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KRISHAN LAL

v.

STATE OF HARYANA & ORS.

(Civil Appeal No. 4385 of 2009)

JULY 16, 2009

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[S.B. SINHA AND DEEPAK VERMA, JJ.]

SERVICE LAW:

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Appointment to post of Mechanist Grinder Instructor – Criterion of experience – Period of 5 years' practical/teaching experience – HELD: Would include the duration of certificate course undergone by candidate as also the period during which he was an apprentice – Thus calculated, the candidate satisfied the required experience – Merely because the establishments were not subscribing to the provident fund, the same would not be a ground to treat the experience certificates issued by them as nullities – Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

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The appellant challenged the appointment of respondent No.4 as Mechanist Grinder Instructor by filing a writ petition before the High Court on the ground that he did not fulfill the criteria of 5 years practical/teaching experience; and that the Certificates produced by him would show that he had been working at difference placed at the same time and thus the same could not have been taken into consideration. The High Court on consideration of the Certificates produced by respondent No.4 dismissed the writ petition.

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In the instant appeal, it was contended for the appellant that even if the two Certificates relied upon by respondent no. 4 were held to be valid, the period of practical experience gained by him would be less than 5

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years; and that the Certificates were issued by the industries which were not in existence as no provident fund was deposited by them. A

Dismissing the appeal, the Court

HELD: 1. The period of five years practical/teaching experience would include the period mentioned at column No.(ii), namely, a certificate course undergone by the candidate concerned. It has not been disputed that the said certificate course is of two years. From a perusal of the judgment passed by the High Court, it would furthermore appear that respondent No.4 was an apprentice in Maruti Udyog for a period of one year. The said period must also be counted. It has categorically been stated before the High Court as also before this Court that the Commission did not take into consideration the third certificate. It can, therefore, not be said that respondent No.4 did not fulfill the requisite essential qualifications. [Para 9] [1023-B-E] B C D

2. As regards the plea of the appellant that since no provident fund was deposited, the industries issuing the experience certificates were not existing, admittedly, the same having not been raised before the High Court, cannot be permitted to be raised before this Court. However, non-deposit of the provident fund in terms of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 by itself does not lead to the conclusion that the establishments are non-existing. Provident fund need to be deposited provided the said Act applies. It may be even otherwise a violation of the provisions of the said Act, but only by reason thereof, the certificates granted by the employers would not be treated to be nullities. [Paras 9 and 10] [1023-E-H; 1024-A] E F G

A 4385 of 2009.

From the Judgment & Order dated 24.3.2008 of the High Court of Punjab & Haryana at Chandigarh in Civil Writ Petition No. 16960 of 2006.

B Gp. Capt. Karan Singh Bhati (SCLSC) for the Appellants.

Manjit Singh AAG, T.V. George and R.C. Kaushik for the Respondents.

C The Judgment of the Court was delivered by

S.B. SINHA, J. 1. Leave granted.

D 2. The Haryana Staff Selection Commission issued an advertisement for the post of Mechanist Grinder Instructor in newspapers laying down the following essential qualifications:

“(i) Matriculation/Senior Secondary/10th pass under 10+2 scheme.

E (ii) National Trade certificate and Craft Instructor Training course in concerned Trade.

(iii) Five years practical/teaching experience including the period mentioned at (ii) above from a reputed Industrial concern or recognized Institute.

F (iv) Knowledge of Hindi upto Matric.”

G 3. The appellant as also the respondent No.4 amongst others applied pursuant to the said advertisement. The respondent No.4 had admittedly been selected. Questioning the said selection and consequent appointment, appellant herein filed a writ petition before the High Court, inter alia, contending that he did not fulfill the criteria of five years practical/teaching experience. It was pointed out that the certificates produced by him would show that he had been

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working at different places at the same time and, thus, the same could not have been taken into consideration. A

4. The High Court rejected the said contention, stating:

"It is not disputed that on the basis of certificate mentioned at Sr. No.1, requisite benefit was given to respondent No.4 by the competent authority, in awarding marks for the Crafts course, which obviously means that the certificate has to be taken as a correct certificate. B

With regard to above mentioned two certificates, (approximately for the same period), it has been stated that respondent No.4 was working in two shifts. Be that as it may, it is not necessary for us to go into that dispute on facts. If we ignore experience certificate mentioned at Sr. No.2, even then respondent No.4 completes the condition of five years experience. It is clear from the record that to add five years experience, period spent in getting National Trade Certificate and Craft instructor Training Courts (sic Course) certificate is to be counted. Respondent No.4 has spent two years during those courses. Besides that, he has gained experience of two years against certificate mentioned at Sr. No.1 and about 2½ years experience against certificate mentioned at Sr. No.3. Not only this, with reply, a certificate has been put on record from Maruti Udyog Limited (annexure R-2) showing that respondent No.4 has undergone apprenticeship training for one year. If we count the abovesaid periods of training/experience undergone by respondent No.4, total period of experience comes out to be more than five years. No other point was raised." C
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5. Aggrieved by the said judgment, the appellant is before us. G

6. The respondent No.1 has filed a counter affidavit, inter H

A alia, contending that it had taken into consideration only two certificates and not the third one which are as under :

	S. No.	Name of the firm	period
B	1.	Deep Precision Industries, Rohtak	15.5.2000 to 15.7.2002
C	2.	Sunita Industries, Rohtak	15.8.2003 to 20.2.2006

7. Ms. Aishwarya Bhati, learned counsel appearing on behalf of the appellant would urge:

D (1) From a perusal of the two certificates, it would appear, even if they are held to be valid, the period of practical experience gained by the respondent No.4 would be less than five years.

E (2) The certificates were issued by the industries which were not existing as no provident fund was deposited by them.

F 8. Mr. Manjit Singh, learned counsel appearing on behalf of the respondent, on the other hand, urged that from a bare perusal of the conditions laid down for appointment to the post of Mechanist Grinder Instructor, it would be evident that the same includes the period mentioned at column (ii) and in view of the fact that the respondent No.4 had produced training certificate from a recognized institute which is of two years course, he must be held to have the requisite qualification.

G So far as the second contention of Ms. Bhati is concerned, the learned counsel urged that the same had not been raised before the High Court.

H It was furthermore urged that even assuming that no

provident fund was deposited, so far as the respondent No.4 is concerned, the same would not mean that the industries do not exist.

9. It is now a well settled principle of law that a candidate not having the requisite qualifications would not be entitled to be appointed in public employment. There is no dispute that the respondent No.4 fulfills the essential qualifications specified in clauses (i), (ii) and (iv). The third essential qualification laid down in the advertisement is a five years practical/teaching experience. The said period of five years, as has rightly been pointed out, would include the period mentioned at column No.(ii), namely, a certificate course undergone by the candidate concerned. It has not been disputed that the said certificate course is of two years. From a perusal of the judgment passed by the High Court, it would furthermore appear that the respondent No.4 was an apprentice in Maruti Udyog for a period of one year. The said period must also be counted.

It has categorically been stated before the High Court as also before us that the Commission did not take into consideration the third certificate. We are, therefore, not in a position to agree with the learned counsel for the appellant that the respondent No.4 did not fulfill the requisite essential qualifications.

So far as the second contention raised by the appellant is concerned, admittedly, the same having not been raised before the High Court cannot be permitted to be raised before this Court. Had such contention been raised before the High Court, the respondents could have met the same. It is now well settled that a new point should not ordinarily be allowed to be raised before this Court for the first time.

10. In any event, non-deposit of the provident fund in terms of the Employees' Provident Funds & Miscellaneous Provisions Act, 1952 by itself does not lead to the conclusion that the

A establishments are non-existing. Provident fund need to be deposited provided the said Act applies. It may be even otherwise a violation of the provisions of the said Act, but only by reason thereof, the certificates granted by them would not be treated to be nullities.

B 11. For the reasons aforementioned, there is no merit in this appeal. It is dismissed accordingly. However, in the facts and circumstances of this case, there shall be no order as to costs.

R.P.

Appeal dismissed.