

(2011) 03 JH CK 0177

In the Jharkhand High Court

Case No : Writ Petition (S) No. 7053 of 2005

Amit Naresh Beck and Another

APPELLANT

Vs

Tenughat Vidyut Nigam Ltd. and Others

RESPONDENT

Date of Decision : 09-03-2011

Acts Referred:

Citation : (2011) 2 JCR 491

Hon'ble Judges : Bhagwati Prasad, C.J;Dhirubhai Naranbhai Patel, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Heard learned Counsel for the parties.
2. These two cases involve same question of law and fact and, therefore, they are being disposed of together.
3. In one case, there is a panel of candidates, who appeared for selection pursuant to the advertisement issued by the Respondent-Tenughat Vidyut Nigam Limited (in short "T.V.N.L.") for recruitment. Such candidates, who appeared in the selection were empanelled but not appointed. The grievance of the Petitioners is that they were validly selected pursuant to a valid advertisement and had legitimate expectation to get appointed pursuant to the advertisement issued. The panel was prepared in the year, 2005 and till date they have not been appointed, though according to law, the panel expires within one year but the Courts have power to extend the currency of the panel, if the writ petition is filed prior to exhaustion of the panel and the writ petition was admittedly filed before the end of one year and, therefore, the right of the Petitioners to get appointed cannot be said to have been extinguished.
4. In any case, the argument of the learned Counsel is that if the Petitioners being only recommended for being appointed, no indefeasible right to get appointed then the action of the Respondents can be seen to be arbitrary and legally malafide, because there was no power of absorption with the T.V.N.L. of

the employees of another institution. Now after filing of the writ petition, the appointments have been ordered to be cancelled and that aspect has also been brought on record that such action is not bonafide as the cancellation has been ordered after filing of the writ application.

5. In another writ petition, the Petitioner has challenged the absorption of the employees on the ground that there is no power of absorption with the T.V.N.L. and, therefore, that absorption has resulted in denying the opportunity of appointment of candidates.

6. Learned Counsel for the Respondents submitted that as far as the fresh candidates are concerned, they are only selectees and a selected candidate has no indefeasible right to get appointed. The selection was made in the year, 2005 and now we are in the year, 2011 and the very advertisement for that appointment has been cancelled. Therefore, the right cannot be said to be subsisting and more particularly in the background that at the time when the decision was taken, there was only one unit i.e. Bihar State Electricity Board and now after bifurcation, the Bihar State Electricity Board got bifurcated into two units i.e. Bihar State Electricity Board and Jharkhand State Electricity Board and the cadre division took place in the year, 2005. While the cadre division was undertaken, the absorbed employees were already working with the T.V.N.L. on deputation and therefore, at that time a decision of the Board of Directors of T.V.N.L. to absorb all those persons, who were working on deputation, was taken, because they were better suited to get it operated and, therefore, after the decision of the Board of Directors of T.V.N.L., the option was invited from those persons, who were on deputation, for being absorbed. Thus, the absorption was with the approval of highest body of the Company's Executive i.e. the Board of Directors. Any decision taken by the Board of Directors partakes the character of law, which empowered them to absorb the employees.

7. We have heard learned Counsel for the parties and have given our thoughtful consideration. In our considered opinion, the selected candidates, if not appointed for the exigency of the service and the situation, obtaining that Bihar State Electricity Board came to be bifurcated and certain employees were already working with the T.V.N.L. on deputation. Their option being invited under the orders of the Board of Directors, it cannot be said that that action of the Respondents was in any way designed to defeat the rights of the Petitioners, which was the subject matter of direct selection and that can not be seen to be a malafide action, because such employees were already working and they have been absorbed by the orders of the Board of Directors. It cannot thus be said that there was no law or authority available with the T.V.N.L. to absorb such employees. In that view of the matter, the absorption is not seen in any way illegal as far as the selectee is concerned.

8. Mere figuring the names in the select list does not confer any indefeasible right and the appointments, if any made in the background that there were already existing workmen available with the T.V.N.L. on deputation, they were

ordered to be absorbed, it cannot be said that there were enough vacancies to offer appointment to those selected candidates and in that view of the matter no relief can be granted to the Petitioners, more particularly when from 2005 six years have elapsed. So, the time has also played against the Petitioners. The writ petitions are accordingly, dismissed.