

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C. W. P.No. 7784 of 2012

Reserved On : 04.05.2015

Pronounced On : 07.05.2015

Bharat Kalotra and another Petitioners

vs.

Punjab State Power Corporation
Limited and others Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL.

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To be referred to Reporters or not ?

Whether the judgment should be reported in the digest ?

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Present : Mr. G. S. Bal, Senior Advocate
with Mr. A. D. S. Bal, Advocate
for the petitioners.

Mr. Kapil Kakkar, Advocate
for the respondents.

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DEEPAK SIBAL, J. :

The petitioners, who were two in number, have knocked the doors of this Court seeking a direction to the respondents to consider and promote them as Shift Chemists with effect from the dates their juniors have been promoted, with all consequential benefits.

The petitioners, who belong to the Scheduled Caste category, have passed Matric, as also a three years' diploma in Chemical Engineering. Through advertisement no. Annexure P-8, the respondent Punjab State Electricity Board (now – Punjab State Power Corporation Limited) (hereinafter referred to as – the respondent Corporation), invited applications for filling up posts of Junior Plant Attendants/Chemical (Training) (hereinafter referred to as – JPA). As per the Punjab State Electricity Board Technical Services Class-III Regulations, 1996 (hereinafter referred to as – the Regulations), the prescribed academic qualifications for the post of JPA is B.Sc. (of which Chemistry should be the main subject). However, the respondent Corporation was facing a huge shortage of JPAs as eligible candidates possessing a degree in B.Sc. were becoming hard to find. This was adversely hampering the smooth functioning of the Water Treatment Plants. Therefore, it was decided as a one time measure to recruit JPAs, who would have the qualification of a three years' diploma in Chemical Engineering with minimum 50% marks. The decision to this effect taken by the Board of Directors of the respondent Corporation on 30.04.1999 is reproduced below :-

*“Chief Engineer/Thermal,
GNDTP, Bathinda vide his letter No.1917
dated 12.3.99 (Annexure-'A') has informed
that a number of posts of Chemical Cadre in*

all the three Thermal Plants of PSEB are lying vacant and hampering the smooth functioning of the Water Treatment Plants. In the year 1997 recruitment of 30 posts of Junior Plant Attendants (Chemical) and 19 posts of Laboratory Assistants (Chemical) were attempted to be filled through recruitment under CRA-205/97 but only 13 candidates qualified for Junior Plant Attendants (Chemical) and 1 candidate for Laboratory Assistants (Chemical).

Subsequently for the emergent requirement at GHTP, Lohra Mohbbat, CE/O&M, GHTP, Lohra Mohabbat was authorized to fill up the vacant posts of Laboratory Assistant through Employment Exchange but that proposal has also not materialized due to non-availability of experienced persons thus there is great pressure to transfer Junior Plant Attendants (Chemical) and Laboratory Assistants (Chemical) from GNDTP, Bathinda and

GGSSTP, Ropar for commissioning of IInd Unit at GHTP, Lehra Mohabbat. There is already shortage of qualified personnel and it is not possible to carry out necessary analysis of Water, Steam and Coal etc. with the existing staff available.

In the prevailing circumstances and for the satisfactory performance and long life of the Thermal Plants, Water Chemistry has got utmost important role and it is not possible to skip away the chemical analysis. Accordingly it has been proposed to meet the requirement of chemical department by appointing Apprentice Junior Plant Attendants (Chemical) and Laboratory Assistants (Chemical) from fresh graduates from the open market with following qualifications. A comparison of the existing and proposed qualifications/experience and the no. of posts proposed to be filled is as under :-

Sr. No	Name of Post	Existing qualification as per Regulation	Proposed Qualification	No. of posts vacant
1	J.P.A (Chemical)	1. B.Sc. with chemistry as a principal subject and have knowledge of water analysis and conversant with dosing of water requirement of high pressure boilers. Preference to be given to those having experience of working in a Thermal Power Plant. 2. Punjabi passed upto Matric Standard.	1. B.Sc. with chemistry with minimum 50% marks. OR Diploma in chemical Engineering with minimum 50% marks. 2. Punjabi passed upto Matric Standard.	10
2	Lab. Asstt. (Chemical)	1. B.Sc. with chemistry as a principal subject and have 4 years experience in carrying out chemical analysis of D.M. Water, Coal, Ash, Oil, Gases etc. 2. Punjabi passed up to Matric Standard.	1. M.Sc. Chemistry with minimum 50% marks. OR B.E. (Chemical) with 50% marks. 2. Punjabi passed upto Matric Standard.	19

With the revised qualification the Junior Plant Attendants (Chemical) and Laboratory Assistants (Chemical) will be appointed as Junior Plant Attendant (Chemical) Trainee and Laboratory Assistant (Chemical) Trainee for a period of one year. They will be paid stipend equal to the minimum basic pay in the revised scales allowed to respective categories. After

completion of training period, they will be absorbed on regular basis against the vacant posts at all the 3 Thermal Plants.

It has also been brought out by Chief Engineer/Thermal, GNDTP, Bathinda that the proposal has been discussed with the CE/O&M, GGSSTP, Ropar and CE/O&M, GHTP, Lehra Mohabbat and their concurrence has been obtained. Accordingly proposal and authorization for recruitment of these candidates to fill up the posts in shortest possible period.

Chairman/Board has accorded the administrative approval for placing the matter before the full Board for carrying out revision/amendment in the qualification as a one time measure in the services regulation and also authorization to CE/O&M, GNDTP, Bathinda for filling up these posts on priority basis, keeping in view the urgency for commissioning of IInd Unit of GHTP, Lehra Mohabbat.

The above proposal involves amendment in services Regulation of 'PSEB Tech. Class-III Regulation-1996' as a one time measure and as such submitted for consideration and approval of full Board in view of provision provided under Regulation-5 in the First Schedule of 'PSEB Regulation of Conduct of Business-1980.'"

From the above quoted decision dated 30.04.1999 of the Board of Directors of the respondent Corporation, it is amply clear that the respondent Corporation was facing an acute shortage of JPAs and that this was affecting the smooth functioning of the Water Treatment Plants. The above decision further throws the light on the fact that in the earlier selection of JPAs, which took place in the year 1997, there was a dearth of eligible candidates. In view of the precarious situation as detailed in the above quoted decision, as a one time measure, the eligibility with regard to the prescribed academic qualifications was relaxed and resultantly, a three year diploma holder instead of a holder of a B.Sc. Degree was made eligible for appointment as a JPA.

The above relaxation was apparently given under Regulation 21 of the Regulations, the translation of which is as under :-

"Where the Board is of the

opinion that it is expedient or valid for the time being, the Board can grant relaxation/ exemption of any regulation or provision of these regulations in respect of any clause or person by making an order in writing and recording reasons thereof.”

In view of the above, the petitioners, who were holders of three years' diploma in Chemical Engineering, thus became eligible for consideration of their candidature for appointment as JPAs. After undergoing the process of selection, they were appointed as such. Thereafter, the petitioners have been promoted as Lab Assistants.

Through the present petition, the petitioners stake their claim for further promotion from the posts of Lab Assistants to the Shift Chemists. Before proceeding further in the matter, it would be appropriate to refer to the relevant part of the Regulations, prescribing the qualifications for promotion to the post of Shift Chemist, which is as under :-

<i>Sl. No.</i>	<i>Shift Chemist</i>	<i>Qualification</i>	<i>Experience</i>
<i>1.</i>	<i>100% by way of promotion from Lab Assistant</i>	<i>1. M.Sc. with Chemistry as main subject</i>	<i>2 years experience as Lab Attendant</i>
		<i>2. B.Sc. with Chemistry as main subject</i>	<i>3 years experience as Lab Attendant</i>

From the above quoted qualifications, it is clear that only a

candidate, who has the qualification of M.Sc. or B.Sc., could be considered for promotion to the post of Shift Chemist. Admittedly, the petitioners are neither holders of a M.Sc. or B.Sc. Degree with Chemistry.

Shri G. S. Bal, learned senior counsel appearing on behalf of the petitioners has argued that as per the Regulations, the required academic qualifications for appointment as JPA is B.Sc. Once, after relaxation, the petitioners, who are holders of three years' diploma in Chemical Engineering, have been considered and appointed as JPAs, then in their cases, their qualifications should be considered equivalent to B.Sc. for throughout their service under the respondent Corporation. In the alternative, learned senior counsel submitted that the Regulations, have been framed by the Board of Directors of the respondent Corporation and once they have framed the Regulations, they were always competent to amend it. It is submitted that the resolution of the Board of Directors dated 30.04.1999, as reproduced above, granting relaxation in the qualifications for appointment as JPA, would be deemed to be an amendment to the Rules, wherein wherever the prescribed qualification was B.Sc., the same would be have to be read as three years' diploma course in Chemical Engineering, especially in the cases of the petitioners.

For the above proposition, learned senior counsel has relied upon the following judgments :-

1. **S. Sivaguru vs. State of Tamil Nadu and others** reported as

(2013) 7 Supreme Court Cases 335,

2. Shivani Gupta and others vs. State of Haryana and others
reported as 2013 (1) S. C. T. 545 and
3. Indian Council of Agricultural Research and another vs.
T. K. Suryanarayan and others reported as (1997) 6
Supreme Court Cases 766.

A perusal of the resolution dated 30.04.1999, as reproduced above, clearly shows that at the time when such resolution was passed, the respondent - erstwhile Punjab State Electricity Board, now the respondent Corporation was facing an acute shortage of JPAs and that this was having an adverse impact on the functioning of the Water Treatment Plants. In the earlier selection of JPAs held in the year 1997, there was a dearth of eligible candidates. It was in a desperate situation, as detailed in the above quoted decision dated 30.04.1999 that, as a one time measure, the qualifications for appointment to the posts of JPAs were relaxed. The relaxation in qualifications was specifically referred to as a one time measure and the petitioners have enjoyed the benefits of such relaxation. The relaxation so granted, keeping in view the peculiar circumstances, as were prevailing at that point of time, cannot be allowed to be extended for all times to come. Under such relaxation, as given under the resolution dated 30.04.1999, the qualification of three years' diploma in Chemical Engineering was never equated with the qualification of B.Sc., as sought to be projected on behalf

of the petitioners. A one time relaxation cannot be allowed to be extended in perpetuity.

The decision of the Board of Directors dated 30.04.1999 also cannot be considered to be amending the Regulations, as sought to be projected by the petitioners.

Admittedly, as per the prescribed qualifications in the Regulations, the petitioners are not eligible for promotion to the posts of Shift Chemists. The Regulation, providing for M.Sc. and B.Sc. to be the essential qualification for promotion to the posts of Shift Chemists, is not under challenge. In the absence of any challenge to the above referred qualification, I deem it proper not to issue any kind of direction to the respondent Corporation to consider the cases of the petitioners for promotion to the posts of Shift Chemists.

The judgments cited by learned senior counsel for the petitioners have been gone through by me but none of them pertain to a case, where relaxation had been granted like in the present case and such relaxation was permitted to be allowed to the beneficiaries of such relaxation for all times to come throughout their service.

In view of the above, finding no merit in the writ petition, the same is ordered to be dismissed. However, the claim of the petitioners for amendment of the Regulations, on any hardship being faced by them, can be considered only by the Regulation making Authority. Therefore, if any

representation in this regard is made by the petitioners to the concerned Authority, highlighting the hardships being faced by them, I leave it to the best judgment of the concerned Authority to consider such hardship and take a decision thereupon, in accordance with law.

No costs.

(DEEPAK SIBAL)
JUDGE

Pronounced On : 07.05.2015

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