2024 INSC 832

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

MISCELLANEOUS APPLICATION NO. _____ OF 2024
[@ DIARY NO. 4407 OF 2023]
IN
CIVIL APPEAL NO. 9026 OF 2019

MUKUL KUMAR TYAGI ...APPLICANT(S)

VERSUS

THE STATE OF UTTAR PRADESH
AND OTHERS ...RESPONDENT(S)

WITH

MISCELLANEOUS APPLICATION NO. _____ OF 2024
[@ DIARY NO. 5682 OF 2023]
IN
CIVIL APPEAL NO. 9026 OF 2019

MISCELLANEOUS APPLICATION NO. _____ OF 2024
[@ DIARY NO. 10291 OF 2023]
IN
CIVIL APPEAL NO. 9026 OF 2019

CIVIL APPEAL NO. OF 2024
[Arising out of SLP(C) No. 23273 of 2023]

J U D G M E N T

B.R. Gavai, J.

1. Leave granted in appeal arising out of SLP(C) No. 23273 of 2023.

2. The present applications/appeal have been filed praying for a direction to the concerned authority to re-appoint the applicants on the post of Technical Grade-II (Electrical) in Uttar Pradesh Power Corporation Limited (hereinafter referred to as "respondent-Corporation") who were appointed pursuant to the advertisement dated 6th September 2014, by setting aside the termination letter dated 13th May 2018 issued by the respondent-Corporation against the applicants herein.

3. The facts, *in brief*, giving rise to the present applications/appeal are as given below:

3.1 The erstwhile Uttar Pradesh State Electricity Board under the Uttar Pradesh Electricity (Supply) Act, 1948, promulgated the U.P. State Power Parishad Operative Employees Cadre Service Regulations, 1995 (hereinafter referred to as "1995 Regulations").

3.2 With the enactment of Uttar Pradesh Electricity Reforms Act, 1999, the U.P. State Electricity Board ceased to exist and was replaced by the respondent-Corporation.

3.3 The respondent-Corporation adopted the 1995 Regulations which prescribed the method of filling-up posts

of Technician Grade-II and set out the educational qualifications in relation thereto.

3.4 By an office memorandum dated 29th January 2011, the Board of Directors of the respondent-Corporation amended the 1995 Regulations thereby prescribing that all incumbents seeking selection to the post of Technician Grade-II would be liable to hold a Certificate of 80 Hours Course on Computer Concepts (hereinafter referred to as "CCC certificate") issued by Department of Electronics and Accreditation of Computer Courses (hereinafter referred to as "DOEACC") and would need to produce the same certificate at the time of interview.

3.5 By an office memorandum dated 25th November 2011, the respondent-Corporation provided that an equivalent computer eligibility qualification to CCC certificate issued by DOEACC would also be accepted.

3.6 On 6th September 2014, the respondent-Corporation issued an advertisement, thereby inviting applications for appointments against 2,211 posts of Technician Grade-II (Electrical). Possession of CCC certificate or its equivalent computer qualification certificate was one of the mandatory

educational qualifications prescribed in paragraph 2 of the advertisement. In terms of paragraph 7 of the advertisement, the candidates were required to submit the CCC certificate at the time of interview.

3.7 On 8th November 2014, a written examination was conducted and the applicants herein qualified the written examination. The applicants herein, thereafter, appeared in the interview conducted during the period from December 2014 to July 2015.

3.8 On 14th July 2015, the final selection list was prepared and published. The applicants herein were issued appointment letters.

3.9 On 25th July 2015, the unsuccessful candidates preferred a Writ Petition before the Allahabad High Court being Writ-A No. 41750 of 2015 and other connected petitions seeking quashing of the select list dated 14th July 2015, and revision of the select list by excluding those candidates who had obtained CCC certificate on dates subsequent to 30th September 2014 as also those candidates who did not possess CCC certificate as awarded by DOEACC,

since renamed as National Institute of Electronics and Information Technology (hereinafter referred to as "NIELIT").

3.10 Vide final judgment and order dated 7th October 2017, the Single Judge of the Allahabad High Court quashed the select list in question insofar as it includes candidates who do not hold a CCC certificate conferred or recognized by NIELIT. Further, the Single Judge directed the respondents therein to re-draw the select list restricting it to the candidates who hold a recognized CCC certificate or a qualification recognized in law as being equivalent thereto.

3.11 Accordingly, on 13th October 2017, the Electricity Service Commission, UPPCL, *directed* the Chief Engineer(s) and Superintending Engineer(s) to send the attested photocopies of CCC certificates of selected candidates on the 2,211 posts of Technician Grade-II (Electrical) and to check at their own level, whether the CCC certificate attached is issued by an institution recognized by NIELIT (formerly DOEACC) or its equivalent or not.

3.12 Thereafter, on 13th May 2018, the Electricity Service Commission, UPPCL, published the list of candidates whose selection was not found to be in accordance with the

eligibility as per the direction of the learned Single Judge of the Allahabad High Court contained in Writ-A No. 41750/2015 and other connected petitions. The aforesaid list contained the names of the applicants herein.

3.13 Aggrieved thereby, the applicants herein filed a Writ Appeal before the Allahabad High Court being Special Appeal No. 585 of 2018 and connected petitions.

3.14 Vide final judgment and order dated 9th May 2019, a Division Bench of the Allahabad High Court *allowed* the Special Appeals filed *inter-alia* by the applicants herein and set aside the judgment and order passed by the learned Single Judge. The Writ Petitions were dismissed. Further, the respondents therein were directed to restore the position relating to the entire process of selection including the appointments of selected incumbents as that was prior to acceptance of the writ petitions.

3.15 Aggrieved by the judgment and order passed by the Division Bench of the Allahabad High Court, a number of appeals were filed before this Court.

3.16 Vide final judgment and order dated 16th December 2019 in Civil Appeal No. 9026 of 2019 and other connected

appeals titled ***Mukul Kumar Tyagi v. The State of Uttar Pradesh and Others***[1], this Court *allowed* the appeals and set aside the judgment and order passed by the Division Bench of the Allahabad High Court. In paragraph 71, this Court observed that the direction of the Single Judge of the Allahabad High Court, indicates that select list insofar as the candidates, who had certificates from NIELIT/DOEACC was not quashed, their position in select list was not disturbed and select list was partly quashed only with regard to those candidates, who did not have CCC or NIELIT certificate.

3.17 Thereafter, the applicants herein filed a Writ Petition under Article 32 of the Constitution being Writ Petition (C) No. 1144 of 2022 with a prayer for a direction to the respondents therein to restore/re-instate them in their respective positions in their services, as the termination was against the true letter and spirit of the judgment dated 16th December 2019 passed by this Court in the case of ***Mukul Kumar Tyagi*** (supra).

3.18 This Court, vide order dated 30th January 2023, *dismissed* the Writ Petition filed by the applicants herein,

[1] **(2020) 4 SCC 86 : 2019 INSC 1380**

however, in the peculiar facts and circumstances, granted liberty to the applicants to file an appropriate application in the disposed of Civil Appeal (No. 9026 of 2019) with connected matters and *directed* the Registry to entertain the same.

3.19 In such facts, the present applications/appeal have come up for hearing before this Court.

4. We have heard Shri Dama Seshadri Naidu, Shri Amit Anand Tiwari and Shri Rana Mukherjee, learned Senior Counsel appearing on behalf of the applicants. We have also heard Shri S.K. Saxena, learned Senior Counsel appearing on behalf of the respondent-Corporation and Electricity Service Commission.

5. The learned Senior Counsel appearing on behalf of the applicants submitted that, as a matter of fact, vide Office Memorandum dated 29th January 2011, the 1995 Regulations were amended thereby prescribing that all incumbents seeking selection to the post of Technician Grade-II would be required to produce the CCC certificate issued by DOEACC/NIELIT at the time of interview. It is submitted that all such candidates who were selected in

pursuance to the said selection process and having the CCC certificate on the date of the interview were eligible to be continued. It is submitted that the interview process continued for a long period from December 2014 to July 2015. It is submitted that the learned Single Judge of the High Court vide its judgment and order dated 7th October 2017 had set aside the selection process only of such candidates who did not possess the CCC certificate.

6. It is therefore submitted on behalf of the applicants that the approach of the respondent-Corporation in setting aside the selection process even of such candidates who possessed the CCC certificate at the time of interview on the ground that they did not possess the same on the last date of application i.e. 30th September 2014 is totally erroneous.

7. Insofar as the plea of Shri Rana Mukherjee, learned Senior Counsel is concerned, he submitted that, as per the advertisement, even such of the candidates who did not possess the CCC certificate at the time of interview but had obtained the same prior to the last date of the interview i.e. 4th July 2015 are entitled to be continued in service and their selection could not have been set aside.

8. Shri Saxena, learned Senior Counsel appearing on behalf of the respondent-Corporation, on the contrary, submitted that, it is a settled position of law that the requisite qualification has to be obtained prior to the last date of submission of application. It is submitted that, as such, the candidates who possessed CCC certificate on the date of interview but did not possess the same on the last date of submission of application are not entitled to be continued. It is therefore submitted that the respondent-Corporation has rightly terminated the services of such of the candidates.

9. The present applications arise out of peculiar facts and circumstances. The Board of Directors of the respondent-Corporation, vide office memorandum dated 29th January 2011, amended the 1995 Regulations which provided that all incumbents seeking selection to the post of Technician Grade-II would be required to hold the CCC certificate issued by DOEACC/ NIELIT. The amended resolution required CCC certificate to be mandatorily possessed by the candidates at the time of interview.

10. By another office memorandum dated 25th November 2011, the respondent-Corporation provided that an equivalent computer eligibility qualification to CCC certificate issued by the DOEACC would also be accepted.

11. On 6th September 2014, the respondent-Corporation issued an advertisement thereby inviting applications for appointments against 2,211 posts of Technician Grade-II (Electrical). The said advertisement provided two mandatory qualifications. The first one being the High School or its equivalent examination of Board of Higher Secondary Education, U.P. passed with Science & Mathematics subjects and All India/State Professional Certificate in Electrical Trade. The second qualification required a CCC certificate or its equivalent computer qualification certificate. As per clause 7 of the said advertisement, merely permitting a candidate to appear in the written test would not earn him/her a right to selection. It was also provided that the scrutiny of the certificates of the candidates would be carried out at different levels.

12. In pursuance of the said advertisement, a written examination was conducted on 8th November 2014. The

interviews were held from December 2014 to July 2015. The final selection list was prepared and published on 14th July 2015.

13. Subsequent to the publication of the final selection list, the unsuccessful candidates challenged the selection process. The challenge was made on two grounds. Firstly, such of the candidates who had obtained CCC certificate after the last date of advertisement i.e. 30th September 2014 could not have been selected. Secondly, the candidates who did not possess the CCC certificate as awarded by DOEACC/ NIELIT but submitted certificates from private institutions with the self-certification about their equivalence to CCC certificate issued by DOEACC/NELIT could also not be selected.

14. It will be relevant to refer to the conclusions arrived at by the learned Single Judge of the High Court in its judgment and order dated 7th October 2017, which read thus:

> "**CONCLUSIONS**
>
> In the end, the Court records the following conclusions:-
>
> 1. **A recognised qualification is an essential facet of Article 16 of the Constitution**.

2. **No rights can be recognised in a candidate aspiring to enter public service on the strength of an unrecognized qualification or one granted by an institution which is not conferred the authority to grant the same in accordance with law**.

3. The qualification as prescribed by the respondents does not merit interference at the behest of the petitioners.

4. The decision of the Board of Directors of the Corporation dated 23 November 2015 was an act of ratification and therefore does not merit interference.

5. The Commission failed to undertalce any enquiry in respect of equivalence of qualifications. It undertook a wholly perfunctory exercise and that too prompted only by the interim directions of this Court.

6. Even in this exercise no accepted or legally sustainable norms were applied to adjudge the equivalence of certificates.

7. **The equivalence of qualifications cannot be left to depend or rest upon a self certification of candidates.**

8. **No certificate can possibly be accorded equivalence unless an enquiry is addressed towards its course content and syllabus.**

9. **None of the candidates holding other than CCC certificates were shown to hold qualifications recognisable in law. Their inclusion in the select list has clearly tainted the recruitment exercise. It has resulted in the induction of candidates who were not entitled to be selected or offered appointmen**t.

10. **Since their inclusion in the select list is invalid and would consequently merit the select list being redrawn, the petitioners are not liable to be non suited on the basis of the cut off marks prescribed by the Commission.**

Accordingly and in light of the above discussion and the conclusions recorded above, the select list prepared by the respondents is rendered unsustainable and must in consequence be set aside.

The writ petitions preferred by the non selected candidates are therefore allowed to the extent indicated below. The Court negatives the challenge to the decision of the Board of the Corporation dated 23 November 2015 and the condition of eligibility contained in the two advertisements. All interim orders operating on the writ petitions shall stand discharged in order to enable the Commission to proceed in the matter in light of the directions being issued herein after.

Writ Petition No. 18129 of 2017 shall stand disposed of in light of the above and the directions issued herein.

The select list drawn up pursuant to the advertisements in question insofar as it includes candidates who do not hold a CCC certificate conferred or recognised by NIELIT is quashed.

The respondents shall in consequence redraw the select list restricting it to candidates who hold a recognised CCC certificate or a qualification recognised in 'law as being equivalent thereto. The Commission shall as a result of the above, reframe the merit list and publish the results thereof afresh. All consequences to follow."

[emphasis supplied]

15. It could thus be seen that the learned Single Judge held that a recognized qualification is an essential facet of Article 16 of the Constitution of India. It was held that no rights can be recognized in a candidate aspiring to enter public service

on the strength of an unrecognized qualification or one granted by an institution which is not conferred the authority to grant the same in accordance with law. It was held that the equivalence of qualifications could not be left to depend or rest upon a self-certification of candidates. It was further held that no certificate could possibly be accorded with equivalence unless an enquiry is addressed towards its course content and syllabus.

16. The learned Single Judge, in unequivocal terms, has held that inclusion of such of the candidates who did not possess CCC certificate had clearly tainted the recruitment exercise. It is also pertinent to note that the learned Single Judge had set aside the select list only insofar as those candidates who did not hold the CCC certificate conferred or recognized by DOEACC/NIELIT. The learned Single Judge directed that the respondent-Corporation shall in consequence redraw the select list restricting it to candidates who hold a recognized CCC certificate or a qualification recognized in law as being equivalent thereto.

17. Subsequent to the judgment of the learned Single Judge, the Electricity Service Commission, on 13th October

2017, directed the Chief Engineer(s) and Superintending Engineer(s) to send the attested photocopies of CCC certificates of selected candidates and to check at their own level, whether the CCC certificate attached is issued by an institution recognized by DOEACC/NIELIT or its equivalent or not. Subsequently on 13th May 2018, the Electricity Service Commission published a list of candidates whose selection was not found in accordance with the eligibility as per the direction of the learned Single Judge of the Allahabad High Court. The said list also contained the names of the candidates who were possessing the CCC certificate on the date of their interview. Consequently, their services also came to be terminated.

18. Various writ appeals came to be filed before the Division Bench of the High Court. The learned Division Bench, vide judgment and order dated 9th May 2019, held that the finding of the learned Single Judge that possession of CCC certificate from DOEACC/NIELIT was erroneous. It held that for computer literacy, self-certification was always acceptable and therefore, the CCC certificate having the self-certification could very well be accepted. The Division Bench thereby

allowed the appeals reversing the judgment and order of the learned Single Judge and dismissing the writ petitions.

19. The judgment of the Division Bench of the High Court was carried to this Court in three appeals in the case of ***Mukul Kumar Tyagi*** (supra). It will be relevant to refer to the following observations of this Court:

> "**53. The candidates who had CCC certificate from NIELIT/DOEACC and who were included in the merit list dated 14-7-2015 were not affected by the judgment of the learned Single Judge dated 7-10-2017 [*Prashant Kumar Jaiswal* v. *State of U.P.* Writ A No. 41750 of 2015, order dated 7-10-2017 (All)] since the list was quashed only insofar as those candidates included in the merit list who did not have CCC certificate by NIELIT/DOEACC.** The Division Bench in the impugned judgment [*Deepak Sharma* v. *State of U.P.* Special Appeal No. 585 of 2018, order dated 9-5-2019 (All)] has erroneously held that employer after judgment dated 7-10-2017 [*Prashant Kumar Jaiswal* v. *State of U.P.* Writ A No. 41750 of 2015, order dated 7-10-2017 (All)] did not take into consideration the CCC certificate of DOEACC or NIELIT. The following are the observations made by the Division Bench in this regard:
>
> > "... Heard the learned counsel appearing on behalf of the rival parties. At the threshold, it would be appropriate to state that the employer after accepting the judgment given by the learned Single Bench has prepared a fresh select list and, while doing so, the certificate issued by DOEACC relating to "CCC" has not been taken into consideration...."

> **54.** The Division Bench was not correct in making the above observations since neither the learned Single Judge vide its judgment dated 7-10-2017 [*Prashant Kumar Jaiswal* v. *State of U.P.* Writ A No. 41750 of 2015, order dated 7-10-2017 (All)] directed **for not taking into consideration CCC certificate by DOEACC nor Corporation or Commission deleted those names from the merit list who had CCC certificate from DOEACC**."
>
> [emphasis supplied]

20. It can thus be seen that this Court has, in unequivocal terms, held that the candidates who had CCC certificate from DOEACC/NIELIT and who were included in the merit list dated 14th July 2015 were not affected by the judgment of the learned Single Judge dated 7th October 2017, since the list was quashed only insofar as those candidates included in the merit list who did not have CCC certificate by DOEACC/NIELIT. This Court has, in unequivocal terms, held that the learned Single Judge, vide its judgment and order dated 7th October 2017, had neither restrained the respondent-Corporation from taking into consideration the CCC certificate issued by DOEACC/NIELIT nor had it directed that the respondent-Corporation delete those names from the merit list who had CCC certificate from DOEACC/NIELIT. From paragraph 55 of the said judgment,

it would be clear that this Court was of the considered opinion that the CCC certificate as mentioned in the advertisement dated 14th September 2014 was CCC certificate as granted by DOEACC/NIELIT.

21. A perusal of the said judgment of this Court would reveal that this Court upheld the finding of the learned Single Judge that the advertisement dated 14th September 2014 did not envisage self-certification of the candidate of equivalence to CCC certificate. It further held that the self-certification by the candidates of their computer qualification was not sufficient to treat them having passed the required qualification. It will further be relevant to refer to the following observations of this Court in the said case:

> "**71.** The above direction indicates that select list insofar as the candidates, who had certificates from NIELIT/DOEACC was not quashed, their position in the select list was not disturbed and select list was partly quashed only with regard to those candidates, who did not have CCC or NIELIT certificate. **The object or purpose of the direction was to scrutinise the qualifications of those candidates, who have claimed equivalent certificate. The above direction of the learned Single Judge was only for the purpose to scrutinise the qualification of those candidates, who are found possessing equivalent computer qualification so as to retain their names in the select list.** After the judgment of the learned Single

Judge dated 7-10-2017 [*Prashant Kumar Jaiswal* v. *State of U.P.* Writ A No. 41750 of 2015, order dated 7-10-2017 (All)] , the Commission in revising the merit list accepted the guidelines given under the Government Order dated 3-5-2016. The guidelines prescribed under the Government Order dated 3-5-2016 are as follows:

> "(*a*) *The qualification of High School or intermediate examination with an independent subject or Computer Science from Madhyamik Shiksha Parishad, Uttar Pradesh or from any Institution/Education Board/Council established by the Central or any State Government.*
>
> (*b*) *If any candidate has obtained diploma or degree in Computer Science then he shall also be eligible to be recruited as Junior Assistant/Stenographer.*"

72. Thus, in the revised select list apart from candidates, who had CCC certificates from DOEACC/NIELIT, the candidates who were covered under guidelines dated 3-5-2016 were also treated as equivalent to CCC and were given place in the merit list subject to marks secured by them in the written test and interview."

22. It can be seen that this Court held that the object and purpose of the direction was to scrutinize the qualifications of those candidates, who had claimed equivalent certificate. It was only for the purpose to scrutinize the qualification of those candidates, who were found possessing equivalent computer qualification so as to retain their names in the select list. It is further clear that the direction given by the

learned Single Judge was applicable, apart from the candidates who were having CCC certificate from DOEACC/NIELIT, to the candidates who were covered under the guidelines dated 3rd May 2016 and were also treated as equivalent to CCC certificate. Ultimately, this Court upheld the finding of the learned Single Judge and held that there was no reason to interfere with the finding of the learned Single Judge.

23. It can be seen from the said judgment that an appeal was made to this Court that since number of vacancies were still available, the candidates who were initially in the select list dated 14th July 2015 and went out of the select list due to redrawing of the select list, they could be accommodated. However, this Court did not issue any direction in that regard and permitted such candidates to make representation which was to be considered by the respondent-Corporation.

24. It is thus clear from the aforesaid that such of the candidates who were having CCC certificate issued by DOEACC/NIELIT on the date of interview and who were part of the select list dated 14th July 2015 could not have been terminated by the respondent-Corporation.

25. It also appears that the respondent-Corporation has been taking contradictory stands. Before the High Court, it took a stand that not only such candidates having CCC certificate issued by DOEACC/NIELIT but also such candidates who had submitted certificate by self-certification were also entitled to be considered. It is only now that the respondent-Corporation is taking a stand that such of the candidates who did not have CCC certificate on 30th September 2014 i.e., the last date of application could not be considered as eligible candidates. The stand is contrary not only to its advertisement dated 6th September 2014 but also to the office memorandum of the Board dated 29th January 2011 vide which the 1995 Regulations were amended.

26. We have therefore no hesitation in holding that services of such of the candidates who were selected in the select list dated 14th July 2015 and had produced the CCC certificate at the time of the interview could not have been terminated. We find that the respondent-Corporation has grossly erred in terminating their services. At the same time, we are not inclined to accept the contention of those candidates who did not have CCC certificate even on the date of their interview

but have obtained the same subsequently. When the advertisement as well as the 1995 Regulations required the CCC certificate to be produced at the time of interview, if it is permitted to produce the same subsequent to the date of interview, it would be contrary to the advertisement and the 1995 Regulations.

27. It was also sought to be urged on behalf of the respondent-Corporation that such a relief could not have been granted by the present applications. We clarify that, this Court itself vide order dated 30th January 2023, while disposing of the writ petition filed under Article 32 of the Constitution of India, granted a liberty to file an appropriate application in disposed of CA No. 9026 of 2019 with connected matters. This Court has subsequently observed that, in peculiar facts and circumstances, if such application was filed, the same would be entertained by the Registry of this Court.

28. We therefore find that the present case is a fit case wherein this Court should exercise its extraordinary jurisdiction under Article 142 of the Constitution of India. The respondent-Corporation has misinterpreted the

judgment of the learned Single Judge and terminated the services of the applicants who were otherwise entitled to be continued as per the judgment. It is further pertinent to note that the view taken by the learned Single Judge has been affirmed in unequivocal terms by this Court. We find that if we fail to exercise our jurisdiction under Article 142 of the Constitution of India in these cases, it will be permitting continuation of illegality committed by the respondent-Corporation.

29. In the result, we pass the following order:

(i) The present applications/appeal are allowed;

(ii) Such of the applicants who found place in the select list dated 14th July 2015 and who possessed/produced the CCC certificate at the time of their interview are directed to be reinstated forthwith;

(iii) Though they would not be entitled to back wages for the period during which they were out of employment, they would be entitled to placement in the seniority list as per their positions as in the select list dated 14th July 2015 with continuity in service

with all consequential benefits including pay fixation, terminal benefits etc.; and

(iv) Application(s) of impleadment/intervention are allowed.

30. Pending application(s), if any, shall stand disposed of in the above terms. No order as to costs.

.....J.
(B.R. GAVAI)

.....J.
(K.V. VISWANATHAN)

NEW DELHI;
NOVEMBER 05, 2024.