

(1989) 10 AHC CK 0028

Allahabad High Court (Lucknow Bench)

Case No: Writ Petition Nos. 863 942, 1210, 1283, 1413, 1957, 2545 and 2749 of 1989)

U.P.Parivahan Nigam Shishuksh
Berozgar Sangh and Anr.

APPELLANT

Vs

U.P.State Road Transport
Corporation

RESPONDENT

Date of Decision: Oct. 6, 1989

Hon'ble Judges: U.C.Srivastava, J and S.H.A.Raza, J

Final Decision: Allowed

Judgement

1. In this bunch of the writ petitions the petitioners who were trained as apprentices at the expense of the state were not given appointment in U.P. Road Transport Corporation in accordance with circular dated 21st September, 1977, issued by the Uttar Pradesh Road Transport Corporation (herein referred to as Corporation) have prayed for issue of writ of certiorari for quashing the letter dated September 1, 1988 and Government circular dated September 21, 1977 as well as advertisement, issued for the post, and has further prayed for issue of writ of mandamus, directing the opposite parties to appoint the petitioners on the post of Conductors/clerks in the Corporation in different regions.

2. The Corporation in its meeting dated 27th August, 1977 resolved that those apprentices who have been trained as apprentice by the U.P. State Road Transport Corporation will get preference in the matter of selection for appointment in the U.P. State Road Transport Corporation. On the basis of the aforesaid resolution, the Joint General Manager (Administration and Personnel) issued a circular dated 21st September, 1977, laying down the procedure of selection of apprentice as General Clerk/working Clerk/Junior Clerk in the corporation mentioning that these apprentices will not be required to appear at the written test and at the time of interview 10 marks will be given to every trained apprentice towards his experience. It was also provided that it will not be necessary for these apprentices to be sent through Employment Exchange and they shall be eligible for selection upto the age

of 32 years. On 10th January, 1978 the Joint General Manager wrote to all the Regional Managers of the U.P. State Road Transport Corporation and asked them to consider the apprentices in the light of the circular dated 21987 by giving them priority in appointment against leave vacancies also. Thereafter the persons who were trained as apprentices were appointed as & when vacancies occurred and some of the trained apprentices were also absorbed against other posts such as Conductors. In the ear 1977 on the basis of the circular Miss Laxmi Kaur, Miss Lata Sharma and Miss Kusum Gupta who were trained as apprentices, were appointed as Office Assistants. Even prior to the resolution dated 2781977 the trained apprentices used to be appointed by the U.P. State Road Transport Corporation in accordance with tie consistent policy of appointment of trained apprentices In the year 1980 the Corporation started to appoint the trained apprentices on the post of conductors without holding any interview and the procedure followed was that options were called from the trained apprentices of different categories for appointment as Conductors. Vide letters dated 1451980 and 16980 the Corporation appointed 36 and 10 trained apprentices respectively without holding any interview on the post of conductors and such appointments were made in verious regions. Names of such appointees were mentioned by the petitioners in the writ petition. The petitioners who had obtained certificates as apprentices approached the Regional Manager for appointment but they were not given appointments on the ground that the posts were not available. In the year 1982 the Corporation imposed ban on fresh appointments but the training of apprentices were allowed to continue by the Corporation and the bar which was so imposed by the Corporation was lifted in the year 1987 and thereafter these persons approached for their appointment. As the vacancies of the Conductors were available, the Corporation wrote to the District Employment Officer for sending names of 700 eligible candidates for the post of Conductors and in Lucknow Region 55 posts of Conductors were advertised on 15th October, 1988 and similarly in other regions of U.P., State Road Transport Corporation issued advertisements and applications were invited. The Director/State Apprenticeship Advisor of the State Government issued orders to consider the cases of the trained apprentices in order to appoint them. In the meantime the State Government had also issued Government Orders dated 211977 and 121179, providing that if trained apprentices are available, so far as possible, direct recruitment should not be made. The Government of India had also issued an order to "All the State Apprenticeship Advisor" that 50% of total vacancies be filled by the trained apprentices only. Some of the Directors of the Corporation also supported the petitioners" cause but inspite of the aforesaid orders they were not given appointment and feeling aggrieved against the issuance of the Government orders and the issuance of the advertisement which completely mars their chances for appointment the petitioners have approached this court.

3. On behalf of the Corporation in the counter affidavit it has been stated that after coming into force of the Regulation, framed under section 77 of the U.P. Roadways

Corporation Act, now appointments are made in accordance with the regulation and those who do not fulfil qualifications and it may be educational or experience or age cannot be appointed. The regulation on which reliance has been placed came into force in the year 1981 which is known as U.P. State Road Transport Corporation Employees (other than officers) Service Regulations, 1981. Regulations 11 and 12 of the Service regulations deal with source of recruitment and reservation and do not provide any preference to apprentices.

4. On behalf of the petitioners it was contended that in view of the circular, issued by the Corporation in the year 1977, mentioned above, the petitioners took the training of apprentice and some of the such persons were appointed but now the opposite parties have stopped to appoint the petitioner on the ground that under the present regulation the petitioners cannot get appointment. The new regulation deals with the appointment and it is true that under the new regulation there is no provision for giving preference to apprentices. Section 21 of the Apprentices Act, 1961 reads as under:

◆HOLDING OF TEST AND GRANT OF CERTIFICATE AND CONCLUSION OF TRAINING:

(i) Every (trade apprentice) who has completed the period of training shall appear for a test to be concluded by the National Council to determine his proficiency in the designated trade in which he has undergone his apprenticeship training.

(ii) Every (trade apprentice) who passes the test referred to in subsection (1) shall be granted a certificate of proficiency in the trade by the National Council.

(iii) The progress in apprenticeship training of every graduate or technician apprentice shall be assessed by the employer from time to time.

(iv) Every graduate or technician apprentice, who completes his apprenticeship training to the satisfaction of the central Apprenticeship council, shall be granted a certificate of proficiency by that council.

Section 22 of the Act deals with Officer and acceptance of employment. It reads as under:

(i) 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.

(ii) Notwithstanding anything in subsection (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 of remuneration agreed to between the apprentice and the employer. ♦

5. Section 22 of the Act undoubtedly provides that it is not obligatory on the part of the employer to offer employment to any apprentice who has completed the period of apprenticeship training in the establishment, but here in the case the Corporation had taken a decision and issued circular to the effect that trained apprentices shall be taken into service and some of them have been absorbed into service and they were given job of Clerks and Conductors and this process continued for service. Much after the arguments were concluded the opposite party filed the copy of the agreement containing similar condition as is contained in section 22(i) extracted above alongwith an application, which was rejected.

6. In view of the Directive Principles, contained in Articles 29 and 41 of the Constitution, both Central Government and the State Government, in conformity, have laid down a policy for providing employment to the apprentices. The Central Government even has reserved 50% posts for apprentices. The taking of advantageous position by opposite party for apprentices would not change the position in the instant case.

7. On behalf of the petitioners it was contended that the opposite parties after giving an assurance to the petitioners to appoint them, after completion of the apprenticeship and acting upon the said assurance completed the said training. Hence, the Corporation cannot be allowed to change or alter its policy or resile from its assurance to provide employment to the petitioners. The decision of the Corporation not to appoint the petitioner is discriminatory in as much as those who had received training prior to the framing of regulation will get employment but the petitioner will be denied the appointments. Thus the principle of promissory estoppel has been invoked.

8. Delhi Cloth & General Mills Ltd. v. Union of India in 1988 (I) Supreme Court Cases 86 the principle of promissory estoppel was considered, after taking into consideration the various cases, it was laid down by Hon"ble Supreme Court:

♦ For invoking the doctrine of promissory estoppel what is required is that the party asserting the estoppel must have acted upon the assurance given to him or must have relied upon the representation made to him. It means, the party has changed or altered the position by relying on the assurance or the representation. The alteration of position by the party is the only indispensable requirement of the doctrine. It is not necessary to prove further any damage, detriment or prejudice to the party asserting the estoppel. It is not the question of detriment but whether it appears unjust, unreasonable or inequitable that the promisor should be allowed to

resile from his assurance or representation, having regard to what the promisee has done or refrained from doing in reliance on the assurance or representation. The entire doctrine proceeds on the premise that it is reliance based and nothing more.❖

❖The concept of detriment as we now understand it is whether it appears unjust, unreasonable or inequitable that the promisor should be allowed to resile from his assurance or representations, having regard to what the promisee has done or refrained from doing in reliance on the assurance or representation.❖

9. In the instant case also the same principle applies. As mentioned earlier, the Joint General Manager of the Corporation issued circular letter and in pursuance of the assurance given by the Corporation the petitioners took training and they did not make attempt for securing any other job. In these circumstances the opposite parties are directed to give employment to all those petitioners who have received training of Conductor or Junior Clerk or working Clerk etc. before coming in face (force) of Service Regulation provided they do not suffer from any disqualification. Accordingly the letter dated September 1, 1988 which has been challenged by the petitioner will not be given effect to. The advertisements for appointments on different posts will be limited to the posts which will be available after reducing those posts which now will be given to the petitioners provided they do not suffer from any disqualification, apart from age, which will not be taken into consideration as Corporation is responsible for the same. The advertisement will be read down in respect of the post against which they are to be allowed. The writ petition stands allowed in the above terms.

(Petition allowed)