

Narender Kumar And Ors vs State Of Punjab And Ors on 29 November, 1984

Equivalent citations: 1985 AIR 275, 1985 SCR (2) 52, AIR 1985 SUPREME COURT 275, 1985 (1) SCC 130, 1985 LAB. I. C. 541, (1985) IJR 83 (SC), 1985 ICR 119, (1985) 2 SCR 152 (SC), 1985 UJ (SC) 297, 1985 2 SCR 152, (1982) 50 FACLR 132, 1985 SCC (L&S) 182, (1985) 1 CURLR 121, (1985) 67 FJR 1, (1985) 1 LABLJ 337, (1985) 1 LAB LN 245, (1985) 1 CURCC 571

Author: Y.V. Chandrachud

Bench: Y.V. Chandrachud, E.S. Venkataramiah

PETITIONER:
NARENDER KUMAR AND ORS.

Vs.

RESPONDENT:
STATE OF PUNJAB AND ORS.

DATE OF JUDGMENT 29/11/1984

BENCH:
CHANDRACHUD, Y.V. ((CJ))
BENCH:
CHANDRACHUD, Y.V. ((CJ))
VENKATARAMIAH, E.S. (J)

CITATION:
1985 AIR 275 1985 SCR (2) 52
1985 SCC (1) 130 1984 SCALE (2) 826

ACT:
Apprentices Act (Act-LII of 1961), Section 22(2),
object and scope of- Contract of apprenticeship-
Interpretation of Para 2 of the contract of Apprenticeship-
Whether the terms of the contract entitle the trained
apprentices to be appointed to 50% of the posts as per
Government of India Department of Labour (D.G.E.T.)
Instructions notified on March 23rd, 1983- Words and
Phrases. meaning of "without commitment".

HEADNOTE:
In accordance with the provisions of the Apprentices

Act, 1961 and in terms of Para 2 of the contract of apprenticeship the appellants completed a one year apprenticeship under respondent No. 2, Punjab State Electricity Board. Contrary to the Instructions, noticed on March 23rd, 1983 and issued by of the Ministry of Labour and Rehabilitation, Department of Labour (D.G.E.T) Government of India to all officers asking them to take necessary action to ensure that the trained apprentices are absorbed in industries upto a minimum of 50 per cent of direct recruitment vacancies, the Board advertised on July 27, 1983 50 posts of Junior Engineers-II (Electrical) in its establishment for which the appellants had successfully completed a one year apprenticeship under it.

The appellants, therefore, filed a writ petition in the High Court of Punjab and Haryana, challenging the issuance of the advertisement on the ground that under their respective letters of appointment, they were entitled to be appointed to 50 per cent of posts which were advertised by respondent No 2. The writ petition was dismissed by the High Court on the ground that the letters of appointment issued to the appellant did not contain any assurance or undertaking that they will be absorbed in the service of the - Punjab State Electricity Board; that 47 per cent of the vacancies were already reserved for Scheduled Castes, Scheduled Tribes, backward classes, ex-servicemen, etc, and that, if another 50 per cent of the posts were to be reserved for apprenticeship trainees, almost 100 per cent posts shall have been put in the reserved category which would be contrary to law. Hence the appeal by special leave

Allowing the appeal, the Court,

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HELD. 1. The object of Section 22(2) of the Apprentice Act 1961 is to guarantee to the extent of the existence of vacancies that the apprentices will not be rendered jobless after they complete their training.

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2.1. Sub-section (2) of section 22 leaves no doubt that, despite the A provision contained in sub-section (1), the employer is under an obligation to offer suitable employment to the apprentice if the contract of apprenticeship contains a condition that the apprentice shall serve the employer after the successful completion of the training. Indeed, when such an offer is made the apprentice on his part is bound to serve the employer in the capacity in which he was working as an apprentice. In a contract of apprenticeship, if a condition is not happily expressed the Court must take a broad and commonsense view of the terms of the employment. It is not proper in such cases to indulge in a hair-splitting approach and find an escape for defeating the rights of employees. [155 F-G]

2.2. Paragraph 2 of the letters of appointment is intended to convey the meaning that there is an obligation on the apprentices to serve the employer after the

successful completion of the training. When paragraph 2 says that the apprentice "shall be absorbed in the department" the only reasonable interpretation to put upon that expression is that it creates reciprocal rights and obligations on the parties to the contract of apprenticeship, namely, the employee and the employer. "You shall be absorbed" is a double-edged term of the contract. It binds the employer to offer employment to the apprentice (if there is a vacancy) and, equally, it binds the apprentice to accept the offer. [156 D.F]

2.3. In the context in which the expression "without any commitment" occurs, it only means that the obligation of the employer to offer employment to the apprentice and the corresponding obligation of the apprentice to serve the employer arises only if and when there is a vacancy in which the apprentice can be appointed. Paragraph 2 of the letters of appointment creates a binding obligation upon the employer to absorb the apprentices in the department on the successful completion of the training period, provided there is a vacancy in which the apprentices can be appointed. It would be contrary both to the letter and spirit of paragraph 2 of the letters of appointment to hold that even if there is a vacancy in which an apprentice can be appointed after the successful completion of his training, the employer is free not to appoint the apprentice and fill that vacancy by appointing an outsider. Such a reading of the assurance contained in paragraph 2 will also frustrate the very object of the provision made by the legislature in section 22(2) of the apprentice Act. [157 B; E-F]

3. The contention that the Executive Engineer, who sent the letters of appointment, had no authority to incorporate the particular condition in those letters cannot be accepted in as much as a senior officer in the position of an Executive Engineer would not incorporate a specific term in the contract of apprenticeship without being authorised to do so. [156 G-H]

4. In the instant case, offering employment to the appellants to the extent of 50 per cent of the posts will not violate the law, as laid down by this Court, in regard to reservation of posts. The appellants are entitled to be appointed in the available vacancies not because of any reservation of posts in their favour but because of the provisions of section 22(2) of the

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Apprentices Act and the contractual obligations arising under paragraph 2 of the letters of appointment. [157 H; 158 A]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4720 of 1984.

Appeal by Special leave from the Judgment and order dated the 24th November, 1983 of the Punjab and Haryana HIGH Court in C.W.P. No. 4839 of 1983.

V.M. Tarkande and A.K. Goel, for the Appellant. Ashwani Kumar and A.K. Panda for the Respondents. The Judgment of the Court was delivered by CHANDRACHUD, C.J. The appellants 22 in number, who hold a three-year Diploma in Electrical Engineering Course from the State Board of Technical Education, Punjab, were appointed as apprentices in August 1981. The Principal, Technical Training Institute, Punjab State Electricity Board, Patiala, who is respondent 3 herein, issued the requisite certificates to the appellants on successful completion by them of one year's apprenticeship. After obtaining those certificates the appellants registered their names with the Employment Exchanges in Punjab. The Ministry of Labour and Rehabilitation, Department of Labour (D.G.E.T.), Government of India, New Delhi, issued instructions to various offices including the Punjab State Electricity Board, Patiala, respondent 2 herein, asking that necessary action should be taken to ensure that the trained apprentices are absorbed in industries upto a minimum of 50 per cent of direct recruitment vacancies. These instructions were notified on March 23, 1983. On July 27, 1983, respondent 2 advertised 50 posts of Junior Engineers-II (Electrical) in its establishment, for which the appellant had successfully completed a one-year apprenticeship.

The appellants filed a writ petition (No. 4839 of 1983) in the High Court of Punjab and Haryana, challenging the issuance of the advertisement on the ground that, under their respective letters of appointment, they were entitled to be appointed to 50 percent of the posts which were advertised by respondent 2. That writ petition was dismissed by the High Court on the ground that the letters of appointment issued to the appellants did not contain any assu-

rance or undertaking that they will be absorbed in the service of the Punjab State Electricity Board; that 47 per cent of the vacancies were already reserved for Scheduled Castes, Scheduled Tribes, backward classes, ex-service men, etc.; and that, if another 50 per cent of the posts were to be reserved for apprenticeship trainees, almost 100 per cent posts shall have been put in the reserved category which would be contrary to law. This appeal by special leave is directed against the judgment of the high court.

Section 22(1) of the Apprentices Act, 52 of 1961, provides 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 in his establishment nor shall it be obligatory on the part of the apprentice to accept an employment under the employer. This provision is, however, subject to the non-obstante clause in sub-section (2) of section 22 which reads as follows:

"Notwithstanding anything in sub-section (1), where there is a condition in a contract of apprenticeship that the apprentice shall, after the successful completion of the 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".

(The proviso to this sub-section is not relevant for our purpose) .

This sub-section leaves no doubt that, despite the provision contained in sub-section (1), the employer is under an obligation to offer suitable employment to the apprentice if the contract of apprenticeship contains a condition that the apprentice shall serve the employer after the successful completion of the training. Indeed, when such an offer is made, the apprentice on his part is bound to serve the employer in the capacity in which he was working as an apprentice.

The question which, therefore, arises for consideration is whether there is a condition in the contract of apprenticeship of the appellants that they shall serve the employer after the successful completion of their apprenticeship training. In this behalf, Para graph 2 of the letters of appointment under which the appellants were appointed as apprentices is important. It reads thus:

"It should be clearly understood that you shall be on stipendary training for a period of one year and on successful completion of this training, you shall be absorbed in the department if there are vacancies, without any commitment subject to the stipulation that during the waiting period after one year s apprenticeship, you will not be paid any remuneration".

It is urged on behalf of the respondents that, this particular term in the contract of apprenticeship cannot be construed as a condition that the apprentices shall, after the successful completion of their apprenticeship training, serve the employer. We find it difficult to accept this submission. Paragraph 2 of the letters of appointment is intended to convey the meaning that there is an obligation on the apprentices to serve the employer after the successful completion of the training. This condition is not happily expressed but, in matters such as the one before us, one must take a broad and commonsense view of the terms of employment. It is not pro per in such cases to indulge in a hair-splitting approach and find an escape for defeating the rights of employees. When paragraph 2 says that the apprentice "shall be absorbed in the department", the only reasonable interpretation to put upon that expression is that it creates reciprocal rights and obligation of the parties to the contract of apprenticeship, namely, the employee and the employer "You shall be absorbed" is a double-edged term of the contract. It binds the employer to offer employment to the apprentice (if there is a vacancy) and, equally, it binds the apprentice to accept the offer.

Indeed, that is why, instead of advancing the argument which was made before us, the stand taken by the State of Punjab in the High Court was that the Executive Engineer, who sent the letters of appointment, had no authority to incorporate the particular condition in those letters. That contention is wholly without substance and in any event, remains unsubstantiated. It is quite difficult to accept that a senior officer in the position of an Executive would incorporate a specific term in the contract of apprenticeship without being authorised to do so.

That is also why yet another defence was taken by the State of Punjab to the contention of the appellants. That defence was that the words "without any commitment" which occurs in paragraph 2 of the letters of appointment, show that there is no obligation on the part of the employer to employ the apprentices after their period of training is over. There is no substance in that contention also

because, in the context in which the expression "without any commitment" occurs, it only means that the obligation of the employer to offer employment to the apprentice and the corresponding obligation of the apprentice to serve the employer arises only if and when there is a vacancy in which the apprentice can be appointed. This is made clear by the clause, "you shall be absorbed in the department if there are vacancies", which precedes the expression "without any commitment". This is plain commonsense because, if there is no vacancy in which an apprentice can be appointed, there can be no obligation to appoint him and there can, evidently, be no obligation upon the apprentice to serve the employer. These reciprocal rights and obligations, namely, to serve and offer employment, arise on the occurrence of a vacancy in which an apprentice can be appointed.

We are also of the opinion that, apart from the implications arising out of Section 22(2) of the Apprentices Act, paragraph 2 of the letters of appointment creates a binding obligation upon the employer to absorb the apprentices in the department on the successful completion of the training period, provided there is a vacancy in which the apprentices can be appointed. It would be contrary both to the letter and spirit of paragraph 2 of the letters of appointment to hold, that, even if there is a vacancy in which an apprentice can be appointed after the successful completion of his training, the employer is free not to appoint the apprentice and fill that vacancy by appointing an outsider. Such a reading of the assurance contained in paragraph 2 will also frustrate the very object of the provision made by the legislature in Section 22 (2) of the Act. The object of that provision is to guarantee, to the extent of the existence of vacancies, that the apprentices will not be rendered jobless after they complete their training.

No other point was argued before us on behalf of the respondents. We would, however, like to indicate that there is no substance in the contention taken by the respondents before the High Court that offering employment to the appellants to the extent of 50 percent of the posts will violate the law, as laid down by this Court, in regard to reservation of posts. The appellants are entitled to be appointed in the available vacancies not because of any reservation of posts in their favour but because of the provisions of Section 22(2) of the Apprentices Act and the contractual obligations arising under paragraph 2 of the letters of appointment.

For these reasons, we allow the appeal and set aside the judgment of the High Court. A writ shall issue directing the respondents to absorb the appellants as "Junior Engineers-II(Electrical) in the 22 vacancies which will form a part of the fifty vacancies which are advertised by respondent 2, The Punjab State Electricity Board, Patiala. The appellants will get their costs here and in the High Court, which we quantify at rupees five thousand in all.

S.R.

Appeal allowed