

(2000) 11 P&H CK 0027
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 7734 of 2000

Daljit Singh

APPELLANT

Vs

Punjab State Electricity Board

RESPONDENT

Date of Decision : 29-11-2000

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2001) 2 ILR (P&H) 103

Hon'ble Judges : R.S. Mongia, J;K.C. Gupta, J

Bench : Division Bench

Advocate : Mr. G.K. Chatrath, Adv and Ms. Deepika Verma, for the Appellant;
Mr. Sukhbir Singh, for the Respondent

Judgement

R.S. Mongia, J.—This judgment will dispose of this writ petition as well as CWP No. 10327 of 2000.

2. The only point which we are determining in this case is as to whether under the Punjab State Electricity Board Technical Service Class-III Rules, 1996 (hereinafter referred to "the rules"), for direct recruitment to the post of Auxiliary Plant Attendant, the experience acquired as Plant Attendant has to be after obtaining a Diploma in Mechanical/Electrical Engineering of the duration of 3/4 years/Matric with ITI Mechanical/Electrical trade or the experience can be counted which has been acquired as plant Attendant even prior to obtaining the aforesaid qualifications.

3. Rule 9 of the rules gives the method and the minimum academic qualifications and experience for the various posts. So far as Auxiliary Plant Attendant is concerned, the method of filling the post and the qualifications/experience are as under :-

Post

Manner of filling the post

Minimum qualification

Minimum experience

Remarks

1.

2.

3.

4

5.

Auxiliary Plant Attendant

By direct (33% of the vacant posts)

1. Recognised diploma of 3/4 years in engineering.

3 years experience as Plant Attendant of Condenser, Boiler, Feed Pump and other similar instruments of 15 MW capacity thermal plant or above.

The requirement of diploma can be relaxed in case of candidate who has passed the competency and has got experience on the boiler of the Thermal Plant or on other similar instruments for a longer time.

OR

2. Matric with ITI Electrical/Mechanical Trade.

8 years experience as Plant Attendant of Condenser, Boiler, Feed Pump and other similar instrument of 15 MW capacity thermal plant or above.

2.By promotion from Junior Plant Attendant (67% of the vacant posts)

1) 3/4 years diploma and possessing a certificate in Second division of Boiler Competency:

1 year

OR

2) 3/4 yeais diploma:

2 years

OR

3) Martic with ITI and a certificate in second division of Boiler Competency:

3 years

OR

4) Matric/Non-matric with ITI.

4 years

OR

5) Non-matric .

6 years.

4. The petitioners have been working as Plant Attendants on Thermal plants of 15 MW capacity or above for about 15 to 19 years. They were all working as Electrician Grade-I and Electrician Grade-II and Technician Grade-I. Som Nath, petitioner has been working as Junior Plant Attendant. He is matriculate and has passed ITI examination in January, 1991. The other petitioners are also matriculates and have passed the ITI examination between February 1995 to July, 1996.

5. Respondent No. 2 i.e. Chief Engineer vide Memo No. 8781/90/Estt. 88. dated 19.4.1999 wrote to all the Deputy Chief Engineers/S.Es (O&M). Guru Gobind Singh Super Thermal Plant, Ropar on the subject of filling up of some regular posts of Auxiliary Plant Attendants (A.P.As) falling to the share of direct quota for which the last date for sending applications was fixed as 30.4.1999 and they were asked to ensure that applications of all the eligible employees who possess prescribed qualifications and experience in the concerned trade and were working under their control be sent in time to his office complete in all respects in one lot. Copy of letter dated 19.4.1999 has been annexed as Annexure P.4,

6. Pursuant to the said letter, Annexure P.4, a notice was displayed on the notice board by the respondents inviting applications. The qualifications as depicted were the same as in the rules, which have been reproduced above. The applications were required to reach the office of the Chief Engineer upto April 30, 1999. The petitioners submitted their applications alongwith their certificates of academic and technical qualifications supported by the certificates of experience of the post of Plant Attendant.

7. It may be observed here that in the rules, as such, there is no post of Plant Attendant mentioned. However, there is a post of Junior Plant Attendant, though in the rules, while giving qualifications for the post of Auxiliary Plant Attendant, experience as a Plant Attendant has been mentioned. Petitioners had stated in paragraph 10 as under :-

"10. This it is to be submitted that all those persons who are working as Skilled workers, Electrical Grade I & II, Technician Grade I & II, Junior Plant Attendant etc. in thermal Plant are treated as Plant Attendants."

8. The respondents. In their written statement, have given reply to that paragraph as under :-

"10. That in reply to this para, it is submitted that some Junior Plant Attendants

have challenged the decision of the Selection Committee vide which the other persons working on the plant are treated as Plant Attendant in CWP No. 6221 of 1999. The said writ petition is pending in this Hon"ble Court. The reply given in para supra may be perused."

9. On our oral duly, learned counsel for the respondents, submitted that all persons. Like the petitioners, who were working as Technician Grade I & II etc. and looking after the equipment of the Thermal Plant like Boiler, Feed Pump Condenser came to be known as Plant Attendants. As observed above, nothing said herein would be an expression regarding the merits of CWP No.6221 of 1999 or any other writ petition filed by the Junior Plant Attendants.

10. It may be observed here that as per the petitioners a meeting of the Staff Selection Committee was held in the office of the Chief Engineer on March 29, 2000 and the Committee took a decision that, in view of the earlier decision dated February 7, 2000, the result be reviewed after counting that experience only which has been acquired by the candidates after passing the prescribed qualifying examination. The result was accordingly reviewed and the petitioners were not called for interview inasmuch as their experience as Plant Attendant was less than the requisite experience which they had acquired after obtaining the qualifications of Matric with ITI. This led the petitioners to file the present writ petition. The Motion Bench while issuing notice of motion on June 12, 2000, passed the following order :-

"Inter alia, contends that the statutory rule does not talk of experience before or after passing the ITI, yet the same has been made necessary after passing of the ITI. It is in that manner that the petitioners have not been considered eligible for the post.

Notice of motion for 12.7.2000.

In the meanwhile, the petitioners be interviewed for the post under contention which is said to be scheduled for 13.6.2000, provisionally and subject to the decision of the writ petition.

A copy of this order be given dasti under the signatures of the Court Secretary."

11. The petitioners have been duly interviewed pursuant to the above order. Learned counsel for the petitioners argued that the rules governing the recruitment to the post of Auxillary Plant Attendant do not restrict the experience of Plant Attendant which is acquired only after the qualifications for the post have been obtained. The rule does not exclude the experience of the petitioners which they may have acquired as Plant Attendant even prior to acquiring the qualifications of Matric with ITI. The respondents have no jurisdiction to add anything to the rules and make the petitioners ineligible by ignoring the experience of the petitioners as Plant Attendant acquired by them prior to obtaining the qualifications of Matric with ITI.

12. In support of his submission, learned counsel for the petitioners relied upon

the Apex Court judgments in *Anil Kumar Gupta v. Municipal Corporation of Delhi* (S.C.) 2000(1) SLR 303 : 2000(1) SCT 731 (SC) and in *A.K. Raghmani Singh and others v. Gopal Chandra Nath and others* 2000(2) SLR 633 : 2000(2) SCT 465 (SC). In the said judgments, it was held that unless the rules were to say that the experience which is countable or reckonable is only acquired after obtaining the qualifications, then experience acquired even prior to me acquiring of qualifications cannot be ignored. In *Anil Kumar Gupta* case (supra) one of the points to be decided by the Apex Court was "While deciding, whether the respondents had two years experience, the experience gained while holding diplomas could also be counted in addition to the experience gained after obtaining degree ?" In paragraphs 19 and 20 of the judgment, it was observed as under :-

"19. We may point out that in the present case, the relevant provisions applicable and the notification dated 30.6.89 inviting applications refer to essential qualification as (i) Degree and (ii) 2 years professional experience. As stated earlier, experience upto 2 years is the minimum and those above 2 years, get 1/2 marks each year's experience ranging between 3 to 12 years, the maximum marks being 5 for experience. 20. We may at the outset state that the provision regarding experience speaks only of "professional experience" for two years and does not, in any manner, connect it with the degree qualification. In our view, the case on hand is similar to *Subhash v. State of Maharashtra and Ors.* where, while considering Rule 3(c) of the relevant Recruitment Rules, namely, the Maharashtra Motor Vehicles Department (Recruitment) Rules, 1991, this court pointed out that the rule 3(e) which required one year experience in registered Automobile Workshop did not make any difference between acquisition of such experience prior to or after the acquisition of the basic qualification."

13. After discussing the rival contentions and some earlier judgments, the Apex Court observed as under :-

"For the aforesaid reasons we hold that the service rendered by the diploma holders before obtaining degree can also be counted."

The aforesaid view was reiterated by the Apex Court in *A.K. Raghmani Singh's* case (supra).

14. On the other hand, learned counsel for the respondents submitted that as the regulations were silent whether the experience as Plant Attendant was to be counted after passing of the ITI or not, the Selection Committee constituted by the Board took a decision that the experience be counted from the date of passing the prescribed qualifying examination i.e. ITI. Since the petitioners were not fulfilling the requisite experience, after passing the ITI, they were not entitled to be considered for the post in question. It was further submitted that the aforesaid decision of the Selection Committee was in line with the instructions issued by the Board on August 3, 1988, copy whereof had been appended by the petitioners as Annexure P.7, which reads as under :-

"In supersession of this office order No. 64/ENG-10(7) Vol. III dated 31.5.88, the Punjab State Elec. Board is pleased to order that in future the qualifications for direct recruitment of skilled workers (scale of Rs. 325/495) shall be as under :-

"Matric (or with equivalent qualification) with ITI course of 2 years duration in the trade of Fitter, Welder, Turner, Electrician, Instrumentation Mech., Radio and Television Mech., Electronics Mech., Refrigeration and Air Conditioning Mechanic, Wireman with one year experience of working in operation at different locations of a large Thermal Power Station (50 MW and above) or having at least two years experience, in respective trade of Maintenance in Thermal Plant after passing ITI Course."

15. On the basis of the aforesaid instructions, it was argued by the learned counsel for the respondents that if for the skilled workers, which is a lower post than Auxiliary Plant Attendant/Plant Attendant/Junior Plant Attendant, the experience in respect of trade is to be reckoned after passing the ITI course, therefore, there was nothing wrong in the decision of the Selection Committee that for the post of Auxiliary Plant Attendant only that experience of Plant Attendant would be reckoned which had been acquired after obtaining the minimum qualification i.e. ITI. It was further contended that under the 1996 Regulations for direct recruitment to the post of Junior Plant Attendant minimum qualifications were ITI course; therefore, the decision of the Selection Committee that only that experience as a Plant Attendant would be taken into consideration which is obtained after a person got the qualifications for direct recruitment as Junior Plant Attendant was in consonance with the spirit of the regulations.

16. After hearing the learned counsel for the parties we are of the view that there is substance in the arguments of the learned counsel for the petitioners. As held by the Apex Court in the judgments, referred to above, the experience which is acquired as a Plant Attendant under the Regulations for the post of Auxiliary Plant Attendant, it has not been qualified in the regulations that the same has to be after passing the ITI course. The framers of the rules did not choose to qualify the experience and it did not choose to vest in the Selection Committee to deviate from the clear language of the rules. The instructions dated August 3, 1988 (supra), on which reliance was placed by the respondents would have no bearing after the rules of 1996 were framed. A similar point arose before a Division Bench of this Court in Kamla Joshi etc v. State of Punjab etc. (CWP No. 10859 of 1994, decided on April 20, 1995). In that case the controversy was regarding the qualifications for recruitment to the post of Headmaster/Headmistress. The qualifications, which were laid down for the aforesaid post, were as under:

"Degree of a recognised University with B.T. B.Ed, or Senior Basic Training with the following minimum teaching experience :-

i) In the case of M. A. or M.Sc. with M.Ed, six years.

ii) In the case of M.A. or M.Sc. with B.T. or B.Ed, seven years.

iii) In the case of B.A. or B.Sc. with B.T. or B.Ed. eight years:

iv) In the case of D.P. Ed. eight years from the date physical education was introduced compulsory in the Schools: and

v) In the case of B.A. or B.Sc. with M.Ed, seven years."

17. The candidates who had not been selected, had challenged the selection on the ground that the selected candidates did not have the requisite teaching experience after they had obtained any of the qualifications mentioned at (i) to (v) above. The argument was that the teaching experience acquired by the selected candidates prior to acquisition of any one of the qualifications mentioned from (i) to (v) above could not be reckoned as a requisite teaching experience. While incorporating the rules, the Division Bench observed that the rules however provided that the teaching experience should be on the post of a Master or Mistress (for which the qualifications were one of those mentioned in (i) to (v) above. The petitioners in that case relied upon some instructions issued earlier to the framing of the rules, in which the aforesaid qualifications were mentioned, to contend that the teaching experience has to be after obtaining one of the qualifications, mentioned above. The Bench while repelling the argument held that the instructions had no application after the framing of the rules. The Division Bench has placed reliance on a judgment of a learned Single Judge in Smt. Jasminder Kuar v. State of Punjab etc. 1995(1) All I J 224, in which it was held asunder :-

"In my considered view, the expression "minimum teaching experience" used in Column II of Appendix to the rules of 1981 cannot be read as minimum teaching experience as mistress for the purpose of recruitment on the post of Head Mistress. Ordinarily, this Court cannot by the process of interpretation add or subtract from the language of the Statute and in my opinion, there are no compelling reasons for this Court to re-write the rule so as to read the requirement of teaching experience on the post of Mistress as a condition for the purpose of appointment as Head Mistress."

In these circumstances, the reliance by the learned counsel for the respondents on the circular instructions dated August 3, 1988 (Annexure P.7) (supra) is not well based.

18. Apart from the above, it may be noticed here that even a non-matriculate and non-ITI, Junior Plant Attendant, is eligible for promotion as Auxiliary plant Attendant, who has six years experience. Consequently, it cannot be said that some wholly illegal consideration will be done if the experience of the direct recruits as Plant Attendant which they had obtained prior to obtaining the ITI qualification is taken into account.

19. For the foregoing reasons, we allow these writ petitions and hold that for seeing the eligibility of the petitioners, their entire experience as Plant Attendant, whether acquired prior to or after passing the ITI would be taken into

consideration. Since the petitioners have already been provisionally interviewed, pursuant to the interim directions of this Court, let merit list be accordingly prepared and result declared by taking into consideration the petitioners' eligibility as observed in this judgment. The result of the interview which was produced in a sealed cover has been returned to the counsel for the respondents.

20. Petitions allowed.