

SUPREME COURT OF INDIA

U.P. Public Service Commission

Vs.

Rajeev Kumar Bansal

C.A.No.2842 of 2005

(R.V. Raveendran and Dr. Mukundakam Sharma JJ.)

23.06.2008

ORDER

1. The appellant-U.P. Public Service Commission (UPPSC) issued an advertisement dated 16.07.1999 inviting applications for recruitment to the posts of Regional Inspectors (Tech.) and Assistant Regional Inspectors (Tech.) in U.P.

“Transport Department. The respondent-Rajeev Kumar Bansal was an applicant for both the posts. The said advertisement prescribed the qualifications required for the posts. There is no dispute that the respondent possessed the requisite educational qualification. The dispute is in regard to the practical experience required for the posts. Sub-clause (5) of Clause 5 of the advertisement prescribing the practical experience, is extracted below:

"(5) Besides above, for the post of Regional Inspector (Tech.) candidates must possess at least five years practical experience and for Asstt. Regional Inspector (Tech.) three years practical experience of repairs, overhauling and inspection of Motor Vehicles in a large automobile workshop."

The said practical experience specified in Clause 5(5) of the advertisement is in terms of the provisions of the *U.P. Transport (Subordinate) Technical Service Rules, 1980.*”

2. The applicant claimed that he had two and a half years experience (10.5.1994 to 22.11.1996) as Workshop Supervisor in Hindustan Automobiles which was admittedly a State Government approved institution and another two and a half years experience commencing from 1.1.1997 in a large private workshop known as Zaheer Engineering Works.

3. Nearly six months after the said advertisement, the Transport Commissioner, Lucknow issued certain guidelines in regard to what should be considered as 'large automobile workshops' for the purpose of fulfilling the requirement relating to practical experience mentioned in Clause 5(5) of the advertisement. As per the said guidelines, only (i) workshops

which were approved by the State Government, (ii) Department of State Government or Central Government which has its own large automobile workshop, (iii) a corporation which has its own large workshop and (iv) workshops of authorised dealers of heavy/light vehicles manufacturers where repairs and overhauling are carried on, could be considered as large automobile workshops. The appellant considered the application of the respondent with reference to the said guidelines and found that working at Zaheer Engineering Works could not be considered as practical experience as it is not a large automobile workshop. As a result UPPSC rejected the application of the respondent on the ground that he did not have the prescribed experience.

4. Feeling aggrieved the respondent approached the Allahabad High Court by filing Civil Misc. Writ Petition NO.34884 of 2000. A learned Single Judge of the High Court by judgment dated 17.08.2000 rejected the writ petition. Feeling aggrieved the respondent filed Special Appeal No.515 of 2001. The Division Bench of the Allahabad High Court by judgment dated 16.07.2001 accepted the contention of the respondent and allowed the appeal. It rejected the contention of the appellant that a large automobile workshop refers to a automobile workshop approved by the State Government. The High Court held that "It will be quite unreasonable to construe the large automobile workshop as that workshop which was approved by the State Government because many automobile workshops are very big and cannot be excluded for the purposes. Moreover, the decision of the Commission cannot override the statutory rules. That apart the advertisement does not also mention that the large automobile workshop only relates to the workshops approved by the State Government." As a consequence the Division Bench directed the UPPSC to consider the case of the respondent for appointment afresh by taking into account the period of service/experience of the respondent herein in large automobile workshops meaning thereby any large automobile workshops approved by the State Government or in the private sector.

5. The appellant purported to reconsider the case of the respondent in the light of the order of the Division Bench and passed a fresh order dated 24.08.2001 whereby it again rejected the application of the respondent on the ground that there was no mention in the certificate that Zaheer Engineering Works was a workshop approved by the State Government.

6. The respondent again approached the Allahabad High Court by initiating a second round of litigation in Civil Misc. Writ Petition No.12615 of 2002. A learned Single Judge of the High Court by judgment dated 04.10.2002 allowed the writ petition. He did not go into the question whether Zaheer Engineering Works was a large automobile workshop or not. He was of the view that having regard to the qualification prescribed by the Central Government in a notification dated 12.06.1989 issued under Section 213(4) of the Motor Vehicles Act 1989, prescribing the practical experience of one year it was unnecessary for the respondent to establish five years experience. The learned Single Judge was of the view that the said Central notification dated 12.6.1989 would prevail over the provisions of the U.P. Transport (Subordinate) Technical Rules 1980. The said judgment of the learned Single Judge was upheld by a Division Bench and the appellant's appeal (Special Civil Appeal No.99 of 2003) was rejected by order dated 08.07.2004. The Division Bench also did not go into the question whether Zaheer Automobile workshop was a large automobile workshop, as it was also of

the view that one year's experience was sufficient and the respondent admittedly possessed such experience.

7. The said judgment is challenged by the UPPSC. It contends that the decision of the Division Bench holding that the notification dated 12.06.1989 of the Central Government will prevail over the *U.P. Transport (Subordinate) Technical Rules 1980* is contrary to the decision of this Court in *S. Satyapal Reddy and others vs. Government of A.P. and others*¹.

8. A perusal of the decision of this Court in *Satyapal Reddy (Supra)* clearly shows that the High Court erred in holding that the notification dated 12.06.1989 will prevail over the State rules. However, it is not necessary to examine the said issue in further detail, as this appeal can be disposed of on facts, with reference to the decision rendered by the Allahabad High Court in the first round of the litigation.

9. The question that was considered in the first round was whether only State approved workshops should be considered as large automobile workshops. The said contention of the Commission based on the guidelines issued by the Transport Commissioner was expressly negated by the Division Bench by the judgment dated 16.07.2001. The Division Bench directed the Commission to consider the case of the respondent without reference to the requirement imposed by the guidelines. That judgment attained finality as it was not challenged. Necessarily, therefore, the Commission had to decide the issue with reference to the observations made in the said judgment. The Commission could not have again rejected the application on the same ground which was negated by the Division Bench by judgment dated 16.7.2001. Learned counsel for respondent invited our attention to the recent decision of this Court in *K. Manjusree vs. State of A.P. and another*², wherein this Court has observed that while making selections, the Rules of the game cannot be altered after the game was started. In this case the advertisement was issued on 16.07.1999 and obviously therefore any subsequent guideline which has effect of restricting the definition of large automobile workshops cannot be relied on for the purpose of rejecting an application which was otherwise acceptable, if the normal meaning was assigned to the term 'large automobile workshop' in view of the decision in the first round of litigation.

10. We are informed that one post has been kept vacant in pursuance of the interim order of the High Court passed on 01.04.2002. It is also stated that in the written examination the respondent had secured third position and but for the dispute relating to practical experience he would have been selected.

11. We therefore dismiss this appeal as having no merit. The appellant shall declare respondent's result as selected. We make it clear that our decision will not affect any other rejection by the UPPSC which has attained finality. This appeal is by an applicant for impleadment when the matter was pending in the High Court in Civil Special Appeal No.99/2003. The grievance of the appellant is that his application for impleadment was not considered by the High Court. Having regard to the facts and circumstances of the case, the appellant in this appeal (C.A.No.2843/2005) was neither a necessary nor a proper party and

the non consideration of his application for impleadment cannot be said to have caused any prejudice. This appeal is also therefore rejected.

¹*1994(4) SCC 391*

²*2008(2) SCALE 554*