

(2010) 11 SHI CK 0008
In the High Court Of Himachal Pradesh
Case No : CWP (T) No. 6475 of 2008

Sh. Jiwan Kumar and Others	Vs	APPELLANT
State of Himachal Pradesh and Others		RESPONDENT

Date of Decision : 23-11-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 21, 309
Electricity (Supply) Act, 1948 — Section 5, 79

Citation : (2010) 11 SHI CK 0008

Hon'ble Judges : V.K. Sharma, J

Bench : Single Bench

Judgement

V.K. Sharma, J.—The petition has been filed for grant of the following substantive reliefs vide para 7 (i) to (v):

(i) That the Respondent Board may be directed to consider and to appoint the applicants as Junior Engineer (Electrical) forthwith.

(ii) That the Respondent Board may be directed to give all consequential benefits like seniority and back wages to the applicants w.e.f the date the Respondent Board appoints the persons of 1982 batch and junior 1983 batch as Junior Engineer (Electrical) forthwith.

(iii) That the action of the Respondent Board in treating the applicants as ineligible for appointment as Junior Engineer (Elect) on the basis of having cross upper age limit of 38 years, may kindly be declared, unfair, illegal, discriminatory, malafide, unconstitutional and thus violative of Article 14, 16 & 21 of the Constitution of India.

(iv) That the Respondent Board may be directed to invoke the "relaxation principle" in the case of the applicants and then to consider and appoint the applicants as JE(Elec) forthwith.

(v) That the prescription of age limit of 18-38 years in the case of the applicants,

by the Respondent Board, while making batch-wise appointment to the post of Junior Engineer (Elec), may kindly be declared illegal, arbitrary based on no classification/invalid classification, may kindly be declared ultra-vires of the Constitution of India.

2. In reply on behalf of Respondents No. 4 and 5, the following averments have been set up vide paras 1 (i) to (iv) of preliminary submissions and paras 3 and 6(vi) on merits:

In context, the replying Respondents submit with utmost respect that the H.P. State Electy. Board is a body corporate incorporated u/s 5 of the Statute namely Electricity (Supply) Act , 1948 having perpetual succession and a common seal with powers to acquire and hold property both moveable and immovable. Section 79 of the Act ibid empowers the HPSEB - Board to make its rules and Regulations. It is the respectful submission of the replying Respondents that in exercise of its powers to frame rules and regulations etc. the replying Respondents have since framed Recruitment and promotion Regulations for all the categories of employees including the category of Junior Engineers. According to the provisions of R&P Regulations, 1980 a copy of which is placed on record as Annexure RA-I 80% posts are to be filled in by direct recruitment from amongst the personnals having matric as basic qualification with diploma in Elect. Engineering from the recognized institution ((and within the age group of 18 to 27). However later on the Govt. of Himachal Pradesh (Respondent-I) in exercise of powers vested under Article 309 of the constitution and in consultation with the H.P. Public Service Commission amended Himanchal Pradesh Civil Service Bharti (Adhiktam Ayu Seema) Nimavali Rules-1980 vide its notification ; dated 27.3.98 Annexure-RA-II and substituted age limit for direct recruitment in Class-III & IV services to 38 years, relaxable for SC/ST/Other categories to the extent permissible under the general and special orders of the State Govt. issued from time to time. This upper age limit of 38 years was made applicable with immediate effect. These instructions raising the upper age limit to H.P. Civil Services Barti (Adhiktam Ayu Seema) as contained in above notification were also made applicable in the Respondent Board vide its office Memorandum dated 18.5.98 Annexure-RA-II. Among these posts 20% of the posts are to be filled in by promotion from amongst the Surveyors having 5 years regular service & ITI certificate in the trade of Surveyor.

Out of the above 80% direct quota for recruitment 50 % posts are to be filled in on batch wise basis, as is evident from the perusal of notification dated 3.8.98 a copy of which is placed on record as Annexure-RA-III.

The replying Respondents have since started the process to recruit Junior Engineers against 50% quota for batch-wise and the vacancies were notified to the Employment Exchanges, in H.P. on 5.8.99, specifically mentioning therein the age limit for recruitment ;between 18 to 38 years as per Annexure-RA-IV. The employment Exchanges have since sponsored the names of the candidates on batch wise basis and consequently the replying Respondents had fixed the dates

i.e 25th and 26th.11.99 for verification of the documents/testimonials of the candidates. It is also the respectful submission of the reply Respondents that no dates have yet been fixed for the interview/test etc. and thus there was no question of declaration of the result of the same at this stage as wrongly averred by the applicants . The applicants herein will have the right of consideration of their candidature, but cannot seek their selection as a matter of right in as much as the selection is to be made by the competent authority considering all the aspects of the recruitment process in accordance with the R&P Regulations. The action of the replying Respondents is perfectly legal, intravires bonafide one and consequently warrants no interference by this Ld. Tribunal.

That the applicant herein has no locus-standi to file and maintain the present application in as much as no legal or vested right(s) of the applicants herein have been infringed or violated by the replying Respondents in any way or in any manner nor there in any procedural irregularity. Consequently, the O.A. is not maintainable.

That the application discloses no enforceable cause of action in favour of the applicants and against the replying Respondents. On this score, the O.A is not maintainable and deserves only dismissal.

In reply to this para, it is submitted that there was no interview fixed for the post of JE (E) on 25 & 26.11.99 in the office of the Respondents No. 6. The candidates whose names had been sponsored by the Employment Exchanges and were within the upper age limit of 38 years were asked vide communication dated 8.11.99 Annexure RA-V to produce original/photocopies of their testimonials on the said dates for screening purpose only. The Respondent No. 1 framed the batch wise recruitment policy vide H.P. Govt. letter notification dated 21.4.98 which was adopted by the Respondent Board on 3.8.98 vide Annexure-RA-III. The Respondent No. 5 & 6 adopted the upper age limit of 38 years vide No. HPSEB(SECTT)/R&E/106-1/98-15570-770 dated 18.5.98 as notified by the Respondent No. 1 for recruitment in class-III & IV in its notification No. Per (AP-II)/8(2)-3/84 dated 27.3.98 Annexure RA-II. It may be stated that the fixing of upper age limit is the sole discretion of the rule making authorities/employer only. Those persons who were within the age limit of 18-38 years were called to produce their testimonials because they were the only eligible candidates for submission of documents for the post of JE(E) which fact is clear from the call letter dated 8.11.99, copy of call letter dated 8.11.99 is annexed as Annexure RA-V. In fact, the applicants have crossed the upper age limit of 38 years on the date of notification of the vacancies to employment Exchange and were not eligible for the post on batch-wise, recruitment as per H.P. Govt. notification No. Per (AP-II)8 (2)-3/84 dated 27.3.1998 vide which the maximum age limit for direct recruitment in the case of Class-III & IV services has been fixed as 38 years. (copy of notification dated 27.3.98) is annexed herewith as Annexure RA-II. As such there is no illegality, dis-crimination, malafide, arbitrariness and violation of Articles 14, 16 and 21 of the constitution of India in not calling the

applicants for submitting the documents. The candidate who were educationally qualified and were between the age of 18 years to 38 years on the date of notification of the vacancies were called for the submission of documents for the post J.E(Elect). 6(vi) That the contents of this para are wrong and hence denied, merely that the applicants are matriculates and having 3 years diploma does not mean that the applicants had become eligible to be considered for appointment as J.E. (Elect.) under the Respondent Board. The person must fulfill all the requirements as per R&P Regulation. The academic as well as Technical educational qualification of a candidate does not make the candidate eligible for the post, but he should be otherwise also eligible in accordance with the R&P Regulation and fulfil other terms and conditions as prescribed by the Govt./Board from time to time. In the instant case applicants have not fulfilled the age criteria as prescribed by the Respondent No. 1 in the notification No. Per(AP-II)B(2)-3/84 dated 27.3.98 i.e Annexure RA-II which is one of the important eligibility conditions for consideration of the applicant(s).

3. Admittedly, this case relates to batch-wise recruitment of Junior Engineers (Electrical) in the State Electricity Board for which, as per Rules, the upper age limit vide Annexures RA-II and RA-IV is 18 to 38 years. Judicial notice of the fact that upper age limit for Government employment in Himachal Pradesh has since been raised up to the age of 48 years as is also apparent from letter dated 28.11.1998, Annexure-A-12. It is also not disputed that in some departments such as Ayurveda, it has further been raised up to 52 years. It is also submitted that the upper age limit of 38 years has been relaxed by the Respondent-Board in some cases earlier vide letter No. HPSEB-CEP/104-7 (Interview)/99-13081-13165, dated 5.1.2000, addressed to "All the Regional/ District Employment Officers/Indora & Employment Exchanges in H.P." by the Chief Engineer, HPSEB, Shimla, a copy of which has also been brought on record by the Petitioners.

4. In view of the above, the petition is disposed of with a direction to Respondents No. 4 and 5 to consider the case of the Petitioners for appointment as Junior Engineer (Electrical) on batch-wise basis in relaxation of upper age limit as has already been done in the case of similarly situate persons in terms of the aforesaid letter, dated 5.1.2000, as also the existing policy of the State Government in this regard within a period of two months from today on production of a certified copy of this judgment by the Petitioners within 15 days.

5. With these observations, the writ petitions are disposed of, so also the pending application(s), if any.