

(1999) 09 DEL CK 0079

In the Delhi High Court

Case No : CWP. No. 4297/99 and CM. 8326/99

Delhi State Electricity Workers Union

APPELLANT

Vs

Delhi Vidyut Board and Others

RESPONDENT

Date of Decision : 27-09-1999

Acts Referred:

Citation : (1999) 6 AD 160

Hon'ble Judges : A.K. Sikri, J

Bench : Single Bench

Advocate : Mr. K.K. Sharma, Advocat, for the Appellant; Mr. N.S. Dalal, for the Respondent

Judgement

A.K. Sikri, J.—Petitioner is a Union of employees of Delhi Vidyut Board (hereinafter to be referred as "DVB") and claims that it looks after the welfare and take care of the interest of various categories of employees working in DVB. The present writ petition has been filed for issuance of a writ of quo warranto and certiorari challenging the appointment of Respondents 2 and 3 who have been appointed to the post of Dy. Chief Legal Officer, DVB. A perusal of the writ petition shows that appointment of Respondents 2 and 3 has been challenged mainly on the ground that as per Resolution No. 341 (Item No. 197-A) of DVB in the meeting held on 10.10.97, post of Dy. Chief Legal Officer has to be filled up by transfer on deputation basis from amongst the Members of the higher judiciary and ignoring this Resolution, Respondent No. 1 appointed Respondents 2 and 3 who are not from higher judiciary of any State including Government of NCT of Delhi.

2. When the matter came up for preliminary hearing on 23rd July, 1999, Mr. N.S. Dalal appeared for the respondents and pointed out that the whole basis of the writ petition upon aforesaid Resolution No. 341 (Item No. 197-A) dated 10.10.97 and alleging violation thereof, is misconceived and petitioner has suppressed the fact that subsequent to the aforesaid Resolution another Resolution No. 621 dated 4.3.98 was passed by the DVB and in terms thereof Respondents 2 and 3

are eligible. The matter was adjourned to 28th July, 1999 to enable Mr. Dalal to file the aforesaid Resolution No. 621 dated 4.3.98. The respondents, accordingly, filed certain documents. Thereafter, matter was heard on "Admission" on 13th September, 1999.

3. As per Resolution No. 341 post of Dy. Chief Legal Officer has to be filled up by transfer on deputation basis from amongst the members of higher judiciary. After this Resolution steps were taken by the Respondent - DVB to fill-up the said post on ad hoc deputation basis. Documents produced by DVB show that letter dated 20.11.97 was written to the Secretary, Ministry of Law, Justice & Company Affairs followed by reminder letter dated 22.12.97 for sending the bio-data and C.R. dossiers of willing officer but no response was received. A request was made to Delhi High Court as well. However, the Registrar, Delhi High Court vide his communication dated 16.12.97 expressed inability to send the names of any judicial officer for this post. It was in these circumstances, the DVB resolved vide Resolution No. 621 dated 4.3.98 to modify the criteria/eligibility for filling-up of the post of Chief Legal Officer and Dy. Chief Legal Officer as detailed below :

"(i) For Chief Legal Officer:

Members of the Higher Judicial Services having at least the rank of Addl. District & Sessions Judge.

(ii) For Dy. Chief Legal Officer :

Members of the Judicial Services having at least ten years of judicial service.

OR

An officer possessing the minimum qualification as LLB and legal experience of at least ten years in Public Sector Undertaking or other Government departments in handling departmental cases in various courts of Delhi."

4. Thus as per the aforesaid Resolution an officer possessing the minimum qualification as LLB and legal experience of 10 years in Public Sector Undertaking or other Government Departments in handling departmental cases in various courts of Delhi also becomes eligible for the post of Dy. Chief Legal Officer. It is pursuant to this Resolution that steps were taken to fill-up these posts and Respondents 2 and 3 were appointed on deputation basis.

5. There is no dispute that Respondents 2 and 3 fulfill the alternate eligibility conditions prescribed as per Resolution No. 621 dated 4.3.98. Thus the entire basis of the writ petition is unfounded.

6. Counsel for the petitioner faced with the aforesaid situation argued that it was not in public interest to change the eligibility conditions and put alternate eligibility conditions. It is sufficient to observe that it was for the DVB to lay down the eligibility conditions and moreover the intention in laying down alternate eligibility conditions cannot be doubted when the members of higher judicial service for appointment to these posts were not available and when High Court

of Delhi had particularly expressed its inability to provide these officers. Moreover, there is no challenge to this Resolution No. 621 dated 4.3.98 in the writ petition. In fact, in the writ petition there is no reference to this Resolution No. 621 at all.

7. It was next contended by the petitioner that the post of Dy. Chief Legal Officer was Class-A post and, Therefore, no such appointment could be made without prior consultation of UPSC as required u/s 96 of the Delhi Municipal Corporation Act. This point has not been taken up in the writ petition and has been urged in the supplementary affidavit filed by the petitioner, which was filed after the Respondent-DVB filed the documents mentioned above. It would be appropriate, if there is a proper challenge on this aspect by raising appropriate ground in the writ petition itself with proper pleadings.

8. Since the matter is still at the stage of preliminary hearing, I allow the petitioner to amend the writ petition incorporating the aforesaid point in the writ petition and file an amended writ petition within a period of two weeks. Thereafter, notice to show cause be issued to the respondents limited to the point of prior consultancy of the UPSC for appointment of Respondents 2 and 3 to the post of Dy. Chief Legal Officer, returnable on 22nd November, 1999.