

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

Date of decision: 12.07.2016

CWP No.11006 of 2012 (O&M)

Harjinder Pal Singh & others

...Petitioners

Vs.

Punjab State Power Corporation Limited & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. D.S.Patwalia, Senior Advocate, with
Mr. Gaurav Rana, Advocate, for the petitioners.

M/s Amit Aggarwal & Gursimranjit Singh, Advocates,
for respondents No.1 & 2.

Mr. Anupam Gupta, Senior Advocate, with
Mr. Pankaj Gupta, Advocate, for respondents No.3, 5 to 7, 9 to 16,
18 to 23, 25 to 31, 34 to 37, 39, 41 to 46, 48 to 59 & 62 to 67.

Mr. R.D.Bawa, Advocate,
for respondent No.10.

1. *To be referred to the Reporters or not?*
2. *Whether the judgment should be reported in the Digest?*

RAJIV NARAIN RAINA, J.

1. This case involves seniority disputes amongst Assistant Engineers in the Electrical Wing directly recruited as Assistant Engineers (On Training) between the petitioners and the non-official respondents.

2. The petitioners are represented by Mr. D.S.Patwalia, learned senior counsel, while the non-official respondents are represented by Mr. Anupam Gupta, learned senior counsel, while the Corporation by Mr. Amit Aggarwal, Advocate. Arguments in detail were heard on 05.05.2016 and judgment was reserved. The order is released today and the issue involving

inter se seniority dispute has been reconciled in favour of the non-official respondents by the reasons that next follow.

3. However, before this Court proceeds to discuss the disputed issue involved, it would be necessary to advert to few relevant facts to notice how the dispute developed and led to the present writ petition. The Punjab State Electricity Board (PSEB), presently represented by Punjab State Power Corporation Limited (PSPCL), its successor-in-interest, issued an advertisement on 08.12.2006 calling applications from eligible candidates for filling up 263 posts of Assistant Engineers (On Training) lying vacant in the PSEB. As per the advertisement, there were 165 posts in the Electrical Wing; 40 posts in Computer Sciences; 25 posts in Electronics & Communications; 10 posts in Mechanical; 10 Posts in Instrumentation & Control; and 13 posts in Civil Engineering discipline. Presently, we are concerned only with 165 posts in the Electrical discipline in this case. The criterion for selection was based on a written examination of 120 marks to be held on 12.01.2007 at Patiala conducted by National Thermal Power Corporation (NTPC). There was a stipulation in the terms & conditions of the advertisement that to qualify the written test, a general category candidate had to secure minimum 50% marks while a reserved category candidate has to secure minimum 40% marks. On the basis of written test conducted by NTPC, only 121 candidates have qualified in the Electrical discipline. The documents of the qualified successful candidates were checked between 09.04.2007 and 13.04.2007 as a result of which only 115 candidates were found eligible and available for appointment against 165 posts advertized. On 10.05.2007, the PSEB issued offers of appointment to the candidates, who had qualified for appointment, which appointment offers were sent not only to all the successful candidates in the Electrical discipline, but also in other disciplines. Posting orders were issued

on 09.06.2007 and the selected candidates in the Electrical discipline were directed to report for duty on 18.06.2007. They joined service and are working on the posts.

4. After the joining of the selected candidates on 18.06.2007, the Secretary, PSEB, prepared Memorandum No.31 on 19.06.2007 proposing that since only 115 candidates were found eligible and there was shortfall of 50 unfilled posts in the Electrical wing of the Board. It was further proposed that the 50 vacant posts may be filled up by lowering the minimum percentage of marks required for qualifying the written examination. This is how relaxation was granted by reducing minimum marks to 45% for the General category candidates and 30% for the reserved category candidates. The decision was proposed to be put up in the meeting of Whole Time Members (WTM) of the PSEB. The very next day, WTM approved the memorandum in their meeting held on 20.06.2007 (Annex R-3/4). By this process, the newly eligible candidates from the same advertisement and selection process were called for scrutiny and checking of documents by letters dated 05.07.2007. The successful candidates were offered appointment on 02.08.2007 and they joined the PSEB on or after 19.09.2007.

5. Though the non-official respondents in their reply have castigated lowering of minimum qualifying marks in the advertisement as wrong, illegal and in violation of the Punjab State Electricity Board Service of Engineers (Electrical) Regulations, 1965 and the settled service jurisprudence, but the issue need not to be entertained by this Court at the hands of the private respondents in the absence of direct challenge to the action. It is, therefore, not necessary to go into further pleadings on the point.

6. In short, the case of the private respondents is this: They were appointed to service prior to the petitioners, who came into service through concessions and relaxations in the minimum bench-mark caused by inadequacy of manpower to fill up the original 165 posts in the Electrical discipline on the original criteria fixed for recruitment. With the culmination of appointment and joining prior to the decision of the WTM drawing names from the original list, the recruitment process came to an end and became a dead ball. The petitioners could not have asserted as a matter of right to be offered appointments, but for the relaxations granted which led to their appointments. It is, therefore, argued that the petitioners and the non-official respondents belong to different batches and accordingly the petitioners cannot claim seniority above the answering respondents as per relief claimed in the petition. Even the process of appointment of two groups was materially different although under the same advertisement. The non-official respondents were selected on the basis of norms and criteria of eligibility prescribed in the advertisement while the petitioners were selected on the strength of relaxation of the original norms and without the benefit of such relaxation, they could never have been selected and appointed. It is argued on behalf of the private respondents that it is misnomer to describe advertisement dated 08.12.2006, as “the same advertisement” in relation to the petitioners since the original advertisement underwent a material change by relaxation in the minimum qualifying marks granted to bring in the petitioners on lower standards to man posts and maintain public utility services. Even though in the Meeting held on 04.08.2000, the PSEB took a conscious decision on the minimum qualifying marks for the recruitment to the various posts shall be raised to 50% for general category and 40% in the case of reserved category candidates yet standards were lowered while this decision

taken by the PSEB has been followed resolutely while making all subsequent selections. The present instance was the first of its kind.

7. It is urged and quite rightly so that the original advertisement neither contemplated any such relaxation or lowering of minimum qualifying marks to 45% for General category candidates nor can any such relaxation in the minimum qualifying marks be justified on first principles. It is submitted by Mr. Anupam Gupta, learned senior counsel that the lowering of minimum qualifying marks is a visible erosion of the threshold of merit. It does not, therefore, lie in the mouth of the petitioners to claim that “the selection was the same and was in pursuance to the same advertisement”. The process of selection of the petitioners was patently contrary to the requisite conditions in the advertisement which prescribed higher standard of merit and they came through a lower or relaxed merit threshold of 45% which is certainly not the same as the prescribed merit threshold of 50% and the selection of persons, such as the petitioners, who were ineligible for selection, since they had secured less than 50% marks, certainly cannot be treated as the same selection as that of persons, such as the private respondents, who had secured minimum qualifying marks laid down in the original advertisement and neither claimed nor were granted the benefit of any relaxation or the lowering of the minimum marks. As a matter of fact, the claim of the petitioners is manifestly misconceived and the misconception is only compounded by their attempt to compare the incomparable i.e. the general category candidates with the reserved category candidates. More than the once, the Supreme Court has reaffirmed that such selections and appointments are clearly illegal holding that the rules of the game or the norms of the selection cannot be changed after the selection process has been initiated. The petitioners cannot claim any parity or equality with the non-official respondents whether on the facts or in law.

8. The case of the petitioners is built on Regulation 16 of the Regulations of the Board, which prescribes that “persons appointed as a result of an earlier selection shall remain senior to the subsequent batch”. The question is; whether the petitioners belong to the same selection or were appointed as a result of subsequent selection. This basic distinction has been adhered to by the official respondents while drawing up the impugned seniority list i.e. the distinction between the candidates who were originally eligible or satisfied the original merit threshold of 50% for general category candidates and 40% for reserved category candidates on the one hand and those who were not originally eligible, but became eligible only subsequently upon relaxation or lowering of the merit threshold. The significance and sanctity of this distinction, Mr. Gupta submits is apparent and regardless of the date of joining of any particular candidates. The distinction has been correctly maintained by the official respondents with complete consistency admitting of no exception whatsoever. The candidates who happened to join later than the petitioners, but have been placed senior to them in the impugned seniority list are all those candidates, who were originally eligible, with none of them having acquired eligibility subsequently by virtue of the relaxation in the minimum qualifying marks. The distinction between the two classes of candidates i.e. the class of candidates originally eligible on the one hand and the class of candidates’ bestowed eligibility subsequently on the other hand, is a clear and valid distinction or in other words, a classification that fully meets and conforms to the requirements of the rigour of Article 14 of our Constitution. It is on this classification that the impugned seniority list is based.

9. As per Regulation 16, the seniority inter se members of the service in a particular class of posts shall be determined by the dates of their continuous appointments in that class, which according to Mr. Gupta has to

suffer reasonable interpretation to protect the rights of the private respondents to their accrued seniority as per merit determined by the recruiting agency since the petitioners were not even eligible and qualified on the date when the private respondents had already joined service, and as a result the date of appointment of the petitioners in the cadre of Assistant Engineers can be taken only from the date of their substantive appointment to the post.

10. A fortiori the seniority of directly recruited employees is to be determined in the order of merit at the time of selection only among the eligible candidates. As a matter of fact, the candidates who were kept on the waiting list or who joined later because of any administrative reason have been given seniority as per the order of merit determined on the basis of the written examination conducted by the NTPC, the nodal agency deputed to make the selection on behalf of the PSEB, to which fact there is no dispute.

11. Mr. Anupam Gupta, learned senior counsel, pointed out that the petitioners have not annexed the complete advertisement with the writ petition and this is not a good thing since it is that advertisement which demolishes the case set up by them and thus the respondents had to annex the advertisement in extensor in their reply. The marked point of departure in the case set up by the private respondents stands raised on a point of fact that the process to select and appoint the petitioners by lowering the minimum marks was initiated after the original selection process had become final. In law, the petitioners have no legal right to be appointed as Assistant Engineers by lowering of the minimum qualifying marks. It is admitted case of the petitioners that they were selected and appointed on 19.09.2007 i.e. much after the joining of the private respondents on 18.06.2007. They accordingly formed a subsequent batch and cannot legally claim seniority over the non-official respondents.

12. Mr. Gupta points out from the Minutes of the PSEB meeting held on 04.08.2000 that the entire Board sat to decide that the minimum qualifying marks be raised to 50% for general category and 40% in the case of the reserved category. Consequently, the WTM could not have taken a decision to lower the marks except by putting up the proposal to the Board, which alone has the jurisdiction to consider alteration and relaxation of recruitment standards and therefore the appointments of the petitioners are questionable and on a challenge to their appointments, the petitioners would have been hard pressed to hold on to their jobs.

13. However, in the absence of challenge no comment can be made by this Court on such appointments since the only question to be decided in this case is on the issue of seniority, where the names of the petitioners have been placed below the names of the private respondents.

14. In support of his submissions, Mr. Anupam Gupta relies on a direct ruling of the Supreme Court in Shitala Prasad Shukla Vs. State of U.P. & others, AIR 1986 SC 1859, which case arose in somewhat similar circumstances. The facts of the case were that the appellant was working as an Assistant Teacher in an Institution, which was upgraded into an Intermediate College under the provisions of the Intermediate Education Act, 1921. The appellant started teaching Hindi in the upgraded College, but he did not possess the requisite qualification of B.A. degree in Sanskrit and therefore he was not entitled to be appointed in the Lecturer's grade as Lecturer (Hindi) having regard to the prohibition contained in Section 16-F of the said Act. The appellant however could have been appointed as a Lecturer in Hindi if he was exempted from possessing such qualifications in exercise of powers under sub-section (i) of Section 16-E of the Act. The appellant made an application for exemption. Such application was granted by the Board of High School and

Intermediate Education, UP by its order dated 23.07.1963. The contention of the appellant was that the Board had actually granted exemption only on 23.07.1963, he must be deemed to have been exempted retrospectively from 04.11.1960, the date on which he made the application for exemption. If the deeming exemption was granted to him he would succeed. If the contention was untenable, the appellant must fail. This was the situation in the appeal before the Supreme Court. On facts, it was found that initially the Board was disinclined to grant exemption to the appellant and had insisted on the appellant securing the requisite qualification by appearing in an examination, from an appropriate institution. When this is the factual position, how could the appellant contend that the Board must be deemed to have granted the exemption from the date of his application. The argument was not accepted that the Board had granted exemption with retrospective effect or that the exemption must relate back to the date of the making of the application. Besides, the language of Section 16E of the Act does not admit of the construction canvassed on behalf of the appellant viz. that the Board can grant exemption with retrospective effect. The Supreme Court held that it would be reasonable to construe the section as enabling the Board to exercise the power to grant exemption prospectively after considering the report and taking into account the relevant circumstances which would by the very nature of things be with prospective effect and not with retrospective effect. To accede to the construction canvassed on behalf of the appellant would be to hold that any unqualified person can be appointed even without possessing the minimum qualifications subject to post facto exemption being granted. Till the exemption is granted the person is not qualified to be appointed. In other words, he would be lacking in the basic qualification for being appointed. This deficiency cannot be made good with retroactive exemption unless the provision itself

expressly or by necessary implication contemplates such a course of action. Even otherwise, the Supreme Court held that it is not sufficient to show that retrospective exemption could have been granted. It must also be shown that retrospective exemption was in fact granted. Section 16E of the Act deserves to be noticed. It reads as under:

“16-E. (1) Qualifications for appointment as Principals, Head Masters and teachers of different subjects at different stages of the course shall be as prescribed by regulations;

Provided that the Board may after considering the report of the Director exempt any person from the requirements of minimum qualifications having regard to his experience education and other attainments.”

15. Mr. Gupta submits that the word “exemption” can easily be read as “relaxation” to fit the case to the present one. In Para. 9, the Supreme Court held as follows:

“9. An employee must belong to the same stream before he can claim seniority vis-a-vis others. One who belongs to the stream of lawfully and regularly appointed employees does not have to contend with those who never belonged to that stream, they having been appointed in an irregular manner. Those who have been irregularly appointed belong to a different stream, and cannot claim seniority vis-a-vis those who have been regularly and properly appointed, till their appointments became regular or are regularized by the appointing authority as a result of which their stream joins the regular stream. At that point of confluence with the regular stream, from the point of time they join the stream by virtue of the regularization, they can claim seniority vis-a-vis those who join the same stream later. The late comers to the regular stream cannot steal a march over the early arrivals in the regular queue. On principle the appellant cannot therefore succeed. What is more in matters of seniority the Court does not exercise jurisdiction akin to appellate jurisdiction against

the determination by the competent authority, so long as the competent authority has acted bona fide and acted on principles of fairness and fair-play. In a matter where there is no rule or regulation governing the situation or where there is one, but is not violated, the Court will not overturn the determination unless it would be unfair not to do so. In any view of the matter the appellant who did not even belong to the stream of regularly (he was allowed to teach only in an irregular and unauthorized manner) and lawfully appointed lecturers cannot claim seniority against any one already in the stream before he joined the stream himself. The view taken by the High Court is unexceptionable.”

16. Reliance is also placed by Mr. Gupta on the dicta in State of UP Vs. Rafiquddin & others, 1987 (Supp.) SCC 401, which clearly promotes the case of the private respondents in a manner which may render the appointments of the petitioners illegal. The Supreme Court introduced the principle of “dead ball” in cricket into the service law expressing opinion that once the result of the subsequent examination was declared, the Commission could not revise the list of approved candidates of the earlier examination prepared by it under Rule 19 at the behest of the Government by lowering down the standard fixed by it. The Court held in Paragraphs 18 to 21 of the report as follows:

“18. We are in agreement with the views expressed in the aforesaid decisions. The appointment of the unplaced candidates of 1970 examination at the behest of the high level committee was unwarranted by law and it was likely to create a feeling of distrust in the process of selection for appointment to public services which is intended to be fair and impartial. The high level committee had no power to lower down the standards fixed by the Commission with a view to accommodate unsuccessful candidates in the judicial services. The procedure adopted in appointing the unplaced candidates of 1970 examination was unauthorised by law and it practiced discrimination in violation of Article 14 and Article 16 of the Constitution.

19. The unplaced candidates were appointed to the service in breach of the Rules and they form a separate class. They cannot be equated with those who were appointed to the service from the first and second list of 1970 examination as their appointment was made on the recommendation of the Public Service Commission. They remain unchallenged. Similarly, candidates appointed to the service on the basis of the result of the competitive examination of 1972 before the unplaced candidates were appointed, formed separate class as they were also appointed in accordance with the Rules. The "unplaced candidates" of 1970 examination cannot claim seniority over them on the basis of Rule 22 as their appointment was not made on the basis of the list approved by the Commission under Rule 19. In *Shitla Prasad Shukla Vs. State of UP & others*, AIR 1986 SC 1859 this Court held that an employee must belong to the same stream before he can claim seniority vis-a-vis others. Those appointed irregularly belong to a different stream and they cannot claim seniority vis-a-vis those who may have been regularly and properly appointed.

20. We have recorded findings that 21 unplaced candidates of 1970 examination were appointed to the service illegally in breach of the Rules. We would, however, like to add that even though their appointment was not in accordance with law but the judgment and orders passed by them are not rendered invalid. The unplaced candidates are not usurpers of office, they were appointed by the competent authority to the posts of Munsifs with the concurrence of the High Court, though they had not been found suitable for appointment according to the norms fixed by the Public Service Commission. They have been working in the judicial service during all these years and some of them have been promoted also and they have performed their functions and duties as de facto judicial officers. "A person who is ineligible to judgeship, but who has nevertheless been duly appointed and who exercise the powers and duties of the office is a de facto judge, he acts validly until he is properly removed." Judgment and orders of a de facto judge cannot be challenged on the ground of his ineligibility for appointment. This doctrine in

founded upon sound principles of public policy and justice. In Achanti Sreenivasa Rao & others Vs. State of Andhra Pradesh, (1981) 3 SCC 133, the de facto doctrine in relation to a judicial officer was considered at length. Chinnappa Reddy, J. speaking for the court observed:

“A judge, de facto, therefore, is one who is not a mere intruder or usurper but one who holds office, under colour of lawful authority, though his appointment is defective and may later be found to be defective. Whatever be the defect of his title to the office, judgments pronounced by him and acts done by him when he was clothed with the powers and functions of the office, albeit unlawfully, have the same efficacy as judgments pronounced and acts done by a judge de jure. Such is the de facto doctrine, born of necessity and public policy to prevent needless confusion and endless mischief. There is yet another rule also based on public policy. The defective appointment of a de facto judge may be questioned directly in a proceeding to which he be a party but it cannot be permitted to be questioned in a litigation between two private litigants, a litigation which is of no concern or consequence to the judge except as a judge. Two litigants litigating their private titles cannot be permitted to bring in issue and litigate upon the title of a judge to his office. Otherwise, so soon as a judge pronounces a judgment a litigation may be commenced for a declaration that the judgment is void because the judge is no judge. A judge's title to his office cannot be brought into jeopardy in that fashion. Hence the rule against collateral attack on validity of judicial appointments. To question a judge's appointment in an appeal against his judgment is, of course, such a collateral attack.”

We have adverted to this aspect of the case in order to avoid any challenge to the validity of judgments and orders by the unplaced candidates of the 1970 examination on the ground on legal infirmity in their appointments. But having regard to

the period of 12 years that have elapsed we do not propose to strike down their appointments.

21. Now the question arises as to what seniority should be assigned to the unplaced candidates. Their claim for assigning them seniority on the basis of the competitive examination of 1970 is not sustainable in law as discussed above. They were appointed to service after five years of the examination and before their appointment competitive examination of 1972 had taken place and candidates selected under that examination had been appointed to service prior to their appointment. The directions issued by the High Court for rearranging the merit list of 1970 examination seriously affect the seniority of those who were regularly selected in accordance with the norms prescribed by the Commission. Having regard to these facts and circumstances of the case we are of the opinion that the view taken by the High Court on its administrative side and the State Government that the unplaced candidates of 1970 examination should be assigned seniority below the last candidates of 1972 examination appointed to the service is just and reasonable. In our opinion it would be just and proper to assign seniority to the unplaced candidates of 1970 examination at the bottom of the list of 1972 candidates. There were 37 unplaced candidates of 1970 examination who were included in the third list, out of them 16 candidates appeared in the 1972 examination and they were successful and their names were approved by the Commission in the list prepared under Rule 19. The State Government appointed them in service. Under Rule 22 they are entitled to seniority of 1972 examination but in view of the judgment of the High Court in Rafiquddin's case their seniority has been determined on the basis of their recruitment to service under the 1970 examination. We have already recorded findings that unplaced candidates of 1970 examination (as included in the third list) have not been recruited in service according to the Rules and their recruitment to service cannot be treated under 1970 examination for purposes of determining their seniority under Rule 22. We have further directed that 21 unplaced candidates of 1970 examination should be placed below the

candidates of 1972 examination But so far as 16 remaining candidates are concerned, they were appointed to the service on the result of 1972 examination and their appointment does not suffer from any legal infirmity. They are therefore entitled to seniority of 1972 examination on the basis of their position in the merit list of that examination. They are however not entitled to the seniority of 1970 on the basis of the examination of that year as held by the High Court.”

17. The next in line from the armoury of Mr. Gupta is State of Orissa & another Vs. Mamata Mohanty, (2011) 3 SCC 436, which is in the same line of reasoning, but examines the situation from a different angle. He refers to Para.37 in his favour, which reads as follows:

“37. It is a settled legal proposition that if an order is bad in its inception, it does not get sanctified at a later stage. A subsequent action/development cannot validate an action which was not lawful at its inception, for the reason that the illegality strikes at the root of the order. It would be beyond the competence of any authority to validate such an order. It would be ironic to permit a person to rely upon a law, in violation of which he has obtained the benefits. If an order at the initial stage is bad in law, then all further proceedings consequent thereto will be non est and have to be necessarily set aside. A right in law exists only and only when it has a lawful origin. (vide: Upen Chandra Gogoi v. State of Assam & Ors., AIR 1998 SC 1289; Mangal Prasad Tamoli (Dead) by L.Rs. v. Narvadeshwar Mishra (Dead) by L.Rs. & Ors. , AIR 2005 SC1964; and Ritesh Tiwari & Anr. v. State of U.P. & Ors., AIR 2010 SC 3823).”

18. In Mamata Mohanty’s case, the Supreme Court referred to Para.18 its earlier decision in Parmod Kumar Vs. UP Secondary Education Services Commission, (2008) 7 SCC 153 in Para.41, wherein the Supreme Court observed as under:

“18. If the essential educational qualification for recruitment to a post is not satisfied, ordinarily the same cannot be condoned. Such an act cannot be ratified. An appointment which is contrary to the statute/statutory rules would be void in law. An illegality cannot be regularised, particularly, when the statute in no unmistakable term says so. Only an irregularity can be. (See Secy., State of Karnataka v. Umadevi (3), (2006) 4 SCC 1; National Fertilizers Ltd. v. Somvir Singh, (2006) 5 SCC 493; and Post Master General, Kolkata v. Tutu Das (Dutta), (2007) 5 SCC 317).”

19. While dealing with this case, he relies to his advantage the passages in Paras.50 & 51, which read as follows:

“50. In absence of an enabling provision for grant of relaxation, no relaxation can be made. Even if such a power is provided under the Statute, it cannot be exercised arbitrarily. (See: Union of India v. Dharam Pal & Ors., (2009) 4 SCC 170). Such a power cannot be exercised treating it to be an implied, incidental or necessary power for execution of the statutory provisions. Even an implied power is to be exercised with care and caution with reasonable means to remove the obstructions or overcome the resistance in enforcing the statutory provisions or executing its command. Incidental and ancillary powers cannot be used in utter disregard of the object of the Statute. Such power can be exercised only to make such legislation effective so that the ultimate power will not become illusory, which otherwise would be contrary to the intent of the legislature. (vide: Matajog Dobey v. H.S. Bhari, AIR 1956 SC 44; and State of Karnataka v. Vishwabharathi House Building Co-operative Society & Ors., (2003) 2 SCC 412).

51. More so, relaxation in this manner is tantamount to changing the selection criteria after initiation of selection process, which is not permissible at all. Rules of the game cannot be changed after the game is over. (Vide K. Manjusree v. State of Andhra Pradesh & Anr., AIR 2008 SC 1470; and

Ramesh Kumar v. High Court of Delhi & Anr., AIR 2010 SC 3714).”

20. In the face of this legal position, the petitioners should feel satisfied that they are working, but cannot claim the right to seniority over and above the private respondents as a legitimate due enforceable in law.

21. In order to rebut the arguments of Mr. Anupam Gupta, Mr.D.S.Patwalia refers to the office order dated 03.09.1980 issued by the PSEB prescribing Regulation of Business from where it is argued that Regulation 3 mandates that the Board shall be collectively responsible for all executive orders issued on its behalf in accordance with these regulations. He relies on Regulation 4 (ii) to submit that all cases referred to in the Second Schedule shall be disposed of collectively by the Whole Time Members of the Board on its behalf. “Collectively” means by majority. The Chairman shall have a casting vote when Whole-time Members are evenly divided. However, where the Whole-time Members decide a case in circulation and one or more Members disagrees with the decision being taken, the case shall be discussed by the next higher authority i.e. the Board before a final decision is taken. He then refers to First Schedule at Pg.261 of the paper-book and points out to Item 20, which deals with ‘policy relating to direct recruitment of Gazetted services of the Board’ and therefore WTM was within its power to accord the relaxation in minimum marks since it was a matter relating to policy viz-a-viz direct recruitment. Mr. Patwalia then refers to the Second Schedule which deals with classes of cases which shall be referred to WTM and one of which is at 1(vii), empowers WTMs to exercise jurisdiction over selection and appointment of all Gazetted officers to represent the Board on various Committees set-up by the State or Central Government where any final commitment on behalf of the Board is involved.

22. Still further, learned senior counsel for the petitioners refers to the provisions of the Electricity (Supply) Act, 1948. Section 5 of the said Act deals with the Constitution and composition of State Electricity Boards, which specifies in sub-section (2) that the Board shall consist of not less than three and not more than seven members appointed by the State Government. From this, he takes the Court to the Annual Administration Report 2006-2007 (at Pg.273 of the paper-book). Chapter – 2 deals with ‘Organisational Set Up’ and defines the powers of the Board and the WTMs as follows:

“2. ORGANISATIONAL SET UP

2.1 THE BOARD

The full Board consisting of 7 members is supreme decision making authority of the Punjab State Electricity Board. All other authorities exercise power delegated to them by the Board from time to time, of the 7 member, 6 including the Chairman, are Whole Time Members and one Ex-officio member is representative of the Pb. Govt. The Board meets periodically to transact the business placed before it. In the transaction of its business it is assisted by the Secretary who is responsible for presenting matters for decision by the Board, keeping a record of its decisions, circulating these decisions to the concerned quarters and for ensuring proper follow up action. The incumbency of Chairman and Members during the year 2006-2007 is given in Chart-I. During this year the Board held 11 meetings.

2.1.1 WHOLE TIME MEMBERS

The 6 Whole Time Members collectively are the second level of decision-making authority in the Board. Apart from this each of them has been assigned a specific area of responsibility in the Board’s functioning for which he is overall incharge. The distribution of duties and functions between the Whole

Time Members is decided by the Chairman from time to time. A summary of the functions assigned to each Whole Time Member is given in chart-I. During this year Whole Time Members held a total of 37 meetings including special and M.I.R.”

23. Lastly, Mr. Patwalia submits that the advertisement prescribes age limit from 20 to 35 years as on 01.01.2006, but reserves right in the Board to relax the age limit as admissible under rules/instructions of PSEB/Punjab Government. These rights are meant for Scheduled Castes, Scheduled Tribes, Backward Classes, Ex-Servicemen and Physically Handicapped candidates and therefore, relaxation could have been accorded in minimum qualifications and thus in any case he would refer to the Note under the Head ‘Selection Process’, where the Board reserves the right to modify/alter the “above mode of recruitment without any notice” and when this preserved right is read into the appointment of the petitioners then they not only deserve to be upheld, but with a consequential right to seniority from the date of appointment of the private respondents.

24. On this survey of facts, he submits that the decision of the WTM in lowering minimum standards of admission to service was not an illegal act. I may record that I have noticed this segment of the case only account of the fact that both the learned senior counsel have addressed arguments extensively on the point and therefore, I should not ignore their submissions and at least record them, but still I fail to see any reason to go into this issue in ultimate decision making as the case can be decided on first principles of service law on other relevant issues regarding inter se seniority between the disputing parties.

25. However, to counter this argument, Mr. Anupam Gupta persuades the Court to hold that while age limit is relaxable condition, the criteria of selection fixing minimum marks is the substantive condition of eligibility

unlike age limit of entry to service, which is not substantive condition of eligibility and is a mere incident or condition of recruitment. There is another point from where Mr. Gupta presses his case i.e. in Bullet-5 of the advertisement under the Head 'Candidature of the Registration Candidates is liable to be rejected' stipulating that at any stage of recruitment process or after recruitment or joining, if any information provided by the candidate is found to be false or is not found in conformity with eligibility criteria mentioned in the advertisement then candidature can be rescinded; (*see* Pg.89 of the paper-book). It is argued on behalf of the private respondents that the rigours of Bullet-5 refer only to eligibility criteria mentioned in the advertisement and the declarations and information provided have to be read accordingly. This also falsifies the case of the petitioners for claiming seniority over the private respondents where the rules of the game were changed not when the game was being played, but after the game was played out and the private respondents appointed to service by a bye-lane. They became members of the service prior to the petitioners.

26. On the issue of authority of the Board to modify or alter the mode of recruitment without any notice, Mr. Gupta submits that this is the devils clause which is akin to what is now commonly phrased in service jurisprudence when it describes such extraneous exercise of power as the Henry the VIII Clause which has to be struck down to tune executive action with the rule of law. The principles of equality and equal opportunity have to be read by introducing principles of reasonable classification as between the meritorious and the less meritorious candidates. By the very nature of things the advertisement and the selection process has to be split into two separate, recognizable and distinct parts as rightly canvassed before this Court by the non-official respondents to non-suit the petitioners.

27. It is trite to say that the very format of selection stood transformed and materially altered when the decision was taken to grant relaxation by way of finding a via media only to cater to the left-out candidates who failed to make the grade to meet the administrative exigencies in service since a fresh recruitment process could have considerably delayed appointments. However, exigencies of administration, which are found necessary and expedient, cannot adversely disturb the accrued rights to seniority of the private respondents to be placed en bloc above the petitioners, their merit secured in conformity with the original standards set in the advertisement.

28. For the foregoing reasons, this Court finds no error in the impugned seniority list warranting interference and for those reasons would dismiss this petition as without merit. The seniority list be drawn in terms of this order in the relevant cadre, if not already finalized.

12.07.2016
Vimal

[RAJIV NARAIN RAINA]
JUDGE