

(2021) 07 JH CK 0028
In the Jharkhand High Court
Case No : Writ Petition (S) No. 543 Of 2020

Durgesh Kumar & Ors

APPELLANT

Vs

Chairman Coal India Limited & Ors

RESPONDENT

Date of Decision : 30-07-2021

Acts Referred:

Citation : (2021) 07 JH CK 0028

Hon'ble Judges : Dr. S. N. Pathak, J

Bench : Single Bench

Judgement

Dr. S.N.Pathak, J

It appears that learned Advocates are abstaining themselves from Court's work in view of call given by the Jharkhand State Bar Council.

Mr. Sri Ram, Sr. Manager, Legal, Coal India Ltd., assisted by Mr. C.Gupta, Chief Manager (Recruitment), Coal India Ltd. are present on behalf of the CIL.

Vide order dated 28.07.2021, a direction was given upon the respondents to file a specific affidavit, bring on record as to whether any candidate other

than the employees who had already applied and were in possession of requisite qualification in the year, 2016 itself, have been considered for

appearing in the said departmental examination.

An affidavit in compliance of the said order has been filed through email, which is taken on Board.

The main prayer of the petitioners was to include the name of the petitioners in the list of candidates prepared and forwarded by the Recruitment

Department, Coal India Limited for re-conducting Departmental Examination for promotion/selection from non-executive to executive cadre, so that

the petitioners may not be deprived from their right to be considered for promotion from non-executive to executive cadre and for declaration that the action of the respondents by not including the candidature of the petitioners for departmental examination, which is to be re-conducted in recent future

for selection/promotion from non-executive to executive cadre post is wholly illegal, arbitrary and against the law. Further, prayer has been made to

reconsider the case of the petitioners for promotion from non-executive to executive cadre as the petitioners are fulfill the eligibility criteria for

promotion/selection to the executive cadre from non-executive cadre as per the cadre scheme/circular of the respondents.

It has been stated in para 9 & 11 to the counter-affidavit filed by the respondents, which reads thus:

9. that an internal notification was issued vide No.CIL:C5A(i);50254:NE:7575 dated 16.10.2015 for promotion /selection from Non-Executive cadre to

Executive Cadre in

13 disciplines to fill up 1589 vacancies. Subsequently a written test was held on 17.01.2016 at Kolkata. For conducting the test and providing

assistance for recruitment process of executives, an agency was engaged. The written test has been cancelled due to some shortcomings in

conducting the test by the Agency concerned vide Notice No. CIL/Rectt./10415 dated 11.07.2017, wherein following was mentioned:

“The written test will be re-conducted with the same set of candidates who were found eligible for the written test held on 17.01.2016 and it will

be notified in the CIL Website.”

11. Counter-affidavit was filed by the CIL in W.P No. 4315 of 2017 before Hon’ble Bombay High Court and at point No.16 of the said affidavit

sworn on 03.12.2019 it was mentioned by CIL that “the proposal for re-conducting the written test of departmental candidates for

promotion/selection from Non-executive to Executive Cadre in 13 disciplines with the same set of candidates, who were eligible on roll at present for

the written test held on 17.01.2016 has already been approved by the Competent Authority and further action pursuant to the same is under process.

This apart other normal recruitment activity is also in progress. It is evident to note here that the respondent is taking steps to conduct examination till

December, 2020 as all the procedures may be completed within the said

stipulated time.

From perusal of the aforesaid statement, it is crystal clear that there was a specific stipulation that re-examination/ written test will be conducted with

the same set of candidates, who appeared in the written test held on 17.01.2016 and as such, candidates, who were found eligible for the written test

held on 17.01.2016 were only eligible for the examination for promotion/ selection and no other candidates were to be allowed.

The petitioners' case is that in the year, 2021, when the re-examination is being conducted, they have become eligible for the selection/promotion

and as such, their candidature should also be considered by accepting their forms.

At this juncture, this Court is not inclined to interfere in the writ petition and no interim relief can be granted to the petitioners for appearing in the re-

examination, which is going to be held on 31.07.2021.

However, since the petitioners have also claimed for promotion/selection, the respondents are directed to file an additional counter-affidavit, bringing

on record, as to whether they intend to hold further examination for promotion for the candidates, who were not eligible for the written test on

17.01.2016 as they did not possess requisite qualification at that time. Law is well settled that promotion is not a right of the employees, but there is a

right for consideration.

Let a specific affidavit be filed to the extent that as within what time, the respondents intend to hold fresh selection process for the left over

employees, who were not eligible for examination of 2016, but by afflux of time have become eligible now.

This Court appreciates the valuable legal assistance given by the Sr. Manager (Legal), CIL and Chief Manager (Recruitment), CIL.

Put up this case after four weeks.