

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6865 of 2015

=====

Brij Nandan Singh Son of Late Sheo Pujan Singh, Resident of Mohalla - D.V.C. Colony, Jakkanpur, P.S. - Jakkanpur, District - Patna.

.... Petitioner/s

Versus

1. The Bihar State Electricity Board, through its chairman, Bailey Road, Patna.
2. The Secretary, Bihar Holding Company Ltd., Vidyut Bhawan, Bailey Road, Patna.
3. The Director (Adm.) Bihar Electric Power (Holding), Ltd., Bihar, Patna.
4. The Dy. Director (Human Resources) Bihar State Power Holding Company Ltd, Bihar, Patna.
5. The General Manager cum Chief Engineer, South Bihar Power Supply Ltd., Bihar, Patna.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Dhananjay Kumar
For the Respondent/s : Mr. Vinay Kirti Singh
Mr. Akhileshwar Singh
Mr. V.K. Verma

=====

CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA

ORAL JUDGMENT

Date: 01-05-2015

Heard learned counsel for the parties.

The petitioner seeks quashing of an advertisement as contained in Annexure-6. That advertisement has already led to appointment of the persons on the post of Junior Engineer. Therefore, now seeking quashing of that advertisement will be of no benefit to the petitioner.

Let it be noted that this advertisement was issued way back some time in the month of December, 2013/January, 2014 whereas the writ application has been filed on 30.4.2015. Faced with this



situation, Mr. Dhananjay Kumar, learned counsel for the petitioner, has submitted that initially in the advertisement as contained in Annexure-6, the cut-off date for computation of maximum age was 30.10.2013 but, then, just a few days earlier to the holding of the examination, the cut-off date was changed from 30.10.2013 to 1.11.2012. He has also submitted that such change of cut-off date was done only to suit and serve the interest of four persons and, in this regard, reference has been made to paragraph no.14 of the writ application which reads as follows:-

"14. That later on by another letter issued one day before of such examination, the respondents reduced cut off date from 30.10.2013 to 1.11.2012 to accommodate four person, who were becoming over age of 50 years on 30.10.013 one year as a result of which all four person were accommodate and participated in such examination and were taken in service."

He has, accordingly, submitted that the petitioner would be entitled for relief sought in this writ application, namely, relaxation of age limit of 50 years for appointment on the post of Junior Engineer in the Bihar State Power Holding Company, the successor body of Bihar State Electricity Board.

It is not in doubt that the petitioner was initially appointed in the then Bihar State Electricity Board (hereinafter to be referred to as 'the Board') on the post of Operator. The petitioner while



continuing on the post of Operator had sought to pursue his study and is said to have completed his diploma course in the Engineering in the year 2011. According to the petitioner, he could just miss the bus of the earlier selection and appointment of Junior Engineer confined to the employees of the Board because at that point of time in the year 2011, he had not completed the diploma course. The petitioner in fact cannot lay such a claim as a matter of right because there is no right vested in the Operator of the Board to be promoted on the post of Junior Engineer only because he has completed the course of diploma in Engineering. In this regard, it can be safely found from the document on record that either in the year 2011 or in the year 2014, an internal recruitment was sought to be made by way of appointment from amongst the qualified employees of the Board/company who had possessed the qualification of diploma in engineering. That internal recruitment cannot give any right to the working Operator to be appointed on the post of Junior Engineer save and except that his case has to be also considered provided he fulfills the criteria fixed in the advertisement.

Judged in this background, this Court would find that the next advertisement issued in the month of December, 2013/January, 2014 fixing the last date of filing of the application on 31.1.2014, if the petitioner had found that fixation of maximum age of 50 years was



in any way arbitrary or irrational, he had to assail the same immediately. The petitioner, however, did not do so and now having found that four others who had also crossed their age of 50 years on 30.10.2013 were allowed to participate in the process of selection on the basis of corrigendum issued changing the cut-off date for computation of maximum age from 30.10.2013 to 1.11.2012, he cannot have a grievance because even if this change of cut-off date may have suited certain candidates, that could not have served the purpose of the petitioner because either on 1.11.2012 or 30.10.2013, he had already crossed the prescribed age.

The issue as to whether the said change in the cut-off date was a tailor made to suit and serve the interest of the four persons cannot be gone into either in the absence of those four persons or in the light of the very very vague pleading in paragraph no.14 of the writ application, which has already been quoted above.

The next submission that the Company has now also sought to regularize the Junior Engineer, initially appointed on contract basis can be of no help or assistance to the case of the petitioner. Such Junior Engineers who were initially appointed as Junior Engineer on contract basis are Class apart and do not fall in the same category as that of the petitioner holding the post of Operator. The petitioner being Operator, he may have allowed to look after the



work of Shift In-Charge but that that would not give him any right to be regularized on the post of Junior Engineer merely because he had passed the diploma in engineering examination. His case therefore cannot be compared with the junior engineer initially appointed on contract basis and later on regularized on such post of Junior Engineer. There was neither any cadre rule in the erstwhile Board nor in the present Company which lays down that the post of Junior Engineer shall be promotional post and would be filled up from the post of Operator having diploma in engineering. There is also never any quota or percentage of post prescribed for such operation which can be said to have been eaten away on account of the regularization of the Junior Engineer on contract basis.

Faced with this situation, Mr. Kumar comes to say that there is some sort of agreement/understanding between the employees of the Association/Union with the Management of the Company that those employees of the Board/Company, who would possess the requisite qualification for the post of Junior Engineer, shall be appointed on the post of Junior Engineer and, therefore, the petitioner should be given opportunity to represent his case before the Management of the Company for his appointment on the post of Junior Engineer.

First of all, this Court would find it difficult to implement

the so-called understanding or agreement between the Union and the Management because it that was/is the case of the petitioner, he being admittedly a workman and governed by certified standing order, has to seek a remedy before the competent labour/industrial court after seeking reference under Section 10 of the Industrial Dispute Act. The writ application filed for the relief sought herein, therefore, was/is wholly misconceived because he actually wanted to assail the advertisement and/or seeking relaxation of age for appointment and/or his adjustment by way of promotion on the post of Junior Engineer. In fact all the aforesaid three reliefs were not possible as has already been examined and explained above. In such a situation, if the petitioner wants to still press his claim for the post of Junior Engineer before the Management/Company, he may do so but then it is made clear that he being a workman and covered by the provisions of certified standing order for any and every condition of his service will have no liberty to mere this court against for the same cause of action.

With the aforementioned observation, this application is disposed of.

(Mihir Kumar Jha, J)

Rishi/-

U			
---	--	--	--