



2026:AHC-LKO:280-DB

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

SPECIAL APPEAL No. - 279 of 2024

Abhimanyu Prasad

.....Appellant(s)

Versus

State of U.P. Thru. Addl. Chief Secy. Vocational Edu. and Skill
Development Deptt. Lko. and another

.....Respondent(s)

Counsel for Appellant(s)	:	Abhishek Dwivedi, Pradeep Chandola
Counsel for Respondent(s)	:	C.S.C.,

Court No. - 1

**HON'BLE RAJAN ROY, J.
HON'BLE ABDHESH KUMAR CHAUDHARY, J.**

1. Heard Shri Pradeep Chandola, learned counsel for the appellant as well as learned counsel representing the State-respondent(s) and perused the material available on record.

2. The instant appeal has been preferred by the appellant-**Abhimanyu Prasad** under Chapter-VIII Rule 5 of the Allahabad High Court Rules, 1952 against the judgment and order dated 18.10.2022 passed by the learned Single Judge of this Court in Writ-A No. 4631 of 2022 (Abhimanyu Prasad vs. State of U.P. and others).

3. The facts of the case in brief are that an advertisement for filling up various posts including the post in question i.e. of 'Instructor' in the Trade of Welder (Gas & Electric), was issued on 07.11.2014 by the respondents. The appellant-petitioner applied for being considered in pursuance to the same. While applying for the aforesaid post, he

disclosed his qualification as National Apprenticeship Certificate (NAC) and also uploaded it on the website. It is not out of place to mention that the other qualification permissible i.e. of National Trade Certificate (NTC) was also possessed by the appellant-petitioner, however, as, he had lesser marks in NTC, therefore, he relied upon NAC Certificate for his consideration for selection and appointment.

The fact that he possessed NTC also could not be disclosed in the application form as there was no column permitting disclosure of all the qualifications or more than qualification. It is not in dispute that although, an interview was also to be held but the marks obtained in the aforesaid two qualifications were also to be taken into consideration to determine the merit and it is for this reason that the appellant relied upon NAC Certificate in which he had secured higher marks.

At the time of interview, the question of his three years' experience came up, the appellant-petitioner informed the Interview Board about the other qualification of NTC and the experience acquired by him, thereafter, as also the experience certificates which were annexed with the application form, as claimed.

However, the candidature of the appellant-petitioner was rejected on the ground that he having relied upon the National Apprenticeship Certificate he could count his experience only post issuance of the said certificate. The NAC certificate was issued to him on 25.09.2009 and, thereafter, he had an experience of only about 01 years, 10 months and 05 days.

4. The contention of the appellant's counsel is that qualification and experience were two distinct subjects. There was no stipulation in the advertisement nor is there any stipulation in the relevant Rules pertaining to the post in question that only such experience should be counted which had been acquired post acquisition of the qualification being disclosed in the application form. It was also his contention that had there been any provision in the application form for disclosing both the certificates and uploading the same, he would have done so. It was

also contended by Shri Chandola that in fact qualification of NAC can be acquired only after having obtained the qualification of NTC and experience can be gained simultaneously after obtaining the earlier qualification, as was done in this case. No opportunity was given to the appellant-petitioner to explain this aspect and there was no such provision in the advertisement, the Rules or the application form where the appellant-petitioner could explain the same.

5. He also submitted that the reason NAC was relied upon by the appellant-petitioner was the higher marks obtained by him otherwise he could have been ousted from consideration or selection based on the lesser marks obtained by him in NTC.

6. It was also submitted that the respondents themselves having given two options or qualifications, the best option was exercised by the appellant. Submission is that so far as experience of 3 years and more is concerned, the same was supported by requisite experience certificates issued by the employer, veracity of which has not been doubted by the respondents. Had the appellant-petitioner been put to notice as to how he is claiming experience of three years when the qualification of NAC was obtained by him only on 25.09.2009 he would have disclosed the factum of having acquired NTC qualification in 2007 and experience acquired after issuance of the said certificate. There was no stipulation in the advertisement or the Rules that only such experience would count as may have been acquired subsequent to the qualification being relied by the appellant, therefore, the respondents incorrectly rejected the candidature of the appellant. So did the learned Single Judge.

7. It is also informed that the appellant-petitioner has not crossed the maximum age for recruitment in Government service, which is 40 years for Scheduled Caste as mentioned in the advertisement.

8. Learned counsel for the appellant-petitioner has invited our attention towards certain paragraphs of the writ petition, wherein, he has mentioned the marks he would get on the basis of the NTC, NAC and CITS certificates based on the Rule 16(1)3 of U.P. Industrial Training

Institutes (Instructors) Service Rule, 2014. He has also invited our attention to the supplementary affidavit dated 05.12.2023 filed by the appellant-petitioner annexing therein information provided to him under Right to Information Act regarding the marks obtained by him in the interview in which he had participated. According to the said document annexed as part of Annexure No.1 to the said supplementary affidavit, the appellant-petitioner had secured 48.4 marks out of 100 in the interview and as only 15% of the said marks were to be taken into consideration for calculating final merit, these 15% marks came to 7.26 marks. Based on the aforesaid and cutoff marks for selection as contained in documents filed by the appellant, the appellant-petitioner, had secured more marks than the last selected candidate belonging to the Scheduled Caste category.

9. Shri Anand Singh, however, reiterated the reasoning given by the learned Single Judge and submitted that only such experience would count as had been acquired after obtaining the qualification prescribed. However, on being confronted with the situation, as has presented before us, wherein, the appellant possesses both the qualification but opted for the NAC on account of higher marks obtained by him and there is nothing in the advertisement or the Rules precluding the appellant-petitioner from exercising such option and also on being confronted with the fact that after acquiring NTC certificate the appellant-petitioner had three years' experience, veracity of which was never doubted by the respondents on facts, Shri Singh had no arguments to put-forth in support of his case.

10. Apparently, the rejection of the appellant-petitioner's candidature appears to erroneous. If there was any doubt with regard to the experience of the appellant-petitioner in the mind of the respondents, they could have sought a clarification from him, whereupon the facts would have been clarified.

11. The appellant-petitioner belongs to the Scheduled Caste. He must have made great effort to prepare and compete in the competitive

examination. Apparently, he has been denied his appointment on unsustainable grounds. Qualification and experience were two distinct issues. Out of the several qualifications prescribed, the candidate could rely on anyone and the appellant relied upon NAC as he had secured more marks therein because marks obtained as such would have a bearing on determination of merit but this did not mean that experience acquired by him only after acquiring of NAC qualification relied by him could be considered as, such experience was valid after having acquired other qualifications such as NTC also, which was also presented by the appellant-petitioner. There is nothing in the Rules or Advertisement which could persuade us to take a contrary view.

12. In view of the above discussion, we direct the concerned opposite parties to calculate the marks obtained by the appellant-petitioner based on his qualifications and interview as per Rules so as to determine his merit and, based upon the aforesaid exercise, if it is found that the appellant-petitioner had secured more marks than the last selected candidate under his category i.e. the Schedule Caste, then if the posts which were advertised vide advertisement dated 07.11.2014 are still vacant, the appellant-petitioner shall be considered against such vacancy and offered appointment, as this, in our opinion will meet the ends of substantial justice. Even if the post which were advertised had already been filled up, purely in the facts of this case, in order to do substantial justice, we are of the opinion that the appellant-petitioner should be considered for appointment against any vacancy which may be existing as on date or which may fall vacant within the next one year.

13. In view of the above discussion, we hereby **set-aside** the impugned judgment and order dated 18.10.2022 and **allow** the appeal and the writ petition in the aforesaid terms.

(Abdhesh Kumar Chaudhary,J.) (Rajan Roy,J.)

January 05, 2026

Praveen