

(2014) 04 JH CK 0060
In the Jharkhand High Court
Case No : W.P. (S) No. 2491 of 2013

Md. Mushtaque Ahmed

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 07-04-2014

Acts Referred:

Citation : (2014) 3 JLJR 490

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : Nehala Sharmin, Advocate for the Appellant; Abhay Kumar Mishra, S.C. III, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Aparesh Kumar Singh, J.—Heard counsel for the parties. In the present writ application the petitioner has prayed for direction upon the respondents to appoint him on the post of Electrician, Group C under Advertisement No. 50 dated 8.9.2009 issued by the Jharkhand Combined Entrance Competitive Examination Council. According to the petitioner in the result published on 13.10.2010 after counseling and scrutiny of the petitioner's testimonials, his name was reflected in item no. 10th in combined merit list in General category, though he belongs to backward community i.e. B.C. II. However two candidates in the combined merit list have already been appointed who obtained lesser marks than him. Therefore, petitioner sought for direction for such appointment claiming that out of 41 posts advertised, 21 post were meant for General category candidates and out of that though he stood 10th in the combined merit list in General category, only 12 persons have been appointed and that too some of the persons who have obtained lesser marks than him. He also sought quashing of Annexure-5 contained in memo no. 1908 dated 20.12.2012 whereby the Deputy Director (Training), Department of Labour and Employment has informed him under R.T.I. application that his appointment has been refused on the ground that the period for which he claims experience on account of

prosecuting studies for the B.Tech course cannot be counted for the purpose of minimum requisite 5 years experience under the advertisement in question for the appointment to the post of Electrician, Group C.

2. Learned counsel for the petitioner submits that petitioner passed matriculation in the year 1999 as per certificate dated 7.6.1999 (Annexure-2). The competent authority, S.D.O., Jamtara issued caste certificate for the purpose of employment on 14.12.2010 (Annexure 2/1) showing him to be belonging to B.C. II category; character certificate was issued by the Circle Officer, Jamtara dated 21.4.2012 (Annexure 2/2) as also residential certificate for the purpose of employment issued on 21.12.2010 by the S.D.O., Jamtara (Annexure 2/3). Petitioner applied for the said post on 6.9.2009 as per application form annexed as Annexure-A to the counter affidavit. After having passed the 3 years diploma course from the Government Polytechnic, Dumka for which examination was held in May-June 2007 and secured first class with distinction as per certificate dated 9.7.2009 (Annexure 2/4), he undertook the course of B.Tech in which the Diploma Holders were exempted from 1st and 2nd semester. As per Annexure 2/6, he cleared the 3rd semester examination held in February, 2008, 4th semester examination held in July, 2008 (Annexure 2/7), 5th semester examination in January, 2009 (Annexure 2/8), 6th semester in June 2009 (Annexure 2/9). Therefore, according to the petitioner, though he finally cleared the last semester examination i.e. 8th semester held in May 2010 as per Annexure 2/10, at the time of making application he was entitled to count the period of study of the said B.Tech course for 2 years for the purpose of reckoning his experience required under the said advertisement.

3. Learned counsel for the petitioner submits that as per the minimum eligibility criteria prescribed under the advertisement (Annexure-1) the petitioner was entitled for claiming the benefit for the period of study under the B.Tech course i.e. 2 years apart from the 3 years study of Diploma course for the purpose of reckoning 5 years experience for being eligible for the post of Electrician, Group C. However, the respondents have chosen to deny the said benefit by refusing to count the said 2 years experience of B.Tech course till the filing of his application in November, 2009. The petitioner having faced the examination and came in the merit list and persons having obtained lesser marks being appointed, the respondents are not justified in refusing his claim and the action of the respondents is arbitrary and discriminatory in nature.

4. According to the learned counsel for the respondents, the criteria prescribed under the advertisement required passing of ITI/Diploma/Degree course by the interested candidate applying for the post advertised under Serial No. 1 to 33 under the advertisement no. 50 dated 8.9.2009. He also submitted that for the purpose of counting the period of experience of 5 years, the period of study undertaken during the completion of a particular course on the basis of which he has applied was to be reckoned. The petitioner has wrongly counted period of his study in the incomplete B.Tech course from June 2007 to July 2009 at the time of

filing his application, which has been discounted while considering his case for final appointment. In the circumstances, learned counsel for the respondent has contested the claim of the petitioner that no arbitrariness or discrimination is made out on the part of the respondents as they have acted fully in terms of the advertisement.

5. I have heard counsel for the parties and gone through the relevant materials on record. The sole issue which is relevant for determination of the question raised in the present application is in relation to the interpretation of the minimum eligibility criteria prescribed under the said advertisement in which the petitioner had applied for the post of Electrician, Group C. From perusal of clause "Ka" read with Note 1 and 2 thereof, it is evident that interested candidates who had either passed ITI/Diploma/Degree could have made the application for the post advertised from serial no. 1 to 33 and they ought to have obtained experience of at least 5 years from the recognized Industrial Organization approved by the State or Central Government. As per note 2 the period of study undertaken for such course of ITI/Diploma/Degree would be counted as a period of experience for reckoning 5 years experience. The proviso 2 to be read in harmonious construction with the main provision. Petitioner having staked claim of qualification for making application on the basis of his Diploma qualification therefore could have claimed benefit of 3 years experience under the Diploma Course and not 2 years as he has claimed on the basis of study of the higher B.Tech course which was incomplete in the year 2009 when he made his application in 2009. Apparently, petitioner completed his B.Tech course in 2010 after the cut off date. Therefore, the respondents are justified in refusing to reckon the 2 years period of experience from 2007 to 2009 in prosecuting B.Tech Course for the purpose of consideration of the case of the petitioner. In the aforesaid facts and circumstances, the impugned action of the respondents does not suffers from error of law and facts. Accordingly, the writ petition being devoid of merit is dismissed.