

(2019) 11 P&H CK 0145

In the Punjab And Haryana At Chandigarh

Case No : Civil Miscellaneous No. 14676, Civil Writ Petition No. 2017 In Civil Writ Petition No. 65 Of 1992

Satbir Singh And Others

APPELLANT

Vs

Haryana State Electricity Board And Others

RESPONDENT

Date of Decision : 02-11-2019

Acts Referred:

Citation : (2019) 11 P&H CK 0145

Hon'ble Judges : Harsimran Singh Sethi, J

Bench : Single Bench

Advocate : Harshit Joon, Sumeet Jain, R.K. Malik, Sandeep K. Rana, Rajinder Kumar, Pardeep Singh Poonia

Final Decision : Dismissed

Judgement

Harsimran Singh Sethi, J

CM-14676-CWP-2017

1. Present application has been filed for recalling the order dated 19.09.2013, vide which the present writ petition was dismissed for non-prosecution.

Notice of the application had already been given to learned opposite counsel.

Learned State counsel as well as learned Senior counsel appearing on behalf of private respondents raises no objection in respect of the prayer made in the present application.

Keeping in view the averments made in the application, which are duly supported by an affidavit, the present application is allowed and order dated 19.09.2013 is recalled and the writ petition is restored to its original number and status.

CWP-65-1992

In the present writ petition, the challenge is to the recruitment/promotion policy dated 06.04.1988 (Annexure P-5), by which, the promotion were to be made to

the post of Helper Grade-I.

As per the said policy (P-5), 50% posts were reserved for direct recruitment to be filled up from Matric ITI qualified personnel and 50% posts were to be filled up by promotion from the Helpers Grade-II, having four years of experience on seniority basis. The relevant portion of the policy is as under:-

"2. HELPER GRADE - I (` 825/-1300)

i) 50% posts shall be filled up by direct recruitment from Matric ITI qualified persons in the trade of: -

1. Fitter (electrical/Mechanical).
2. Electrician
3. Welder
4. Turner
5. Machine Operator (Machinist)
6. Moulder.
7. Carpenter/Pattern Maker.
8. Black-smith.
9. Painter
10. Die Maker.
11. Workshop Operator (Boiler attendant, ASSA, Filtration Set Attendant etc.).

The departmental candidates if any having ITI qualifications, will also be eligible for recruitment.

ii) 50% posts shall be filled up by promotion from Helpers Grade-II having 4 years experience as such, on seniority basis.

OR

By transfer."

By order dated 22.08.1991, private respondents, who were having the qualification prescribed for direct recruitment, were appointed against the posts, which were reserved for the direct quota. The challenge of the petitioners is to the said action on the ground that they were senior to the private respondents and hence, had a preferential right for promotion over the private respondents for promotion to the posts of Helper Grade-I.

In regard to the claim of the petitioners, respondents have filed the reply, in which, it has been stated that there are two sources for filling up the posts of Helper Grade-I i.e. 50% by direct recruitment and 50% by promotion and the

private respondents were appointed against the direct quota posts as they fulfilled the qualification laid down for the said posts by way of internal selection, whereas, the petitioners are not matriculate/ITI qualified, hence, they cannot raise any grievance in this regard. It has been further stated that petitioners are also not eligible for promotion under the promotion quota as they don't have four years required experience. The relevant part of the reply is as under:-

"8. In reply to para 8 of the writ petition, it is submitted that the respondents No.3 to 25 were appointed against direct quota as mentioned in the recruitment and promotion policy placed in Annexure P-5 vide Sr. No.2(i) of Helper Grade-I, whereas the petitioners are not Matric/ITI and also failed to complete 4 years experience and as such they have not been promoted. They will be promoted after completing 4 years service.

9 and 10. In reply to paras 9 and 10 of the petition, it is submitted that the representation made by the petitioner has no relevancy at all in view of the reply given in paragraph 4 above. The respondents No.3 to 25 and 26 to 36 have been appointed/promoted in accordance with the minutes of the meeting held on 22.3.1991. The copy of which has already been annexed as Annexure R/1."

I have heard learned counsel for the parties and have gone through the record with their able assistance.

The question, which arises for the determination before this Court, is as to whether, the promotion policy dated 06.04.1988 (Annexure P-5) is a valid policy and the action of the respondents in appointing the in service candidates even against 50% direct quota, who fulfilled the qualifications for the same, is permissible or not.

Counsel for the parties agree that not only the petitioners, but even the private respondents have already retired from service. As counsel for the petitioners is pressing the present writ petition, the question raised before this Court is being answered though it might be academic as far as the relief, which is being claimed by the petitioner in the present writ petition.

Once, there are two sources of recruitment to the posts of Helper Grade-I i.e. 50% by direct recruitment and 50% by promotion, having different eligibility qualifications, petitioners who are seeking promotion, against the 50% promotion quota, cannot raise any grievance with regard to the 50% posts, which are to be filled by way of direct recruitment. In this case, the direct quota posts have been filled from in service candidates, who fulfilled the qualifications required for direct appointment to the posts of Helper Grade-I i.e. matriculation/ITI qualification. Admittedly, the petitioners do not fulfill the said qualifications and therefore, they cannot lay down any claim in respect of the 50% posts, against which the private respondents were appointed on account of non-eligibility in respect of the qualifications required for filling up the 50% direct quota posts. It is immaterial as far as the petitioners are concerned within 50% posts to be filled by direct recruitment, are filled by in service candidates or from

the open market, once petitioners are ineligible to compete for the same.

Further, the petitioners, who are Helpers Grade-II, can only claim promotion on the basis of seniority against 50% posts of Helper Grade-I. The petitioners are not even eligible for the same as they did not have four years experience on the said posts, which is necessary eligibility for promotion. Therefore, once the petitioners do not fulfill the eligibility as required for appointment against 50% posts meant for direct quota and also are not eligible to be promoted against 50% posts meant for promotion quota as they do not have four years experience on the day when the promotion were made, the claim of the petitioners for promoting them in preference to the private respondents, against the posts meant for direct quota, cannot be accepted.

Further, nothing has been shown as to how the promotion policy is bad or is causing prejudice to the petitioners. Merely that petitioners are not eligible to be appointed against direct quota post will not render the policy arbitrary or ultra-vires, therefore, the prayer of the petitioner in this regard cannot be accepted.

Under these circumstances, the prayer made by the petitioners cannot be accepted and hence, there is no ground to interfere with the action of the respondents in appointing the private respondents against 50% direct quota posts, for which they had the qualifications though, they might be junior to the petitioners in the cadre of Helper Grade-II.

Dismissed with no order as to costs.