Irrigation Department Boring Technician Service Rules, 1993 in Rule 8 prescribes the qualification for direct recruitment to the post of Assistant Boring Technician as contained in the advertisement. It is not in dispute that the diploma course in the trade of "Tool maker" was stopped in the year 1968 and in its place the new course i.e., diploma in "Tool and Die maker" was started in the year 1976 by the National Council for Vocational Training. The new course is much wider and includes within its ambit the course of "Tool maker". Therefore, the petitioners possessing the diploma in "Tool and Die maker" do possess diploma in "Tool maker" as well. The question whether the diploma in "Tool and Die maker" is equivalent and at par with the diploma of "Tool maker" came up for consideration before Lucknow Bench of this Court in Writ Petition No. 239 (S/S) of 2004 Shailendm Kumar v. State of U.P. and others arising from the same selection. The Court while allowing the writ petition and commanding the opposite parties to appoint the petitioner of that writ petition on the post of Assistant Boring Technician held that the diploma in the trade of "Tool and Die maker" and the diploma in the trade of "Tool maker" are one and the same and therefore the candidates cannot be denied appointment on the ground that they did not possess the specific diploma as "Tool maker" as prescribed in the rules. The above view has been followed and accepted by this Court by a decision rendered in writ another Writ Petition No. 1973 (S/S) of 2006 Umesh Singh v. State of U.P. and another. So far both the above judgments and orders of this Court are final as they have not been set aside or have been stayed by the Superior Court. Thus controversy involved is squarely covered by the aforesaid decisions and therefore I am of the opinion that the petitioners cannot be denied consideration for appointment on the post of Assistant Boring Technician in the Minor Irrigation Department after having qualified the written test and having appeared in the

interview on the ground that they do not possess the diploma in the trade "Tool Maker" ignoring the diploma in "Tool and Die maker". The respondents are also estopped under law from ignoring their candidature at such a belated stage after they have accepted the applications of the petitioners to take the written examination followed by interview.

7. Learned Standing Counsel has submitted that the petitioners have not arrayed the selected candidates as the respondents who are 387 in number and as such they cannot be granted the relief as claimed by them. The above submission is bereft of merit in as much as the petitioners are not challenging the selection of the selected candidates. Admittedly, 401 posts were advertised and only 387 have been filled up. Therefore, undisputedly 14 posts are still vacant and probably have been kept reserved by the inferior orders of Court. Therefore, the petitioners can easily be considered and if found successful in the ultimate analysis may be accommodated on the said remaining vacant posts without disturbing any of the selected candidates.

8. In view of the above, respondents are directed to consider the candidature of the petitioners for the post of Assistant Boring Technician in pursuance to the advertisement dated 8.6.2003 and not to ignore their candidature only on the ground that they possess diploma in the trade of "Tool and Die maker" and not the diploma in "Tool maker" prescribed in the rules. The respondents shall complete the process of selection as expeditiously as possible preferably within a period of two months from the date of production of the certified copy of this order.

The writ petition succeeds and is allowed.