

(2015) 05 SHI CK 0150

In the High Court Of Himachal Pradesh

Case No : CWP No. 1325, 1423, 1511, 1516, 2026, 7572, 7575/2013 and 1753/2015

Yashpal Singh and Others

APPELLANT

Vs

H.P. State Electricity Board Limited and Others

RESPONDENT

Date of Decision : 28-05-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 16
Contract Act, 1872 — Section 23

Citation : (2015) 05 SHI CK 0150

Hon'ble Judges : Rajiv Sharma, J.

Bench : Single Bench

Advocate : Ranjana Parmar, Advocate, for the Appellant; Richa Sharma, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Rajiv Sharma, J.—Since common questions of law and facts are involved in all these petitions, the same are taken up together and are being disposed of by a common judgment. However, in order to maintain clarity, facts of CWP No. 1325 have been taken into consideration.

2. Respondent-Board issued different advertisements vide Annexure P-2 annexed with all the writ petitions whereby applications were invited to appoint Apprentice Assistant Engineers, (Electrical/Civil)/Apprentice Junior Engineers (Electrical in different trades) and Apprentice Assistant Electrician/Assistant Linemen on merit basis for a period of one year, as per terms and conditions of Apprenticeship Act, 1961 on monthly fixed stipend of Rs. 10,000/-, 6,000/- and Rs. 5,000/-, respectively only. The apprenticeship training was for a period of one year duration with no guarantee for job. The apprentices were entitled to holidays for Sunday's and 3 National Holidays only. They were to be put on training at different locations in the State of Himachal Pradesh. Petitioners participated in the selection process and were offered appointment as per Annexure P-3. The

contract was also entered into between the petitioners and employer. Conditions No. 7 of the contract reads as under:

"Contract appointment will be made against vacant posts in difficult and tribal areas or the office jobs as per requirement. Transfer of contract appointee will not be permitted from one place to another. However, at the time of renewal of contract, if any, such appointee can be appointed at different place or office on administrative grounds."

3. Petitioners were assigned day to day duties, as is evident from daily attendance sheet placed on record by the petitioners as page 65 of the paper book. Petitioners approached this Court by way of CWP No. 9069 of 2012. It was decided on 7.11.2012. In sequel to judgment dated 7.11.2012, petitioners made a representation which was rejected by the competent authority on 5.1.2013. In other connected writ petitions, daily log sheets and attendance registers have been placed on record by the petitioners to justify that in fact they were discharging the duties of Assistant Engineer, Junior Engineer and Assistant Linemen, respectively. Their cases have also been rejected by the management.

4. The Court, on 26.2.2014, in CWP No. 1423 of 2013 had directed the respondent-Board to file supplementary affidavit. The Court had directed the respondent-Board to state what training was imparted to the petitioners as apprentices and in case no training was imparted to them, what duties were extracted from the petitioners as Assistant Engineers/Junior Engineers/Electricians/Linemen. The respondent-Board was also directed to specifically mention whether a report on the performance of the apprentices in the petitioners' respective trade was obtained within three months. The respondent-Board was also directed to file supplementary affidavit whether the petitioners on their successful apprenticeship were given any certificate or not. In sequel thereto, supplementary affidavit was filed on 1.7.2014. According to the supplementary affidavit, advertisements were issued in the three leading newspapers, i.e. The Tribune, Amar Ujala and Dainik Bhasker on 28.5.2011, 2.6.2011 and 27.5.2011, respectively to engage Apprentice Trainees. According to the supplementary affidavit, petitioners engaged as Apprentice Assistant Engineers were imparted practical training in the field of supervision and operation and maintenance including distribution of power supply system and other paper work related to the post of Assistant Engineer (E) by the regular Assistant Engineer and Senior Executive Engineer and Superintending Engineer concerned. The petitioners engaged as Apprentice Junior Engineers were imparted practical training in the field of supervision and operation and maintenance including distribution of power supply system and other paper work related to the post of Junior Engineer (E) by the regular Junior Engineer and Assistant Engineer concerned. Similarly, petitioners engaged as Apprentice Assistant Electrician/Assistant Linemen were imparted practical training by the Junior Engineers Incharge as well as other superiors in the field of operation and maintenance of electrical lines and transforms and other related equipments. It is

specifically admitted in the supplementary affidavit that the petitioners were not issued any certificate on their successful apprenticeship training of one year nor any report on the performance in their respective trade was obtained. Petitioners were discharged from their training on completion of one year by their respective controlling officers. In case the petitioners were on training, their performance was to be seen as apprentices and they were required to be issued certificate.

5. Case of the petitioners, in a nutshell, is that they were duly qualified and the respondent-Board has adopted a new mode of appointment by terming their appointments as apprentice trainee but they have discharged the duties of Assistant Engineer, Junior Engineers and Assistant Electrician/Assistant Linemen. It is also apparent from Annexure P-9 that the petitioners were posted against the particular sanctioned posts. Their duty roster is Annexure P-10. They in fact have discharged the duties of Assistant Linemen as employees and not as apprentice trainee.

6. Mr. B.S. Ranjan, learned counsel for the respondent-Board, has vehemently argued that the petitioners themselves have entered into contract with the employer and they are precluded from challenging the terms and conditions contained in the agreement. The terms and conditions of the contract are contrary to Section 23 of the Indian Contract Act. The terms and conditions are unconscionable, thus, violative of Articles 14 and 16 of the Constitution of India. The petitioners were legitimately expecting that since they have been appointed for a period of one year, their appointments would be continued by the employer. However, fact of the matter is that employer has devised this exploitive method only to engage the petitioners for a period of one year. In case the petitioners were appointed apprentices trainee, they were required to be issued certificate of completion of training. Court is of the considered view that they were not required to be put on training since they have already acquired the requisite qualification and in fact have discharged the duties against the posts of Assistant Linemen. The nomenclature of the trainee has been adopted by the Board to deny them salary at par with the regular/contractual appointees. It is a misnomer. It amounts to unfair labour practice. The entire exercise undertaken by the respondent-Board to engage the petitioners and similar situate persons as apprentices is to avoid to give them regular/contractual appointment.

7. The petitioners have also placed on record sufficient material to show that in fact they have discharged the duties of Assistant Engineers/Junior Engineers and Assistant Linemen, respectively, as per log sheets. It is also clear from condition No. 7 of the agreement entered into between the parties that the contract appointment was to be made against the vacant posts in difficult and tribal areas or the office jobs as per requirement. It is, thus, evident that the posts in difficult and tribal areas were lying vacant. There were no incumbents to man these posts. In these circumstances the petitioners were appointed to discharge the duties of Assistant Engineers/Junior Engineers and Assistant Linemen, respectively in difficult and tribal areas against the vacant posts as per office

requirement.

8. Mr. B.S. Ranjan has also argued that the petitioners have joined as apprentices after their selection as trainee. There cannot be estoppel against the fundamental and legal rights.

9. Accordingly, in view of the analysis and discussion, made hereinabove, all the petitions are allowed. Respondent-Board is directed to re-engage the petitioners till the regular process is initiated for filling up the posts of Assistant Engineers/Junior Engineers and Assistant Linemen. It is made clear that since the petitioners had been discharging the duties of Assistant Engineers/Junior Engineers and Assistant Linemen, respectively, they are entitled to minimum pay scale of the posts of Assistant Engineers/Junior Engineers and Assistant Linemen, respectively instead of stipend. Pending application(s), if any, are also disposed of. No costs.