
(2011) 03 JH CK 0213

In the Jharkhand High Court

Case No : Writ Petition (S) No's. 5079, 5119, 5201, 5210, 5217, 5219, 5226, 5228 and 5235 of 2009 and 583 and 2406 of 2010

Madhusudan Murmu and Others

APPELLANT

Vs

Jharkhand State Electricity Board and Others

RESPONDENT

Date of Decision : 30-03-2011

Acts Referred:

Bihar State Electricity Board (Conduct of Business) Act — Section 16
Bihar State Electricity Board Electrical Engineer (General) Cadre Rules, 1976 — Rule 1, 2, 4, 5, 7
Electricity (Supply) Act, 1948 — Section 79C

Citation : (2011) 03 JH CK 0213

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.R. Prasad, J.—The issue involved in all these writ petitions is that whether the Petitioners on being selected are entitled to be appointed on the post of Assistant Executive Engineer (Transmission)/Assistant Electrical Engineer (General)/Assistant Engineer (I.T.) in the establishment of the Electricity Board.

2. The facts leading to filing of these writ petitions are that the Respondents-Electricity Board issued an advertisement bearing No. 01/08 on 20.9.2008 calling for applications from the eligible candidates for appointment on the post of Assistant Executive Engineer (Transmission) -Code A-1/Assistant Electrical Engineer (General)-Code A-2/Assistant Engineer (I.T.) Code A-3 and Assistant Executive Engineer (Transmission) Code A-4. The eligibility, which was prescribed for appointment on the post of Code A-1 and A-2, is that a candidate coming under the general category should have passed examination in Electrical Engineering with 65% marks whereas it was fixed as 60% for the candidates belonging to the category of Scheduled Castes and Scheduled Tribes. Similarly, the candidates having degree of Computer (I.T.) Engineering was eligible for being appointed on the post of Assistant Engineer Code A-3, whereas the

candidate having degree of Electrical and Communication was eligible to be appointed on the post of Assistant Executive Engineer (Transmission) Code A-4. For the said post the minimum percentage of marks in the qualifying examination for general candidate and also for category of Scheduled Castes and Scheduled Tribes is the same as in the case of Code A-1. Subsequently, a corrigendum was issued, which was published on 23.9.2008, whereby nomenclature of the post, advertised under the earlier advertisement, was changed in the following manner:

Name of the post earlier advertised	Name of the post after verification
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Assistant Executive Engineer Code A-1 (G.T.O.)	Assistant Executive Engineer Code (Transmission) Code A-1
Assistant Electrical Engineer(I.T.)(General) Code A-3	Assistant Engineer (I.T.) Code A-3
Assistant Executive Engineer (Transmission) Code A-4 (G.T.O.)	Assistant Executive Engineer Code A-4

3. After a month, another corrigendum was issued, which was published in the newspapers on 22.10.2008, whereby the minimum eligibility fixed for being appointed on all the posts was dispensed with. Yet, again a corrigendum was issued, which was published on 10.11.2008, whereby both the posts of Assistant Executive Engineer (G.T.O.) Code A-1 and the posts of Assistant Executive Engineer (Transmission) Code A-4 were amalgamated and the eligibility prescribed for having degree of Electrical Engineering and Electrical and Communication Engineering for being appointed on the post of Code A-1 and A-4 respectively was expanded to the extent that the candidates having degree of Electrical/ Mechanical/Electronics/Electronics and Communication were made eligible. Similarly, eligibility prescribed for having degree in Electrical Engineering for being appointed on the post of Assistant Electrical Engineer (General) Code A-2 was widened to the extent that the candidates having degree in Electrical/ Electronics Engineering were made eligible for being appointed on the said post.

4. It is the case of most of the Petitioners that after publication of last corrigendum, whereby the eligibility was expanded, the Petitioners having degree in Engineering in Electrical/Mechanical/Electronics/Electrical and Electronics applied for being appointed either on the post of Code A-1, Code A-4 or Code A-2 and the Petitioners having degree in Information Technology (I.T.) applied for the post of Code A-3. All the Petitioners on coming out successful in the written examination conducted by the Xavier Labour Research Institute, Jamshedpur were called on for interview which they also faced and thereupon when the results were published by the Xavier Labour Research Institute, Jamshedpur, they were declared successful. But in spite of passing of a considerable period when the Petitioners did not receive appointment letters though certain candidates being placed lower down than these Petitioners in the merit list were appointed, queries were made from the department about the reasons for their non-appointment. The reason which was disclosed to them is that they do not have requisite qualification, details of which have been disclosed in the counter affidavit.

5. Being aggrieved with the action of the Respondents-Board, all the Petitioners have moved this Court, wherein prayer has been made to direct the Respondents-Board to appoint them on the posts on which they have applied for, as they have been declared successful.

6. A counter affidavit has been filed, wherein it has been stated that it is true that apart from the first advertisement calling for the applications from the eligible candidates, three corrigendum?s were issued whereby the eligibility of having minimum percentage of marks in qualifying examination has been relaxed and even other degrees in Engineering than the degree in Electrical Engineering and Electronics and Communication were added but all those corrigendum?s issued had no sanction of the Board, as those corrigendum?s had been issued without having any approval of the Board who is the competent to change the service condition or the eligibility prescribed under the Bihar State Electricity Board Electrical Engineer (General) Cadre Rules 1976 which prescribes that the candidates having degree in Electrical/Electronics are eligible to be appointed in the cadre of Bihar State Electricity Board Electrical Engineers (General). On this premise, it has further been stated that since the aforesaid rule does not permit a candidate having degree other than Electrical and Electronics to be appointed, the candidates having degree of Mechanical and also Electrical and Electronics were not chosen to be appointed. With respect to the Petitioners having degree of I.T., statement was made to the effect that the aforesaid rule since never prescribes for appointment on the post of Assistant Engineer (I.T.) they were not appointed. Learned Counsel appearing for the Petitioners submits that the grounds, which have been taken by the Respondents-Board for denying the claim of the Petitioners, who are having degree of Mechanical Engineering, Electronics, Electrical and Electronics and Information Technology, for appointment either on the post of Assistant Electrical Engineer (General)/Assistant Executive Engineer (Transmission) and Assistant Engineer (I.T.), are not tenable at all, as only when a corrigendum was issued on 10.11.2008, whereby the degree-holders of engineering in Electrical/Mechanical/Electronics/Electronics and Communication as well as Electrical and Electronics were made eligible the Petitioners applied for appointment on the said posts. All of them came out successful not only in the written examination but also in the interview. Therefore, it is not open now for the Respondents-Board to take plea that all the corrigendum?s issued do not have sanction of the Respondents-Board and, thereby, the Petitioners having degree of engineering other than Electrical and Electronics are not entitled to be appointed. Said action on the part of the Respondents-Board is certainly tainted with mala fide and arbitrariness. Learned Counsel further submit that Petitioner-Saurabh Kumar in W.P.(S) No. 5210 of 2009 has been denied appointment on the ground that he does not have the minimum percentage of marks of 65% though minimum eligibility has been done away with under corrigendum issued on 10.11.2008.

7. It was further pointed out that other Petitioner namely, Sumit Kumar Gupta, having degree of engineering in Electrical has been denied appointment on the

plea that the post of O.B.C. is not available which plea is also not tenable, as the persons, who were placed under Serial No. 24 to 29 in the category of O.B.C., have been appointed except the Petitioner Sumit Kumar Gupta who was placed at Serial No. 28 and furthermore, the post under O.B.C. category has been shown to be existing in the fresh advertisement, issued for appointment on the post of Assistant Executive Engineer.

8. Mr. Jerath, learned Counsel appearing on behalf of the Petitioners, submits that the Petitioners, who are having degree in Information Technology, are being denied appointment on the plea that Bihar State Electricity Board Electrical Engineering (General) Rules, 1976, does not prescribe for appointment on the post of Assistant Engineer (I.T.) though the Petitioners having degree of engineering in Information Technology came out successful but said plea is not tenable, as it is the Respondents-Board who by issuing initial advertisement on 20.9.2008 had itself come forward calling for applications from the holder of degree in Information Technology presumably keeping in view that in every sector of Technology expertise of engineers having Information Technology is required. Not only that the Respondents-Board has employed the engineers having degree in Information Technology on contractual basis, which itself suggests that the Electricity Board is very much in requirement of the engineers having degree in Information Technology.

9. Learned Counsel further submits that once the Respondents-Board issued the advertisement calling for applications from the degree-holder of Information Technology, it cannot go back. In other words, the Board cannot change the rule of game in the midst of the process of appointment, which proposition is well settled.

10. As against this, Mr. V.P. Singh, learned senior counsel, Mrs. I. Sen Choudhary, Mr. Rajendra Krishna and Mr. Rajan Raj, learned Counsel appearing on behalf of the Board, submitted that by virtue of the power conferred u/s 79(C) of the Electricity Supply Act, 1948, Bihar State Electricity Board Electrical Engineers (General) Rules, 1976 was framed. One of the rules such as Rule 8 does prescribe for direct recruitment of a candidate having degree of engineering in Electrical/Electronics from a recognized University and in consonance with the said rule, applications were called for through advertisement from the candidates having degree of engineering in Electrical/Electronics and Communication with minimum 65% of marks for general candidate and 60% for the candidate belonging to the Scheduled Castes and Scheduled Tribes. So far as minimum percentage of marks is concerned, that was brought under the rule through an amendment w.e.f. 14.10.1998. However, stipulation made under the advertisement issued on 20.9.2008 was subsequently diluted by the subsequent corrigendums issued but those corrigendums were issued by the Secretary of the Electricity Board without having concurrence of the Board and as such, stipulation made in the corrigendum contrary to stipulation prescribed under the advertisement can not be given effect to as that would be contrary to law. On

these premise, it was submitted that the candidates having degree of engineering in the trade other than Electrical and Electronics and Communication would not be entitled to be appointed for the posts advertised and, therefore, even if the Petitioners came out successful, they cannot claim appointment as a matter of right. Learned Counsel in support of their submissions have referred to decisions in the case of J and K. Public Service Commission, etc. Vs. Dr. Narinder Mohan and others etc. etc., . The State of Haryana Vs. Subash Chander Marwaha and Others, . Rakesh Ranjan Verma and others Vs. State of Biha and others, .

11. Learned Counsel further relied on a decision reported in Government of Orissa through Secretary, Commerce and Transport Department, Bhubaneswar Vs. Haraprasad Das and Others, wherein it has been stated that for valid reason, one, who was selected for appointment, can be denied appointment and under these situations, the Petitioners are not entitled to the relief as claimed by them.

12. Thus the stand, which has been taken on behalf of the Petitioners, is that the Petitioners having degree-holder in engineering in Electrical/Mechanical/Electrical and Electronics and Information Technology being eligible for being appointed in terms of the advertisement particularly corrigendum came out successful in the written examination and in the interview but they are being denied appointment arbitrarily. On the other hand the stand, which has been taken on behalf of the Respondents-Board, is that the Petitioners though came out successful in the said test but most of them having degree in engineering in other trades than in Electrical/Electronics and Communication were never eligible in terms of the advertisement issued on 20.9.2008 in which the eligibility was prescribed in terms of the Rules known as The Bihar State Electricity Board Electrical Engineering (General) Cadre Rules, 1976 and as such, they have rightly been denied appointment.

13. It is also the case of the Respondents-Board that some of the Petitioners having degree in Electrical Engineering have been denied appointment, as they have not obtained 65% of marks in the qualifying examination and that the stipulations made in the corrigendum do not confer any right upon them to be appointed on the posts for which they had applied and that the Petitioners can not claim appointment as a matter of right.

14. It is true that the selects do not have any right of appointment but it is subject to bona fide action on the part of the State. In this regard, a decision rendered in the case of Shankarsan Dash Vs. Union of India, be referred to, wherein in Paragraph-7 it has been held as follows:

7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate,

the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in *State of Haryana v. Subash Chander Marwaha*; *Neelima Shangla v. State of Haryana* or *Jatinder Kumar v. State of Punjab*.

(emphasis supplied)

15. Again in the case of *R.S. Mittal Vs. Union of India (UOI)*, , it was held as follows:

10. ...It is no doubt correct that a person on the select panel has no vested right to be appointed to the post for which he has been selected. He has a right to be considered for appointment. But at the same time, the appointing authority cannot ignore the select panel or decline to make the appointment on its whims. When a person has been selected by the Selection Board and there is a vacancy which can be offered to him, keeping in view his merit position, then, ordinarily, there is no justification to ignore him for appointment. There has to be a justifiable reason to decline to appoint a person who is on the select panel. In the present case, there has been a mere inaction on the part of the Government. No reason whatsoever, not to take of a justifiable reason, was given as to why the appointments were not offered to the candidates expeditiously and in accordance with law. The appointment should have been offered to Mr. Murgad within a reasonable time of availability of the vacancy and thereafter to the next candidate. The Central Government's approach in this case was wholly unjustified.

(emphasis supplied)

16. The same principle has been reiterated in the case of *Asha Kaul (Mrs) and Another Vs. State of Jammu and Kashmir and Others*, , which reads as under:

8. It is true that mere inclusion in the select list does not confer upon the candidates included therein an indefeasible right to appointment *State of Haryana v. Subash Chander Marwaha*, *Mani Subrat Jain v. State of Haryana*, *State of Kerala v. A. Lakshmikutty* but that is only one aspect of the matter. The other aspect is the obligation of the Government to act fairly. The whole exercise cannot be reduced to a farce. Having sent a requisition/request to the Commission to select a particular number of candidates for a particular category, in pursuance of which the Commission issues a notification, holds a written test, conducts interviews, prepares a select list and then communicates to the Government the Government cannot quietly and without good and valid reasons nullify the whole exercise and tell the candidates when they complain that they have no legal right to appointment. We do not think that any Government can

adopt such a stand with any justification today.

17. Again in the case of Food Corporation of India and Others Vs. Bhanu Lodh and Others, , it was held as under:

14. Merely because vacancies are notified, the State is not obligated to fill up all the vacancies unless there is some provision to the contrary in the applicable rules. However, there is no doubt that the discussion not to fill up the vacancies, has to be taken bona fide and must pass the test of reasonableness so as not to fail on the touchstone of Article 14 of the Constitution. Again, if the vacancies are proposed to be filled, then the State is obliged to fill them in accordance with merit from the list of the selected candidates. Whether to fill up or not to fill up a post, is a policy decision, and unless it is infected with the vice of arbitrariness, there is no scope for interference in judicial review.

18. Thus, the principle, enunciated in the cases, referred to above, is that where the selectees have no legal right, the Court in exercise of its judicial review would not ordinarily direct issuance of any writ in absence of proof of mala fide or arbitrariness. Hence, it is to be seen as to whether the action of the Respondents-Board denying appointments to the Petitioners, in spite of being selected, is tainted with vice of arbitrariness or not? Main stand of the Board is that any eligibility relating to education prescribed in the corrigendum other than Electrical/Electronics and Communication being not in accordance with Rules namely, Bihar State Electricity Board Electrical Engineering (General) Cadre Rules, 1976, cannot be given effect to and hence, one having degree in engineering other than electrical/electronics and communication cannot be allowed to be appointed. Under this situation, the provisions of the said rules need to be taken notice of. The said rule was framed by the Respondents-Board in exercise of power conferred by Section 79(C) of the Electricity (Supply) Act, 1948 with following object:

Whereas it is necessary to make precise rules and constitute clearly demarcated cadre of Electrical and mechanical engineers for the distribution and supply of electrical energy.

19. Rule 1(ii) speaks that the rule shall apply to the electrical and mechanical engineers included in the cadre in which as per Sub-rule (iii) of Rule 4, all engineers directly recruited can be a member of the cadre. Thus, the aforesaid rules sufficiently indicate that apart from electrical engineer, mechanical engineer also does constitute cadre. Further, I do find that Rule 8 does prescribe qualification for direct recruitment. The eligibility relating to the education has been stipulated in Sub-clause (c) of Rule 8 which reads as follows:

8C - Education and degree in electrical/electronics engineering from a recognized University or Institute in India or its equivalent.

Provided that in the matter of judging what qualifications are equivalent to a degree in electrical/electronics engineering, the Board shall be guided by the

principles laid down by the State Government.

Provided further that in case the Board requires graduates in mechanical engineering, Board may prescribe a degree in mechanical engineering as an equivalent qualification.

20. Thus the basic eligibility for being appointed on the post of Assistant Electrical Engineer in the junior cadre happens to be the degree in engineering in Electrical/Electronics but the Board can also appoint a person in the cadre having degree in Mechanical Engineering.

21. Here, it would be significant to note that under 1st Advertisement issued on 20.9.2008, which, according to the Respondents-Board, does have approval of the Board, applications were called for not only for the appointment on the post of Assistant Electrical Engineer (General) but also for the appointment on the post of Assistant Executive Engineer (Transmission) and Assistant Engineer (I.T.). Nomenclature of the post notified as Assistant Executive Engineer (Transmission) was subsequently changed as Assistant Executive Engineer (G.T.O.). However, the stand of the Board is that the nomenclature has been changed through a corrigendum which does not have any approval of the Board. Whether said corrigendum does have sanction of the Board or not, it hardly matters as apart from the post of Assistant Electrical Engineer (General) post of Assistant Executive Engineer (Transmission) were also advertised in the first advertisement whose service conditions would be governed by the rule known as The Bihar State Electricity Board (Generation-cum-Transmission Cadre) Rules, 1976, which has also been formulated in exercise of power conferred by Section 79(C) of the Electricity (Supply) Act, 1948 with certain objectives, wherein the cadre and cadre officers have been defined in Rules 2(ii) and 2(x) respectively, which read as follows:

2(ii) "Cadre" means the Generation-cum-Transmission Cadre of Electrical, Mechanical; Electronics and Tele Communication engineers of the Board being constituted under these rules.

2(x) "Cadre Officer" means an electrical, mechanical, electronics or tele-communication engineer borne on the Cadre.

Further, Rule 5(iii) does prescribe that all engineers shall be the members of the cadre who are directly recruited to the cadre by the Board. Further, Rule 7 does prescribe about the manner of direct recruitment to the Cadre, which reads as follows:

7. Manner of direct recruitment to the Cadre.--

(i) Depending on the number of vacancies existing in the Cadre there shall be an advertisement by the Board published in important newspapers and number of vacancies, age and qualifications as well as reservations for Scheduled Castes and Scheduled Tribes as per the directions of the State Government shall be clearly mentioned in the advertisement. Applications shall be invited by a fixed

date.

22. Having noticed the aforesaid provisions including Rule 7 of the said Rules, one can certainly come to conclusion that corrigendums published under the signature of the Secretary of the Board, who, as per terms of Bihar State Electricity Board (Conduct of Business) Regulations, 1973, was empowered to issue the same, have been issued absolutely in accordance with the aforesaid Rules referred to above whereby the persons having degree in Mechanical Engineering were also made eligible for being appointed on the post of Assistant Executive Engineer (Transmission). In this event corrigendum issued subsequent to first advertisement can never be said to have changed the rule regarding recruitment rather those corrigendums either concerns with the change in nomenclature of the post or prescribes degree holders in Mechanical Engineering to be eligible. Thus the corrigendum in question which never concerns with change of service condition or with varying rule relating to recruitment need not to have sanction of the Board in view of the provisions, as contained in Section 16(v) of the Bihar State Electricity Board (Conduct of Business) Regulations, 1973, which does stipulate that whenever there would be necessity to amend rule regarding recruitment and condition of service, the Secretary shall be placing the matter before the Board.

23. Thus the corrigendum prescribing the degree-holders in Mechanical Engineering to be eligible candidates, does not contravene the rule relating to recruitment prescribed under the Bihar State Electricity Board (Generation-cum-Transmission Cadre) Rules, 1976. Therefore, the submission advanced on behalf of the Board that corrigendum cannot be given effect to in absence of any approval by the Board does not have any substance and is fit to be rejected.

24. Having come to such conclusion, cases of the Petitioners need to be examined individually. Petitioners Madhusudan Murmu Gaurav Kumar [writ Petitioner of W.P. (S) No. 5201 of 2009] Awadhesh Kumar, Praveen Kujur, Atilesh Gautam, Satish Kumar, Baliram Oraon, Ashwani Kumar Kachchap, Neeraj Kumar, Kumar Sambhav and Dharam Beer Singh, all holders of degree in Mechanical Engineering either Applicants for the posts of Code A-1 or A-4 have come out successful in the written as well as interview and as such, they are entitled to be appointed on the post of Assistant Executive Engineer (Transmission) Code A-1 and A-4, subsequently designated as Assistant Executive Engineer (GTO).

25. Coming to the case of Petitioner Rimil Topno, he having degree in engineering in Electronics also came out successful in both the examinations but he is being denied appointment on the plea that he is not having degree in Electronics & Communication. Such plea is not tenable in view of the definition of cadre as defined under Clause 2(ii) of the Bihar State Electricity Board (Generation-cum-Transmission) Rules, 1976, whereby the engineer having degree in Electrical, Mechanical, Electronics and Tele Communication forms cadre. That apart, as per Rule 8 (C) of the Bihar State Electricity Board Electrical Engineer (General) Cadre Rules 1976, educational eligibility has been stipulated

as degree in Electrical/Electronics. Thus, any denial of appointment of the Petitioner on the plea that the Petitioner is not having degree in Electronics and Communication is against both the rules, as mentioned above. Therefore, Petitioner Rimil Topno is entitled to be appointed on the post of Assistant Executive Engineer (Transmission) Code A-1, subsequently designated as Assistant Executive Engineer (GTO).

26. Coming to the cases of Petitioners Satyanarayan Patar, Gaurav Kumar [writ Petitioner of W.P (S) No. 5235 of 2009], Pramod Kumar Gupta and Ajit Nirmal Tirkey they having degree in engineering in Electrical & Electronics are being denied appointment on the post of Assistant Electrical Engineer (General) Code A-2 on the plea that they are not having degree in Electrical, rather they are having degree in Electrical & Electronics which are not only untenable but appear to be illogical also, as the knowledge of Electronics with the knowledge of Electrical can always be advantageous to the employer. Moreover, certificate of the Head of Department of NIIT, Kalikat is there wherein he has certified that the degree of Petitioner Satyanarayan Patar be treated as Electrical. Further, it does appear that B.I.T., Mesra has informed the Respondents-Board that Electrical & Electronics is equivalent to Electrical. This information seems to have been given in connection with the case of Petitioners Ajit Nirmal Tirkey and Pramod Kumar Gupta. Under these situations, aforesaid Petitioners are directed to be appointed on the post of Assistant Electrical Engineer (General) Code A-2.

27. Coming to the case of Petitioner" Sumit Kumar Gupta, he having degree in engineering in Electrical is being denied appointment on the plea that the post of O.B.C. in Cadre A-1 is not available, whereas the case, which has been made out by the Petitioner, is that five posts meant for O.B.C. of Assistant Executive Engineer (Transmission) Code A-1 were advertised and as against that, six persons belonging to O.B.C. category were selected and they were placed at Serial Nos. 24 to 29. Petitioner's position was at Serial No. 28 meaning thereby that he was at 5th position. Thus, when the initial advertisement, which had been issued with the approval of the Board, did notify five posts for O.B.C, the stand taken by the Board that the post is not available does not appear to be justified. Moreover, under fresh advertisement, post of Assistant Executive Engineer (Transmission) Code A-1 meant for O.B.C. has also been advertised meaning thereby that the vacancy is still there. Under this situation, Petitioner "Sumit Kumar Gupta is entitled to be appointed on the post of Assistant Executive Engineer (Transmission) Code A-1.

28. Now coming to the cases of Petitioners Mangal Murmu, Ghasi Ram Sardar, Prakash Kumar, Amit Kumar Singh and Pramod Kumar Vidyarthi, they having degree in Information Technology are being denied appointment on the post of Assistant Engineer (IT) Code A-3 on the plea that Bihar State Electricity Board Electrical Engineer (General) Rules, 1976 never prescribes for appointment of engineers in the cadre holding degree in Information Technology. Admittedly, Bihar State Electricity Board Electrical Engineer (General) Rules 1976 and also

Bihar State Electricity Board (Generation-cum-Transmission) Rules, 1976 are silent on the point of appointment of the engineer having degree in Information Technology in the cadre for obvious reason that in the year 1976 Information Technology had least role to play but subsequently the Board must have felt necessity of having service of the persons having degree in Information Technology and hence, came with an advertisement for the appointment on the post of Assistant Engineer (IT) Code A-3.

29. In this eventuality, the question does arise as to whether action of the Respondent calling for application for appointment on the post of Assistant Engineer (I.T) would be illegal? Answer in my view would be in negative.

30. It is well settled that the Government cannot amend or substitute statutory rules by administrative instruction but if the rules are silent on any particular point, the Government can fill up the gaps and supplement the rules by issuing instruction not inconsistent with the rules. The Government can also confer certain benefits on its employees by an administrative order which proposition has been laid down by the Hon^{ble} Supreme Court in the case of Union of India and Others Vs. Rakesh Kumar etc., .

31. Perhaps, the Board taking into account the immediate need of the engineers having degree in Information Technology advertised the post to be filled up pursuant to which aforesaid Petitioners did apply and came out successful. Therefore, now it is not open for the Board to deny the appointment on the plea, as stated above. Accordingly, aforesaid Petitioners are directed to be appointed on the post of Assistant Engineer (IT) Code A-3.

32. Lastly, so far the case of Petitioner Saurabh Kumar, who applied for the post of Assistant Electrical Engineer (General) Code A-2, is concerned, he has been denied appointment on the plea that he was not having 65% of marks in the degree in engineering examination, which is requisite qualification for the appointment in terms of the provisions of the Bihar State Electricity Board Electrical Engineer (General) Rules 1976 and also the Bihar State Electricity Board (Generation-cum-Transmission) Rules, 1976.

33. On the other hand, Petitioner Saurabh Kumar is claiming appointment on the plea that minimum percentage of marks as fixed under 1st advertisement was done away by the subsequent corrigendum and as such, he is entitled to be appointed particularly when he has come out successful in both the examinations, written as well as interview.

34. No-doubt, it is true that as per the corrigendum published on 22.10.2008, minimum eligibility prescribed earlier was done away with but that is against both the rules i.e. the Bihar State Electricity Board Electrical Engineer (General) Rules 1976 and the Bihar State Electricity Board (Generation-cum-Transmission) Rules, 1976 as amended on 14.10.1998, copy of which have been annexed as Annexures-G and H to the counter affidavit filed on behalf of the Respondents Board. Under these situations, claim of Petitioner Saurabh Kumar for being

appointed on the post of Assistant Electrical Engineer (General) Code A-2 has rightly been refused by the Respondents Board.

35. Thus, all the Petitioners except Petitioner-Saurabh Kumar are directed to be appointed on the respective post on which they have applied for within a period of four weeks from the date of receipt/production of a copy of this order.

36. Consequently, all the writ petitions are allowed except W.P. (S) No. 5210 of 2009 which stands dismissed.