
(2013) 01 PAT CK 0012
In the Patna High Court
Case No : CWJC No. 18382 of 2012

Rishi Raj and Another

APPELLANT

Vs

The Bihar State Electricity Board and Others

RESPONDENT

Date of Decision : 08-01-2013

Acts Referred:

Citation : (2013) 3 PLJR 134

Hon'ble Judges : S.N. Hussain, J

Bench : Single Bench

Advocate : S. Kishore and Jai Kishor Poddar, for the Appellant; Anand Kr. Ojha and Ashok Kumar, for the Respondent

Judgement

S.N. Hussain, J.—I.A. No. 7470 of 2012 has been filed by the petitioners for impleading Chairman-cum-Managing Director, Bihar State Power (Holding) Company Ltd. and Managing Director, Bihar State Power Transmission Company Ltd. as party respondent Nos. 6 and 7 respectively to the writ petition. Learned counsel for the respondent-Board and its authorities raised no objection with respect thereto as he is also appearing for the newly added respondent Nos. 6 and 7. Accordingly the aforesaid interlocutory application is allowed and the aforesaid two persons are added as respondent Nos. 6 and 7 to the writ petition. This writ petition has been filed by two petitioners challenging the decision of Selection-cum-Interview Committee constituted by Board's Office Order dated 16.1.2012 declaring both the petitioners "unfit" for appointment to the post of Assistant Electrical Engineer/Assistant Executive Engineer and also challenging letter dated 10.9.2012 issued by the Joint Secretary of Bihar State Electricity Board (hereinafter referred to as "the Board" for the sake of brevity) communicating the petitioners about rejection of their candidatures for the said posts. Petitioners have also sought direction to the respondents to issue orders of appointment in their favour on the aforesaid posts and for consequential benefits in the light of decision of the Chairman of the Board dated 15.12.2009.

2. Learned counsel for the petitioners stated that both the petitioners were

appointed on compassionate ground in the Board on various posts much earlier and subsequently Employment Notice No. 4 of 2007 (Internal) was advertised inviting applications on prescribed proforma from eligible employees of the Board for internal appointment on the post of Assistant Electrical Engineer (General Cadre)/Assistant Executive Engineer (G.T.O. Cadre) against reserved 2% quota for internal recruitments. The petitioners at the relevant time having the required qualification of Bachelor of Engineering in Electronics and Communication, each securing above 60% marks, submitted their respective applications in the prescribed proforma through proper channel before the last date i.e. 31.1.2008.

3. Learned counsel for the petitioners submitted that thereafter another Employment Notice No. 5 of 2007 was issued by the Board inviting applications from eligible candidates for appointment on the post of Assistant Electrical Engineer (General Cadre)/Assistant Executive Engineer (G.T.O. Cadre) alongwith other posts for general category and the last date fixed for submission of application was 13.3.2008 with general instruction that written test and interview for selection will be held for such candidates. The petitioners being eligible in the general category also applied pursuant to Employment Notice No. 5 of 2007 through proper channel.

4. Learned counsel for the petitioners averred that no condition of written test/interview was provided in Employment Notice No. 4 of 2007, which was for 2% posts reserved for under employed, hence the Board constituted a Committee vide Office Order No. 1212 dated 15.4.2008 for scrutiny of applications in response to the said employment notice and the said Committee held its meeting on 15.4.2008 and declared both the petitioners eligible for the post of Assistant Electrical Engineer (General Cadre)/Assistant Executive Engineer (G.T.O. Cadre).

5. Learned counsel for the petitioners also averred that Employment Notice No. 5 of 2007 being for all the candidates in general, the process of selection was entrusted to National Power Training Institute (NPTI), Faridabad in the light of said employment notice. Petitioner No. 1 had appeared in Computer Literacy Test and was declared successful vide Office Order No. 203 dated 17.1.2008 and in the list his Roll No. 202 was recorded at Serial No. 98. Thereafter both the petitioners appeared in the written test conducted by NPTI, Faridabad on 27.4.2008 in the light of Employment Notice No. 5 of 2007, whereafter they were informed that petitioner No. 1 and petitioner No. 2 secured 29.50 marks and 41.00 marks out of 150 marks in the written test as per Employment Notice No. 5 of 2007. The said marks obtained by the petitioners were placed before the Chairman with a note that both of them belonged to unreserved category and they had not obtained minimum qualifying marks as such it was not desirable to consider their employment in the light of Employment Notice No. 4 of 2007, which was approved by the Chairman on 14.10.2008.

6. Learned counsel for the petitioners asserted that thereafter the petitioners filed representations and reminders before the Chairman of the Board stating that there was no minimum qualifying marks provided for Employment Notice

No. 4 of 2007 (Internal) and in that light legal opinion was obtained from the Senior Law Advisor, who opined that the entire process of selection and recruitment against the Employment Notice No. 4 of 2007 (Internal) have to be completed on the basis of terms and conditions given in that employment notice. In the light of the said opinion, the Joint Secretary of the Board while recommending the case of the petitioners for appointment ordered for asking to appear in interview and to clear Computer Literacy Test before issue of offer letter vide letter dated 14.12.2009, which was ultimately approved by the Chairman on 15.12.2009.

7. Learned counsel for the petitioners claimed that subsequently Board initiated process of conducting Computer Literacy Test and since petitioner No. 1 had already cleared the test, he was exempted from appearing in the said test, whereas petitioner No. 2 appeared in Computer Literacy Test and was declared "pass" on 4.10.2010. But thereafter no action was taken by the Board for conclusion of selection process in the light of Employment Notice No. 4 of 2007 (Internal), hence petitioners filed CWJC No. 4397 of 2011 for directing the respondents authorities to issue letters of appointment in favour of the petitioners on the said posts. The said writ petition was disposed of on 2.12.2011 directing the respondent-Board to complete the selection process of the petitioners and take a final decision in accordance with law within two months.

8. Learned counsel for the petitioners further stated that Board vide its Office Order dated 16.1.2012 constituted a Selection Committee for selection and interview of the candidates for appointments on the said posts in the light of Employment Notice No. 4 of 2007 (Internal), but the selection process could not be completed within the time allowed by the court and hence the petitioners filed M.J.C. No. 3014 of 2012 and during the pendency of the said contempt petition the Board constituted a Selection and Interview Committee, whereafter both the petitioners were interviewed on 27.2.2012, whereafter petitioner No. 2 appeared in Computer Literacy Test and cleared the same, whereas petitioner No. 1 had already cleared the said test and was exempted. Thereafter, the Selection Committee arrived at the conclusion that taking into account the marks obtained by the petitioners in the written test held in the light of Employment Notice No. 5 of 2007, the petitioners had obtained much less marks than that of marks obtained by the last selected candidate through open advertisement and declared both the petitioners "unfit" for appointment to the said post in the light of selection of AEE under Employment Notice No. 4 of 2007 (internal). Thereafter, the Joint Secretary vide the impugned letter dated 10.9.2012 communicated to the petitioners that they were not found "fit" for the said post.

9. Learned counsel for the petitioners also submitted that after passing of the said order, M.J.C. No. 3014 of 2012 was dismissed by a Bench of this court granting liberty to the petitioners to challenge the decision of Selection Committee and consequential orders before appropriate forum in accordance with law.

10. Learned counsel for the petitioners argued that the impugned orders as well as the findings of the Selection Committee were absolutely illegal, arbitrary and perverse and hence they had confused the conditions provided in the Employment Notice No. 04 of 2007 (Internal) and Employment Notice No. 5 of 2007 (Open).

11. On the other hand, learned counsel for the respondents vehemently opposed the contentions of learned counsel for the petitioners and stated that Employment Notice No. 4 of 2007 was for internal candidates including petitioners in which only interview was required, whereas Employment Notice No. 5 of 2007 was for open recruitment in which written test and interview both were required.

12. Learned counsel for the respondents also submitted that since Employment Notice No. 4 of 2007, for internal candidates, did not require any marks in written test and hence on the direction of authorities, petitioners were interviewed and they got only 14 out of 30 marks and 9 out of 30 marks respectively and after adding written test marks and interview marks together the performance of the petitioners was dismal obtaining only 43.5 and 50 marks respectively out of 180 marks, whereas the marks obtained by the last appointed candidate of Employment Notice No. 5 of 2007 was 74.50 and 75.50 out of 180 marks.

13. Learned counsel for the respondents averred that in the said circumstances marks obtained by the last appointed candidate of Employment Notice No. 4 of 2007 (Internal) was not to be considered as in the public employment best among the lot is to be taken for benefit of the institution, specially when the post of Assistant Electrical Engineer (General Cadre)/Assistant Executive Engineer (G.T.O. Cadre) are vital and crucial posts in the Board, which affects the working of the Board itself.

14. Thus learned counsel for the respondents argued that the impugned orders had been passed by the authorities concerned after acting in accordance with earlier decisions of this court and after fulfillment of all legal procedures and also after considering what was best in the interest of institution, namely the Board. Hence, he claimed that no interference is required in the aforesaid order,

15. From the averments made by learned counsel for the parties and the materials on record, it is quite apparent that the crux of the dispute is whether appointment as per two Employment Notice No. 4 of 2007 (Internal) and Employment Notice No. 5 of 2007 (Open) are legally be clubbed together for considering the appointment of petitioners.

16. It is not in dispute that Employment Notice No. 4 of 2007 was for only with respect to 2% of the posts for internal candidates already working in the Board and hence as per the notice only interview was required to be taken for appointment of such candidates (under employed). It is not in dispute that both the petitioners fulfilled all the requirements for filing their applications in

response to the said employment notice and it was only these two persons, namely the petitioners who were found suitable as per Employment Notice No. 4 of 2007 (Internal). It is also not in dispute that both the petitioners were declared successful in Computer Literacy Test on 17.1.2008 and 4.10.2010 respectively.

17. It is also not in dispute that as per Employment Notice No. 4 of 2007 (Internal) only two candidates, namely the petitioners were found eligible and having cleared Computer Literacy Test, interview was taken in which they obtained 14 and 9 marks respectively out of 30 marks. Thereafter nothing else was to be done by the authorities concerned as per Employment Notice No. 4 of 2007 (Internal) and the authorities were only to decide the selection of petitioners for the post concerned on its basis. Petitioners being the only two eligible candidates for 2% of the post reserved for internal candidates of the Board and they having obtained sufficient marks i.e. over 30% marks, no option was left for the authorities except to select and appoint them for the concerned post of Assistant Electrical Engineer (General Cadre)/Assistant Executive Engineer (G.T.O. Cadre) in the light of Employment Notice No. 4 of 2007 (Internal).

18. So far Employment Notice No. 5 of 2007 is concerned, it was an open advertisement for all the candidates apart from 2% reserved for internal candidates and hence it was completely different transaction absolutely unconnected with Employment Notice No. 4 of 2007 (Internal). The petitioners being eligible for open category also had applied, but their said applications in response to Employment Notice No. 5 of 2007 and the written test held therein had no concern with the selection process as per Employment Notice No. 4 of 2007 (Internal) in which no written test was at all required.

19. In the Board, recruitments to the post of Assistant Electrical Engineer (General Cadre)/Assistant Executive Engineer (G.T.O. Cadre) are governed by the BSEB Electrical Engineering (General Cadre) Rules, 1976 and the BSEB (Generation-cum-Transmission Cadre) Rules, 1976 and the BSEB Junior Electrical Engineering (General Cadre) Rules, 1982. The Board vide its Notification No. 540 dated 13.8.2005 made amendments in the Rules and provided that employees of the Board other than JEE, who pass the decree in Engineering, AMIE or equivalent examination while in service or before entry in the service of the Board shall also be eligible for promotion to the rank of Assistant Electrical Engineer/Assistant Executive Engineer for which an additional 2% post of direct recruitment quota shall be reserved. It was also provided therein that 62% of the vacancies of the post of Assistant Electrical Engineer/Assistant Executive Engineer shall be filled up by direct recruitment and it included 2% quota kept reserved for eligible under employees of the Board, whereas 60% would be for open recruitment. Hence, in the light of the aforesaid amended Rules, two different Employment Notice No. 4 of 2007 and Employment Notice No. 5 of 2007 were issued for two completely different quotas which could not be legally

intermingled by the authorities concerned.

20. In the light of the aforesaid specific Rules, the legal opinion dated 25.11.2009 given by the Senior Law Advisory-cum-Additional Secretary of the Board at the instance of the Chairman of the Board clearly mentioned that no minimum marks had been fixed as eligible criteria for appointment against 2% quota of internal recruitment and the entire process of recruitment against Employment Notice No. 4 of 2007 had to be completed on the basis of terms and condition given in the said employment notice. The said opinion was placed before the Secretary of the Board to consider before issuing offer letter to the petitioners as petitioners had to appear in interview and Computer Literacy Test as part recruitment process. The Secretary of the Board vide his note dated 14.12.2009 found the proposal fit to be accepted and recommended for approval, whereafter the Chairman of the Board approved the same on 15.12.2009.

21. The law in this regard is well settled that the process of recruitment of specific quota has to be governed by the procedures prescribed in the advertisement and the procedure of other quotas of appointment must not be adopted. Even after a candidate had applied for both the quotas, each application had to proceed separately in accordance with procedure prescribed in the advertisement for the quota concerned and shall have no concern with the procedure prescribed in the advertisement of the other quota. In this regard reference may be made to three decisions of the Apex Court in case of N.T. Bevin Katti, etc., Vs. Karnataka public Service Commission and others, ; in case of Karnataka Public Service Commission and others Vs. B.M. Vijaya Shankar and others, ; and in case of Sardara Singh and others, etc. Vs. State of Punjab and others, .

22. In the earlier writ petition bearing CWJC No. 4397 of 2011, which was also filed by the petitioners, a Bench of this court vide order dated 2.12.2011 had specifically directed the respondent-Board and its officials to complete the selection process of the petitioners and take a final decision in accordance with law. But since the impugned orders were passed on 16.1.2012 and 10.9.2012 by the authorities concerned during the pendency of M.J.C. No. 3014 of 2012, the said case was disposed of by a Bench of this court vide order dated 12.9.2012 granting liberty to the petitioners to raise their grievances against the said orders.

23. Surprisingly enough in spite of clear provisions of law made in the Rules as well as the contents of both the employment notices and the specific direction of this court, the authorities again committed the same mistake by holding that since Employment Notice No. 5 of 2007 (External) was open for all categories and both the petitioners had applied against the said employment notice, it was decided that both of them will take a common examination to be conducted by NPTI, Faridabad against Employment Notice No. 5 of 2007 (External) and on the basis of marks obtained in the written test of Employment Notice No. 5 of 2007 (External), merit list of Employment Notice No. 4 of 2007 (Internal) will be

prepared.

24. This shows a complete lack of understanding with respect to the specific provisions of law and the different requirements as prescribed in the two Employment Notice No. 4 of 2007 (Internal) and Employment Notice No. 5 of 2007 (External), which were for two different quotas as prescribed in the Rules. The authorities again intermingled Employment Notice No. 4 of 2007 (Internal) with Employment Notice No. 5 of 2007 (External) which was not at all permissible specially when the petitioners, who had admittedly applied in response to Employment Notice No. 4 of 2007 (Internal), fulfilled all criteria, passed the Computer Literacy Test and fared satisfactorily in the interview also. Hence, there was no occasion for adding marks obtained by the petitioners in the written test held in the procedure for Employment Notice No. 5 of 2007, which was for open category.

25. The impugned acts of the authorities are completely against the spirit of the aforesaid Rules as amended to provide 2% quota for under employed persons, who had been working in the Board and for promoting them a simpler method was prescribed to prevent stagnation in their services. In the said circumstances, this writ petition is allowed, the impugned orders of the authorities dated 16.1.2012 and 10.9.2012 are hereby quashed and the respondents are directed to appoint both the petitioners on the post of Assistant Electrical Engineer (General Cadre)/Assistant Executive Engineer (G.T.O. Cadre) forthwith in the 2% quota reserved for under employed in the Board as per Employment Notice No. 4 of 2007 (Internal).