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Reserved on 19.11.2019

Delivered on 28.11.2019

Case :- SPECIAL APPEAL No. - 538 of 2018

Appellant :- Brij Raj Krishan

Respondent :- State Of U.P. And 3 Ors

**Counsel for Appellant :- Sanjay Kumar Singh, Ashok
Khare, Bhuwan Raj, Ravi Prakash**

**Counsel for Respondent :- C.S.C., Avanish
Tripathi, M.N. Singh**

Hon'ble Bharati Sapru, J.

Hon'ble Saurabh Shyam Shamsbery, J.

(Delivered by Saurabh Shyam Shamsbery, J.)

1. Heard Shri. S.K. Singh, learned counsel for the appellant, Shri. Avanish Tripathi and learned Standing Counsel for respondents.
2. The present special appeal is preferred against the judgment and order dated 07.5.2018 passed by the learned Single Judge in Writ-A No.10164 of 2018, whereby the said writ petition filed by the petitioner-appellant has been dismissed.

3. The appellant-petitioner had preferred the writ petition before the learned Single Judge wherein following reliefs were sought:

"(i) A writ order or direction in the nature of mandamus directing the respondent no.3 to allow the petitioner to appear in practical examination and further examination which is going to be scheduled on 25.4.2018, 26.4.2018, 27.4.2018 and 28.4.2018 by treating the training certificate of petitioner in consonance with the qualification as being so enumerated in sub para-3 of Cause 11 of the advertisement.

(ii) A writ, order or direction in the nature of which this Hon'ble Court may deem fit and proper under the circumstances of the case.

(iii) Award cost to the humble petitioner throughout of the present writ petition."

4. Briefly the facts which are relevant for the disposal of the present special appeal are as follows:

i. The respondent no.3 (U.P. Public Service Commission, (hereinafter referred to as "respondent no.3") issued an advertisement dated 13.12.2014 bearing No.A-5/E-1/2014 for the post of Regional Inspector (Tech).

ii. Clause 11 of the said advertisement prescribed Essential Qualification for the posts of Regional Inspector (Tech) Transport Department in accordance with the U.P. Transport Subordinate Technical (Fourth Amendment) Service Rules 2014. For reference, the said essential qualifications are mentioned hereinafter:

Clause 11: Educational Qualifications:
Mandatory: (1) Essential to pass High Schools Examination of the Board of High School and Intermediate Education, Uttar Pradesh or an examination recognized by the Government as equivalent there to and

(2) (i) A diploma in Automobile Engineering (3 years course) or

(ii) A diploma in Mechanical Engineering awarded by the State Board of Technical Education (3 years Course) or

(iii) Any qualification in either of the above discipline declared equivalent, by the Central Government or State Government, and

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(3) Working experience of at least one year in a reputed automobile workshop which undertakes repairs of both light motor vehicles, heavy goods vehicle and heavy passenger motor vehicles fitted with petrol and diesel engine, and

(4) Must hold a driving license authorizing him to drive motor cycle, heavy goods vehicle and heavy passenger motor vehicles;

(5) Must have thorough knowledge of Hindi language written in Devanagari script.

5. The petitioner-appellant in pursuance of the abovementioned advertisement submitted online application on 29.1.2015 wherein he had mentioned that he possessed all the requisite essential educational qualifications including 'Working experience of at least one year' in a reputed automobile workshop which undertakes repairs of both light motor vehicles, heavy goods vehicle and heavy passenger motor vehicles fitted with petrol and diesel engine.

6. In the application form, the petitioner-appellant had also given a declaration "that all the

entries/statement made in the application are true complete and correct to the best of my knowledge and belief”.

7. The petitioner-appellant appeared in the written test on 08.11.2015. Almost after two years, the respondent No.3, published a notification dated 14.7.2017, whereby it was directed that the applicants who had appeared in the examination for the post of Regional Inspector (Technical) 2014 are required to download the application form available on the website of the Commission and send the filled form along with all the certificates of the essential educational qualifications to the Commission.

8. Accordingly, the petitioner-appellant despatched the filled form along with all the certificates. The petitioner also annexed a working experience certificate of a reputed automobile work shop. The certificate was dated 16.5.2016 issued by the Ghaziabad Automobiles. For reference, the contents of the said certificate is reproduced hereinafter:

"TO WHOM SO EVER IT MAY CONCERN

"This is to certify that Sh. Brijraj Krishan S/o Sh. Maharaj Krishan R/o B-7 G F Parsvnath Paradise, Mohan Nagar, Ghaziabad (U.P.) who is an employee of RTO office Ghaziabad has taken part time but full fledged training as Motor Mechanic in the evening session w.e.f. 07/10/2011 to till date without any remuneration.

He has submitted duly acquired permission from department in the workshop. He had good knowledge of Motor Vehicle repairs Overhauling and inspection of both light motor vehicle, heavy goods vehicle & heavy passenger motor vehicles fitted with Petrol & Diesel Engines.

We wish him all success in life & profession.

For:Ghaziabad Automobiles

Auth.Signatory"

9. The respondent no.3 on 12.4.2018 issued a list of candidates who were found to be eligible after scrutinising their records for practical test. However, the name of the petitioner-appellant was found missing in the said list. The petitioner-appellant made a query before the Commission and sought specific reasons for rejection of his application. The Commission provided an E-mail dated 12.4.2018 communicating the reply from the respondent no.3, which stated:

'FOR THE ABOVE QUESTION KINDLY INFORM YOU THAT YOU HAVE NOT FULFIL THE ESSENTIAL QUALIFICATION THAT MENTIONED ADVERTISEMENT PARA NO-11 SUB PARA-3' (sic)

This means that the petitioner did not possess the required working experience of at least one year in a reputed automobile shop.

10. In these circumstances, the petitioner-appellant approached before learned Single Judge by way of filing the writ petition and sought reliefs as mentioned in paragraph 3 above.

11. Counter and rejoinder affidavits were exchanged before the learned Single Judge. In the counter affidavit filed on behalf of the respondent no.3, it was specifically mentioned that the petitioner-appellant had part time experience of repairing work under Ghaziabad Automobile without any remuneration, therefore, the petitioner did not hold essential qualification no.3, in terms of Clause 11 of the advertisement, therefore, his candidature was rejected by the respondent no.3.

12. Reliance was also placed in the counter affidavit on the letter dated 08.5.2000 and also the

decision of the Commission taken in its meeting held on 31.8.2001 that the part time work and any work done without any remuneration could not be treated as an experience within the meaning of U.P. Transport (Subordinate Technical Service Rules, 1980) as amended.

13. Rejoinder affidavit was filed before the learned Single Judge, wherein it was reiterated that the petitioner- appellant fulfilled all the pre-requisite qualifications seeking appointment on the post of Regional Inspector (Tech). The petitioner-appellant had also filed an amendment application before the learned Single Judge whereby the letter of Transport Commissioner dated 08.5.2000 was also challenged.

14. The learned Single Judge after considering the submissions made by the parties as well as the material available on record, dismissed the writ petition vide judgment and order dated 07.5.2018 and held as under:

"In the facts and circumstances of the case, this Court is of the view that the experience certificate dated 16.5.2016 (page '20' of the paper book) and 13.4.2018 (page '41' of

the paper book) both being of later date than last date of the submission of the application form cannot be taken into consideration to hold that the petitioner possessed requisite qualification on the date of submission of the application form. Challenge to the communication dated 8th May, 2000 of the Transport Commissioner to the Secretary, Public Service Commission is, therefore, of no relevance."

15. In these circumstances, the appellant-petitioner has filed the present special appeal, questioning the judgment and order dated 07.5.2018 passed by the learned Single Judge.

16. Counter and rejoinder affidavits have been exchanged.

17. In the counter affidavit, the respondent no.3 had specifically stated that the post of Regional Inspector (Tech) demands that persons selected on the said post must possess requisite and perfect knowledge of work and maintenance of the machine required to be operated. The intent behind experience of one year regular work was to have complete knowledge which could not be

achieved while working as part time trainee by the incumbent.

18. In the rejoinder affidavit, the appellant has reiterated and reaffirmed the grounds and averments mentioned in the special appeal and stated that experience certificate of the appellant was genuine. Remuneration or no remuneration does not in any way or in any manner renders the experience certificate obtained by appellant as nugatory. Appellant had an experience of more than 1 year which is self evident from the certificate appended.

19. Shri. S.K. Singh, learned counsel appearing on behalf of the appellant vehemently argued that the appellant took part time training from the Ghaziabd Automobiles, and the training was full fledged training as motor mechanic in the evening session (5.30 to 8.30 p.m. daily and full time on Sunday) w.e.f. 7.10.2011 to 16.5.2016 without any remuneration. He has also relied upon the certificate issued by the Ghaziabad Automobiles dated 16.5.2016, wherein it was certified that the appellant had good knowledge of motor vehicles

repairs, overhauling and inspection of both light motor vehicle and heavy goods vehicle and heavy passenger motor vehicles fitted with petrol and diesel engines.

20. Learned counsel for the appellant further submitted that for the purpose of training the department had granted requisite permission and the training period was more than one year as required for the purpose of selection. Even though it was part time, it could not be said that the appellant had not gained adequate experience in that field. The advertisement had not distinguished the experience certificate on the basis of full time or part time, therefore, the rejection of his candidature was not correct.

21. Per contra, learned Standing Counsel has opposed the submissions made by the learned counsel for the appellant on the ground that the experience certificate required under the rules was to be based on the full fledged training and the certificate based on part time training would not be considered to be sufficient for essential educational qualifications. He placed reliance on the

Government Order dated 08.5.2000 as well as the decision of the Commission taken on 31.8.2001 to the effect that the part time work and work done without remuneration would not be treated as experience within the meaning of Uttar Pradesh Transport Rules, 1988 as amended. He further submitted that last date of submission of application was 29.1.2015, whereas the certificate submitted by the appellant-petitioner was dated 16.5.2016 and 13.4.2018, therefore, appellant was not qualified on the date of submission of form.

22. We have considered the submissions made by the learned counsel for the rival parties and perused the record.

23. One of the essential educational qualifications for the post of Regional Inspector (Technical) was "(3) Working experience of at least one year in a reputed automobile workshop which undertakes repairs of both light motor vehicles, heavy goods vehicle and heavy passenger motor vehicles fitted with petrol and diesel engine." The appellant had submitted two documents first was the certificate dated 16.5.2016 issued by the Ghaziabad

Automobiles which certifies that the appellant-petitioner had taken part-time but full fledged training as motor mechanic in the evening session w.e.f. 7.10.2011 till date without any remuneration and second was a certificate dated 13.4.2018 issued by the Ghaziabad Automobiles which states that the petitioner had good knowledge of motor vehicle repairs, overhauling and inspection of both light motor vehicles, heavy goods vehicles and heavy passenger motor vehicles fitted with petrol and Diesel engines. Both of these certificates were issued after the last date of submission of application form which was 03.2.2015, therefore, the learned Single Judge has rightly held that the petitioner did not possess requisite experience as on the last date of submission of application form.

24. The appellant had undertaken training on part time basis, which could not be treated at par to the candidates who had undertaken full time training especially when there was a Government Order dated 8.5.2000 as well as the decision of the Commission dated 31.8.2001 to the contrary that the part time working and work without

remuneration would not be treated as an experience under the relevant rules.

25. Learned counsel for the appellant has failed to show any material that the part time training is equivalent to the full time training.

26. The purpose of one year regular training is that the person must possess requisite and perfect knowledge of work and maintenance of the machine required to be operated. There is no challenge to any of the requisite essential qualifications.

27. Having heard learned counsel for the parties and having perused the material on record as well as the impugned judgment and order passed by the learned single judge, we are of the considered opinion that one year part time work that too without remuneration in Ghaziabad Automobiles undertaken by the appellant is nothing but a training acquired by the appellant with the firm, cannot be covered and considered in the category of 'Working Experience' in terms of the advertisement. As such there is no illegality in the impugned judgment and order of the learned

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Single Judge, which calls for no interference by this Court and the appeal deserves to be dismissed.

28. In view of the above, the appeal is dismissed.

No costs.

Order Date:28.11.2019.

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