
(1971) 02 P&H CK 0009
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 2839 of 1970

Shri Salim Chohan and another

APPELLANT

Vs

The Punjab State Electricity Board, Patiala and another

RESPONDENT

Date of Decision : 15-02-1971

Acts Referred:

Electricity (Supply) Act, 1948 — Section 79(c)

Citation : (1971) 02 P&H CK 0009

Hon'ble Judges : Bal Raj Tuli, J

Bench : Single Bench

Advocate : J.L. Gupta, for the Appellant; B.S. Jawanda, for the Respondent

Final Decision : Allowed

Judgement

B.R. Tuli, J.—This petition seeks a writ of quo warrantor against the appointment of respondent 2 as Assistant Engineer Class I by the Punjab State Electricity Board. According to the returns of the respondents, respondent 2 is a highly qualified Engineer who having lucrative service in the United States of America drawing a salary of 12,000 a year. According to his return, he was anxious to serve his own country and, therefore applied for the post of Civil Engineer to the Punjab State Electricity Board in February, 1969. In response to his application, he was sent an offer of appointment by the Punjab State Electricity Board in June, 1989. offering the post of an officiating Assistant Engineer Class I (Jr.) (Civil) in the pay-scale of Rs. 400-25-450-30-510/700-40-940 fixing his pay in the scale at Rs. 700.00 per mensem. respondent 2 could not join the post earlier because of his commitments in the United States and when he came to Punjab from that country, he was given the appointment letter on June 26, 1970. According to this appointment letter, he was appointed officiating Assistant Engineer Class I (Jr.) (Civil) in the pay-scale of Rs. 560-1100 at a monthly salary of Rs. 800.00 against a newly created post which related to Inspection Agency Thermal, Bhatinda. The petitioners have challenged the appointment of respondent 2 on the ground that it was made contrary to "The Punjab State

Electricity Board Service of Engineers (Civil) Recruitment Regulations, 1966". (hereinafter called the Regulations), which have been framed that Board in exercise of the powers vested in it by Section 79(c) of the Electricity (Supply) Act, 1948, and are, therefore, statutory in nature.

2. Two separate written statements have been filed, one by the Punjab State Electricity Board and the other by respondent 2, and the facts narrated above have been taken from them. In the return filed by the Board it has also been emphasised that respondent 2 was highly qualified and his services were needed for the construction of the Thermal Plant at Bhatinda which is a work of urgent nature because the first phase of the Plant is to be finished by October, 1972, and the second phase by October, 1973, and each phase will generate 110 Magawat of electricity for the State.

3. Regulation 6 of the Regulations relates to the recruitment of the officers to the Service and with regard to the posts of Assistant Engineers Class I (Jr.), the following methods of recruitment are mentioned:

- (i) By promotion from amongst Assistant Engineers Class II, and
- (ii) By transfer of an officer already in the service of Government or any other State Electricity Board or an undertaking of Government.

Here it is significant to note that prior to the 3rd Amendment of these Regulations with effect from May 30, 1967, the method of recruitment to the post of Assistant Engineers Class I (Jr) was by direct appointment and by the said amendment that method was substituted by the method of promotion from amongst Assistant Engineers Class II. This amendment makes it absolutely clear that the method of direct appointment to the post of Assistant Engineer Class I (Jr.) was given up in favour of the method of pro notion and it is, therefore, not correct on the part of the State Electricity Board to plead that respondent 2 could be appointed by the method of direct recruitment as these Service Regulations are only directory and not mandatory. The State Electricity Board is "State" as defined in Article 12 of the Constitution and for this reason it is bound to follow the provisions of Articles 14 and 16 of the Constitution in the matter of employment of its service personnel. According to Article 16 of the Constitution, equal opportunity of employment has to be afforded to the persons qualified to hold the post and Regulation 10 provides the procedure for recruitment by direct appointment. According to this Regulation, in order to fill a post by direct appointment, the Board has to advertise the post, invite applications from candidates and the appointment has to be made by the Board of such candidates as are selected by the Selection Committee, constituted for the purpose, after interviewing the applicants. Were the method of direct recruitment open to the Electricity Board in this case, the procedure prescribed by Regulation 10 had to be followed. Admittedly, that procedure was not followed but, as I have pointed out above, the method of direct appointment to the post of Assistant Engineer Class I (Jr.) is not permissible by Regulation 6 (b). This method was available to

the Board prior to May 30, 1967, from which date by an amendment it was replaced by the method of recruitment by promotion from amongst Assistant Engineers Class II. I am, therefore, of the opinion that the post of Assistant Engineer Class I (Jr.) to which respondent 2 has been appointed, had to be filled in by either of the two methods prescribed in Regulation 6(b) of the Regulations and not by direct recruitment, as has been done in the instant case by making an offer to him in response to his application. In that case also, the post had to be advertised and application invited and thereafter the selection had to be made by the Selection Committee. That method was also not adopted in this case. In this view of the matter, the appointment of respondent 2 is contrary to the provisions of statutory Regulations 6 and 10 and Article 16 of the Constitution and" therefore, he has usurped a public office to which an Assistant Engineer Class II is entitled. It will be instructive to refer here to the following observations of their Lordships of the Supreme Court made in *The University of Mysore and Another Vs. C.D. Govinda Rao and Another*, in this connection:

Broadly stated, the quo warranto proceeding affords a judicial enquiry in which any person holding an independent substantive public office, or franchise, or liberty, is called upon to show by what right he holds the said office, franchise or liberty; if the inquiry leads to the finding that the holder of the office has no valid title to it, the issue of the writ of quo warranto ousts him from that office. In other words, the procedure of quo warranto confers jurisdiction and authority on the judiciary to control executive action in the matter of making appointments to public offices against the relevant statutory provisions; it also protects a citizen from being deprived of public office to which he may have right. It would thus be seen that if these proceedings are adopted subject to the conditions recognised in that behalf, they tend to protect the public from usurpers of public office; in some cases, persons not entitled to public office may be allowed to occupy them and to continue to hold them as a result of the connivance of the executive or with its active help, and in such cases, if the jurisdiction of the Courts to issue writ of quo warranto is properly invoked, the usurper can be ousted and the person entitled to the post allowed to occupy it. It is thus clear that before a citizen can claim a writ of quo warranto, he must satisfy the Court, inter alia, that the office in question is a public office and is held by usurper without legal authority, and that necessarily leads to the enquiry as to whether the appointment of the said alleged usurper has been made in accordance with law or not.

4. The learned counsel for the Electricity Board has drawn my attention to Regulation 23 relating to the power to relax the requirements in certain cases which reads as under:

where the Board is satisfied that the operation of any of these Regulations causes undue hardship in any particular case, it may, by order, dispense with or relax the requirements of that Regulation to such extent, and subject to such conditions, as it may consider necessary for dealing with the case in a just and

equitable manner.

In *Lehna Singh and others v. Punjab State* 1970 S.L.R. 844, I considered the scope of such a Regulation and that it is meant to avoid hardship to the employees already in service and is not meant for relaxing the rule for making fresh appointments. The instant case is also covered by the ratio of my decision in *Mrs. Davinder Brar v. State of Punjab* 1969 S.L.R. 613, wherein I held that-

To appoint a particular person along with the creation of the post and debarring other eligible candidates to compete for the same directly contravenes the fundamental right of the other eligible candidates guaranteed by Article 16(1) of the Constitution.

It appears from annexure "B" to the writ petition that the post was specially created for respondent 2 and after keeping it vacant for a whole year, he was taken in employment to fill that post which, in my opinion, was not permissible to the State Electricity Board in view of the provisions of Article 16 of the Constitution as explained above. I may also observe that I am not impressed by the plea that the methods prescribed in the Regulations were not adopted. while making the appointment of respondent 2 as it had to be made urgently in order to complete the construction of the Thermal Plant at Bhatinda in time because of the fact that the offer of appointment was made to him in June, 1969, which he accepted at his convenience a year later in June, 1970, and for one full year the work was carried on without him.

5. For the reasons given above, this petition is accepted and a writ of quo warranto is issued directing respondent 2 to vacate his post of Assistant Engineer Class I (Jr.) which he is holding under the Punjab State Electricity board. In the circumstances, however, I make no order as to costs.