

SUPREME COURT OF INDIA

Electronic Corporation of India Ltd.

Vs.

M.Shivani

C.A.No.2560 of 2019

(Uday Umesh Lalit and Indu Malhotra,JJ.,)

08.03.2019

JUDGMENT

Uday Umesh Lalit,J.,

1. This appeal challenges the correctness of the judgment and order dated 08.03.2018 passed by the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh in Writ Appeal No.94 of 2018

2. The matter arises out of Writ Petition No.382 of 2018 filed by the Respondents in the High Court submitting inter alia that they had been working with the Appellant-Corporation through an outsourcing agency since 2010; that they had passed ITI and completed National Apprenticeship Certificate in the Appellant-Corporation itself; that the Appellant had issued Notification No.38 of 2017 for recruitment to the posts of Tradesman-B (WG- III) in different trades; that the upper age limit was prescribed as 28 years as on 30.11.2017; that there was relaxation in the age limit upto 40 years for those who had worked or were working with the Appellant-Corporation as Senior Artisan/Junior Artisan with ITI qualification plus NAC or ITI qualification plus experience of tenure based contract. It was the submission of the Respondents that they were seeking similar extension of benefit of age relaxation as they had worked through an outsourcing agency.

3. In the affidavit-in-reply by the Appellant-Corporation it was stated that 3064 applications were received pursuant to the Notification to fill up 40 posts and that the request of the Respondents could not be considered as it would have had a cascading effect as many similarly situated candidates, who had been working through outsourcing agencies, may claim similar relaxation.

4. The advertisement in question was issued on 19.12.2017 and the last date for filling up applications online was 05.01.2018. The age limit as prescribed in the advertisement was 28 years for unreserved candidates but the age limit could be relaxed upto 40 years as stated above. The aforesaid Writ Petition was filed by the Respondents on 02.01.2018 and was dismissed by the Single Judge of the High Court on 04.01.2018 with following observations:-

“It is the case of the petitioners that they have been working with the first respondent Corporation through an outsourcing agency since 2010. They passed ITI and completed National Apprenticeship Certificate (Electronic Mechanical Trade) in ECIL only. While so, the second respondent issued Notification No. 38 of 2017 for the recruitment to the post of Tradesman-B (WG-III) in different Trades. The last date for submission of applications through online is 05.01.2018. The upper age limited prescribed is 28 years as on 30.11.2017. However, the relaxation of maximum age limit is allowed up to 40 years for those who worked or working with ECIL as Senior Artisan/Junior Artisan with ITI qualification plus NAC or ITI qualification plus experience of tenure based contract. The present Writ Petition is filed seeking extension of the same benefit of age relaxation to the petitioners also, as they worked through an outsourcing agency.

The notification was issued long back and the applications were sought to be accepted from 20.12.2017. Though there is some grievance to be redressed in relation to the petitioners, since the procedure for acceptance of applications is through online basis, no relief can be granted to the petitioners who approached this Court at the last moment seeking relaxation of age limit. Obviously, the software so far developed does not accept the applications which did not contain any code number which is available for the persons who worked or working with ECIL on tenure based contract. In the circumstances, no relief can be granted to the petitioners. The Writ Petition is, accordingly dismissed at the admission stage. There shall be no order as to costs. As a sequel thereto, the miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.”

5. The Respondents, being aggrieved, challenged the decision of the Single Judge by filing Writ Appeal No. 94 of 2018. A counter affidavit was filed on behalf of the Appellants in said Writ Appeal submitting:-

“ that in Electronics Corporation of India Limited there are two types of contract employees. The first category is those employees who are directly employed by ECIL, who work for some time and for whom an employee code is allotted and a Service Certificate will also be given by ECIL. The Corporation has an employer and employee relationship with such employees for the period of contract. The second category is those employees who are engaged through Manpower Supplying Agencies, who work in short durations in projects undertaken by ECIL. For such employees no employee code will be allotted and the Corporation does not issue any Service Certificate to those employees, they being the employees of the Manpower Supplying Agencies. The Corporation engages hundred of such employees through the Manpower Supplying Agencies depending upon the temporary need. With such employees there is no employer and employee relationship with the Corporation and they work as per the terms and conditions of their employer i.e. Manpower Supply Agency, with whom they are employed as per the advertisement issued by the Corporation the first category of employees are eligible for age relaxation, but the second category of employees are not entitled to such age relaxation and since the appellants herein belong to the second category,

they are not entitled to claim any age relaxation in this case. If age relaxation to those appellants is extended, then there will be hundreds of such applicants, who are employed through Manpower Supply Agency and they also will seek such age relaxation and in such a case it will be difficult for the Corporation to conduct selection.”

6. The Division Bench of the High Court by its judgment and order dated 08.03.2018 allowed the appeal and passed following directions:-

“In view of the above, we are of the considered opinion that the petitioners are entitled to be considered for the posts in question and also entitled for the age relaxation up to the age of 40 years. Consequently, we hereby set aside the order dated 04.01.2018 passed in WP No.382 of 2018. Accordingly, the Writ Appeal is allowed. Consequently, the respondents shall permit the petitioners to participate in the selection process to be conducted on 11.03.2018. The petitioners are directed to file their applications by tomorrow 5 PM.”

7. The decision of the Division Bench of the High Court is presently under appeal. While issuing notice, the operation and implementation of judgment and order under appeal was stayed. Though the service was effected on the Respondents, none entered appearance on their behalf and the matter was repeatedly adjourned to enable the Respondents to enter appearance and contest the matter, as is clear from the following:-

a) On 30.11.2018 it was recorded that, according to the office report, the Respondents had been served in the matter and by way of last chance the matter was directed to be listed on 07.12.2018.

b) On 07.12.2018 since none had entered appearance, fresh notices were directed to be issued. In addition, dasti service was also permitted.

c) On 18.02.2019 the matter was called and this Court noticed that according to the office report dated 16.02.2019 Respondents were served in the matter and yet none had appeared on their behalf. It was, therefore, directed:-

“By way of last chance, we adjourn the matter to 05.03.2019. If the respondents choose not to enter appearance, the matter shall be disposed of ex-parte on the next date of hearing.”

Despite repeated opportunities, the Respondents have chosen not to appear. We, therefore, proceed with the matter ex-parte.

8. Two features emerge in the matter. First is about the nature of engagement of the Respondents. The record indicates that they were engaged through an outsourcing agency. Going by the terms of the advertisement the Respondents were, therefore, not entitled to have any age relaxation. Secondly, the advertisement was issued on 19.12.2017 and the last date for submission of applications was 05.01.2018. Challenge itself was raised by the

Respondents by filing Writ Petition No.382 of 2018 on 02.01.2018. The Single Judge of the High Court was, therefore, right and justified in rejecting the challenge. By the time the matter came up before the Division Bench, the period was already over. The Division Bench did not consider the submissions whether the Respondents could, as a matter of right, claim relaxation in age limit. Without considering said aspect of the matter, the Division Bench proceeded to pass the directions as quoted above.

9. Having gone through the record, in our view, the assessment made by the Division Bench was completely incorrect. We, therefore, allow this appeal, set aside the judgment and order under appeal and restore the order dated 04.01.2018 passed by the Single Judge of the High Court in Writ Petition No.382 of 2018.

10. No order as to costs.