

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.22949 of 2016
Date of Decision:-07.11.2016.

Narinder Pal and others

.....Petitioners

Versus

Bhakra Beas Management Board and others

.....Respondent

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. Raman Sharma, Advocate for the petitioners.

P.B. BAJANTHRI, J. (Oral)

1.) In the instant writ petition, petitioner has sought for the following relief:-

“ ii) issue a writ in the nature of Certiorari, Mandamus or any other appropriate writ, order or direction declaring impugned action of respondents in not adhering to the decision of Hon'ble Supreme Court in 'U.P. State Road Transport Corporation Vs. U.P. Parivahan Nigam Shishukhs Berozgar Sangh and other AIR 1995 SC 1115 and own instructions in the matter of filling up various posts including the posts of Lineman, pursuant to advertisement no.2 of 2014 dated nil. (Annexure P-2) and further in allowing all the candidates to be treated at par with the petitioners, who have done apprenticeship course from the respondent Board without disclosing what preference to be given to the petitioners as totally wrong, illegal, without

jurisdiction, in clear violation to the aforesaid decision of Hon'ble Supreme Court, subsequent decision of this Hon'ble Court and thus unconstitutional; and, to pass other appropriate orders or directions deemed proper in the facts and circumstances of this case.”

2.) The respondents have advertised for the post of Lineman in BBMB. The post of Lineman in BBMB is governed by Rules called BBMB Class III and Class IV Employees' (Recruitment and Conditions of Service) Regulations, 1994. Method of recruitment to the post prescribed is as under:-

Group XII

Sr. No.	Name of post	No. of posts	Pay scale	Method of appointment	Minimum education & other qualification	Min exp.	Appointing authority	Remarks
1 to 19	X-----X-----X							
20	Lineman	457 Subject to variation depending on the workload	Old scale 1200-2200 Revised scale w.e.f. 1.1.96 4300-7500	(i) by direct recruitment 50% (ii) by promotion from amongst Asstt. Lineman 50%	Matric or its equivalent and National apprenticeship certificate in the trade of lineman. Candidates possessing higher qualifications such as diploma/degree/AMIE in Elec. Engg. Will only be considered if they possess minimum essential qfs. Viz. National Apprenticeship certificate in the trade of lineman	Matric -5 years Non-matric -7 years	Supdt. Engg.	----

3.) The grievance of the petitioners is that they are stated to be seniors while holding the apprenticeship, therefore, they should be given

preference as per the decision of the Apex Court reported in ***AIR 1995 SC 1115*** titled as **“U.P. State Road Transport Corporation Vs. U.P. Parivahan Nigam Shishukhs Berozgar Sangh and other”**. The petitioner relied on para 12 of the decision of the Apex Court which reads as under:-

“12. In the background of what has been noted above, we state that the following would be kept in mind while dealing with the claim of trainees to get employment after successful of their training:-

(1) Other things being equal, a trained apprentice should be given preference over direct recruits.

(2) For this, a trainee would not be required to get his name sponsored by any employment exchange. The decision of this Court in Union of India. v. Hargopal, AIR 1987 SC 1227, would permit this.

(3) If age bar would come in the way of the trainee, the same would be relaxed in accordance with what is stated in this regard, if any, in the concerned service rule. If the service rule be silent on this aspect, relaxation to the extent of the period for which the apprentice had undergone training would be given.

(4) The concerned training institute would maintain a list of the persons trained year wise. The persons trained earlier would be treated as senior to the persons trained later. In between the trained apprentices, preference shall be given to those who are senior.”

4.) Learned counsel for the petitioner relied on Government of India, Ministry of Labour Directorate General of Employment & Training Communication dated 24.2.1996 to substantiate the claim the apprenticeship holders are entitled for preference. He also relied on Division Bench

decision of this Court passed in CWP No.12204 of 2007 dated 8.5.2008 which reads as under:-

“It has also come on record that the apprentices have undergone training for a period of two years with BBMB and for such training they were paid stipend in terms of Rule 11 of the Apprenticeship Rules, 1992. The BBMB has thus, spent time, money and energy on the trainees to train them in the trades prevalent in the BBMB. Therefore, such training cannot be permitted to go waste. If the preference is not given to such apprentices, it will not be utilization of the man power trained by the BBMB. In fact, learned counsel for the respondent has stated that the apprentices with the BBMB were enrolled for training after their names were sponsored by the Employment Exchange. It is, thus, apparent that the apprentices were imparted training after enrolment on being sponsored by the employment exchange. Being apprentices from BBMB, the only benefit given to them is, not to subject such trainees to the screening test conducted to shortlist the large number of the applicants. The apprentices as well as the shortlisted applicants have been subjected to the trade test and interviews. In the selection process, the only benefit given to the apprentices is the weightage of 5 marks according to the year in which apprentices have undergone training. By assigning such marks, the final seniority list has been determined and appointment made. Such process of selection in fact, is in terms of the orders passed by the Hon’ble Supreme Court, referred to above.”

5.) It was further submitted that with reference to earlier advertisement notified in the year 2006, the issue was subject matter and the

first petitioner is one of the candidate for recruitment. His name was

considered. However, for want of merit, he was not selected vide Annexure P-8 at page 50.

6.) Heard learned counsel for the petitioner.

7.) Grievance of the petitioners is that they are entitled for preference being holder of the National Apprenticeship Certificate in the trade of Lineman with reference to seniority. Reading of the Rules of Recruitment, it is crystal clear that the qualification prescribed is *“Matric or its equivalent and National apprenticeship certificate in the trade of lineman. Candidates possessing higher qualifications such as diploma/degree/AMIE in Elec. Engg. Will only be considered if they possess minimum essential qfs. Viz. National Apprenticeship certificate in the trade of Lineman”* Rules of recruitment are in statutory character. Therefore, the selecting authority is bound by the above Rules for the purpose of recruitment to the post of Lineman and he cannot deviate with reference to the prescribed qualification for the post. The grievance of the petitioner is that they being the holder of National Apprenticeship Certificate, they should be given preference with reference to the decision of Apex Court, decision of Division Bench of this Court and the communication of the Government of India Ministry of Labour Directorate General of Employment & Training. As long as Rules of recruitment BBMB Class III and Class IV Employees' (Recruitment and Conditions of Service) Regulations, 1994 is not amended to the extent that the holders of National Apprenticeship Certificate who are seniors are to be given preference, the same cannot be extended. The Supreme Court decision and decision of Division Bench of this Court are distinguishable for the reasons that Rules of recruitment do not provide for giving any preference to such of the

seniors who are holders of National Apprenticeship Certificate in the trade of Lineman. In this regard, it is necessary to quote decision of the Apex Court passed in **Nair Service Society vs T. Beermasthan 2009 (2) SCT 625.**

Para 45 of the judgment reads as under:

“45. Different State Governments in the country may have different methods for providing reservations, and these will be valid as long as the method adopted by a particular State Government does not violate any constitutional provision or statute. It is not for this Court to decide on the wisdom or otherwise of the said method of reservation. This Court should exercise judicial restraint and not interfere with the same unless there is some clear illegality. In our opinion the method prescribed by the Rules made by the State Government suffers from no infirmity or illegality, and hence the High Court acted wrongly in allowing the Writ Petition. We are clearly of the opinion that the High Court has placed a wrong interpretation on the relevant Rules.”

8.) Thus, the Supreme Court has held that while interpreting the Rules particular Rules are required to be taken into consideration. In the instant matter selecting authority is bound by rules of recruitment and he cannot go beyond statutory provisions. If petition is allowed the selecting authority has to travel beyond statutory rules which is impermissible as long as necessary amendment to statutory recruitment rules is brought in. Therefore, the selecting authority cannot sidetrack the existing rule of recruitment to the post of Lineman in respondent Board. Thus, the petitioners have not made out a case so as to seek a direction sought in the present petition.

9.) Petition stands dismissed.

10.) No order as to costs.

(P.B. BAJANTHRI)
JUDGE

November 07, 2016.
sandeep sethi

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.