
(2011) 09 JH CK 0080
In the Jharkhand High Court
Case No : L.P.A. No. 226 of 2011

Jharkhand State Electricity Board and Others

APPELLANT

Vs

Ghasi Ram Sardar and Others

RESPONDENT

Date of Decision : 07-09-2011

Acts Referred:

Bihar State Electricity Board (Generation-cum-Transmission Cadre) Rules, 1976 — Rule 5

Citation : (2011) 4 JCR 364

Hon'ble Judges : Prakash Tatia, Acting C.J.; P.P. Bhatt, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Heard the parties.

2. the Appellants are aggrieved against that part of the judgment delivered in a bunch of the writ petitions decided by judgment dated 30/03/11 whereby Respondents' appointments have been protected.

3. the Appellants' contention is that as per the Service Rules governing the services of the employees of the Jharkhand State Electricity Board, there is no cadre post of the Assistant Engineer (IT) and, therefore, merely because advertisement was issued by the Board inviting application from the candidates having qualification of Graduate in Information Technology cannot create right in favour of those incumbent merely because of the fact that they succeeded to get through in that process of selection. It is submitted that any appointment in the cadre of the services of the employees in the Jharkhand State Electricity Board could have been given provided that post would have been in the cadre.

4. Learned Counsel for the Respondents submitted that the Board itself took a decision to offer appointment to the I.T. Graduates in Engineering on the post of Assistant Engineer (IT). The need of these technical persons is admitted by the Board and not only this, the Board itself subsequently has included the post of

Assistant Engineer (IT) in the cadre post as stated by counsel for the Board today with the help of resolution of the Board's 82nd meeting dated 19.11.2010. It is also submitted that after filing of the writ petition and when the Court already passed the order that any appointment given in pursuance of any subsequent advertisement, will be subject to the decision of the writ petition, even then the Board has given appointment to other persons selected by the same process of selection and that too without there being any Rules for appointment for the post of Assistant Engineer (IT) thereby the Board which itself has selected the candidates for appointment on the post of Assistant Engineer (IT) by a process, want to replace the selected candidates on the basis of the same process by giving appointment of the same nature. It is submitted that the appointees appointed by one mode cannot be removed by giving appointment to other persons by same mode taking the plea that they have selected other persons to replace earlier selected persons.

5. We have considered the submissions of the learned Counsel for the parties and since the facts are not in dispute, we need not to go in detail of the facts except that the services in the Jharkhand State Electricity board are governed by the s framed by the Board which are known as Service Regulation, 1976; Electrical Engineer (General) Cadre Rules, 1976; Civil Engineers Cadre Rules, 1976; Recruitment Promotion and Cadre Rule for the Subordinate Accounts Service; The Bihar State Electricity Board (Generation-cum-Transmission Cadre) Rules, 1976 and The Bihar State Electricity Board Junior Engineers (Generation-cum-Transmission Cadre) Regulations, 1976. It is not in dispute that post of the Assistant Engineer (IT) is not a cadre post in the definition given in the relevant Rules and particularly Rule 5 of the Bihar State Electricity Board (Generation-cum-Transmission Cadre) Rules, 1976 and not within the cadre as given in Rule 6. Therefore, the appointment of any person selected for the post which is not the cadre post cannot be treated to be an appointment in the cadre and can be treated to be ex-cadre post appointment. In facts situation where the Board itself has admitted that there is need of such technical persons in service and the need of the Board for these technical persons has further fortified by the Resolution taken in the Board's 82nd meeting dated 19.11.2010 whereby such posts have been included in the cadrepost. However, even after including the said post as cadre post vide Resolution dated 19.11.2010, the Rules yet have not been framed and as per resolution dated 19.11.2010, copy of which has been provided by the learned Counsel for the Board, read with Board's order in Agenda No. 694/2010-11, only it has been proposed that now the Rules may be framed obviously, prescribing educational and further requirements for giving regular appointment in the cadre. In view of the above reasons, by subsequent advertisement, if any appointment is given, that appointment is also only without there being any Rule. Therefore, the Respondents who have been selected by the Appellant Board for appointment, though as ex-cadre employee, sought to be replaced by another set of ex-cadre employee and not by regularly selected employees which is impermissible and, therefore, on this count also, we do not

find any reason to interfere in the impugned order.

6. Therefore, the L.P.A. preferred by the Board, having no merit, is dismissed.