

(1990) 09 P&H CK 0118
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 7928 of 1989

Balwant Singh and Others	Vs	APPELLANT
State of Punjab and Others		RESPONDENT

Date of Decision : 05-09-1990

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 309
Electricity Act, 1910 — Section 36, 36(1), 36A, 36A(2), 37
Electricity Rules, 1956 — Rule 2, 4, 4A, 4B
Punjab Electrical Inspectorate (State Service, Class II) Rules, 1979 — Rule 10, 32(1), 46(2), 49(1), 5(1)

Citation : (1992) 1 ILR (P&H) 388

Hon'ble Judges : R.S. Mongia, J

Bench : Single Bench

Advocate : G.K. Chathrath and A.G. Masih, for the Appellant; Anil Malhotra, for A.G., J.L. Gupta T.S. Bagga, Vikrant Sharma for Respondents Nos. 6 to 10, H.S. Brar Manjit Singh and H.P. Singh Rana, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Mongia, J.—The Petitioners are Diploma Holders in Electrical Engineering and are working as Line Superintendents in the office of the Chief Electrical Inspector, Punjab, Patiala. They are staking their claim to the posts of Assistant Electrical Inspectors to be filled in by way of direct recruitment.

2. There is a Service known as the Punjab Electrical Inspectorate State Service Class II (hereinafter called the Service). The recruitment and other conditions of Service of Assistant Electrical Inspectors appointed to the Service are governed by the statutory Rules framed under Article 309 of the Constitution of India, which are known as the Punjab Electrical Inspectorate (State Service, Class II) Rules, 1979 (hereinafter called the 1979 Rules). Though 1979 Rules are known as the Punjab Electrical Inspectorate State Service yet under Appendix "A" to the Rules, which indicates the posts of which service is comprised of, only the posts of Assistant Electrical Inspectors are mentioned. Rule 8 of the Rules, which lays

down the method of appointment, it has been provided that 60 percent of the posts (i.e. the posts of Assistant Electrical Inspectors) shall be filled by direct recruitment and 40 percent by promotion from amongst the Line Superintendents who have rendered service as such for not less than 10 years in case of Diploma Holders and 5 years in the case of degree holders in the Electrical Inspectorate. Appendix "B" to Rule 9 of the 1979 Rules lays down the qualifications and experience for direct recruitment to the post of Assistant Electrical Inspector, which: are reproduced for ready reference:

Post Qualifications and experience for direct appointment or by transfer from any other Department of the State Government.

Assistant Electrical Inspector. (a) Possesses a Degree or Diploma equivalent to Degree in Electrical Engineering from a recognized university or qualifications equivalent to such Degree or Diploma;

(b) has been regularly engaged for a period of at least three years, in the practice of Electrical Engineering and in the administration of Act and Rules made, there under of which not less than one year has been spent in an Electrical or Mechanical Engineering Workshop or in generation, transmission or distribution of electricity or in the administration of Act and Rules made there under, in a position of responsibility; and

(c) Possesses knowledge of, Punjabi language in Gurmukhi script of Matriculation Standard or its equivalent.

3. Section 36 of the Indian Electricity Act, 1,910 (hereinafter called the Act) envisages appointment of Electrical Inspectors. Section 36-A of the, Act gives the Constitution of the Central Electricity Board. Further Section 37 of the Act gives the power to the Board constituted u/s 36-A of the Act to make rules. For ready reference, Section 36 and relevant extracts of Sections 36-A and 37 are reproduced below:

36. Appointment of Electrical Inspectors.--(1) The appropriate Government may, by notification in the Official Gazette, appoint duly qualified persons to be Electrical Inspectors and every Electrical Inspector so appointed shall exercise the powers and perform the functions of &n Electrical Inspector under this Act within such areas or in respect of such class of works and electric installations and subject to such restrictions as the appropriate Government may direct.

(2) In the absence of express provision to the contrary in this Act, or any rule made there under, an appeal shall lie from the decision of an Electrical Inspector to the appropriate Government or if the appropriate Government, by general, or special order so directs, to an Advisory Board.

36-A. Central Electricity Board.--(1) A Board to be called the Central Electricity Board shall be constituted to exercise the powers conferred by Section 7.

(2) The Central Electricity Board shall consist of the following members, namely:

- (a) a Chairman and five other members to be nominated by the Central Government;
- (b) one member to be nominated by the Government of each of the States not being a Union Territory, to which this Act extends;
- (c) one member to be nominated by the Central Government to represent each of the Union Territories of Delhi and Himachal Pradesh;
- (d) one member to be nominated by the Central Government to represent the Union Territories of Manipur, Tripura and the Andaman and Nicobar Islands;
- (e) one member to be nominated by each of the State Electricity Boards;
- (f) one member to be nominated by the Central Government to represent the Federation of Electricity Undertakings of India;
- (g) one member to be nominated by the Railway Board;
- (h) one member to be nominated by the Chief Inspector of Mines appointed u/s 5 of the Mines Act, 1952; and
- (i) one member to be nominated by the Indian Standards Institution. constituted under the, Indian Standards Institution. (Certification Marks) Act, 1952

37. Power for Board to make Rules.--(1) The Central Electricity Board may make rules, for the whole or any part of the territories to which this Act extends, to regulate the generation, transmission, supply and use of energy, and, generally, to carry out the purposes and objects of this Act.

2. In particular and without prejudice to the generally of the foregoing power, such rules may--

- (a)...
- (b)...
- (c)...
- (d)...
- (e)...
- (f)...
- (g)...
- (h)...
- (i) prescribe the qualifications to be required of Electrical Inspectors;
- (j) authorise any Electrical Inspector or other officer of a specified rank and class to enter, inspect, and examine any place, carriage or vessel in which he has reason to believe any appliance or apparatus used in the generation,

transmission, supply or use of energy to be, and to carry out tests therein, and to prescribe the facilities to be given to such Inspectors or officers for the purposes of such examination and tests;

(k)...

(l)...

(3) Any rules made in pursuance of Clauses (e) to (j) both (inclusive) of Sub-section (2) shall be binding on the Government.

(4)...

4. In exercise of the powers conferred by Section 37 *ibid*, the Board constituted u/s 36-A of the Act, framed Rules known as Indian Electricity Rules, 1956 (hereinafter called the 1956 Rules). Rule 2(w) defines "Inspector". Rule 4 of the 1956 Rules lays down the qualifications of Inspectors. Rule 2(w) and Rule 4 of the 1956 Rules are reproduced below for ready reference: (Note Rule 4 was substituted for an earlier Rule with effect from 4th September, 1986 and it is the substituted Rule which is being quoted as it is not necessary to quote Rule 4 prior to 4th September, 1986):

2(w) "Inspector" means an Electrical Inspector appointed u/s 36;

4. Qualifications of Inspectors.--No person shall be appointed to be an Inspector unless--

(a) he possesses a degree in electrical engineering or its equivalent from a recognised University or Institution; and

(b) he has been regularly engaged for a period of at least eight years in the practice of electrical engineering, of which not less than two years have been spent in an electrical or mechanical engineering workshop or in generation or transmission or distribution of electricity, or in the administration of the Act and these rules, in a position of responsibility:

Provided that the appropriate Government may, for a period of seven years commencing on the date the Indian Electricity (Amendment-4) Rules, 1986 are brought into force, also appoint a person possessing recognized Diploma in Electrical Engineering and having prescribed experience to be an Inspector in respect of low and medium voltage installations only.

It may be added here that Rule 4-A and 4-B were inserted in the 1956 Rules with effect from 9th April, 1966. Rule 4-A and Rule 4-B (as it stood prior to its substitution with effect from 20th September, 1986) are quoted below:

4-A. Appointment of Officers to assist Inspectors.--(1) The appropriate Government may by notification in the official Gazette, appoint as many officers as it thinks fit to assist an Inspector.

(2) The appropriate Government may, by a separate notification in the official

Gazette, authorize certain officers appointed under Sub-rule (1), for the purposes of Sub-rule (3) and Sub-rule (4) of Rule 5, Rule 9, Rule 10, Clause (c), of Sub-rule (1) of Rule 32, Clause (b) of Sub-rule (1) and Clause (c) of Sub-rule (2) of Rule 46, Sub-rule (1) of Rule 49, Sub-rule (6) of Rule 61 and Clause (b) of Sub-rule (5) of Rule 67.

4-B. Qualifications of officers appointed to assist Inspectors.---No person shall be appointed, as an officer to assist an Inspector, unless--

(a) he possesses, a degree or diploma in electrical engineering from a recognized University or Institution or qualifications equivalent to such degree or diploma; and

(b) he has been regularly engaged for a period of at least three years in the practice of electrical engineering, of which not less than one year has been spent in an electrical or mechanical engineering workshop or in generation, transmission or distribution, of electricity, or in the administration of the Act and these rules, in a position of responsibility:

Provided that the appropriate Government may relax the requirements of experience in case of officers otherwise well qualified,

Rule 4-B *ibid* Was substituted by GSR No. 772, dated 5th September, 1986 with effect from 20th September, 1986 and the substituted Rule 4-B is reproduced as follows:

4-B. Qualifications of officers appointed to assist the Inspectors.--No person Shall be appointed as an officer to assist an Inspector unless--

(a)(i) he possesses a Degree in Electrical Engineering or its equivalent from a recognised University or Institution; and (ii) he has been regularly engaged for a period of at least three years in the practice of electrical engineering, of which not less than one year has been spent in an electrical or mechanical engineering workshop or in generation or transmission or distribution of electricity, or in the administration of the Act and these rules, in a position of responsibility:

Provided that the appropriate Government may relax the requirements of experience in case of officers otherwise well qualified.

OR

(b) (i) he possesses a diploma in electrical engineering or its equivalent from a recognised institution; and

(ii) he has been regularly engaged for a period of at least six years in the practice of electrical engineering, of which not less than two years have been spent in an electrical or mechanical engineering workshop or in generation or transmission or distribution of electricity or in the administration of the Act and these rules in a position of responsibility.

(c) The persons appointed under Rule 4-A shall undergo such training as the

appropriate Government may consider it necessary for the purpose and such training shall be completed to the satisfaction of the appropriate Government.

5. Now, coming back to the facts of the case, it has been averred by the Petitioners that when they came to know that the Punjab Government was going to advertise for filling of posts of Assistant Electrical Inspectors by way of direct recruitment on the basis of the qualifications as provided in Appendix B to 1979 Rules and not in accordance with the substituted Rule 4-B of the 1956 Rules, they submitted applications on 20th March, 1989 to the Secretary to Government, Punjab, Department of Irrigation and Power (Annexure P-4 to the writ petition), inter alia praying that the 1979 Rules as far as the qualifications for direct recruitment to the post of Assistant Electrical Inspector were concerned, should be amended to bring the same in conformity with the substituted Rule 4-B of the 1956 Rules. In the meantime, the Punjab Public Service Commission advertised for filling 8 posts of Assistant Electrical Inspectors to be filled in by way of direct recruitment,--wide advertisement dated 25th March, 1989, published in the daily Tribune. The qualifications for the posts which were advertised were the same as provided in Appendix B to the 1979 Rules, which have already been quoted above. The Petitioners filed another representation alter the advertisement for restraining the Punjab Public Service Commission from processing the applications until the posts were re advertised by inserting the qualifications as mentioned in Rule 4-B of the 1956 Rules. The Petitioners submitted their applications for the posts through proper channel as well as they sent copies of the applications in advance to the Punjab Public Service Commission. The Chief Electrical inspector did not forward their applications and issued them letters that the department was unable to forward their applications as they did not fulfill the qualifications as advertised. The Punjab Public Service Commission also intimated the Petitioners that they could not be called for interview as they did not fulfill the requisite qualifications. Aggrieved by the action of the State Government in (i) not amending the 1979 Rules to bring it in conformity with Rule 4-B of 1956 Rules; (ii) in not re-advertising the posts of Assistant Electrical Inspectors as per qualifications under Rule 4-B of 1956 Rules and (iii) refusing to forward the applications of the Petitioners for consideration of the posts and the non-calling of the Petitioners by the Punjab Public Service Commission, the Petitioners have approached this Court by way of the present writ petition.

6. When the learned Counsel for the Petitioners was asked whether the Court can direct an Authority to make an amendment in the Rules, the learned Counsel Mr. G.K. Chathrath for the Petitioners changed his stance and submitted that electricity is in the concurrent list of the Constitution of India, and, therefore, 1956 Rules made by the Central Board under the Indian Electricity Act, would override the 1979 Rules made under Article 309 of the Constitution of India on behalf of the State Government to the extent there is a conflict in these Rules. He further submitted that the qualifications given for direct appointment as Assistant Electrical Inspector in Rule 4-B of the 1956 Rules are different

equivalent qualifications and the Respondent was not justified in confining in the advertisement inviting applications to one of the equivalent qualifications. According to him, all the equivalent qualifications should have been advertised. The exclusion of one of the equivalent qualifications, submitted by the learned Counsel, violated the equality clause as enshrined under Articles 14 and 16 of the Constitution of India. On the other hand, Mr. J.L. Gupta, Senior Advocate, learned Counsel appearing for the private Respondents and Mr. Anil Malhotra, Advocate, learned Counsel for the official Respondents, submitted that the Service created by 1979 Rules is totally different than as envisaged by the Act and 1956 Rules. According to them, Section 36 of the Act only envisages appointment of Electrical Inspectors and in the present case we are dealing with the post of Assistant Electrical Inspector. Mr. Gupta further submitted that even if it is held that to the post of Assistant Electrical Inspectors in question, 1956 Rules were applicable, even then the employer had the right to recruit persons with one of the equivalent qualifications and could exclude from consideration the persons possessing the other equivalent qualifications. According to him, the Respondent-State could legally exclude the persons like the Petitioners; having qualifications mentioned in Rule 4-B(b) as those were the alternative qualifications to the qualifications mentioned in Rule 4-B(a) of the 1956 Rules.

7. After hearing the learned Counsel for the parties at length, I find that there is force in the contentions of the learned Counsel for the Respondents. The reading of Section 36 of the Act, quoted above, would show that the appropriate Government (in the present case it is the Punjab Government) may by notification in the official Gazette appoint duly qualified persons to be Electrical Inspectors and the Electrical Inspectors so appointed shall exercise the powers and perform the functions of an Electrical Inspector under the Act i.e. the Indian Electricity Act. Then comes Section 37 of the Act, which gives power to the Central Electricity Board to make Rules and it is u/s 37(2)(i) that the power has been given to prescribe qualifications required for being appointed as Electrical Inspectors. It is under this power that Rules 4, 4-A and 4-B of 1956 Rules are said to have been framed. It is evident that--(a) Section 36 talks of appointment of Electrical Inspectors who are to carry out the functions under the Indian Electricity Act and (b) the power u/s 37(2)(i) is to prescribe qualifications for Electrical Inspectors who are to be appointed u/s 36 of the Act. The question that comes to the fore is whether the Assistant Electrical Inspectors (the posts with which we are concerned in the present case) are envisaged by the Indian Electricity Act. According to me, the Indian Electricity Act only contemplates the appointment of Electrical Inspectors and that too for the purpose of carrying out the purposes of the Act. The Assistant Electrical Inspector, the post which has been created under 1979 Rules, has nothing to do with the post of Electrical Inspector envisaged by the provisions of the Act. Mr. Gupta, learned Counsel, went to the extent that Rule 4-B of the 1956 Rules which "lays" down the qualifications for the Assistant Electrical Inspector are beyond the scope of Sections 36 and 37 of the Act, inasmuch as Section 36 of the Act only

contemplates the appointment of Electrical Inspectors and Section 37(2)(i) of the Act only gives powers to the Central Electricity Board to prescribe qualifications for Electrical Inspectors and not for Assistant Electrical Inspectors. It is not necessary for me in this case to opine on this matter. Even if it is taken that the laying down of the qualifications of the Assistant Electrical Inspectors under Rule 4-B of the 1956 Rules is good, even then those qualifications will only apply to the Assistant Electrical Inspectors who are appointed and given powers to carry out the functions under that Act, under Rule 4-A(2).

8. The learned Counsel for the Respondents drew my attention to an unreported Division Bench judgment of the Bombay High Court in Writ Petition No. 2217 of 1987 Shri Sudhakar Jagannath Haridas and (sic) Ors. v. The Union of India and 59 Ors. decided on 21st December, 1989, in which considering a similar contention as above, it was held as under:

Mr. Singhvi who has appeared for the graduate Electrical Engineers in the Electrical Organization of the Public Works Department of the Government of Maharashtra has correctly pointed out that the Rules 4 and 4B of the Indian Electricity Rules, 1956, prescribe qualifications for appointment respectively as Inspectors and as officers to assist Inspectors and the said prescribed qualifications are not either for appointment or for promotion in a different hierarchy of posts in the Electrical Organisation under the Public Works Department of the Government of Maharashtra. Rules of recruitment including qualifications for appointment by promotion and by nomination continue to be governed by the aforesaid rules of 1956 made by the Governor of Maharashtra in exercise of powers under Article 309 proviso of the Constitution. Section 36(1) of the Indian Electricity Act, 1910, provides that appropriate Government may, by notification in the Official Gazette, appoint duly qualified persons to be Electrical Inspectors and every Electrical Inspector so appointed shall exercise the powers and perform the functions of an Electrical Inspector under the Act within such areas or in respect of such class of works and electric installations and subject to such restrictions as the appropriate Government may direct.

Merely because one grade of officers in the Inspection Branch of the Electrical Organisation of the Public Works Department of the Government of Maharashtra is also designed as Electrical Inspector (Grade I), it does not follow that by virtue of being appointed either by promotion or by nomination to the said post under the Maharashtra State, the officer would ipso facto be an Electrical Inspector u/s 36 of the Indian Electricity Act. Only upon the appropriate Government making an appointment by nomination u/s 36 in the Official Gazette of a duly qualified person, one could exercise the powers and perform the functions of an Electrical Inspector under this Act.

9. From the above judgment, it is clear that the requirement of the qualifications under the 1956 Rules of the Electrical Inspector or Assistant Electrical Inspector is only for those Electrical Inspectors or Assistant Electrical Inspectors who are appointed or nominated u/s 36 of the Act and are required to perform functions

under the Indian Electricity Act. As and when the present Assistant Electrical Inspectors in the State are required to perform any functions under the Indian Electricity Act then only the question of their having qualifications under Rule 4-B would arise. It would be open at that stage to any of the parties to raise the question whether Rule 4-B is beyond the scope of the Indian Electricity Act.

10. For the view I am taking on the abovementioned point it is not necessary for me to deal with the point of the learned Counsel for the Petitioners that if there are two equivalent qualifications whether the employer can consider persons with one of the equivalent qualifications and exclude the other totally. This is because of the fact I am holding that Rule 4-B is not applicable to the Assistant Electrical Inspectors envisaged under 1979 Rules.

11. The learned Counsel for the Petitioners also submitted that 1956 Rules made under the Indian Electricity Act are ipso facto applicable to any appointment of Assistant Electrical Inspector in the State. According to him, since u/s 36-A(2)(b) and (e) one by member each by the State Government as well as the State Electricity Board are to be nominated for constitution of the Central Electricity Board is ipso facto binding on the State Government. I am afraid I cannot agree with this contention. The constitution of the Board had nothing to do with the Rule making power as such. As I have already observed above, it is only when the State Government is appointing Electrical Inspector or Assistant Electrical Inspectors to whom the powers under the Act have to be conferred, only then the qualifications as prescribed under 1956 Rules would come into play. Otherwise as in the present case, the Assistant Electrical Inspectors under 1979 Rules have nothing to do with the Assistant Electrical Inspectors that are envisaged under 1956 Rules.

12. For the reasons recorded above, this petition fails and is dismissed without any order as to costs.