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**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

**Civil Writ Petition No.5143 of 2014
Date of decision : 08.10.2015.**

Manjit Singh & others

..... Petitioners

VERSUS

State of Punjab & others

..... Respondents

**CORAM: HON'BLE MR. JUSTICE SATISH KUMAR MITTAL
HON'BLE MR. JUSTICE MAHAVIR S. CHAUHAN**

Present: Mr. Anupam Gupta, Sr. Advocate with
Mr. Aseem Rai, Advocate
for the petitioners.

Mr. B.S. Chahal, DAG, Punjab.

Mr. Parambir Singh, Advocate
for the respondents No.2 to 4.

1. **Whether Reporters of local papers may be allowed to see the judgment? Yes/No**
2. **To be referred to the Reporters or not ? Yes/No**
3. **Whether judgment should be reported in the Digest? Yes/No**

Mahavir S. Chauhan, J.(Oral)

The petitioners herein were working as Helpers/T-mates in the pay scale of ₹ 3120-5160/- in Punjab Mandi Board (respondent No.2). Vide order dated 29.04.2011 (Annexure P-4), petitioners were appointed as Electrician in the pay scale of ₹ 5910-20200/- plus ₹ 1900/- grade pay and vide order dated 27.07.2011 (Annexure P-5), their services as

Electrician were regularized. However, it was realized that the rules governing service conditions of the petitioners did not provide for promotion of Helpers/T-mates to the post of Electrician and, even otherwise except for two, namely Malkiat Singh (petitioner No.14) and Munish Kumar (petitioner No.19), who did not possess the requisite qualification of Matriculation with Diploma in Electricity Trade from an Industrial Training Institute (ITI), as for the post of Electrician, their appointment as Electrician was made by Executive Engineer (Electrical) who was not competent to make such appointments. Accordingly, the Chairman, Mandi Board, Punjab, vide order dated 07.03.2014 (Annexure P-9), set aside order dated 29.04.2011 (Annexure P-4), appointing the petitioners to the posts of Electricians and instead ordered regularization of services of petitioners as Helpers/ T-mates.

Order dated 07.03.2014 (Annexure P-9) is under challenge in the instant writ petition.

It has been stated on behalf of the petitioners that petitioner Nos.14 and 19 possess the qualification of Matriculation + Diploma in Electrical Engineering; petitioner Nos.4, 9, 10, 11, 12, 15, 16, 17, 18, 20, 21, 22, 23 and 24 possess the qualification of Matriculation + National Trade Certificate from Polytechnic/Industrial Training Institute, while petitioner Nos.1, 7, 8 and 13 have passed Middle Standard Examination as also A/B Class Wireman Examination held by

the Punjab Government and petitioner Nos.3, 5 and 6 have passed Matriculation with A/B Class Wireman Examination held by the Punjab Government. It has also been stated that previously also Helpers/T-mates had been appointed as Electrician by Chief Engineer (North), Punjab Mandi Board, respondent No.3.

In the reply submitted on behalf of the respondent No.2 and 4, it has been stated that the Chairman, Mandi Board, Punjab, is the recruiting/appointing authority for the post of Electrician as per Rule 2(k) of Punjab State Agricultural Marketing Board Service (Class-III), Rules 1989 and the Executive Engineer being not competent to appoint the petitioners as Electricians, their appointments as such were illegal/ab initio and have rightly been set aside by the impugned order dated 07.03.2014 (Annexure P-9).

We have heard learned counsel for the parties.

During the course of the hearing a reference has been made to Punjab State Electricity Board Rules (for short 'PSEB Rules'), Annexure P-10, showing eligibility and mode of appointment to the post of Electrician in Punjab State Electricity Board and it has been admitted to project that persons having qualification of Matriculation with certificate of Electrician Trade course from ITI and the non-matric who can read and write have been stated to be eligible for promotion to the post of Electrician and most of the petitioners are

possessing the qualification of Matriculation with Diploma in Electrical Engineering or National Trade Certificate or A/B Class Wireman Certificate and as such were rightly appointed as Electricians vide order dated 29.04.2011 (Annexure P-4).

Per contra, on behalf of the respondents, it has been argued that the petitioners' appointment as Electricians vide order dated 29.04.2011 (Annexure P-4) was result of connivance between the petitioners and the then Executive Engineer and that the petitioners neither possessed the requisite qualification for the post of Electrician nor any advertisement before appointing the petitioners to the post of Electricians was issued and, thus, rights of the persons eligible for and aspiring to apply for the post of Electrician were forfeited.

It has also been pointed out on behalf of the parties that respondent No.3 is in the process of framing rules having avenues of promotion for Helpers/T-mates.

It is not in dispute that except for the two, the petitioners do not fulfill the qualification required for the post of Electrician and that in the extant rules, there is no provision for promotion of Helpers/T-mates as Electricians. It has also remained undisputed that when the petitioners were appointed as Electricians vide order dated 29.04.2011 (Annexure P-4), no public notice was published inviting applications from the eligible candidates for the said post. Though, it is sought to be

contended that most of the petitioners hold National Trade Certificates issued by Industrial Training Institutes or A/B Class Wireman Examination Certificate issued by Punjab Government but it is well settled position of law that prescription of qualification for a particular post is the prerogative of the employer because it is the employer who knows the requirement of the post to be filled by appointment from amongst the eligible candidates. It also needs to be stressed that appointments of the petitioners as Electricians being direct appointments/it was incumbent upon the respondent-Board to publish public notice and thereby inviting applications from all candidates eligible for the post. It has also remained undisputed that Executive Engineer is not competent to make appointments against the post of Electrician. In view of these circumstances, no fault can be found with order dated 07.03.2014 (Annexure P-9) setting aside the appointment of the petitioners as Electricians.

However, the petitioners have been working as Helpers/T-mates since long before they were appointed as Electricians vide order dated 29.04.2011 (Annexure P-4) and since then they have been working as Electricians.

In view of the foregoing circumstances, we dispose of the writ petition with the directions to the respondent No.3 to finalize and notify the rules, stated to be in drafting process, within three months and immediately after the rules are

finalized and notified, to consider requests of the petitioners and other eligible employees of the Mandi Board for being promoted/appointed to the posts of Electricians and not to make any direct appointments against that post is made until such consideration.

No costs.

(SATISH KUMAR MITTAL)
JUDGE

(MAHAVIR S. CHAUHAN)
JUDGE

October 08, 2015
Ramandeep Singh