
(2013) 01 MP CK 0101

Madhya Pradesh High Court (Gwalior Bench)

Case No: Writ Petition (S) No's. 4223, 4224 and 4225 of 2011

Prem Chand Yadav
and Others

APPELLANT

Vs

The M.P. Poorva
Kshetra Vidyut Vitaran
Company Ltd. and
Others

RESPONDENT

Date of Decision: Jan. 30, 2013

Acts Referred:

- Constitution of India, 1950 - Article 14

Citation: (2013) 2 MPHT 412 : (2013) 2 MPLJ 323

Hon'ble Judges: Sujoy Paul, J

Bench: Single Bench

Advocate: N.S. Kirar, for the Appellant; Vivek Jain, Advocate for the Respondent Nos. 1 to 3 and Mr. Vinod Sharma, Advocate for the Respondent No. 4, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Sujoy Paul, J.

In these petitions, common questions of fact and law are involved and, therefore, on the joint request of the parties, matters are analogously heard at motion stage and decided by this common order. Brief facts necessary for adjudication are taken from W.P. No. 4223/2011 (S) (Prem Chand Yadav Vs. The Madhya Pradesh Poorva Kshetra Vidyut Vitaran Company Ltd. and others).

2. The petitioner submitted his candidature for the post of Line Attendant. The post was required to be filled up on contract basis. It is not in dispute between the parties that along with application, he submitted relevant documents including the vocational

certificate issued by National Institute of Open Schooling (for short "NIOs") (Annexure P-2).

3. On the basis of said application and documents, the petitioner was selected for the said post by appointment order dated 27-1-2011 (Annexure P-7). By order dated 15-6-2011 (Annexure P-1), the respondents terminated his services. The basic reason assigned in the termination order is that the petitioner was appointed on the basis of certificate issued by the NIOS and company came to know that this institution, which has issued Annexure P-2, is not a recognised institute from the Industrial Training Institute (for short "ITI") and is not affiliated with MPSCVT/NCVT.

4. Shri Kirar, learned Counsel for the petitioner, submits that the petitioners have not suppressed any fact from the employer. Pursuant to advertisement, they submitted their candidature disclosing correct informations and annexing the relevant documents including Annexure P-2. The employer with open eyes selected the petitioner and permitted him to work. Petitioner's work was not found unsatisfactory nor he was found ineligible or incompetent while performance of duty. Once the petitioner has been permitted to occupy the post despite the qualification disclosed, employer is estopped from taking this objection or dismissing him on this ground. Shri Kirar by placing reliance on the condition (Annexure P-5) submits that even otherwise petitioner's certificate (Annexure P-2) is issued by an agency of Government of India, New Delhi and Annexure P-3 makes it clear that the said body who has issued Annexure P-2 is constituted by Ministry of Human Resources Development (Department of Education), New Delhi of the Central Government. He submits that petitioner's case falls within the eligibility conditions laid down in Annexure P-5. Shri Kirar submits that the said certificate issued by the said institute is recognised in the entire Madhya Pradesh by various Universities. For which he placed reliance on a document at Page 15 of the writ petition.

5. Per contra, Shri Vivek Jain, learned Counsel for the employer submits that petitioners have not fulfilled the eligibility condition mentioned in Annexure P-5 and, therefore, their services are rightly terminated. He submits that there cannot be any estoppel against law. Shri Jain relied on [Mohd. Sartaj and Another Vs. State of U.P. and Others](#), and [G.N. Nayak Vs. Goa University and Others](#),

6. Shri Vinod Sharma, learned Counsel for the respondent No. 4, submits that the certificate (Annexure P-2) is issued by the Competent Authority and relied on the resolution dated 14th September, 1990 (Annexure R-2) to submit that the body which has issued Annexure R-2 is a Competent Authority. He relied on two judgments of Patna and Ahmedabad High Court to submit that certificate issued by the said body were treated to be competent by the High Courts.

7. Shri Jain lastly submits that the certificate (Annexure P-2) is not issued by the ITI and, therefore, it does not fall within the ambit of eligibility clause. He also relied on a note allegedly downloaded from the website of NCVT.

8. I have heard the learned Counsel for the parties and perused the record.

9. This is not in dispute between the parties that there is no suppression of fact by the petitioners with regard to their eligibility conditions. The relevant portion of the eligibility conditions mentioned in Annexure P-5 read as under:--

A bare perusal of the said eligibility condition shows that the candidate after passing Class 10th examination must possess a certificate in the trade of electricity or the lineman or wireman from an ITI which is recognised by Government of Madhya Pradesh, other State or Central Government. The first question is whether the certificate (Annexure P-2) falls within the ambit of this eligibility condition. Annexure P-3 is admittedly a document by which National Open School Society is constituted. The relevant portion of the same reads as under:--

A bare perusal of the aforesaid para shows that a decision is taken by Human Resources Development Ministry of Central Government to conduct examination in various subjects including in technical subjects. This includes competence to issue certificate in this regard,

10. Shri Sharma submits that subsequently a Gazette Notification was issued empowering NIOS to conduct such examination and for issuing certificate thereupon. Annexure P-2 shows that the petitioner has prosecuted one year course in a ITI institution namely Dayal Institute of Vocational Education and Training, Gwalior and after appearing in the examination, the certificate is issued by NIOS.

11. I find force in the argument of Shri Kirar that both the conditions that one must possess an ITI certificate in relevant trade issued by a recognised institute of any State/Central Government is satisfied. Annexure P-2 shows that petitioner has undergone studies in an ITI and obtained certificate from a recognised body of the Central Government, i.e., NIOS. No doubt as per argument of Shri Jain, the words "MPSCVT/NCVT" mentioned in bracket of eligibility condition have some significance. He submits that as per advertisement certificate of only those institutions which are recognised by MPSCVT/NCVT alone are permissible cannot be, in my opinion, accepted. In my opinion, the said description of those two institutions is only illustrative and not exhaustive. In other words, if the certificate is issued by Madhya Pradesh Government, any other State or by institute recognised by the Central Government, whether or not it is recognised by MPSCVT/NCVT, said certificate cannot be excluded from eligibility criteria. Interestingly, Patna High Court in Bablu Kumar Vs. State of Bihar and others, CWJC No. 5014/2010, dealt with a question whether Pharmacy Council of India was justified in not treating a certificate of 10 + 2 issued by NIOS as requisite qualification for Pharmacy Course. The High Court opined that it is peculiar that such an objection is taken by the Government. It is held that the NIOS is running under the aegis of Ministry of Human Resources Development Department, Government of India. It is held that Government institutions cannot be permitted to appear in conflict with each other. The Gujrat High

Court in Sidharth Jagdishbhai Panchal Vs. Admission Committee for Professional Diploma Course and others, SCA No. 7406/2010, held as under:--

15. It has not been disputed that CBSE, CISCE, as also NIOS, all Boards have been constituted by Education Department, Government of India. For all purposes, they are equivalent. It is also not in dispute that there are institutions in the State of Gujarat, including the institution in which the petitioner has studied, which is recognised by the NIOS and certificate is granted by NIOS. Previously, on behalf of the NIOS, CBSE used to grant the certificate and now after the decision of the Central Government, since 2002, it has been granted by NIOS.

17. It has already been pointed out that NIOS is constituted by the Central Government. It is also recognised for all purposes by the State of Gujarat, and the centre in which the petitioner was studying is also located in the State of Gujarat. Having noticed the aforesaid facts, the State Government has also accepted to recognise the candidates, who have passed from the institutions situated in the State of Gujarat and are granted certificate by NIOS for the future academic session 2011-12, but the ground given for not granting such recognition to the students for the academic session 2010-11 is that it will be flooded with applications, cannot be accepted as not allowing such applicants to take part in the selection for admission in the Diploma Courses will render the admissions violative Article 14 of the Constitution, and in such case, Rule 5 may be doubted.

12. Page 15 of the writ petition also shows that the certificate issued by NIOS is accepted by various bodies of the State Government and the Universities.

13. The note heavily relied by Shri Jain is of no assistance to him. It is not even an executive instruction. The date, name of issuing authority, to whom it is issued and for whom it is applicable, is not mentioned. In those circumstances, said note is of no assistance to the respondents. It cannot be doubted that the Labour Ministry under the provisions of the Apprentices Act, 1961 earlier established a forum namely NCVT but no provision is shown that any other body is excluded to issue any such certificate or recognised the institute or examination in this regard. The NIOS is established by another arm of the Central Government, i.e., Ministry of Human Resources Development and, therefore, its certificates cannot be discarded merely on the ground that it is not affiliated with NCVT. A perusal of Annexure P-3 shows that the organisation was equipped with the power to issue certificate in the field of technical education. Thus, the eligibility condition of Annexure P-5 aforesaid is to be read in the aforesaid context. In view of aforesaid and in the peculiar facts of these cases, judgments cited by Shri Vivek Jain have no application. In the opinion of this Court, the petitioners have fulfilled the eligibility condition because they obtain ITI certificate from an institute of Gwalior which is affiliated with NIOS, a body recognised by the Central Government. Any other narrow interpretation of eligibility condition will lead to absurdity and will create a conflict between recognised institutions of the Government. Apart from this, the impugned order (Annexure P-1) is passed without affording any opportunity to the petitioner. Even in contractual matters,

the principles of natural justice and Article 14 of the Constitution has a role to play. The Apex Court in Kumari Shrelekha Vidyarthi Vs. State of Madhya Pradesh and others, reported in (1991) 1 SCC 212, held that Article 14 will apply even in cases of contractual appointment. Thus, impugned orders are liable to be interfered with on this ground also. For the reasons stated above, impugned orders cannot be permitted to stand and are hereby quashed. Petitions are allowed. No costs.