(1992) 12 PAT CK 0003

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 8470 of 1991

Shashi Shekhar Prasad Singh APPELLANT

Vs

The Bihar State Electricity Board and Others RESPONDENT

Date of Decision : 21-12-1992

Acts Referred:
Constitution of India, 1950 — Article 226, 227
Electricity (Supply) Act, 1948 — Section 79(c)

Citation : (1993) 1 PLJR 400

Hon'ble Judges : Aftab Alam, J

Bench : Single Bench

Advocate : S.J. Mukhopadhya, for the Appellant; Basudeva Prasad and S. Rafat Alam for Respondents 1 to 3 and M/s Chandramauli Kumar Prasad, Bipin Kumar Sinha, Abhay Prakash Sahay and Ranjit Sahay Tarun for Respondent 4, for the Respondent

Final Decision : Dismissed

Judgement

Aftab Alam, J.—This application under Articles 226 and 227 of the Constitution was filed initially challenging Employment Notice no. 9/91, dated 22.10.1991 inviting applications for appointment to the post of Director of Accounts in Bihar State Electricity Board (''the Board'', for short). A copy of the impugned notice is at Annexure-1 to the main writ petition. During the pendency of this application, another notice was issued being Employment Notice no. 12/91, dated 30.12.1991 slightly modifying the criteria relating to experience. The petitioner has brought the second Employment Notice on record as Annexure-18 to the amendment petition and now seeks to challenge the notice in so far as it lays down the experience criteria for direct recruitment to the post of Director of Accounts in the Board. The challenge is primarily based on the allegation that the experience clause was tailored to suit respondent no. 4 alone to the exclusion of the petitioner in particular and any other candidates in general. Mr. Mukhopadhya, Learned Counsel appearing on behalf of the petitioner, placed in some detail the careers of both the petitioner and respondent no. 4 with the

Board to make a grievance that there was a clear endeavour to nurture and promote the career of respondent no. 4 at the expense of others and as a consequence, the petitioner was being made to suffer.

2. The facts concerning the petitioner are simple. In 1984 the Board issued an advertisement for appointment to the post of Deputy Director of Accounts. The minimum qualifications and experience required were either a degree in Chartered Accountancy with seven years experience in accounts or an M.B.A. degree with ten years'' experience in accounts. The petitioner, who possessed the requisite qualifications, was then working in a private organisation. He applied in response to the advertisement, was selected and joined the Board as Deputy Director, Accounts on 12.8.1986. At the material time, the petitioner claimed to be the senior most Deputy Director, Accounts.

3. As regards respondent no. 4, it was stated that be was appointed as an Engineer Assistant in the Board in 1986 he had a bachelor''s degree in Electrical Engineering and in 1973 he was promoted to the post of Assistant Electrical Engineer and on 23.6.1973 was posted as Assistant Engineer (Planning) under the Executive Engineer (Planning) in the Board''s Planning Department dealing with financial planning. In the counter-affidavit filed on behalf of respondent no. 4 it is clarified that on being promoted to the rank of Assistant Electrical Engineer, the fourth respondent was posted under the Executive Engineer (Planning) on 23.2.1973 and thereafter he was posted as an Assistant Electrical Engineer (Planning) against a leave reserve post on 23.6.1973 and finally on 13.1.1975 he was posted as Assistant Electrical Engineer (Planning) on a regular basis where he was doing specialised work that includes macro planning, financial for various annual plans, five-years plan, cost benefits of schemes and returns on investments on projects etc. Mr. Mukhopadhya further stated that on 1.2.1980 a post of Deputy Director, Accounts (Planning) was created in the accounts cadre of the Board and on 31.12.1980 a notification was issued asking respondent no. 4 to hold charge of Deputy Director, Accounts (Planning) in addition to his duties as Assistant Electrical Engineer; respondent no. 4, however, continued to receive the salary of Assistant Electrical Engineer without any officiating allowance for holding charge of the post of Deputy Director, Accounts (Planning). On 19.8.1983 respondent no. 4 acquired the degree of Master of Financial Management (M.B.M.) which was admittedly equivalent to a M.B.A. degree. On 16.12.1983 the 4th respondent made a representation for his absorption on the post of Deputy Director, Accounts (Planning). His representation was received favourably and on 8.10.1988 a notification was issued by the Board whereby respondent no. 4 was ''absorbed'' as Deputy Director, Accounts (Planning) with effect from 19.8.1983, i.e., the date of his obtaining the M.B.M. degree. This absorption took the respondent out of the cadre of Assistant Electrical Engineers and put him in the accounts cadre; further by virtue of the retrospectivity given to the notification, the respondent was made senior to the petitioner and others in the cadre of Deputy Director, (Accounts). At this stage it was also pointed out that in response to the 1984

advertisement (for direct recruitment to the post of Deputy Director, Accounts) respondent no. 4 had also applied along with the petitioner but then it was the petitioner who was selected. In other words, though the respondent failed to compete with the petitioner for direct recruitment he was made senior to the petitioner by his retrospective absorption to the post.

4. The petitioner and some of his other colleagues working as Deputy Director, Accounts challenged the notification dated 8.10.1988 before this Court in C. W. J. C. No. 8102 of 1988. The High Court decided the writ petition in favour of the present petitioner and quashed the notification dated 8.10.1988 by its judgment and order dated 19.12.1988. It was held by the High Court that it was not open to the Board under the existing regulations to absorb respondent no. 3 (present respondent no. 4) in the cadre of Deputy Director of Accounts and in any case not from a retrospective date so as to affect the seniority of this petitioner who had entered into the cadre of Deputy Director of Accounts admittedly before 18.10.1988 when the impugned notification was issued. The judgment, accordingly, quashed the notification dated 18.10.1988.

5. As an instance of undue favour shown to respondent no. 4, it is again pointed out that while the aforesaid writ application was pending before this Court, three posts of Director of Accounts fell vacant and vide notification dated 5.7.1990 the respondent was given the charge of Director of Accounts subject to the final decision in the case.

6. Both the Board and respondent no. 4 preferred special leave petitions to the Supreme Court against the judgment of this Court dated 19.12.1990 passed in C. W. J. C. No. 8102 of 1988. The Supreme Court while disposing of the special leave petitions modified the High Court''s order vide its order dated 11.4.1991 which is reproduced below:

The view taken by the High Court that the petitioner (in S. L. P. No. 6303 of 1991) is not entitled to retrospective seniority with effect from August 19, 1983 cannot be found, fault with. However, the High Court has quashed the notification of the Board dated October 8, 1988. The result is that the petitioner (in S. L. P. No. 6303 of 1991) is neither here nor there. In fairness to the petitioners the High Court ought to have said that the petitioner is entitled to seniority with effect from October 8, 1988 i. e. the date of the notification absorbing him as the Deputy Director of Accounts. We accordingly modify the order of the High Court altering the operation of the notification with effect from October 8, 1988. Needless to state that the petitioner''s seniority would be determined with effect from October 8, 1988 in the cadre of Deputy Director, Accounts.

With this modification, the special leave petitions are disposed of.

7. The Supreme Court, thus, approved the absorption of respondent no. 4 on post of Deputy Director, Accounts, though fixing 8.10.1988 as the date of his entry to the post. The result was that the petitioner ranked senior to respondent no. 4 as a Deputy Director Accounts.

8. As a further instance of undue favour being shown to respondent no. 4 it is stated that even after the High Court''s judgment quashing the notification absorbing him to the post of Deputy Director of Accounts, respondent no. 4 was allowed to continue on the post of Director, the charge of which was made over to him during the pendency of the case and subject to final decision of the High Court. In this regard no heed was paid to a specific representation made by the petitioner alleging undue favour being shown to respondent no. 4. It is also stated that during the pendency of the special leave petitions at the Supreme Court an ex-cadre post of Director of Finance (Planning) was created vide notification dated 14.3.1991. This, according to the petitioner, was by way of a contingency plan to accommodate respondent no. 4 on this ex-cadre post in case the appeals before the Supreme Court were decided against him. Further, during the pendency of the special leave petitions at the Supreme Court an internal advertisement was issued on 26.3.1991 for filling up the pest of Director, Finance. The petitioner submitted a representation before the Board making an allegation that the terms of the advertisement were framed to suit respondent no. 4 only. On 31.5.91 the Board issued a modified notice only. The petitioner once again made a representation stating that even after the modification, the notice was aimed at accommodating respondent no. 1 to the exclusion of others.

9. Admittedly, however, no action was taken in furtherance of this advertisement and the post of Director, Finance (Planning) was not filled up on that basis.

10. In the meanwhile two developments took place; first the Supreme Court order (quoted above) came on 11.4.1991 whereby the absorption of respondent no. 4 to the post of Deputy Director, Finance was approved with effect from 8.10.1988; and secondly on 5.7.1991 Bihar State Electricity Board Accounts Service Cadre Rules, 1991 framed u/s 79 (c) of the Electricity Supply Act came into force.

11. Following the framing of the aforesaid statutory rules the impugned Employment Notice No. 9/91 dated 22.10.1991 was issued. This was followed by the modified notice no. 12/91 dated 30.11.1991.

12. The narration of the past events in such detail is intended to serve as the backdrop for the challenge to the Employment Notice for direct recruitment to the post of Director of Accounts. Instances, described as showing undue favour by the Board to respondent no. 4, have been cited to lend strength to the plea that on this occasion also the Board was bending the rules to promote the interests of respondent no. 4 even by eliminating the petitioner. To my mind, however the past facts, as narrated above, are of no practical significance. This is for two reasons. First, the career of respondent no. 4 with the Board, of which reference has been made by the petitioner, spans over a period of 22 years. It is obvious that during this period the Board did not have the same composition and the concerned respondent also worked under different individuals as his immediate and final superiors. The allegation of malafide is not raised against any individual person in the Board who might have been acting with the motive

to promote the career of respondent no. 4. What is vaguely and loosely alleged is that the ''Board and its authorities'' have been acting with the object to promote the 4th respondent and in a manner prejudicial to the interests of the petitioner. The petitioner''s allegations actually amount to, if I may use the expression an ''institutionalised malafide''. Such an allegation is most unusual and it is hardly possible to entertain such a plea.

13. Secondly, and this is more important, the absorption of respondent no 4 to the post of Deputy Director of Accounts with effect from 8.10.1988 has received the seal of approval by the apex Court. Any facts or events prior to the date of the Supreme Court order (11.4.1991) should have formed the subject matter of the previous litigation. And in fact the allegation of undue favour being shown to respondent no. 4 was raised by the petitioner on the basis of the same set of facts and circumstances, while challenging the absorption of respondent no. 4 to the post of Deputy Director of Accounts. Now taking the past facts into account in support of the plea of malafide would only imply that the Supreme Court while passing the order dated 11.4.1991, as quoted above, did not take into consideration those facts and the petitioner''s allegation based thereon. This would be wholly improper and impermissible.

14. For the reasons stated above all the past events and the petitioner''s allegation resting thereon must be ignored. Accordingly, the consideration of this case has to be undertaken by taking into account only the following three basic facts ; (i) the petitioner was appointed as Deputy Director of Accounts on 12.8.1986 (ii) respondent no. 4 was absorbed to the post of Deputy Director of Accounts with effect from 8.10.1988 and (iii) the Board has decided to fill up the post of Director of Accounts not by promotion but by direct recruitment and for that purpose has issued the impugned employment notice as contained in Annexure-18 laying down certain experience criteria.

15. Before considering the specific challenges raised against the employment notice, it would be convenient to examine the material rules in this regard. As already noted above, statutory rules, viz, Bihar State Electricity Board Accounts Service Cadre Rules, 1991 (''the Accounts Cadre Rules'', for short), framed u/s 79(c) of the Electricity Supply Act came into force with effect from 5.7.1991. A copy of these rules have been enclosed as Annexure-14 to the writ application. Rule 5 of the Accounts Cadre Rules lays down the initial strength of the cadre and gives the hierarchy of posts and the number of each post; rule 6 (1) provides that fresh recruitments to the cadre shall be made at the level of Accounts Officer ; Rule 6 (iv), however, is in the following terms :

6 (iv). Notwithstanding the provision that the direct recruitment in the cadre would be made only in the level of Accounts Officer, in the exigencies the Board may make direct recruitment in the ranks of Deputy Director of Accounts and Director of Accounts of persons having requisite qualifications as laid down in rule 7 with experience to be decided by the Board from time to time.

16. The next material rule for the purpose of this case is rule 11 dealing with the line of promotions and the requisite experience in one post for promotion to the next higher post. Rule 11 is re-produced below:

11. Line of Promotion.?(i) The line of promotion for a cadre officer shall be from Accounts Officer to Deputy Director of Accounts to the Director of Accounts to Financial Controller-II to Financial Controller-I.

17. The petitioner''s allegation in this regard is squarely controverted in the counter affidavit filed on behalf of the Board ; in para 33 of the counter affidavit it is stated as follows :

That the statements made in paragraphs 43 and 44 of the writ application are absolutely false. It is emphatically asserted that experience as sought to be decided by the Board, as provided under rule 6 (iv) of the Cadre Rules has been decided by the Board and only thereafter employment notice for direct appointment was issued...

In course of hearing of the case, Mr. Rafat Alam, Learned Counsel for the Board also produced the relevant original records. From a perusal of these records, I am satisfied that the decisions as required under rule 6 (iv) of the Accounts Cadre Rules were formally and validly taken by the Board and there is no infirmity in the employment notice on this score.

18. Mr. Mukhopadhya, next contended that the clause relating to experience criteria in the impugned employment notice was specially designed to suit respondent no. 4 and was calculated to eliminate all competition. In this regard Mr. Chandramauli Kumar Prasad, Learned Counsel for respondent no. 4, rightly submitted that what really mattered was whether the criteria as laid down in the employment notice were in conformity with the rules and could be said to be proper and in accord with the nature of the job in question. If the impugned criteria satisfied these two conditions, then, it was quite immaterial if a particular person, was excluded or not in terms thereof.

19. At this stage it will be apposite to examine the experience criteria which come under challenge in this application. In the employment notice dated 2 2.19.1991 (Annexure 1) clause 4 related to experience and it was in the following terms :

Fifteen years experience of work related either in one or more of the subjects concerning accounts, finance, auditing, budgeting, management, accounting and cost control etc. in large and reputed private or public sector, corporation/boards/ Governments etc. connected with electricity generation, transmission and distribution. Provided, the above total experience must include a minimum of seven years working experience on a post carrying duties and responsibilities similar to those of Deputy Director of Accounts in the Bihar State Electricity Board or in any one or more organisations mentioned above.

(emphasis added).

Clause 4 relating to experience was modified in the employment notice dated 30.12.1991 (Annexure 18) in the following manner :

Must have 15 years experience in one or more of the subjects concerning accounts, finance, auditing, budgeting, taxation, management accounting, planning and commercial management and cost control etc. in large reputed private or public sector corporation/board/Government etc. provided that above total experience must include a minimum of seven years of working experience in any one or more organisations mentioned above on a post, equivalent to the post of Deputy Director of Accounts of Bihar State Electricity Board.

Preference will be given to those who have experience of working in Electricity Board or organisations dealing in electricity.

(emphasis added).

A mere perusal of the original and modified clauses makes it evident that the modification has the effect of enlarging the field for the prospective candidates. In the original clause the 15 years'' working experience in one of the subjects mentioned therein was to be acquired in a Corporation, Board, Government connected with electricity generation, transmission and distribution as a condition for eligibility. After the modification a candidate who has acquired the 15 years'' working experience in any Corporation, Board or Government (not necessarily connected with Electricity generation, transmission and distribution) would also be eligible to be considered and now only preference would be given to those who have acquired working experience in Electricity Board or an origanisation dealing in electricity. In other words, what was an essential condition in the original notice has been reduced to only a preferential term in the modified notice. Another modification of a minor nature is the inclusion of one more subject, namely, Planning and Commercial Management and a person having a working experience in this subject also is made eligible for consideration. As noted above the consequence of the modification is to enlarge the field for the prospective candidates and, thus, it runs counter to the petitioner''s allegations that the experience clause was designed to eliminate competition and to suit respondent no. 4 alone. It is further to be noted that the experience clause stipulates for 15 years'' experience in one of the subjects mentioned therein; out of the total of 15 years'' a minimum of seven years of working experience is required to be on a post equivalent to the post of Deputy Director of Accounts of the Bihar State Electricity Board. This condition is directly relatable to Rule 11 of the Accounts Cadre Rules. As already indicated earlier Rule 11 relating to promotion lays down that eight Years'' experience as Accounts Officer is the minimum for promotion to the post of Deputy Director of Accounts and a minimum of seven years'' experience as Deputy Director, Accounts is required for promotion to the next higher post of Director of Accounts. Therefore, there is hardly any scope to take exception to a demand for 15 years'' total experience out of which a minimum of seven years'' should be acquired on a post equivalent to Deputy Director of Accounts for direct recruitment to the post of Director of

Accounts.

20. Again, the experience is required in any one of the subjects mentioned in clause 4 of the employment notice and it can hardly be suggested that any one of those subjects have no relevance to the post of Director of Accounts. I am, therefore, satisfied that the impugned criteria are in conformity with the rules and cannot be labelled as unreasonable or arbitrary.

21. As regards the petitioner''s allegations that it has been designed specially to suit respondent no. 4, suffice it to note the statement made in paragraphs 36 and 50 of the counter affidavit filed on behalf of the Board that in response to the impugned employment notice as many as 42 applications have been received out of which ten candidates have been screened out for interview; this can hardly be described as a lack of competition.

22. Mr. Mukhopadhya, next contended that in terms of the experience criteria laid down in the employment notice, respondent no. 4 himself was not eligible and accordingly must not be considered for the post. I am of the opinion that any adjudication on this question at this stage would amount to pre-empting the Board from exercising its right and performing its routine function of making selection for appointment to one of its posts. If respondent no. 4 is not eligible in terms of the criteria, I have no reason to presume that the Board would not find him so. Further, whether respondent no. 4 or any other candidate is eligible or not in terms of the eligibility criteria is to be first determined by the Board and not by this Court. If a person is aggrieved by the selection of respondent no. 4 or any other candidate it is open for him to challenge the selection in accordance with law.

23. Mr. Mukhopadhya also argued that the post of Director of Accounts which had fallen vacant before the enforcement of the Accounts Cadre Rules should have been filled up not in accordance with these rules but as per the prior practice of promotion.

24. In support of the submission, Learned Counsel relied upon two Supreme Court decisions reported in Y.V. Rangaiah and Others Vs. J. Sreenivasa Rao and Others, and P. Mahendran and others Vs. State of Karnataka and others, .

25. I am of the opinion that the submission is without any substance and the reliance placed upon the aforementioned decisions is misconceived. In the case of Y.V. Rangaiah and Others Vs. J. Sreenivasa Rao and Others, , the statutory rules required that a list of approved candidates for promotion should be prepared in the month of September every year so as to be in force until the list of approved candidates for the succeeding year was prepared and in that context it was said that vacancies which occurred prior to the amended rules would be governed by the unamended rules and not by the new rules. The facts of the reported case are completely different and the ratio of that case has no application to the instant case. Similarly in the case of P. Mahendran and others Vs. State of Karnataka and others, , it was held that after the commencement of

the process for selection, prospective amendment of rules shall have no application. This case also is of no help to the petitioner in the present case.

26. In this case, there were no statutory rules. It was only as per practice, according to the petitioner, that the post of Director of Accounts was filled up by promotion. Further, there is neither any statutory rules nor even any practice that the post of Director of Accounts falling vacant must be filled up within a specified period. I accordingly do not find any substance in this submission.

27. No other point was argued. I, thus, see no merit in this application and I hereby dismiss the same. No order as to costs.