
(2014) 04 PAT CK 0083
In the Patna High Court
Case No : CWJC No. 18532 of 2013

Shashi and Others

APPELLANT

Vs

Bihar State Power (Holding) Company Ltd. and Others

RESPONDENT

Date of Decision : 24-04-2014

Acts Referred:

Citation : (2015) 2 PLJR 325

Hon'ble Judges : Chakradhari Sharan Singh, J.

Bench : Single Bench

Advocate : Anju Kumari @ Anju Narain, for the Appellant; Vinay Kirti Singh, for the Respondent

Final Decision : Dismissed

Judgement

Chakradhari Sharan Singh, J.?The petitioners seek a direction from this Court to the Respondents to issue forthwith appointment letters in their favour on the post of Assistant Electrical Engineer (General Cadre)-Electrical/Assistant Executive Engineer (GTO Cadre)-Electrical on the basis of selection done pursuant to an advertisement "inviting applications for appointment against various posts". The petitioners have also sought for an order restraining the Respondents from proceeding with the recruitment process for the post of Assistant Electrical Engineer (AEE) as advertised vide Employment Notice No. 1/2013, as according to the petitioners, earlier recruitment process initiated vide employment Notice No. 7/2011 is yet to be completed. Case of the petitioners is that vide Employment Notice No. 7/2011, the erstwhile Bihar State Electricity Board had invited applications for various posts including the post of Electrical Engineer (General Cadre)-Electrical/Assistant Executive Engineer (GTO Cadre). The petitioners who fulfilled the eligibility criteria applied. Petitioner No. 1 applied against unreserved post whereas Petitioner No. 2 applied against backward class (Female) quota.

2. On the basis of written test, result of 3138 candidates was announced and after ten days, 208 candidates i.e. 1.5 time of the total vacancy were called for

documents verification. After document verification the Board called 163 candidates [Unreserved-77; EBC-33, SC-28, ST-4, BC-22, BC-6(F)] for joining on 15.10.2012. Some of the candidates did not join, whereafter the Board called 13 candidates [UR-11, ST-1, SC (F)-1] which included these petitioners for document verification on 17.1.2013 which was duly done. It has been pleaded in the writ application that the petitioners were told by the Authorities of the Board that the petitioners would be getting appointment/joining letters within a week as there were vacant seats on the account of either non-joining or leaving the organization after joining.

3. Subsequently, the Board was reorganized into five companies including Bihar State Power (Holding) Limited, Patna (hereinafter referred to as the "Company"). The Company came out with a new advertisement being Employment Notice No. 1/2013 in the third week of August, 2013 declaring 208 vacancies of the posts of Assistant Electrical Engineers.

4. In these facts and circumstances, the petitioners contend that they should have been issued appointment letters after documents verification done on 17.1.2013 against the posts which remained vacant due to non-joining of the candidates or leaving the job after joining. A counter affidavit has been filed on behalf of the Board.

5. Apart from taking a plea that the petitioners do not acquire any indefeasible right to be appointed merely on the ground that their names figure in the select list, it has been stated that appointments to the post of Assistant Electrical Engineers/Assistant Executive Engineers was completed against Employment Notice No. 7/11 as per the terms and conditions stipulated in the notice.

6. It has also been stated that 1.5 times candidates against the posts vacant due to non-joining of the candidates, including these petitioners, were called for verification of the certification/documents. However, in the meanwhile, the Board stood unbundled and requirements of manpower were redefined. Accordingly, Bihar State Power (Holding) Company Limited and its subsidiary companies took a decision independently for appointment of manpower in their Company. It has been stated that Advertisement No. 1/13 was published by the Bihar State Power (Holding) Limited, Patna for its subsidiary companies.

7. Mr. Rajendra Narain, learned Senior Counsel appearing on behalf of the petitioners has contended that unless there was any compelling circumstance or valid reason, the petitioners could not have been denied appointment against posts which remained vacant due to non-joining of candidates. He submits that the Respondent should have considered the cases of these petitioners first for appointment against the posts which remained vacant due to non-joining before re-advertising the post in advertisement No. 1/2013.

8. It is not the petitioners' case that any persons having inferior merit has been given appointment ignoring his claim. Further no case has been made out by the petitioners that preparation of waitlist was required as per the statutory rules or

any policy decision of the erstwhile Board. The Supreme Court in case of Bihar State Electricity Board Vs. Suresh Prasad and Others, has held that in absence of statutory rules to the contrary, the employer is not bound to prepare a waiting-list in addition to the panel of selected candidates and to appoint candidates from the waiting-list in case the candidates in the panel did not join. The Supreme Court in its judgment reported in Shankarsan Dash Vs. Union of India, has held that in the absence of Rules to such effect, there was no compulsion to prepare a waiting-list and as such the employer was not bound to fill up the posts which remained vacant because of the appointees failed to join by those candidates who were next below the last of the appointees who failed to join.

9. Further, this is an admitted position that the erstwhile Bihar State Electricity Board which had invited applications was re-organized and unbundled into five statutory companies. It has been stated in the counter affidavit that re-organization of the Board resulted into revising and re-defining the requirement of posts and in such circumstance, the action of the Bihar State Power (Holding) Company Limited, Patna in advertising the posts cannot be said to be arbitrary.

10. I find substance in the submission made on behalf of the Respondents. It is well settled law that even a selected candidate does not acquire any indefeasible right to be appointed against a post and for valid reasons appointment can be denied.

11. In the present case because of re-organization of erstwhile Bihar State Electricity Board, the requirements might have changed and in the circumstance the Bihar State Power Holding Company Limited elected to come out with a fresh development which cannot be said to be unfair and arbitrary.

12. In any view of the matter, it cannot be said that earlier process of selection through Employment Notice No. 7/11 was not complete. The Petitioners' claim that against the posts which remained vacant because of the non-joining should be directed to be filled up from the candidates below in the merit list has no merit in view of the law laid down in case of Bihar State Electricity Board vs. Suresh Prasad (supra) as well as in case of Shankarsan Dash vs. Union of India (supra). Accordingly, I do not find any merit in this application and this application is accordingly dismissed.