

(2005) 09 JH CK 0055
In the Jharkhand High Court
Case No : WP (S) No. 2853 of 2005

Power Engineers Service Association

APPELLANT

Vs

Jharkhand State Electricity Board

RESPONDENT

Date of Decision : 16-09-2005

Acts Referred:

Citation : (2005) 4 JCR 366

Hon'ble Judges : S.J. Mukhopadhaya, Acting C.J.; M.Y. Eqbal, J

Bench : Division Bench

Advocate : Ritu Kumar, for the Appellant; Dilip Jerath, A.K. Sinha, A.G. and R.N. Sahay, Senior Standing Counsel II, Dhananjay Kr. Dubey, for respondent No. 12, R.S. Mazumdar, for respondent No. 31 and M.K. Habib, for the Respondent

Judgement

1. This writ petition was preferred by petitioner, Power Engineers Service Association against the Employment Notice No. 5/05 published in the newspaper "HINDUSTAN" On 13th May, 2005, whereby and whereunder, applications were invited from retired employees for filling up the posts of engineer and other posts.

2. Earlier, it was brought to the notice of the Court that a large number of retired employees have been engaged without following the procedure for appointment in spite of specific order passed by a Bench of this Court in WP (S) No. 3746 of 2001. Taking into consideration the facts and circumstances, the following order was passed by this Court on 20th July, 2005 :

"From the writ petition it appears that the petitioner has earlier moved before this Court vide WP (S) No. 3746 of 2001 with a prayer for issuance of a writ of mandamus, restraining the respondents from appointing the retired persons and also from taking the services of Engineers from other Organizations, on deputation, and posting them against the higher posts. The said writ petition was allowed by the learned Single Judge of this Court on 21st March, 2002 and appointments of 4th respondent of the said writ petition, on deputation, and other retired persons of the Jharkhand State Electricity Board (hereinafter to be referred as "the Board") on contractual basis were quashed. However, the 4th

respondent and others were allowed to continue for another period of three months, till alternative arrangement was made.

It appears that thereafter, two Letters Patent Appeals were preferred by the Board i.e., LPA No. 561 of 2002 and LPA No. 587 of 2002. No interim stay having been granted, services of some of the persons, appointed after retirement, were terminated vide Officer Order No. 484, dated 29th June, 2002. On 23rd September, 2004 when the matter (LPA Nos. 561 of 2002 & 587 of 2002) was taken up, in view of IA No. 1670 of 2004, the following orders were passed by the Court :

"Having heard learned counsel on behalf of Jharkhand State Electricity Board and Power Engineers Service Association we direct the appellant-Jharkhand State Electricity Board not to appoint any retired person in their services, and those, who are more than 58 years of age. They will also not make any appointment on contract basis without prior permission of this Court.

However, it will be open to the Board to make selection and appointment from amongst those, who are already in its service, if permissible under the law. This order shall also not stand in the way of the appellant to make appointment by direct recruitment in accordance with the law."

Later on, for the reasons best known to the Board, both the aforesaid Appeals were withdrawn on 3rd February, 2005 and the order of the learned Single Judge, thereby reached finality.

In pursuance of this Court's order dated 7th July, 2005, an affidavit has been filed by the respondent-Board. From the said affidavit, it appears that inspite of specific decision of this Court in WP (S) No. 3746 of 2001 and interim order dated 23rd September, 2004, prohibiting the Jharkhand State Electricity Board not to appoint any retired person in service, and those, who are more than 58 years of age, a large number of persons, namely, M/s. M.C. Suvaruo, Retired IAS, A.M. Rao, Retired Chief Engineer, Dr. Rana Ram Uday Singh, Retired Director of Personnel (Respondent No. 11), Virendra Prasad, Retired Deputy Director of Personnel, Madhav Sinha, Retired IAS, N.D. Prasad Retired General Manager-cum-Chief Engineer, R.K. Shukla, Retired Director (.Finance), N.N.P. Sinha, Retired IAS (Respondent No. 8), Satish Chandra Raut, Retired Deputy Accountant General, K.L. Das Retired Electrical Superintending Engineer (Respondent No. 12), Mr. Jawahar Lal Mehta, Retired Director (Project & Planning), Ajay Kumar Singh, Retired General Manager-cum-Chief Engineer, Rajendra Prasad Singh-II, Retired Executive Engineer (Civil), Surendra Singh, Retired Chief Engineer (Civil), Nawal Kishore Prasad Sinha, Retired Under Secretary (PS cadre), Madan Mohan Choudhary, Retired Sr. Engineer, Muchkund Mallick "Mukur", Retired Accountant, Madhusudan Prasad, Retired Steno Gr-I, Bahulyan P.A., Retired Steno Gr-II, Kunwar K. Lal, Ex. Serviceman and one another Sri Mukesh Kumar (Respondent No. 9) have been appointed.

In the facts and circumstances, we issue notice on Mr. H.B. Lal, Chairman,

Jharkhand State Electricity Board, Mr. K.P. Sinha, Member (Generation & Distribution), Mr. S.N. Akhauri, Member (Rural Electrification) & Mr. GNS Munda, Member (Transmission) to state as to why a suo motu contempt proceeding be not initiated against them for willful and deliberate violation of the Court's order dated 21st March, 2002, passed in WP (S) No. 3746 of 2001 read with interim order dated 23rd September, 2004, passed in LPA Nos. 561 of 2002 and 587 of 2002 and why they be not punished appropriately.

Let notices be issued by the office along with a copy of this order on the aforesaid persons, giving the address C/o Secretary, Jharkhand State Electricity Board, HEC Township, Dhurwa, Ranchi, through special messenger at the cost of this Court, as this Court intends to initiate as suo motu contempt proceeding against them.

Mr. Rajendra Krishna, learned counsel for the Board, shall also inform the individual officers of their appearance. It will, however, be open to the officers to appear through lawyer and to file show cause reply individually.

In view of the fact that the orders of appointment, prima facie seems to have been issued in violation of the Court's order aforesaid, we also allow the petitioner to implead Mr. K.P. Sinha, Member (Generation & Distribution) as respondent No. 14, Mr. S.N. Akhauri, Member (Rural Electrification) as respondent No. 15, Mr. G.N.S. Munda, Member (Transmission) as respondent No. 16, Mr. M.C. Suvarno, Chairman, Manpower Committee as respondent No. 17, Mr. A.M. Rao, Member, Manpower Committee as respondent No. 18, Mr. Virendra Prasad, Manpower Committee as respondent No. 19, Mr. Madhav Sinha, Chairman, Revenue Collection & Assessment Committee as respondent No. 20, Mr. N.D. Prasad, Member-Secretary, Revenue Collection & Assessment Committee as respondent No. 21, Mr. R.K. Shukla, Member, Revenue Collection & Assessment Committee as respondent No. 22, Mr. Satish Chandra Raut, O.S.D. as respondent No. 23, Mr. Jawahar Lal Mehta, Advisor as respondent No. 24, Mr. Ajay Kumar Singh, Technical Advisor of Chairman as respondent No. 25, Mr. Nawal Kishore Prasad Sinha, Under Secretary as respondent No. 26, Mr. Madan Mohan Choudhary as respondent No. 27, Mr. Muchkund Mallick "Mukur", Accountant as respondent No. 28, Mr. Madhusudan Prasad, Steno Gr-I as respondent No. 29, Mr. Bahulayan, Steno Gr-II as respondent No. 30 and Mr. Kunwar K. Lal, Information Technology Cell as respondent No. 31, all C/o Secretary, Jharkhand State Electricity Board.

Let notices be issued on respondent Nos. 8 to 13 and the newly added respondents No. 17 to 31 to show cause as to why their letters of appointment, as issued by the respondents, be not called for and be not cancelled. For issuance of notices, Talbana etc. must be filed by the petitioner in Court within ten days from today, falling which this application, as against them, shall stand rejected without further reference to a Bench.

The Secretary, Jharkhand State Electricity Board, is also directed to serve a copy

of the notice on the individuals. Counsel for the Board will inform the Secretary of this order, who is also present in the Court.

Let this case be listed for further hearing along with CWJC No. 1793 of 2001 under the heading "for orders" on 7th September, 2005, if possible, at 2.15 p.m.

Until further orders, respondent Nos. 8, 9, 10, 11, 12, 13 and the newly impleaded respondent Nos. 17 to 31 are prohibited from functioning. The Chairman, Members and the Secretary of the Jharkhand State Electricity Board are also directed not to take work from the aforesaid persons until further orders of this Court. However, it will be open to one or other private individual to appear and ask for appropriate notification/clarification of the interim order.

Let a copy of this order be handed over to the counsel for the parties.

The Court Master is directed to keep both the sets of file produced by Mr. Rajendra Krishna, learned counsel for the Board, in a sealed cover for perusal of the Court."

3. Counsel for the petitioner submitted that in view of order aforesaid dated 20th July, 2005, all those who were engaged without advertisement, have been removed. This has been accepted by the learned counsel for the Jharkhand State Electricity Board (Board for short).

4. Respondent Nos. 9, 10, 12, 13, 14, 15, 16, 17, 21, 22, 23, 25, 28, 29, 30 and 31 have appeared through their respective counsel. According to them, there being a need, the Board engaged them taking into consideration of their experience. It was further submitted that the respondents have not been removed but they have been restrained from work in view of order of this Court.

5. After hearing the parties, we find that all the respondents including those who have appeared, were engaged without following any procedure, such as advertisement, interview and selection.

6. In the circumstances, if the Board has stopped taking work from them, the Board should not allow them to function. They should to be treated to have been disengaged by the Board.

7. So far as the Chairman and Members of the Board are concerned, the State Government having decided to re-constitute a Board, no further order is required to be passed in this respect.

8. The prayer, as made by the petitioner, having become infructuous, counsel for the petitioner sought permission to withdraw this writ petition. It is, accordingly, dismissed as withdrawn.

9. Let the original file of the Board be handed over to Mr. Dilip Jerath, counsel for the Board.

10. Let a copy of this order be handed over to the counsel for the parties for its communication.