

(2020) 09 P&H CK 0238

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 20169 Of 2017 (O&M)

Karambir Singh And Others

APPELLANT

Vs

State Of Punjab And Others

RESPONDENT

Date of Decision : 30-09-2020

Acts Referred:

Punjab State Electricity Board Service Of Engineers (Electrical) Regulations, 1965 — Regulation 10.7

Constitution Of India, 1950 — Article 14, 16

Citation : (2020) 09 P&H CK 0238

Hon'ble Judges : Tejinder Singh Dhindsa, J

Bench : Single Bench

Advocate : D.S. Patwalia, B.S. Patwalia, T.P.S. Chawla, Navdeep Chhabra, Vijay Pal, Puneet Gupta, A.S. Khara

Final Decision : Allowed

Judgement

Tejinder Singh Dhindsa J

Petitioners joined the respondent Punjab State Power Corporation Limited (hereinafter to be referred to as Corporation) as Junior Engineers pursuant to appointment letters having been issued to them in the month of September 2015.

Instant petition has been filed seeking a mandamus directing the Corporation to treat the petitioners as appointees of 2014 batch w.e.f. the dates other Junior Engineers were appointed through the same selection process alongwith consequential benefits in the nature of seniority etc.

Directions have also been sought to make applicable instructions/policy dated 08.08.2016 (Annexure P-6) upon the petitioners as the relief sought for in the instant petition stands granted by the Corporation vide such policy but confined to the cadre of Assistant Engineers. Challenge has been laid to communications dated 30.05.2017 (Annexure P-9) and 19.07.2017 (Annexure P-10) whereby the petitioners are being denied consideration for promotion to the post of Assistant

Engineers on the ground that they do not possess three years service as Junior Engineers as per relevant statutory rule by treating them appointees of the year 2015 instead of 2014.

Even though an additional prayer was made to afford to the petitioners additional chance(s) to clear the Departmental Accounts Examination but such relief has not been pressed during the course of arguments.

A brief factual matrix would be necessary.

The Corporation issued advertisement dated 10.05.2012 inviting applications for selection and appointment to various posts. These included 242 posts of Junior Engineers, out of which 215 were for Junior Engineer/Electrical. Clause 6 of the advertisement dealt with the selection process. The eligible candidates were required to undergo written test and the merit was to be prepared on the basis of marks secured in the written test. There was to be a common test for J.E./Electrical, A.P.A./Electrical, A.J.S./Electrical and the candidates applying for these posts were required to indicate the order of their preference of post, which was to be allocated based upon their merit.

The written test was got conducted by the Corporation through an independent outsourced agency. A bunch of writ petitions including CWP No.14036 of 2012 titled as Major Singh and others Vs. PSPCL and others came to be filed alleging large-scale bungling and cheating in the test. Taking note of the allegations the Corporation decided to annul the written test and hold a fresh one. Thereafter, Corporation issued a notice for re-conducting the written test for filling up the posts earlier advertised vide advertisement dated 10.05.2012. As per the notice, the test for the post of Assistant Engineers was to be held on 27.07.2013 and for the post of Junior Engineers and other posts, the test was to be held on 28.07.2013. Alongwith the notice the Corporation issued instructions dated 10.07.2013. Clause 5 thereof stated that the candidates who have applied online for the post for which they do not possess required qualifications as indicated in the advertisement and have filled the application form by giving incorrect/incomplete information and admit cards have been sent to them by online process, such candidates would be appearing at their own risk. Their application/candidature was liable for rejection at any stage during and after the process of selection. Clause 6 stated that candidates who have applied for the post of A.E. (OT)/Electrical, J.E./Electrical, A.P.A./Electrical, A.J.S./Electrical but have the qualifications/degree in Mechanical/Instrumentation and Communication/Electrical and Electronics Engineering (i.e. other than the Degree in Electrical Engineering), in case admit cards have been issued to such candidates through online process, they shall be appearing at their own risk and in case such candidates are found during selection process, their candidature would be rejected.

Corporation then held the written examination on 28.07.2013 and the petitioners herein appeared in the examination and were declared successful. However, in

view of the instructions dated 10.07.2013, the Corporation did not appoint the petitioners as well as other similarly situated persons for the reason that they possessed Degree in Electrical and Electronics Engineering.

At this stage, petitioners alongwith others filed CWP No.387 of 2014 (Gurdeep Singh and others Vs. Punjab State Power Corporation Limited and others) and other connected petitions assailing condition No.6 in the instructions dated 10.07.2013 as per which candidates holding a degree in Electrical and Electronics Engineering had been declared to be ineligible for the post of JE/Electrical. Directions were sought for the Corporation to consider them eligible for appointment to the post of Junior Engineer (Electrical) by considering the degree in Electrical and Electronics Engineering as equivalent/prescribed qualifications for the post.

The afore-noticed writ petition came up for initial hearing on 14.01.2014 and the following order came to be passed:-

"Petitioners who are in the merit list for appointment as Junior Engineer (Electrical) with Punjab State Power Corporation Limited (PSPCL) are aggrieved against the proposed action of the respondent-(PSPCL) by considering them ineligible for appointment due to non-possessing the degree of B.Tech (Electrical) Engineering.

It is inter alia contended that the Degree of B.Tech (Electrical Engineering) and the one possessed by the petitioners i.e. B.Tech (Electrical and Electronics Engineering) has been treated as equal by the Punjab Technical University, Jalandhar as also by the AICTE and therefore the proposed action is illegal.

Notice of motion returnable for 21.03.2014.

Dasti as well.

In the meanwhile four posts of Junior Engineer (Electrical Engineering) in the respective category of the petitioners shall be kept vacant."

It may be taken note that similar interim orders were passed by this Court in other connected writ petitions and thereby a total of 14 posts had been kept reserved.

The Coordinate Bench in CWP No. 387 of 2014 (Gurdeep Singh and others vs. Punjab State Power Corporation Limited and others) as also the connected matters held in favour of the petitioners therein and took a view that a candidate possessing the qualification of a Degree in Electrical and Electronics Engineering is liable to be treated as eligible for the post of Junior Engineering (Electrical) that had been advertised vide advertisement dated 10.05.2012.

It is in compliance of the common judgment dated 27.05.2015 rendered in CWP No.387 of 2014 and connected petitions that the petitioners herein were issued appointment letters in September 2015 and joined as Junior Engineers (Electrical).

Counsel for the petitioners has argued that the writ petition is liable to be allowed on the sole ground that the petitioners were denied benefit of appointment alongwith their counter-parts and other candidates who had participated in the same very selection process for no fault of theirs. Only on account of their late joining in the service, the petitioners cannot be denied the service benefits including consideration for being promoted as Assistant Engineers while extending such benefit to their batch-mates. It is contended that the petitioners ought to be considered as appointees of 2014 batch alongwith their counter-parts with whom they had rubbed shoulders in a common selection process and to reckon the three years service as Junior Engineers to be eligible for promotion to the post of Assistant Engineer w.e.f. the year 2014. It has further been argued that the action of the Corporation suffers from arbitrariness. Petitioners having joined on the post of Junior Engineer (Electrical) after issuance of appointment letters in September 2015 have been making repeated representations to consider their claim qua determination of seniority as per inter-se merit determined in the written test, grant of deemed date of appointment and further re-fixation of pay at par with their batchmates, still the Corporation has not taken any decision on the representations but on the other hand have issued the impugned communications dated 30.05.2017 and 19.07.2017 (Annexures P-9 and P-10 respectively) and thereby denying to the petitioners consideration for promotion to the post of Assistant Engineers merely on the basis that they do not possess three years service as Junior Engineers. Counsel has placed heavy reliance upon policy decision taken by the Corporation contained in the Circular dated 08.08.2016 (Annexure P-6) whereby in the cadre of Assistant Engineers a similar situation/grievance stands redressed and benefit in the nature of seniority, pay fixation, promotion etc. stands granted to such employees who had joined service later than their counter-parts/batch-mates and for reasons which were attributable to the Corporation.

Learned counsel representing the respondent-Corporation while opposing the writ petition has referred to Regulation 10.7 of the Punjab State Electricity Board Service of Engineers (Electrical) Regulations 1965 and which reads as under:-

Regulation 10.7.

"14 percent of the cadre post of Assistant Engineers shall be reserved for departmental employees (Technical Subordinates and drawing staff) possessing AMIE/Degree in Electrical/Electronics and communications/Mechanical/Instrumentations and Control/Computer Science Engineering and who have completed three years service in that capacity."

It is submitted that as per statutory provision three years experience on the post of Junior Engineer would be a pre-requisite to be considered for promotion to the post of Assistant Engineer in the 14 per cent AMIE/Degree Holders quota. Since the petitioners had joined in the year 2015 and were to complete three years experience only in the year 2018, the impugned communications dated 30.05.2017 (Annexure P-9) and 19.07.2017 (Annexure P-10) had been issued

confining consideration for promotion to the post of Assistant Engineer to the Junior Engineers who had been appointed and joined as such in the year 2014. Counsel further contends that the petitioners possessed the Degree in Electrical and Electronics Engineering which is not a requisite qualification prescribed under Rule 10.7 of 1965 Regulations and as such the claim of the petitioners for consideration of promotion to the post of Assistant Engineer in the 14 per cent quota is not sustainable. The policy circular dated 08.08.2016 (Annexure P-6) is submitted to be not applicable as such circular is stated to be confined to the Cadre of Assistant Engineers and which is a distinct and separate cadre.

Counsel who have appeared for the private respondents apart from reiterating the submissions advanced on behalf of the Corporation have submitted that the petitioners cannot be treated at par with the appointees of the year 2014. In this regard it has been argued that even as per decision rendered by this Court in CWP No.387 of 2014 and other connected petitions, a separate list was to be prepared for the candidates possessing the degree of Electrical and Electronics Engineering and it is in pursuance thereof that appointments were made in the year 2015. It is urged that names of the petitioners figured in a separate merit list and as such there can be no determination of seniority based on inter-se merit inasmuch as the private respondents stood appointed prior in point of time in the year 2014 itself. It is further argued that the petitioners became members of the service later in point of time i.e. in September 2015 and it is only after acquiring three years experience on the post of Junior Engineer (Electrical) in September 2018 that they acquire eligibility for promotion to the post of Assistant Engineer and not prior to such point of time. Yet another submission advanced on behalf of the private respondents is that the petitioners were issued appointment letters in 2015 and which was accepted without any protest. Petitioners as such have acquiesced and cannot now turn around to seek ante dated appointment. The objection of delay has also been raised against the petitioners and it has been contended that rights inter-se candidates which stand crystallized should not be permitted to be reopened as it would amount to unsettling settled matters.

Counsel for the parties have been heard at length and pleadings on record have been perused.

Undisputedly, petitioners had applied for the post of Junior Engineer (Electrical) in response to the advertisement dated 10.05.2012, issued by the Corporation. As per selection procedure, petitioners appeared in a written test held on 28.07.2013. In spite of having successfully negotiated the written test, they were denied appointment on the basis of instructions dated 10.07.2013 declaring them to be ineligible as they possessed the qualifications of Degree in Electrical and Electronics Engineering. This led to the filing of CWP No.387 of 2014 (Gurdeep Singh and others Vs. Punjab State Power Corporation Limited and others) and other connected petitions. The Writ Court took note that the Corporation upon examining the representation by certain candidates had

constituted a Committee to consider the equivalence of Electrical and Electronic Engineering with Electrical Engineering. Based upon the recommendations of the Committee the Board of the Corporation vide Agenda Item No.50 dated 30.01.2014 took a conscious decision to amend the Recruitment Rules and thereby making holders of degree in Electrical and Electronic Engineering eligible for the post of Assistant Engineer/Electrical and also Junior Engineer (Electrical). Regulations were accordingly amended and in a subsequent advertisement dated 04.09.2014 issued by the Corporation inviting applications for recruitment to the post of Assistant Engineer (OT)/Electrical, the degree in Electrical and Electronic Engineering was recognized as a valid qualification. The Writ Court took a view that even though the decision/amendment had been made specifically applicable to subsequent recruitments but the statutory recognition of equivalence needs to be given full effect to and the petitioners in the connected petitions could not be denied benefit thereof. The Coordinate Bench finally held in the following terms:-

"In my view the benefit of the decision of the Corporation legitimately accrues to the petitioners. What the respondent-Corporation, in effect has done is not to alter the qualifications for the posts. If it were so, then it could surely be made applicable only for future recruitments. But what has been done is only to declare, confirm and recognize the equivalence which already existed in fact and thereby bring the regulations in accord therewith. Thus, in fact, the petitioners were eligible when they applied and the mere fact that this recognition came later ought not to work to their prejudice. Accordingly, I hold that the petitioners are liable to be treated as eligible for the posts."

Thus, it clearly emerges that the petitioners were not clothed with eligibility from any subsequent date. Rather they have been held eligible on the date they applied in response to the advertisement. The clear fall out of the judgment in Gurdeep Singh's case (supra) and connected petitions is that the petitioners would have to be treated at par with other candidates who had applied for the post in question in response to the advertisement dated 10.05.2012 and had participated in the same very selection process/written test held on 28.07.2013. In other words even though appointment letters may have been issued to the petitioners herein in the month of September 2015 but they are vested with the right to be treated as appointees of the 2014 batch w.e.f. the date(s) their counter-parts had been so appointed to the post of Junior Engineer (Electrical).

The judgement in Gurdeep Singh's case (supra) has since attained finality. The appointment letters have been issued to the petitioners in the month of September 2015 in purported compliance of the judgment. Since the finding recorded by the Writ Court in Gurdeep Singh's case (supra) is that the petitioners were eligible on the date they had applied in response to the advertisement, the action of the respondent-Corporation in not treating the petitioners as appointees to the post of Junior Engineer (Electrical) of the batch of 2014 i.e. at par with their counter-parts is held to be arbitrary. Such view is fortified upon perusal of an office order dated 08.08.2016 issued by the respondent-Corporation at

Annexure P-6 which contained a policy decision for considering promotional cases of Assistant Engineers who had joined Corporation later than their batch-mates for reasons attributable to the Corporation. In such office order it was observed that in some recruitments, few candidates could not join at the appropriate time alongwith their batch-mates due to one reason or the other which was attributable to the Corporation and on account of such late joining such candidates suffer on account of loss of seniority, pay fixation etc. and are not able to fulfil the required time gap and other condition of eligibility alongwith their batch-mates for subsequent promotions. Accordingly, a policy decision was taken by the Corporation and as contained in the order dated 08.08.2016 (Annexure P-6) that such candidates who joined as Assistant Engineers later than their batch-mates, they would be placed in seniority as per merit obtained in the recruitment test alongwith other members of the batch irrespective of the actual/delayed date of joining. In the present case as well the petitioners were issued appointment letters later in point of time i.e. in September 2015 as opposed to their batch-mates who had joined in the year 2014 and who had otherwise participated in the same very selection process/written examination. The reason for such late joining was clearly attributable to the respondent-Corporation who had held the petitioners to be ineligible and not possessing the requisite qualifications for the post and such view did not find favour with the Writ Court in the case of Gurdeep Singh's case (supra). Apart from taking a stand that the office order dated 08.08.2016 (Annexure P-6) applies to the post of Assistant Engineer which is a distinct and separate cadre, no justification is coming forth at the hands of the counsel representing the respondent-Corporation as to why the rationale contained in the policy decision dated 08.08.2016 (Annexure P-6) would not apply qua the post of Junior Engineer (Electrical) as well. Action of the respondent-Corporation smacks of arbitrariness and is held to be violation of Article 14 and 16 of Constitution of India.

The objection raised on behalf of the respondent-Corporation in terms of referring to Regulation 10.7 of 1965 Regulations as regards the petitioners not possessing the three years experience on the post of Junior Engineer to be considered for promotion to the post of Assistant Engineer on account of their joining in the month of September 2015 is untenable. Under Regulation 10.07 the pre-requisite is of completion of three years service and not experience. The term "experience" is sought to be imported by the Corporation in the statutory rule and which is not permissible. The requirement is of three years service to be eligible for promotion to the post of Assistant Engineer. Once a view is taken that the petitioners are entitled to be treated as appointees of the 2014 batch w.e.f. the dates other Junior Engineers were appointed through the same very selection process, such condition of completion of three years service would be deemed to have been met in the year 2017 itself.

The contention raised on behalf of the private respondents that the petitioners have secured appointment by virtue of a separate list that was prepared for candidates possessing the Degree of Electrical and Electronics Engineering and

as such there can be no determination of seniority inter-se is ill-founded. In Gurdeep Singh's case (supra) one of the contentions noticed by the Writ Court on behalf of the respondents was specifically noticed to the following effect:-

"If at all the petition has to be allowed then all the posts which have been kept reserved for the petitioners by various interim orders should be made available to all candidates possessing the Degree of Electrical and Electronics Engineering and the posts should be filled by inviting fresh applications."

Such submission was elaborately dealt with by the Writ Court and it was observed that the written test for the post in question had been held on 28.07.2013. By virtue of different interim orders, posts for the petitioners had been directed to be kept vacant. The argument on behalf of the respondents therein that a written examination be conducted for such reserved post wherein all the candidates who possessed the Degree of Electrical and Electronic Engineering on the date of advertisement be permitted to participate was held to be not fair and equitable as such candidates had neither applied in response to the advertisement nor challenged the condition in any Court of law. It was observed that fairness and equality of treatment requires that the benefit be extended to all such candidates who like the petitioners possess the Degree of Electrical and Electronics Engineering and had participated in the test on 28.07.2013, even though they may not have filed writ petitions.

The operative part of the judgment rendered in CWP(s) No.387, 4980, 10087,21012 and 21646 of 2014 read as follows:-

"A merit list of all the candidates (including the petitioners in these five writ petitions) who possessed the degree of Electrical and Electronics Engineering and had taken the written test held on 27/28.07.2013 be prepared. Appointments to the post kept reserved vide interim orders in these petitions be made from amongst those highest in this merit list."

Clearly the sole purpose of such merit list was to identify such of the candidates including the petitioners in the five connected petitions as also those who possessed the Degree in Electrical and Electronics Engineering and had taken the written test on 28.07.2013 so as to be appointed against the posts reserved by virtue of different interim orders passed in the connected writ petitions.

On completion of such exercise and appointment letters having been issued the inter-se seniority of all the candidates would have to be necessarily determined on the basis of merit obtained in the common written examination that was held on 28.07.2013. It is ordered accordingly.

The objection of delay raised on behalf of the respondents is also without merit. The sequence of facts and circumstances would show that the petitioners have been agitating for their cause all through and without any delay. Having denied appointment even though having cleared the written test they had to approach this Court by way of filing CWP No.387 of 2014 (Gurdeep Singh and others Vs.

Punjab State Power Corporation Limited and others) and other connected petitions. Such writ petitions came to be allowed on 27.05.2015. The respondent-Corporation thereafter issued appointment letters to the petitioners for the post in question in the month of September 2015. In the writ petitions, there are specific averments that petitioners submitted representations in the year 2016 staking their claim to be considered as appointees of the year 2014 alongwith their batch-mates and no decision thereupon was taken. On the other hand communications dated 30.05.2017 (Annexure P-9) and 19.07.2017 (Annexure P-10) were issued whereby petitioners were being denied consideration for promotion to the posts of Assistant Engineer on the ground that they do not possess three years service as Junior Engineers. Such communications had been issued without taking any final decision on the representations preferred by the petitioners. Faced with such a situation petitioners' hands were forced to file the instant writ petition. Under such circumstances petitioners cannot be non-suited on the ground of delay.

For the reasons recorded above, writ petition is allowed.

The petitioners are directed to be treated as appointees to the post of Junior Engineers (Electrical) w.e.f. the dates other Junior Engineers were appointed and who had participated in the same very selection process/written examination held on 28.07.2013. Inter-se seniority would be determined on the basis of merit secured in such written examination. Further consideration for promotion to the post of Assistant Engineer would be on the basis of such fresh seniority to be determined and as has been directed. Petitioners would also be entitled to benefit of pay fixation by treating them as appointees of the 2014 batch. However, such benefit of pay-fixation would be on a notional basis and they would not be entitled to arrears of salary for the period that they had not worked on the post of Junior Engineers (Electrical).

Writ petition is allowed in the aforesaid terms.