

A CHAIRMAN/M.D. MAHANADI COALFIELDS LTD. AND ORS.

v.

SRI SADASHIB BEHERA AND ORS.

JANUARY 5, 2005

B [R.C. LAHOTI, CJ. AND G.P. MATHUR, J.]

*Service Law:*

C *Apprenticeship Act, 1961; Ss. 2(aa), 4, 6, 22/Apprenticeship Rules, 1991; Rule 6 and Schedules V & VI thereunder:*

D *Appointment for the post of Welder—Respondent/apprentice not declared successful—Challenge to—High Court issued directions to appointing authority for appointment of the incumbent by dereservation of one of the posts—On appeal, Held: Having regard to reservation policy, directions issued by the High Court erroneous—In the absence of any condition of appointment in the apprentice contract between employer and the incumbent, the incumbent-apprentice could not claim right to appointment on that ground—Since no legal right vested with the incumbent, writ of mandamus could not be issued commanding the employer to give him appointment—Constitution of India, 1950—Article 226.*

F **Respondent No. 1 did apprenticeship training in the Welders trade with the appellant company. Later, he was called for interview by the company for appointment for the post of Welder, but was not appointed. He filed a writ petition for issuance of writ of mandamus directing the appellant to order for his appointment for the said post. High Court issued directions to the company for his appointment. Review Petition filed by the company was dismissed by the High Court. Hence the present appeal.**

**Allowing the appeal, the Court**

G **HELD: 1.1. The view taken by the High Court is clearly unsustainable. It is not disputed that in fact only 7 posts in the welders trade has been sanctioned by the competent authority. However, the High Court had proceeded on the basis that there were 9 sanctioned posts out of which 5 posts were meant for general category and the writ petitioner**

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(respondent no.1) having secured 5th rank in the said category, he was entitled to be given an appointment. [63-C] A

1.2. The provisions of the Apprenticeship Act and the Apprenticeship Rules made thereunder show that in absence of any condition in the contract which is entered into between the employer and the apprentice at the time of commencement of his apprenticeship training and which is registered with the Apprenticeship adviser to the effect that the apprentice shall serve the employer, an apprentice cannot claim any right to get an employment on successful completion of his training. It is not the case of the writ petitioner that in the contract of apprenticeship there was any condition that after completion of training he would serve the employer and in absence of such a condition, the employer, appellants are not bound to offer any employment to them. Thus, in the absence of any legal right, writ of mandamus could not be issued. [65-A-B-C] B C

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 30 of 2005. D

From the Judgment and Order dated 21.11.2002 of the Orissa High Court in C.R. No. 159 of 2000.

Janaranjan Das, Swetaketu Mishra and Ms. Moushumi Gahlot for the Appellants.

A.K. Panda Ms. Mridul Aggrawal and R.P. Wadhvani for the Respondents. E

The Judgment of the Court was delivered by

**G.P. MATHUR, J.** 1. Leave granted. F

2. This petition, by special leave, has been preferred against the judgment and order dated 21.11.2002 of Orissa High Court by which the review petition filed by the appellants for reviewing the order dated 7.12.1999 was disposed of with certain directions.

3. Respondent No.1, Sadashib Behera passed certificate examination in welders trade from Industrial Training Institute in the year 1992. Thereafter, he did one year apprenticeship training in the welders trade with Mahanadi Coalfields Ltd. It appears that some appointments were to be made in Mahanadi Coalfields Ltd. for which purpose he was called for interview, but he was not given any appointment order. He then filed a writ petition under Article 226 G H

A of the Constitution being OJC No.13025 of 1996, praying that a writ of mandamus be issued commanding the appellants in the present appeal to give him appointment on the post of Welder. Reference in the writ petition was made to the judgment and order dated 3.9.1996 of the High Court passed in OJC No.644 of 1996 which indicated that some vacancies still existed in the establishment. The appellants herein, who were respondents in the writ petition before the High Court, filed a counter affidavit and it was pleaded therein that they were bound by the reservation policy notified by Government of India and that the stand of the writ petitioner that some posts of welders were lying vacant is not correct. The High Court held that there were 9 vacancies on the post of welder, out of which 5 were reserved for general category. The writ petitioner's placement in the merit list was 5th and as the person who was placed at number 4 had not joined, he was entitled for being appointed on the post of welder. The writ petition was accordingly disposed of by the order dated 7.12.1999 and a direction was issued to the appellants herein to appoint respondent no.1 on the post of welder within a period of two months.

D 4. The appellants filed a review petition mainly on the ground that there were only 7 sanctioned posts of welders and not 9 as had been mentioned in the judgment. It was pointed out that the document which was annexed along with the counter affidavit as annexure A was not an order of sanction of posts but was only a proposal made to the authorities for sanctioning 9 posts in the welders trade. The competent authority had in fact sanctioned only 7 posts in the said trade. It was also submitted in the review petition that from the year 1998 onwards, the workload had considerably reduced, as a result there was no necessity of filling up the fourth post in the welders trade from amongst the general category. It was further submitted that the management had also taken a decision to introduce a voluntary retirement scheme on account of reduction in work and to reduce the expenditure. The review petition was disposed of by the judgment and order dated 21.11.2002 which is the subject matter of challenge in the present appeal and the relevant part of the order is being reproduced below:

G "Upon hearing the counsel for parties and on perusal of the relevant papers, we find that in two separate affidavits affirmed by responsible officers of the petitioners filed in the writ petition it was stated as if nine vacant posts were available/sanctioned. Having not correctly stated the facts, for which, the petitioners are themselves responsible their prayer to review the order passed in the writ petition is not reasonable.

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It is now submitted by Shri Patnaik, counsel for the petitioners that only five persons were appointed as welder, but two reserved posts (one for S.C. and one for S.T.) have not been filled up.

In view of the fact that since 1996 those two reserved posts are lying vacant and the petitioners claim being legitimate, we direct the petitioners to de-reserve one reserved post and give appointment to opposite party no.1 within two months hence.”

5. In our opinion, the view taken by the High Court is clearly unsustainable. It is not disputed that in fact only 7 posts in the welders trade had been sanctioned by the competent authority. The judgment dated 7.12.1999 by which the writ petition had been disposed of earlier had proceeded on the basis that there were 9 sanctioned posts out of which 5 posts were meant for general category and the writ petitioner (respondent no.1 in the present appeal) having secured 5th rank in the said category, he was entitled to be given an appointment. The appellants filed the review petition explaining the mistake which had occurred on account of the fact that a document which was merely a proposal made to the higher authorities for sanctioning the post was treated to be an order of sanction of posts. When the sanctioned posts were only 7, the writ petitioner could not claim any right to be given an appointment having regard to the reservation policy which was applicable to the establishment of Mahanadi Coalfields Ltd. on account of the notification issued by Government of India. The direction issued by the High Court in the impugned order to the effect that one of the two reserved posts lying vacant be de-reserved and appointment be given to respondent no.1 is, therefore, erroneous. The appellants are fully bound by the reservation policy and it is not open to the High Court to issue a writ for disregarding the said reservation policy which had been enforced by the notification issued by Government of India and then to give appointment to a general category candidate on a post which is meant for a reserved category candidate.

6. There is another aspect of the matter which deserves consideration. The whole stand of the writ petitioner (respondent no.1 in this appeal) was that he had undergone apprenticeship training with Mahanadi Coalfields Ltd. and, therefore, he was entitled to be appointed on the post of welder. The Apprenticeship Act was enacted in the year 1961 and as the preamble shows that it is an Act to provide for the regulation and control of training of apprentices and for matters connected therewith. Section 2(aa) defines an “apprentice” and it means a person who is undergoing apprenticeship training in pursuance of a contract of apprenticeship. Section 2(aaa) defines

A 'apprenticeship training' and it means a course of training in any industry or establishment undergone in pursuance of a contract of apprenticeship and under prescribed terms and conditions which may be different for different categories of apprentices. Section 4 provides that no person shall be engaged as an apprentice to undergo apprenticeship training unless he has entered into a contract of apprenticeship with the employer and the training shall be deemed to have commenced on the date on which the contract of apprenticeship has been entered into. It further provides that every such contract shall be sent by the employer to the Apprenticeship Advisor for registration. Sections 6 and 7 lay down that the period of apprenticeship training shall be specified in the contract of apprenticeship and the same shall terminate on the expiry of the period of apprenticeship. Rule 6 of Apprenticeship Rules, 1991 (hereinafter referred as the Rules) mandates that the contract shall be sent by the employer for registration within three months of date on which it was signed. Sub-rule (3) of Rule 6 provides that the obligation of the employer and that of the trade apprentice shall be as specified in Schedule V or VI, as the case may be. Clause 10 of Schedule V which relates to the obligation of the employer reads as follows:

E “(10) It shall not be obligatory on the part of the employer to offer any employment to the apprentice on completion of 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.”

F These provisions show that apprentice is a person who is undergoing a training in pursuance of a contract of apprenticeship duly registered with the Apprenticeship Adviser and the employer who is imparting training is under no obligation to offer any employment to such a person. The legislature has made the aforesaid position clear by making a specific provision in this regard namely Section 22 in the Act and sub-section (1) thereof lays down that 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. Sub-section (2) however provides that notwithstanding anything in sub-section (1) where there is a condition in a contract of apprenticeship that apprentice shall, after successful completion of 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. Thus

the provisions of the Act and the Rules made thereunder show that in absence of any condition in the contract which is entered into between the employer and the apprentice at the time of commencement of his apprenticeship training and which is registered with the Apprenticeship Adviser to the effect that the apprentice shall serve the employer, an apprentice cannot claim any right to get an employment on successful completion of his training. It is not the case of the respondent no.1 that in the contract of apprenticeship there was any condition that after completion of training he would serve the employer and in absence of such a condition, the employer namely the appellants are not bound to offer any employment to them. In absence of any legal right inhering in the writ petitioner (respondent no1 herein) no writ of mandamus could be issued commanding the appellants to give an appointment to him on the post of welder.

9. For the reasons discussed above the appeal is allowed and the judgment and order dated 7.12.1999 and also the order dated 21.11.2002 of the High Court are set aside.

No order as to costs.

S.K.S.

Appeal allowed.