

# Bhoodev Singh and Others Vs Chairman, Uttar Pradesh State Electricity Board, Engineer in Chief, Uttar Pradesh State Electricity Board, Superintendent Engineer, Uttar Pradesh State Electricity Board and Executive Engineer, Uttar Pradesh State Electricity Board

**Court:** Allahabad High Court

**Date of Decision:** Jan. 31, 2006

**Acts Referred:** Apprentices Act, 1961 " Section 18, 2

Constitution of India, 1950 " Article 14, 16, 309

Electricity Department Operating Staff Service Rules, 1955 " Rule 4, 5, 6

Uttar Pradesh Electricity Reforms Act, 1999 " Section 23(8), 52, 53, 54, 55

Uttar Pradesh State Electricity Board Subordinate Electrical and Mechanical Engineering Service Regulations, 1972 " Regulation 10, 13, 14, 15, 3(10)

**Citation:** (2006) 1 UPLBEC 950

**Hon'ble Judges:** Dilip Gupta, J; B.S. Chauhan, J

**Bench:** Division Bench

**Advocate:** V.B. Upadhyay, Dharmendra Singhal and Rahul Sripat, for the Appellant; C.K. Rai, S.C., Ranjit Saxena and A.K. Mehrotra, for the Respondent

**Final Decision:** Dismissed

## Judgement

B.S. Chauhan, J.

This case arises out of a claim of the petitioners for their appointment as Junior Engineers and on respective posts of operating staff commensurate to the trades in which they claim themselves to be trained apprentices under the provisions of the Uttar Pradesh State

Electricity Board Subordinate Electrical and Mechanical Engineering Service Regulations, 1972 (hereinafter called the "Regulations 1972"). This

petition had been decided earlier by a Division Bench judgment of this Court, where after the petitioners went up to the Supreme Court as a result

whereof the judgment of this Court was set aside on 14th March, 2001 and the Hon"ble Apex Court has remanded the matter under the aforesaid

judgment to this Court for deciding the case in accordance with the recruitment Rules which are applicable to the controversy. The Hon"ble Apex

Court, while remanding the matter to this Court has, however, upheld and approved the ratio of the Full Bench decision of this Court in the case of

Arvind Gautam Vs. State of U.P. and others, The said Full Bench judgment also stood approved by the Apex Court in the case of U.P. Rajya

Vidyut Parishad Apprentice Welfare Association and Anr. v. State of U.P. and Ors. (2000) 5 SCC 438.

2. The petitioners no. 1 and 2 claim that they had completed their training of Junior Engineer Apprentice and the petitioners No. 3 to 34 claim that

they had completed their training as Operating Staff Apprentice while engaged with the Uttar Pradesh State Electricity Board, which now stands

transformed to the Uttar Pradesh Power Corporation Limited. Upon completion of their training, the respondent Electricity Department did not

enter into any contract of employment with the petitioners who were claiming appointment as being qualified u/s 2 of the Apprentices Act, 1961

(hereinafter called the Act 1961"). The Electricity Department issued an advertisement on 17.10.1998 inviting applications for filling up the

vacancies of Junior Engineers, Sub-Station Officers, Pitters, Draftsman Mechanical, Machinists, Lineman, Plumbers, Instrument Mechanic,

Wireman, Diesel Mechanic, Boiler Operators, Electricians and other posts.

3. The petitioners, who were claiming preference by way of direct appointment having received training as apprentice, instituted the present writ

petition after publication of the aforesaid advertisement praying principally for the following relief:-

issue a writ, order or direction in the nature of mandamus directing the respondents to consider the appointment of the candidates on the respective

posts and in which they are trained apprentices giving the preference, ignoring the age bar and giving them preference over the candidates who are

not trained apprentices.

4. When the matter was heard on the earlier occasion, one of the issues, that was raised, was as to whether the petitioners who had completed

their apprentice training were required to face any written examination for the purposes of their selection. This petition was, therefore, tagged along

with the petition of Arvind Gautam v. State of U.P. and Ors. and a Full Bench was constituted to resolve the said issue which was answered by the

Full Bench in the decision reported in 1999 (2) UPLBEC 1397 (supra). This writ petition was also called out before the same Full Bench and after

noting that learned Counsel for the petitioners was not present, the Full Bench disposed of this writ petition on 27.05.1999 by 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 v. State of

U.P. and 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 v.

State of U.P. and others (Supra).

5. The petitioners thereafter approached the Hon"ble Apex Court by filing a Special Leave Petition. Another SLP was filed before the Hon"ble

Apex Court by similarly situate trainees who raised the same issue by taking recourse to the observations made by the Apex Court in paragraph

13 in the case of Uttar Pradesh State Road Transport Corporation and another Vs. Uttar Pradesh Parivahan Nigam Shishukhs Berozgar Sangh

and others, to urge that such apprentice trainees would not be required to appear In any written examination. The Apex Court in its decision in

U.P. Rajya Vidut Parishad, Apprentice Welfare Association (supra), after analysing the impact of the aforesaid decision as also the view taken by

the Full Bench of our Court Arvind Gautam case (supra) and in the case of Manoj Kumar Mishra v. State of U.P. and Ors. 1997 (2) UPLBEC

1374 held as under:-

A question had arisen before the Allahabad High Court in a later case as to whether the direction that the trainees need not undertake examination

was applicable only to the petitioners in the case before this Court or whether para ,13 laid down any general principle that apprentices need not

take the examination. This question went before a Full Bench of the Allahabad High Court in Arvind Gautam v. State of U.P. (1999) 2 UPLBEC

1397 (FB). The Full Bench held that what was mentioned in para 13 was in the specific factual background of the ""cases on hand"" and that the

apprentices are to go through the examination as also the interview, as provided in the Recruitment" Rules. The Full Bench had also approved the

judgment in the case of Manoj Kumar Mishra v. State of U.P. (1997) 2 UPLBEC 1374, which took a similar view in regard to the interpretation

of para 13 of the judgment of this Court mentioned above.

We, are, therefore, of the opinion that the view taken in Manoj Kumar Mishra case as also the view taken by the Full Bench in Arvind Gautam

case is a correct one and that apprentices have to go through the procedure of examination/interview and that they are however entitled to the

benefits of Entries (1) to (4) laid down in Transport Corpn. case.

6. In the SLP filed by the petitioners, the Hon"ble Apex Court reiterated and affirmed the view taken in the decision referred to here in above and

held that the statement made by the Hon"ble Apex Court in paragraph 13 of the UPSRTC case (supra) was not of universal application and

further held that the decision rendered in the case of Tamil Nadu Electricity Board v. P. Arul and Ors. Civil Appeal Nos. 5285-5328 of 1996,

decided on 03.10.1996 is too widely worded and cannot be held to be the law laid down in all cases of appointments of this nature.

7. The Hon<sup>ble</sup> Apex Court, however, while allowing the appeal of the petitioners after approving the view of the Full Bench held that the High

Court ought to have disposed of the writ petition after dealing with the relevant Regulations and Rules which were applicable to the controversy

and since the aforesaid exercise has not been undertaken by the High Court, therefore, this writ petition was remitted back to this Court for hearing

again on the aforesaid limited question in the light of the observations made by the Hon<sup>ble</sup> Apex Court in the decision dated 14.03.2001. The

aforesaid order of remand of the Hon<sup>ble</sup> Apex Court attaches finality to the other issues and the scope of the present writ petition is now limited

on the issues on which this Court is required to pronounce upon under the said judgment.

8. It is in these circumstances that we have<sup>""</sup> been called upon to re-hear this writ petition after taking note of the relevant Rules and Regulations.

9. The petitioners as well as the respondent U.P. State Electricity Board (now Power Corporation) have filed affidavits and a supplementary

affidavit as well. The supplementary affidavit filed by the petitioners discloses that during the pendency of this litigation, the Electricity Board

advertised posts of Junior Engineers by way of direct recruitment and it is alleged that 126 Junior Engineers have been appointed out of the

approximate 500 vacancies that were available. This fact was also brought to the notice of the Hon<sup>ble</sup> Apex Court and the Apex Court in the

judgment dated 14.03.2001 has commented upon the same by saying as follows:-

We fail to understand how an advertisement could be issued for filling up of the post of Junior Engineer under the State Electricity Board directly

from open market which is not contemplated under Regulation 5(b)(1).

10. However, the latter was left to be decided by this Court after examining the principal question as to whether the requirement of written

examinations is provided for in the Regulations even in the matter of the selections of the apprentice trainees. In essence, this Court was called

upon to decide as to whether the petitioners who were claiming appointment were required to undertake any written examination for appointment

or not.

11. During the pendency of the writ petitions, the amendment to the pleadings was sought by the petitioners to the extent that even in 2001, the

vacancies had been advertised by the respondents which were liable to be filled up and as the UPSEB came to an end as it stood replaced by the

Uttar Pradesh Power Corporation (hereinafter called the "Corporation"), an application for substitution was also filed before the Supreme Court.

Both the applications had been rejected by the Hon<sup>ble</sup> Apex Court while deciding the appeals filed by the present petitioners and after hearing the

parties, vide judgment and order dated 14th March, 2001, remanded the matter to decide after scrutinising the particular recruitment Rules

applicable in a particular department as to whether it provided for written test or not. Hence the present petition. Again, an application for

substitution supported by an affidavit has been filed before us.

12. Shri V.B. Upadhyay, learned Senior Counsel appearing for the petitioners has submitted that these applications require to be allowed in the

facts and circumstances of the case. However, Shri C.K. Rai, learned Standing Counsel, Shri Ranjit Saxena and Shri A.K. Mehrotra, learned

Counsel appearing for the Corporation have vehemently opposed the applications. Substitution of the Corporation was necessary so that the

orders passed by the Court may be binding and enforceable against the Corporation being successor of the UPSEB. However, those applications

have been rejected and the Corporation could not be substituted when the appeals were pending before the Apex Court. This writ petition still

remains only against the UPSEB, which is no more in existence. It is further submitted that in these circumstances, to entertain the said applications

as the same had already been rejected by the Hon"ble Apex Court would amount to sitting in appeal against the said order rejecting the said

applications by the Hon"ble Apex Court or reviewing the said orders. Hence the applications are to be dismissed.

13. So far as the effect of the order is concerned, it is settled legal proposition that when a higher Court sets aside the judgment and order of the

Court below and remands the case, only those parties which had been before the higher Court, can be heard and no one else.

14. A Constitution Bench judgment of the Hon"ble Supreme Court in Cumbum Roadways (P) Ltd. Vs. Somu Transport (P) Ltd. and Others,

wherein the Hon"ble Apex Court observed as under:-

On principle, therefore, it does not appear right that the High Court should set aside orders in appeal passed by the Appellate Tribunal when the

parties to those appeals do not bring-up the matter before the High Court, simply because as the matter of convenience the Appellate Tribunal

deals with all the appeals relating to one route by the consolidated order. Therefore, we are of the opinion that the remand should only be confined

to those parties which came to the High Court and not extend to others, as the High Court would have no jurisdiction to interfere with the orders of

the Appellate Tribunal either in favour or against the parties which have not come to it.

15. Similar view had been taken by the Hon"ble Supreme Court in Hanuman Transport Corporation v. Meenakshi G. Ramabhai, Civil Appeal No.

794 of 1963, decided on 20.2.1963. A similar view has been reiterated in The Anamalais Bus Transports (P) Ltd., Pollachi Vs. Tiruppur

KarurTransports (P) Ltd.. Tiruppur and Others, The same view has been taken by the Rajasthan High Court in Rajasthan Barytes Ltd. and Anr. v.

State of Rajasthan and Ors. RLW (1999) 2 835. Thus, submissions made on behalf of the respondents has merit to this limited extent.

16. The submissions advanced in this regard on behalf of the respondents are not tenable for the reason that even in the aforesaid situation, the

proceedings would not abate for non-impleadment of the Corporation for the reason that the pending litigations are saved u/s 23(8) of the U.P.

State Electricity Reforms Act, 1999. In exercise of powers u/s 23(8), paragraph 8 has been specifically framed under the U.P. Electricity Reforms

Transfer Scheme, 2000, which reads as under:-

8. Pending suits, proceedings.- (a) All proceedings of whatever nature by or against the Board pending on the date of the transfer shall not abate

or discontinue or otherwise in anyway prejudicial be affected by reason of vesting or re-vesting of the transfer scheme mentioned in the Act and in

this Scheme but the proceedings may be continued, prosecuted and enforced by or against the Government or after the transfer of the

Undertakings, by or against the transferee to whom the same are assigned in accordance with the transfer scheme only.

(b) Such proceedings may be continued in the same manner and to the same extent as it would or might have been continued, prosecuted and

enforced by or against the Board if the transfers specified in this Scheme had not been made.

17. Thus, in view of the statutory provisions referred to hereinabove, no order is required to be passed on these applications. The rights of

respondents are well protected by the Statute, itself.

18. While considering a similar controversy in Special Leave to Appeal (Civil) Nos. 6337, 6338 of 2000, Naresh Kumar Mathuria and Ors. v.

U.P. Power Corporation and Ors., decided on 10.07.2002, a Bench of three Hon"ble Judges of the Apex Court held that the directions" given in

Bhudev Singh that written test was mandatory even for apprentices was good. The order reads as under:-

In view of the positive statement in the counter affidavit indicating that the relevant rules require a written test to be conducted for the post in

question; and in view of our earlier three-Judges Bench decision in the case of Bhudev Singh v. UPSEB, JT 2001 Supp.(1) 542 there is no merit in

these petitions. They accordingly stand dismissed.

19. It is evident from the aforesaid judgment that the Hon"ble Supreme Court itself has laid down time and again and reiterated that a candidate

cannot claim exemption from the written test if it is required for others under the relevant Rules.

20. A Division Bench of this Court in Rajendra Singh and Ors. v. U.P. State Electricity Board, Shakti Bhawan, Lucknow and Ors. (2000) 86 FIR

155 has taken a categorical view after considering all judgments, including the case of U.P.S.R.T.C. (Supra) that the apprentices cannot be treated

differently from the other candidates seeking employment and they cannot be exempted from appearing in the written test if other candidates are

asked to appear as per the rules of the department. The Court after considering large number of judgments came to the conclusion that the

apprentice in UPSEB had to appear in the written test and they should not be treated differently from other candidates. It is pertinent to be noted

that the same advertisement dated 17.10.1999 (though published in newspapers of, January, 1999) which is under challenge in this petition had

been under challenge in Rajendra Singh (supra) and the issue involved therein had been the same which is involved herein before us. While

deciding the said case, the Full Bench Judgment of this Court in Arvind Gautam v. State of U.P. and Ors. 1999 (2) ALR 739 has also been taken

into consideration.

21. In U.P. State Electricity Board Vs. Shri Shiv Mohan Singh and Another, , the Hon"ble Apex Court reconsidered the whole issue considering

and relying upon all its earlier judgments, and came to conclusion that right of apprentice is only limited to having preference being other things

equal. In the said judgment, the Apex Court full approved the judgment of this Court in Rajendra Singh (supra).

22. The issue involved herein has been considered by the Hon"ble Supreme Court in Mukesh K. Tripathi Vs. Sr. Divisional Manager, L.I.C. and

Others, and held that an apprentice and is neither an employee nor a workman as apprentice has defined in Section 2(aa) of Act 1961, to mean ""a

person who is undergoing an apprenticeship training in a designated trade in pursuance of a contract of apprentices. Section 18 of the Act 1961

provides that apprentices are trainees and not employees.

23. In Executive Officer Vs. E. Tirupalu and others, C.R. Siva Reddy and another, T. Venkateswarlu and another, C. Vani, the Hon"ble Supreme

Court held that where rules provide for preference to a particular class of candidates, that preference under the Rules cannot be applied

irrespective of the merit of candidates, the inmates have to be given appointment. It means that the merit of the candidates being equal, preference

would be given to the inmates of the class which is to be given preferential right and it certainly does not mean an automatic appointment without

considering the cases of other candidates. Therefore, even if it is provided for a preferential right, they have a preferential right only when they

compete with other candidates and are found on equal footings, otherwise not.

24. Similar view has been reiterated in Government of Andhra Pradesh Vs. P. Dilip Kumar and Another, ; and The Secretary, Andhra Pradesh

25. From the aforesaid facts, it is evident that the right of apprentice trainees is limited only to the preference, other things being equal. They cannot

claim any other right or claim different treatment for other non-apprentice candidates. We find no force in the submissions made by Shri

Upadhyay, learned Senior Counsel that from time to time, the Government has issued certain directions/guidelines/orders to appoint the apprentice

trainees and not to make, recruitment from general candidates and for that purpose reference may be made to the Government Orders dated

21.09.1977, 21.08.1978, 27.08.1978, 12.10.1979, 30.05.1981, 03.01.1998, 06.05.1998 and 26.05.1998 contained in Annexures 3, 4, 5, 7 to

14. All these orders speak of preference and the judgment and order passed subsequent to UPSRTC case (supra) specifically provide for making

appointment giving preference.

26. The aforesaid controversy has to be examined in the light of the submissions made by the respective Counsel for the parties on the basis of the

provisions of the Act, Rules and Regulations.

27. Shri V.B. Upadhyay, learned Senior Counsel appearing for the petitioners has placed reliance upon the following provisions in support of his

contention that for recruitment to the post of Junior Engineers and Operating Staff, there is no requirement of holding the written test:-

(1) Section 15 of the Electricity (Supply) Act, 1948 (hereinafter referred to as the Act 1948") deals with the appointment of staff and provides that

the Board may appoint a Secretary and such other officers and employees as may be required to enable the Board to carry out its function under

the Act. Section 78 of the said Act deals with the power to make Rules and provides that the State Government may, after previous publication,

by notification in the Official Gazette, make Rules to give effect to the provisions of the Act. Section 78A deals with directions by the State

Government and stipulates that in the discharge of its functions, the Board shall be guided by such directions on questions of policy as may be given

to it by the State Government. Section 79 of the Act 1948 deals with the power to make Regulations and it has been provided that the Board may,

by notification in the Official Gazette, make Regulations not inconsistent with the Act and the Rules made thereunder to provide for all or any of the

matters specified in the Section. He has placed reliance upon Section 79(c) which relates to the duties of officers and other employees of the

Board and the salaries, allowances and other conditions of service. He, therefore, contended that there is no provision in the aforesaid Act 1948

which requires holding of written examination for recruitment to the post of Junior Engineers and the Operating Staff.



(2) The Electricity Department Operating Staff Service Rules, 1955 (hereinafter referred to as the "Rules 1955"), which have been framed under

Article 309 of the Constitution of India regulating recruitment to post in, and the conditions of service of persons appointed to the Electricity

Department (Operating Staff) service. In particular, he has placed reliance upon Rules 4, 5 and 6 of the aforesaid Rules 1955. Rule 4 deals with

the strength of service and class of post while Rules 5 and 6 deal with the Appointing Authority and the Source of Recruitment. Rule 6 provides

that recruitment to the service shall be made in accordance with the Procedure laid down. His contention is that even these Rules 1955 do not

provide for holding a written test.

(3) The Regulations dated 18.12.1970 framed by the U.P. State Electricity Board u/s 79(c) of the Act 1948 dealing with the Operating Staff also

does not provide for any specific procedure for holding the written test.

(4) The U.P. State Electricity Board Operating Staff Cadre Service Regulations, 1995 framed under Section, 79(c) and (k) of the Act 1948 (Part

III) deals with recruitment while Parts IV and V deal with eligibility and direct recruitment, and the said Regulations do not provide of holding of

any written test.

(5) The U.P. State Electricity Board (Limitation of Functions) Regulations, 1978 (hereinafter referred to as the "Regulations 1978") have been

framed u/s 79(c) of the Act 1948. In respect of the Operating Staff, Regulation (3)(2) does provide that the Commission will examine, interview,

select and recommend suitable candidates in respect of the Operating Staff Cadre post in accordance with the criteria prescribed in the relevant

Regulations and if there are no Regulations, in order of merit yet "examine" does not mean holding of a written test.

(6) The Uttar Pradesh Electricity Reforms Act, 1999 (hereinafter referred to as the "Reforms Act 1999") came into effect from 12.01.2000.

Sections 52, 53, 54 and 55. Section 52 of the said Act deals with the power to make Regulations and it provides that the U.P. Electricity

Regulatory Commission (hereinafter referred to as the "Commission") may make Regulations not inconsistent with this Act or the Rules made

thereunder in the efficient performance of its functions under the Act Section 53 deals with the power to make Rules and stipulates that the State

Government may, by notification, make Rules for carrying out the purposes of this Act. Section 54 deals with the effect of the Reforms Act 1999

on the Indian Electricity Act, 1910 and the Act 1948 and provides that except as provided in Section 55, the provisions of the Reforms Act 1999,

notwithstanding that the same are inconsistent with or contrary to the provisions of the aforesaid Act, shall prevail in the manner and to the extent

provided in sub-section (3). Sub-section (3)(vi) of Section 54 stipulates that in matters provided in Sections 5 to 15, 16, 17, 18, 19, 20, 23 to 26,

27, 37, 40 to 43, 44, 45 to 54, 56 to 69, 72, 75 and 76 to 83 of the Electricity (Supply) Act, 1948 to the extent this Act has made specific

provisions, the provisions to the Electricity (Supply) Act 1948 shall not apply in the State. Section 55 deals with savings and provides as follows:-

55. Savings.- (1) Notwithstanding anything contained in this Act, the powers, rights and functions of the Regional Electricity Board, the Central

Electricity Authority, the Central Government and authorities other than the State Electricity Board and the State Government under the Indian

Electricity Act, 1910 or the Electricity (Supply) Act, 1948, or rules made thereunder shall remain unaffected and shall continue to be in force.

(7) The Uttar Pradesh Electricity Reforms Transfer Scheme, 2000 (hereinafter referred to as the Transfer Scheme 2000") and in particular upon

Clause 2(e) which deals with definition of "personnel" and Clause 6 (10) which deals with transfer of personnel and for the sake of convenience,

they are reproduced below:-

2. Definitions.- In this Scheme, unless the context otherwise requires:-

(a)...

(b) ...

(e) "'Personnel'" means workmen, employees, staff and officers of the board by whatever name called and includes those trainees, if any for the

recruitment in the board and those on deputation from the board to other organizations or institutions.

6. Transfer of Personnel.-(1)....

(2) ....

(10) Subject to the provisions of the Act and this Scheme, the Transferee shall frame regulations governing the conditions of service of personnel

transferred to the transferee under this Scheme and till such time, the existing service conditions of the Board shall mutatis mutandis apply.

28. The Rules 1955 and the policy decisions of the State Government u/s 78A of the Act 1948 have been saved u/s 55 of the Act 1999 and they

do not provide for holding of any written test. In such circumstances, the Act 1961 shall govern the petitioners.

29. Shri Ranjit Saxena and Shri Anil Mehrotra, learned Counsel appearing for the respondents, however, submitted that both in respect of junior

Engineers and the Operating Staff, It is necessary to hold the written examinations and in support of their contentions, they have submitted as

follows:-

(1) Provisions of Section 79(k) of the Act 1948 gives power to the Board to frame Regulations in respect of any other matter arising out of the

Board's functions for which it is necessary or expedient to make Regulations. Section 15 of the said Act gives power to the Board to appoint a

Secretary and such other officers and employees as may be required to enable the Board to carry out its functions. Thus, the Board is clearly

authorised to make Regulations in respect of appointment of staff. In this context, reliance has been placed upon the decision of the Hon'ble Apex

Court in *Uttar Pradesh State Electricity Board Vs. Abdul Sakoor Hashmi and Others*,

(2) Even otherwise, the Regulations framed under the provisions of the Act 1910 or the Act 1948 are saved under the provisions of the Reforms

Act 1999 in view of the provisions of Section 13 of the Act 1948 and Clauses 6(10) and 6(11) of the Transfer Scheme 2000. Clause 6(11) is

quoted below:-

(11) In respect of all statutory and other schemes and employment related matters including the provident fund, gratuity fund, pension and any

other superannuation fund or any other special fund created or existing for the benefit of the personnel, the relevant Transferee shall stand

substituted for the Board for all purposes and all the rights, powers and obligations of the Board in relation to any and all such matters shall

become those of the Transferee concerned and the services of the personnel shall be treated as having been continuous for the purpose of the

application of this sub-clause.

(3) The three Companies namely, the Uttar Pradesh Rajya Vidyut Utpadan Nigam Limited; Uttar Pradesh Jal Vidyut Nigam Limited and the Uttar

Pradesh Power Corporation Limited, have adopted the aforesaid Regulations and, therefore, in any view of the matter, the Regulations 1978

which prescribe for holding of the examination, interview and selection in respect of the Operating Staff continue to remain in force.

(4) In respect of Junior Engineers, the Regulations 1972 clearly provide for holding of the written test.

(5) The advertisement was issued in the year 1998 prior to the coming into force of the Reforms Act 1999 and, therefore, the Regulations 1978

which provide for holding of the examination, interview and selection will be clearly applicable.

30. Thus, according to the learned Counsel for the respondents, holding of a written examination, both for the Junior Engineers and the Operating

Staff is a must and, therefore, the petitioners have to appear at the written test along with the other candidates.

31. It is in the light of the aforesaid submissions made by the learned Counsel for the parties that we have to examine whether there is a provision

for holding a written test for the Junior Engineers and the Operating Staff.

32. It is true that the Act 1948 or the Rules 1955 do not prescribe any procedure for holding the written test but the Regulations 1978 dealing with

the Junior Engineers and the Operating Staff clearly provide that the Commission will examine, interview, select and recommend suitable

candidates in accordance with the criteria prescribed.

33. The petitioners have relied upon the provisions of Act 1961 and certain other letters issued by the officers of the Electricity Board to urge that

the petitioners are entitled to a contract of employment without undergoing any written examination as was done by the respondents in the case of

certain candidates selected, whose names appear in the newspaper Hindi Daily ""Dainik Jagran"" dated 12.06.1997 and further in view of the letter

of the Chief Engineer dated 27.06.2001. (Annex. SA-28 to the supplementary affidavit). The petitioners in the supplementary affidavit have further

stated that the U.P. State Electricity Board Operating Staff Service Regulations, 1972 are contrary to the Rules and as such they would not be

applicable in the case of petitioners no. 3 to 34.

34. On the other hand, the respondent Corporation has filed a written submission wherein it is stated that so far as Junior Engineers apprentice

trainees are concerned, their appointment is governed by Regulations 13 and 14 of the Regulations 1972. The said Regulations also govern the

selection and appointment of Operating Staff as well who are defined in Regulation 3(10) of the said Regulations 1972.

35. The aforesaid contentions have to be examined in the light of the provisions of Section 79(c) of the Act, 1948. The said provision is quoted

herein below:-

79. Power to make regulations.- The Board may, by notification in the Official Gazette, make regulations not inconsistent with this Act and the

rules made thereunder to provide for all or any of the following matters, namely:-

(a).... (b)....

(c) the dues of officers and other employees of the Board, and their salaries, allowances and other conditions of service.

36. The Electricity Board (now Power Corporation) has been conferred power to frame Regulations. The petitioners claim themselves to be

apprentice trainees of the then Electricity Board which had framed the Regulations 1972 (supra) and which were very much in force when the

petitioners instituted the present writ petition. The mode of recruitment for an apprentice was to be in accordance with such procedure as may be

prescribed by the Board from time to time. The Electricity Board has filed an affidavit through Shri Gopal Ram, then posted as Executive Engineer

and P.A. in the office of the Chief Engineer, now U.P. Power Corporation Limited. The affidavit has been sworn on 30.07.2001 wherein it is

stated that the word ""Supervisor"" occurring in Regulation 13 of the Regulations 1972 has been replaced and substituted by the words ""Junior

Engineer"" by a notification dated 28.11.1973 issued u/s 79(c) of the Act 1948.

37. It has been submitted by Shri V.B. Upadhyay, learned Senior Counsel that as the Rules/Regulations have gone a sea change because of the

repealing of the Electricity Act, 1910, Electricity (Supply) Act, 1948 and Rules and Regulations framed there under have also been changed. The

recruitment is to be made by the U.P. State Electricity Board (Limitation of Functions) Regulations, 1978, which defines ""Commission"" in Clause

2(ii) means the Electricity Service Commission Uttar Pradesh State Electricity Board and Clause 3 thereof provides that the Commission shall be

consulted for various purposes including the direct recruitment to the posts of Junior Engineer, Operating Staff cadre etc. etc. Sub-clause (2) of

Clause 3 reads 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.

(Emphasis added).

38. It is submitted by Shri Upadhyay that the word "examine" contained in the aforesaid clause does not mean written examination. It may be an

oral examination, However, if the contention of Shri Upadhyay is accepted, then the word "interview" becomes redundant and in such

circumstances, both the words "examine" and "interview" have to be given different meanings which serves the purpose of the provision.

39. It is a settled legal principle of interpretation of Statute that no word is redundant and every word in a statutory provision is to be given an

effective meaning after determining the intent of the Legislature.

40. In Smt. Shyam Kishori Devi Vs. Patna Municipal Corporation and Another, , the Hon"ble supreme Court held as under:-

It is well known rule of construction that a Court must construe a section, unless it is impossible to do so, to make it workable rather than to make

it unworkable. In the words of Lord Bramwell, the words of a statute never should in interpretation be added to or subtracted from, without almost

a necessity.

41. No word can be rendered ineffective or purposeless. Courts are required to carry out the legislative intent fully and completely. While

construing a provision, full effect is to be given to the language used therein, giving reference to the context and other provisions of the Statute. By

construction, a provision should not be reduced as a ""dead letter"" or ""useless lumber. An interpretation which renders a provision an exercise in

futility, should be avoided, otherwise it would mean that enacting such a provision in legislation was "" an exercise in futility"" and the product came

as a ""purposeless piece"" of legislation and provision had been enacted without any purpose and entire exercise to enact such a provision was ""most

unwarranted" besides being uncharitable."" (Vide Sri Ram Ram Narain Medhi Vs. The State of Bombay, ; R.G. Jacob Vs. Union of India (UOI), ;

Patel Chunibhai Dajibhai etc. Vs. Narayanrao Khanderao Jambekar and Another, ; Anandji Haridas and Co. Pvt. Ltd. Vs. Engineering Mazdoor

Sangh and Another, ; The Commissioner of Sales Tax, U.P. Vs. Madan Lal Das and Sons, Bareilly, ; Annapurna Biscuit Manufacturing Co.,

Kanpur Vs. Commissioner of Sales Tax, U.P., Lucknow, ; Vazir Sultan Tobacco Co. Ltd., Hyderabad and Others Vs. Commissioner of Income

Tax, Andhra Pradesh, Hyderabad, ; M.V. Elisabeth and Others Vs. Harwan Investment and Trading Pvt. Ltd., Hanoekar House, Swatontapeth,

Vasco-De-Gama, Goa, ; Institute of Chartered Accountants of India Vs. Price Waterhouse and Another, ; Sultana Begum Vs. Prem Chand Jain, ;

State of Bihar and others, etc. etc. Vs. Bihar Distillery Ltd., etc., ; The South Central Railway Employees Co-operative Credit Society Employees

Union, Secundrabad Vs. The Registrar of Co-operative Societies and Others, ; Subhash Chander Sharma and Another Vs. State of Punjab and

Others, ; Bharathidasan University and Anr. v. All India Council for Technical Education and Ors AIR 2001 SC 2861 and The Mor Modern

Cooperative Transport Society Ltd. Vs. Financial Commissioner and Secretary to Govt. Haryana and Another,

42. The word "examine", therefore, in the opinion of this Court, does not exclude the holding of a written examination and the Commission is not

precluded from undertaking the exercise of a written examination. From the facts and Rules indicated hereinabove, it is evident that the examination

has to be held, Undoubtedly, examinations have to be held for direct recruitment on the posts of Junior Engineers and Operating Staff Cadre etc.

The petitioners will have to compete in the said written examination alongwith all other eligible candidates who are not apprentice trainees. They do

not enjoy any immunity from the same, which also is supported by the conclusions drawn in the case of Manoj Kumar Mishra as approved by the

Full Bench in the case of Arvind Gautam (supra). In the absence of any bar in the Rules, we are of the considered opinion that the Electricity

Board/Power Corporation does have the authority to make provisions for holding examinations once the same is specifically provided under the

Regulations 1978, referred to hereinabove. The power to examine will also include impliedly the power of the Commission to lay down the

procedure for holding examinations which can also include written examination. It is not the case of the petitioners that the candidates other than

apprentices who apply for direct recruitment on the post in question, are not subjected to examinations. There does not appear to be any valid

reason for providing a different procedure for apprentice trainees only. The apprentice trainees would, at the best, after competing in examinations,

be entitled to the preference to the extent indicated hereinabove.

43. The advertisement was issued by the Electricity Department on 17th October, 1998 inviting applications for filling up the vacancies of Junior

Engineers and Operating Staff. The Reforms Act 1999 came into effect from 12.01.2000 after issuance of the advertisement and the last date for

submission of the applications.

44. The eligibility has to be determined on the last date of submission of the applications, In Y.V. Rangaiah and Others Vs. J. Sreenivasa Rao and

Others, A.A. Calton Vs. Director of Education and Another, ; P. Ganeshwar Rao and Others Vs. State of Andhra Pradesh and Others, ; P.

Mahendran and others Vs. State of Karnataka and others, ; and Ramesh Kumar Choudha and Others Vs. State of M.P. and Others, the Hon"ble

Supreme Court has taken the view that candidates have to be assessed for selection as per the eligibility criteria existing on the date of

advertisement of vacancies for the reason that selection process starts with advertisement and all those persons who apply in response to the same,

would be eligible to be considered.

45. Thus, in our considered opinion, the Regulations 1978 will govern the advertisement and, therefore, the Operating Staff were required to

appear in the written test.

46. We shall now have to determine the position with regard to the Junior Engineers.

47. It has been contended by the learned Counsel for the respondents that the candidates initially used to be recruited as Apprentice Supervisor in

the erstwhile U.P. State Electricity Board under Regulations 13, 14 and 15 of the Regulations 1972. 6/ an amendment made vide notification dated

28.11.1973, the word ""Supervisors"" was substituted by the words ""Junior Engineers"". In fact, the Regulations 1972 were renamed as ""U.P. State

Electricity Board Junior Engineer (Electrical and Mechanical) Service Regulations, 1972"" by the notification dated 29.11.1977. The Board by an

order dated 19.10.1976 decided that instead of initially appointing Diploma holders to the post of Apprentice Supervisors and thereafter Junior

Engineers on completion of one year training, the selected candidates after the examination and the interview, may be appointed as Junior

Engineers (Trainee) in the pay scale of Junior Engineers and may be given regular charge of Junior Engineer on completion of one year's

satisfactory training Thus, according to them, the Junior Engineer (Trainee) for the recruitment on which the advertisement has been issued by the

Electricity Service Commission from time to time, are the same as those who were initially called "Apprentice Junior Engineers" and the recruitment

on the post of Junior Engineers is made from amongst the Junior Engineer (trainee) after completion of training in accordance with the Regulations

5 and 10 of the Regulations 1972. However, after 1978, all the recruitments in the erstwhile U.P. State Electricity Board are being made by the

Electricity Service Commission which has been constituted under the Regulations 1978. Thus, even for the Junior Engineers, the Regulations 1978

will apply.

48. It has also been brought on record that for the recruitment of Junior Engineers in the electrical and mechanical trade, the procedure of holding

written examinations, has to be followed. The said letters are annexed as Annexures SA-3 and SA-4 respectively. One such significant letter is

dated 22nd March, 1985 which clearly states that the recruitment process includes a written test followed by an interview in respect of recruitment

of Junior Engineer trainees, referred to in Regulations 1972, mentioned hereinabove. Another letter dated 10.12.1998 issued by the Additional

Secretary of the Board is also on record to the same effect. The Board has also filed an Office Memorandum of 20.07.1973 which also indicates

that the appointment was preceded by a written examination. It is, thus, clear that the Regulations do not provide any waiver of holding a written

examination for the appointment of apprentice trainees. On the other hand, such apprentice trainees have been subjected to the written

examinations in the past which is evident from the facts narrated, hereinabove.

49. Thus, in view of what has been stated above, it is clear that the Junior Engineers have also to appear at the written examination.

50. The vacancies advertised by the respondents which are the subject matter of the writ petition may have been filled up long back. It has also

been pointed out that the vacancies had been advertised subsequent thereto. There are no pleadings to find out whether all the vacancies had been

filled up or not. Shri V.B. Upadhyay, learned Senior Counsel for the petitioners made submissions in respect of the recruitment process for filling

up the vacancies advertised subsequent to the filing of the writ petition in 1998. There are no pleadings in respect of the said vacancies and

therefore, it is difficult for this Court to determine as to whether the vacancies had been advertised as the copy of the advertisement has not been

filed and whether the said vacancies have already been filled up and who are the candidates selected in that recruitment, as none of them is a party



before us. There are no proper pleadings to determine the controversy involved in respect of such advertisements.

51. There can be no dispute to the settled legal proposition that the Court or Tribunal is not permitted to decide a case going out of pleadings of

the parties nor the evidence led on a non-existing plea is permitted to be taken into consideration. (Vide Sri Mahant Govind Rao v. Sita Ram

Kesho and Ors. (1898) 25 IA 195 Trojan and Co. Ltd. Vs. Rm. N.N. Nagappa Chettiar, ; Kishori Lal Vs. Mst. Chaltibai, Samant N. Balkrishna

and Another Vs. V. George Fernandez and Others, ; Dalim Kumar Sain and Others Vs. Smt. Nandarani Dassi and Another, ; Dattatraya Vs.

Rangnath Gopalrao Kawathekar (Dead) by his legal representatives and Others, ; Bhoona Bi and Another Vs. Gujar Bi, ; Dr. R.K.S. Chauhan

and Anr. v. State of U.P. and Ors. Commissioner of Income Tax, Calcutta Vs. Park Hotel (P) Ltd., 15 Park Street, Calcutta-16, Syed Dastagir

Vs. T.R. Gopalakrishnasetty, ; Sankaran Pillai(dead) by Lrs. Vs. V.P. Venuguduswami and Others, ; J. Jermons Vs. Aliammal and Others, ; Life

Insurance Corporation of India and Others Vs. Jyotish Chandra Biswas, ; Om Prakash Gupta Vs. Ranbir B. Goyal, ; and Ashutosh Gupta Vs.

State of Rajasthan and Others,

52. It is not possible for the Court to decide an issue, not raised/agitated by the authority for the reason that other party did not have opportunity to

meet it and such a course would violate the principles of natural justice. (Vide New Delhi Municipal Committee Vs. State of Punjab, etc. etc.,

Similarly, in V.K. Majotra Vs. Union of India (UOI) and Another, the Apex Court held as under:-

The Courts would be well advised to decide the petitions on the points raised in the petition and if in a rare case keeping in view the facts and

circumstances of the case any additional points are to be raised then the concerned and affected parties should be put to notice on the additional

points to satisfy the principles of natural justice. Parties cannot be taken by surprise.

53. In view of the above, it is neither necessary nor desirable to examine the issue of subsequent recruitment process.

54. However, in the facts and circumstances of this case, we also examined the alternative submission made by Shri V.B. Upadhyay, learned

Senior Counsel appearing for the petitioners that after the coming into force of the Reforms Act, 1999 and the Transfer Scheme 2000, the

Regulations 1978 do not survive and, therefore, there is no existing provision for holding of a written test. Shri V.B. Upadhyay, learned Senior

Counsel placed much reliance upon Section 55 of the Reforms Act 1999 and contended that only the Rules framed under the Act 1910 or the Act

1948 were protected but the Regulations were not protected. On the other hand, Shri Ranjit Saxena and Shri Anil Mehrotra, learned Counsel for

the respondents placed reliance upon the provisions of Clauses 6(10) and 6(11) of the Transfer Scheme 2000 and contended that all the

Regulations shall continue till such time as new Regulations were not framed by the Transferee. In the present case, learned Counsel for the

petitioners has not placed anything on record to indicate that the Transferee had framed separate Regulations while it has been specifically stated

on behalf of the respondents that all the three Transferee Companies had subsequently adopted the Regulations 1978. In these circumstances, in

our opinion, the Regulations 1978 will continue to operate and, therefore, both Junior Engineers and Operating Staff had to appear at the written

examination.

55. Even otherwise, it is settled legal proposition that in the absence of any statutory Rules/Regulations, recruitment may be made on the basis of

executive instructions and in absence thereof, by following a procedure which may be in consonance with the mandate of Articles 14 and 16 of the

Constitution (Vide Ramesh K. Sharma v. Rajasthan Civil Services and Ors. AIR 2000 SC 4206). Thus, it cannot be held that the respondents had

acted arbitrarily or have violated the mandate of the Constitutional provisions. Petitioners' right in all such circumstances is limited to have

preference over non-apprentice candidates, if other things are equal.

56. The resistance of the petitioners, therefore, to the holding of written examination for apprentice trainees is unsustainable and must fail.

57. For the reasons and conclusions drawn hereinabove, we do not find any merit in the writ petition which is accordingly dismissed.