
(2015) 07 PAT CK 0105

In the Patna High Court

Case No : Letters Patent Appeal No. 1471 of 2013 in Civil Writ Jurisdiction Case No. 18382 of 2012

The Bihar State Electricity Board and Others

APPELLANT

Vs

Rishi Raj and Others

RESPONDENT

Date of Decision : 21-07-2015

Acts Referred:

Citation : (2015) 07 PAT CK 0105

Hon'ble Judges : N.P. Singh, J; Nilu Agrawal, J

Bench : Division Bench

Advocate : Anand Kumar Ojha, for the Appellant; Shivendra Kishore and Jai Kishor Poddar, Advocates for the Respondent

Final Decision : Dismissed

Judgement

N.P. Singh, J—IA No. 8147 of 2013 has been filed for condoning the delay in filing the appeal. Heard.

2. For the reasons stated, the delay in filing the appeal is condoned. IA No. 8147 of 2013 stands disposed of.

3. IA No. 5696 of 2015 has been filed by the contesting respondents bringing to the notice of this Court that because of mere pendency of this intra-Court appeal, the appellants are not complying the judgment of the learned Single Judge which is in favour of the writ petitioners.

4. We consider it appropriate to dispose of this appeal at this stage itself with consent of parties because in our view, the issue involved is short and simple.

5. The writ petition was filed by the two petitioners who were employees of the Bihar State Power Transmission Company Limited, a subsidiary of Bihar State Power Holding Company Limited which is the percussor to the Bihar State Electricity Board. An advertisement was issued being Advertisement No. 4 of 2007 for appointment to the post of Assistant Engineer. This was as against 2%

quota fixed for employees of the Company. It provided for Computer Proficiency Test as a qualifying criteria and interview with minimum 30% pass marks. The other eligibility condition was that they must have degree of Graduation in Engineering. The two petitioners applied. Soon thereafter, Advertisement No. 5 of 2007 was issued. This was for direct recruitment of Assistant Engineers from the open market. The eligibility was Engineering Degree and they had to pass a Screening Test to be conducted by the National Power Training Institute (NPTE), Faridabad. Petitioners, being Graduate in Engineering, also applied as against Advertisement No. 5 of 2007. In the meantime, as against Advertisement No. 4 of 2007, they cleared Computer Proficiency Test and were interviewed and they passed in interview but nothing further was being done. That forced the writ petitioners to come to this Court. That writ petition was disposed of with a direction to the Company aforesaid to finalize the selection process within a time frame. Now when the process started, in respect of Advertisement No. 5 of 2007, both these writ petitioners performed miserably in the Test conducted by the NPTE, Faridabad. Ultimately, the Company, not finalizing their selection process in respect of Advertisement No. 4 of 2007, the writ petitioners filed contempt applications in this Court. The matter was then taken up by the Company and they have been declared unfit under Advertisement No. 4 of 2007. That is what has brought them to this Court.

6. The learned Single Judge examined in detail that the two advertisements had two different selection processes. It was for two sources of appointment. Therefore, the result of one could not be taken into account to decide the fate of another examination. We find no reason to take a different view of the matter.

7. In respect of Advertisement No. 4 of 2007, which was in respect of employees of the Company and restricted to 2% of the cadre, the only criteria were that they must be Graduate in Engineering, they must pass Computer Proficiency Test and they must not fail in interview. Both these writ petitioners met these criteria as set by the Company itself. Thus, having succeeded, the results of another examination and selection process cannot be taken into account to disqualify them. This is the view of the learned Single Judge with which we do not disagree.

8. In fairness to Mr. Anand Kumar Ojha, learned counsel for the appellants, we must notice one submission. He submits that the action taken by the Company was in larger public interest. The writ petitioners have performed miserably in the examination conducted by the NPTE. That reflects their quality and caliber. They scored much less than the persons who were the last to be selected as against Advertisement No. 5.

9. Unfortunately, we cannot agree. The reason is simple. The conditions, eligibility and otherwise and the selection process including the Screening Test have been set out differently. It was open to the Management of the Company to set out special terms in Advertisement No. 4 of 2007. They did not. They are, thus, bound by their own advertisement. The conditions cannot be altered midway. Once the writ petitioners qualified and satisfied the terms and conditions

then it becomes constitutional obligation of the Company, which is State, to abide by what they had laid down in the Advertisement.

10. Thus, we find no merit in this appeal. It is, accordingly, dismissed.