

(2001) 01 JH CK 0005
In the Jharkhand High Court
Case No : CWJC No. 230 of 2000

Bihar State Electric Supply Workers' Union S.M.	APPELLANT
Vs	
Bihar State Electricity Board and Others	RESPONDENT

Date of Decision : 22-01-2001

Acts Referred:

Bihar State Electricity Board Junior Electrical Engineers (General) Cadre Rules, 1982 — Rule 7

Citation : (2001) 49 BLJR 1002

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : A.K. Sinha, M.K. Sinha and Ajit Kumar, for the Appellant; I. Sen Choudhary, for the Respondent

Judgement

M.Y. Eqbal, J.—In this writ application, the petitioners have prayed for issuance of appropriate writ directing the respondents to absorb the petitioners on the post of Junior Engineers considering the fact that the petitioners while in service in the lower grade have obtained Diploma in Engineering and thereby became entitled for absorption under Bihar State Electricity Board Junior Electrical Engineers (General) Cadre Rules.

2. The fact of the case lies in a narrow compass.

3. The petitioners were initially appointed in Class III post and during service they obtained Diploma in Engineering in the year 1996 after taking due permission from the authorities. The petitioners' case is that the respondent-Bihar State Electricity Board had adopted a special procedure whereby it allowed its Class HI employees like technician, switch board operator, line- man, etc. to take permission to the Department for the purpose of higher education of Diploma in Electrical Engineering and upon passing the examination they shall be absorbed against 25% post of the total vacancies of Junior Engineers in the said Bihar State Electricity Board. It is stated that in 1982 large number of Diploma holders were absorbed in the post of Junior Engineers and they are working on

the said post. In 1988, a notification was issued by the Board amending the Rules to the extent that appointment to the post of Junior Electrical Engineers from amongst the employees of the Board having Diploma in Electrical Engineering will be made on the basis of recommendation of the Selection Committee, which will be constituted by the Chairman and the said Committee will examine the record and interview of the candidates, who obtained Diploma in Electrical Engineering. It is stated that in 1997, the petitioners made representation before the Chairman of the Board for their absorption on the post of Junior Engineer and the General Manager of the concerned area Electricity Board and Thermal Power Station were asked to recommend the names of such workmen of the Board, who obtained Diploma in Electrical/Mechanical Engineering while in service of the Board. Accordingly, the names of the petitioners were included in the panel for absorption forwarded by the concerned General Manager but till date no action has been taken by the Board to absorb the petitioners on the post of Junior Engineers.

3. A counter-affidavit has been filed by the Board stating, inter alia, that previously recruitment on the post of Junior Engineers was made in the ratio of 75%-25%, i.e., 75% of the post from open advertisement and 25% post through internal candidates. Now, the Rule has been amended and the ratio has been changed from 75%-25% to 95%-5%. This amendment has been made by notification, dated 29.6.1999. It is further stated that since 1993, the Board had adopted a procedure to make selection through written test and in the same year the Board advertised 26 posts of Junior Engineers fallen vacant under 25% quota. The written test was held in 1998 and the candidates were selected on the basis of written test. Again, vide Board's Employment Notice No. 2/2000, the post of Junior Engineers has been advertised for internal recruitment and applications have been invited from such eligible candidates of the Board, who possess the requisite qualification. The respondents' case is that the petitioners have never been debarred from applying to the post of Junior Engineers and if they have applied in pursuance of the Board's advertisement, they will also be given equal opportunity like the other candidates.

4. Mr. A.K. Sinha, learned senior counsel appearing for the petitioners, mainly contended that once the names of the petitioners were recommended for absorption, they became entitled for the said post notwithstanding the amendment made in the Rules reducing the quota from 25% to 5%. According to the learned counsel, petitioners are entitled to be absorbed against 25% of the total vacant posts of Junior Engineers available in the Bihar Static Electricity Board. In this connection, learned counsel drew my attention to a decision of the Supreme Court in Civil Appeal No. 1627/92, a copy of which has been annexed with the reply to the counter-affidavit. Learned counsel also relied upon the decision of the apex Court in the case of State of Rajasthan Vs. R. Dayal and Others, .

5. The admitted case of the petitioners is that initially they were appointed in

Class III posts and after taking permission they obtained Diploma in Electrical Engineering in 1994-96. It has also been admitted that in 1996 they made representation before the Chairman of the Board for their absorption on the post of Junior Engineers which was lying vacant. It is, therefore, necessary to look into the mode of recruitment prevailing in 1996 for appointment to the post of Junior Engineers.

6. As noticed above, under the Rules of 1982, the procedure for appointment was at the ratio of 75%-25%. The Rule was time-to-time amended. In 1993, the Rule was amended and the Board adopted a procedure to make selection on the basis of written test. Lastly, the rule was amended in 1999, vide Notification No. 107, dated 24.6.1999. In terms of the said amendment the ratio for direct appointment and appointment through internal candidates have been changed to 95%-5%. In other words, by the said notification, the Board decided that the post of Junior Electrical Engineer cadre should be filled up in the ratio of 95%-5%, i.e., 95% by direct recruitment and 5% by internal candidates.

7. From perusal of Annexure 6, which is a copy of letter issued by the Joint Secretary of the Board, by which the names of the petitioners were sent for consideration, it appears that this letter was issued on the basis of the representation made by the Joint Secretary of the petitioners' Union to the effect that the candidates, who have obtained Diploma while in service, may be considered for absorption against the post ear-marked. The question, therefore, falls for consideration is whether the petitioners are entitled to be absorbed against 25% quota without any written test in terms of the old procedure of recruitment prevalent before 1993.

8. Mr. A.K. Sinha, learned senior counsel appearing for the petitioners, put heavy reliance on the decision of the Supreme Court rendered in Civil Appeal No. 1627/92. That civil appeal arose out of a writ petition filed by about 120 persons working as operators in the Bihar State Electricity Board for quashing the advertisement, dated 29.7.1989 issued by the Board for filling-up vacancies of Junior Electrical Engineers by direct recruitment and for a direction to the Board to comply with the direction of the State Government, dated 18.7.1988 and 5.5.1989 to appoint/absorb the petitioners in the vacant substantive post of Junior Electrical Engineers. The High Court dismissed the writ application holding that Court cannot issue direction to the Board to absorb the petitioners straight-way against the post of Junior Electrical Engineer. However, it will be open to the Board to consider the cases of the petitioners along with others for appointment on the post of Junior Electrical Engineer in accordance with the new Rule 7 of the said Rules. In Civil Appeal filed by the appellant, the Apex Court after considering various aspect of the matter and also the stand taken by the Board that candidates, who apply for the post of Junior Electrical Engineer as and when advertisement is issued and appear at the competitive examination to be held again by the Board and in case they compete, they would be appointed against the post of Junior Electrical Engineer, observed that, the Board shall issue fresh

advertisement for filling-up the post of Junior Electrical Engineers having fallen due up to 31st March, 1992 and to make appointment in the ratio of 75%-25% as contemplated under Rule 7 of the said Rules. With the said observation, the civil appeal was dismissed.

9. In my considered opinion, therefore, the decision of the Supreme Court will be of no help to the petitioners. As noticed above, the direction was issued by the Supreme Court for filling- up the post of Junior Electrical Engineers having fallen due up to 31st March, 1992 in the ratio of 75%-25%. Admittedly, the petitioners obtained Diploma after 1993 when Rule 7 was time-to- time amended and the ratio for appointment through internal candidates have been reduced to 5% and the amended Rule further provided that the appointment shall be made on the basis of written test. In such circumstances, in my opinion, the petitioners, who become eligible for appointment/absorption in 1996, cannot claim their absorption on the basis of the Rule which was prevalent in 1988.

10. Mr. A.K. Sinha, learned senior counsel, also put reliance on the decision of the Apex Court in the case of State of Rajasthan v. R. Dayal, (supra). In that case, the State of Rajasthan convened a DPC meeting in 1995 under the Rajasthan Service of Engineers (Buildings and Road Branch) Rules, 1954 against 9 existing and anticipated vacancies as on 1.4.1995. The DPC recommended 9 candidates in accordance with the eligibility conditions prescribed in the recruitment Rules then existed. On 24.7.1995, the Recruitment Rules were amended in which eligibility conditions were changed. The amendment came into force with immediate effect. The question falls for consideration before the Apex Court was whether selection of 2 candidates was valid when the eligibility conditions stood changed with effect from 24.7.1995. It was held that the post which fallen vacant prior to the amendment of Rules, would be governed by the original Rules and not by the amended Rules. As a necessary corollary, the vacancies that arose subsequent to the amendment Rules are required to be filled-up in accordance with the law existing as on the date when the vacancies arose. Even a carried- forward vacancy is (required to be considered in accordance with the law existing unless suitable relaxation is made by the Government. Their Lordships observed :--

"9. It is contended by Shri Das that one of the persons, namely, H.L. Meena was appointed against a carried- forward post as per the existing Rules and, therefore, his appointment cannot be challenged. We find it difficult to give acceptance to the contention. Even a carried-forward vacancy is required to be considered in accordance with me law existing unless suitable relaxation is made by the Government. As on that date, when the appointment came to be made, the selection was required to be made on the basis of the Rules as existing on the date, the vacancy arose. Since, admittedly, that has not been done, the appointment of Shri Bhatnagar and H.L. Meena must be treated to be only temporary appointments pending consideration of the claims of all the eligible persons belonging to General and Reserved quota separately as per Rules."

11. In the instant case, as noticed above, the petitioners became eligible for being considered for appointment to the post of Junior Engineers inasmuch as they acquired requisite qualifications in 1995-96. In the year 1997, they made representation for their absorption/appointment on the post of Junior Electrical Engineers. In that view of the matter, obviously, therefore, their cases shall be considered on the basis of the Rules and procedure for appointment existing in the year 1997. The appointment of the petitioners, therefore, is required to be made on the basis of Rules existing in 1996-97 and also against the vacancies, if any, during that period. If the vacancies of the Junior Electrical Engineers occurred after the Rule was amended then the petitioners will have to apply and to fulfil the conditions of the Rules and procedure of appointment if they applied for the said posts. The respondent-Board, therefore, shall look into the matter and take a decision in accordance with law.

12. With the aforesaid observation and direction, this writ application is disposed of.

13. Disposed of accordingly.