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Reserved

Central Administrative Tribunal, Allahabad.

Registration T.A.No. 385 of 1986 (C.Appeal No.132 of 1984)

Union of India and another ... Applicants.

Vs.

Virendra Singh and 6 others ... Respondents

Connected with

Registration T.A.No.387 of 1986 (C.Appeal No. 124 of 1984)

Hari Kishan and 4 others ... Applicants

Vs.

Virendra Singh and 3 others ... Respondents.

Hon.Ajay Johri, AM
Hon.G.S.Sharma, JM

(By Hon.G.S.Sharma, JM)

These two civil appeals against the judgement and decree dated 28.4.1984 passed by the VIII Addl.Munsif Aligarh in suit no.316 of 1983, have been received from the Court of III Addl. Civil ^{Suite} under section 29 of the Administrative Tribunals Act XIII of 1985. Since common questions of law and facts are involved in these two appeals, they are being decided by this common judgement.

2. The relevant facts of these appeals are that Virendra Singh and Vinod Kumar respondents in both the appeals (hereinafter referred to as the plaintiffs) had filed the suit giving rise to these appeals against the Union of India and General Manager, Govt. Press, Aligarh (hereinafter referred to as the defendant nos. 1 and 2) appellants in T.A.No.385 of 1986 and Hari Kishan, Chandra Bhan, Angad Singh, Rajendra Babu and Vir Pal Singh (hereinafter referred to as the defendant nos. 3 to 7) appellants in T.A.No.387 of 1986) for a declaration that the appointment of the defendant nos. 3 to 7 as Binders grade II by the defendant nos. 1 and 2 is illegal and void and for a direction to the defendant nos. 1 and 2 for holding a test for the promotion of the plaintiffs to the post

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of Binders Grade II with the allegations that in Novr. 1982, the defendant nos. 1 and 2 had held an examination for the promotion of the internal candidates as Binders Grade II. According to the notification dated 15.1.1975 issued by the Ministry of Works and Housing, New Delhi, posts were to be filled by promotion and 25% posts by direct appointment. The eligibility for direct appointment was passing of All India Trade Test (for short AITT) and for promotion the eligibility was passing of middle school examination and 3 years experience in the trade. It was alleged by the plaintiffs that they were educated apprentices and had passed the AITT in batch no.4 and, thus, were fully eligible for direct appointment as Binders Grade II and they had applied for participating in the test to be held on 21.11.1982 but they were not allowed to appear in the test by the Manager of the Govt. Press defendant no.2. It was further alleged that the defendant nos. 3 to 6 had not passed the AITT and the defendant no.7 had passed AITT with the plaintiffs and was placed below the plaintiffs in the seniority list. The defendant nos. 3 to 7 were allowed to appear in the trade test held by defendant nos. 1 and 2 and were selected for promotion vide notice dated 11.4.1983. This amounted to discrimination against the plaintiffs and violation of Articles 14 and 16 of the Constitution of India.

3. The suit was contested on behalf of the defendant nos. 1 and 2 before the trial Court and in the written statement filed on their behalf by the Manager of the Govt. Press, defendant no.2, it was stated that the plaintiffs are qualified apprentices (Binding) and they could appear in the trade test held in Nov. 1982 on their names being sponsored by the Employment Exchange for direct recruitment. As their names were not sponsored

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by the Employment Exchange, they were not allowed to appear in the test and as the defendant nos. 3 to 7 fulfilled the requirement of the Recruitment Rules on their completing 3 years service, they were allowed to appear in the test and were selected according to rules. The plaintiffs had not completed 3 years service and as such, they could not be allowed to appear in the test as internal candidates and there has been no discrimination against them in any manner. The defendant nos. 3 to 7 have been rightly appointed as Binders Grade B on their passing the test and the plaintiffs have no cause of action to make any complaint against the same. It was also pleaded that the suit is bad for want of a notice u/s.80CPC and it was not legally maintainable.

4. The defendant nos. 3 to 7 did not file any written statement and the suit proceeded ex-parte against them.

5. The learned trial Court framed the necessary issues in the case and held that the defendants could not produce any evidence to show that the plaintiffs had completed 3 years service in the Govt. Press or their names were sponsored by the Employment Exchange and as such, they were wrongly selected for appointment as Binders Grade II. The plaintiffs had already got their names registered in the Employment Exchange after obtaining no objection certificate from the defendant no.2 and it was not necessary that their names should have been sponsored by the Employment Exchange for allowing them in the test and as such, there is a discrimination against the plaintiffs and they were entitled to be selected against 25% quota for direct recruitment. The suit was accordingly decreed and the appointment

of defendant nos. 3 to 7 as Binder, Grade II was held to be illegal and void and the defendant nos. 1 and 2 were directed to hold the examination for the plaintiffs

and to allow them to appear in the same for their appointment as Binder, Grade II. Aggrieved by this decision, the defendant nos. 1 and 2 filed one appeal and the remaining defendants filed the other appeal, which have been contested on behalf of the plaintiffs.

6. In the appeal filed on behalf of defendant nos. 3 to 7 it was contended that the trial Court did not issue any summons to them and as such, the decree passed against them without affording them an opportunity of hearing is illegal and in fact, they were eligible to appear in the test as internal candidates against 75 % quota as they had completed more than 3 years service in the Department. It has also been contended on behalf of both sets of appellants in these appeals that mere registration of names in the Employment Exchange was not sufficient as under the direction of the Govt. of India only such candidates could be considered for appointment against direct quota whose names are sponsored by the Employment Exchange. The plaintiffs have disputed the correctness of these contentions and have alleged that the defendant nos. 3 to 7 had moved an application under O.IX R.13 CPC for setting aside the ex-parte decree but the same was rejected and they are now estopped from saying that they were not given an opportunity of hearing by the trial Court as they had full knowledge of the proceedings of this case from the very beginning and they now cannot complain that they were not afforded an opportunity of hearing.

7. We have carefully considered the contentions raised before us. The defendant nos. 3 to 7 have filed some additional documents before us which were allowed to be kept on record. In our opinion, only two questions arise for consideration in these appeals. The first question is whether the defendant nos. 3 to 7 were eligible to appear as internal candidates in the test held in Nov. 1982 and secondly whether the plaintiffs could be allowed to appear in the trade test even in the absence of their names being sponsored by the Employment Exchange. The relevant rule for appointment as Binder Grade II is contained in the order dated 15.1.75 copy of which is on record. This order prescribes that 75% posts of Binder 'B' are to be filled by promotion of Assistants with 3 years service in the qualifying grade while 25% posts are to be filled by direct recruitment. The candidates are required to have passed Middle School Examination and for direct recruitment, they are further required to obtain the certificate of Apprenticeship after passing AITT. It appears that the plaintiffs and defendant nos. 3 to 7 were working in the Govt. Press at the time the test was held in Nov. 82 but it is not in dispute that the plaintiffs had not completed their minimum service of 3 years to make them eligible to appear as internal candidates against 75% quota. It is also not in dispute that their names were registered in the Employment Exchange and they had obtained the no objection certificate from defendant no. 2 but their names were not sponsored by the Employment Exchange for being considered against the 25% direct quota.

8. Paper no.20-A filed by defendant nos. 3 to 7 in their appeal is a memorandum dated 14.2.1986 issued by the Asstt. Manager (Admn.) Govt. of India Press Aligarh showing that the defendants Hari Kishan, Chandra Bhan were appointed as Bindary Assistants on 14.9.1967. Defendant Angad Singh, Rajendra Babu and Vir Pal Singh were appointed as such on 24.2.1972, 5.12.1978 and 7.12.78 respectively. In this way, all of them had completed more than 3 years service by Novr.1982 when the test in question was held by the defendant nos. 1 and 2. It has not been disputed before us that these defendants had ~~not~~ passed the Middle School Examination. Paper No.19-C is the office memo dated 21.9.1982 issued by the defendant no.2 inviting applications upto 30.10.1982 for direct recruitment of Binders Grade 'B' laying down that the candidates should have passed Middle School Examination and should hold the Apprenticeship certificate in Book Bindary or they should have 3 years experience in Book Bindary. The applicants were required to give registration number of the Employment Exchange. The defendant nos.3 to 7 have also filed their registration cards that their names were registered in the Employment Exchange. Paper No.18-C is the order dated 11.5.1983 of the defendant no.2 stating that the defendant nos. 3 to 7 who were working as Bindary Asstts. were selected for appointment as Binders Grade|| against direct quota. In view of ~~these~~ evidence, which ~~was~~ not made available before the trial Court, it is fully established that defendant nos. 3 to 7 were eligible to appear in the selection test held in Nov.1982 and the view taken by the trial Court to the contrary is not correct.

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9. So far as the plaintiffs are concerned, it is not in dispute that their names were registered in the Employment Exchange but the same were not sponsored by the Employment Exchange for sitting in the selection for Binder Grade II. Their stand is that mere registration of their names in the Employment Exchange was sufficient for considering their candidature and it was not necessary that their names should have been sponsored by the Employment Exchange. Copy of O.M.No. 71/49-DGS dated 11.12.1949 read with O.M No. 14/11/64-Estt. (B) dated 21.3.1964, paper no.51-C on record, states that no department or office should fill in vacancy by direct recruitment unless Employment Exchange certifies that they are unable to supply suitable candidates. It further states that the need for issuing advertisements for inviting applications or tapping other sources of recruitment should be considered only if the Employment Exchange issues non-availability certificate. It is amply clear from this Office Memorandum that after considering the candidates for direct recruitment either their names should be sponsored by the Employment Exchange or the Employment Exchange should otherwise certify that they are unable to supply suitable candidates. No other O.M laying down a different preposition was brought to our notice on behalf of the plaintiffs. We are, therefore, of the view that after considering the names of the plaintiffs for appearing in the selection held in Novr.82 it was necessary that their names should have been sponsored by the Employment Exchange. They were, therefore, rightly excluded by the defendant nos.1 and 2 at the time of the test in question. We are unable to agree with the view taken by the trial Court to the contrary.

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10. In view of the above considerations, we set aside the judgement and decree passed by the trial Court and hold that the appointment of the defendant nos. 3 to 7 as Binders Grade II was not illegal or void and the plaintiffs could be considered for appointment as internal candidates only after completing 3 years service on the lower post and for direct recruitment, only on their names being sponsored by the Employment Exchange. Both the appeals are disposed of accordingly without any order as to costs.

शजय जैदी

MEMBER(A)

Sharma

MEMBER(J)

Dated: 30th May 1988
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