

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 857 OF 2014

Maheshkumar Chandrashekhar	}	
Dhage	}	
Age 52 years, Occ. Service,	}	
R/o. B1-303, Silver Oak Co. Hsg.	}	
Society Ltd., East Avenue,	}	
Near Bank of Maharashtra,	}	
Kalyani Nagar, Pune,	}	
District - Pune 411 014.	}	Petitioner
versus		
1. The State of Maharashtra	}	
through Secretary, Department	}	
of Energy, Mantralaya,	}	
Fort, Mumbai.	}	
	}	
2. The Managing Director of	}	
MSEB Holding Company	}	
	}	
3. The Managing Director	}	
MSEDCL	}	
	}	
4. The Director (Operation)	}	
MSEDCL	}	
	}	
5. The Executive Director (H. R.)	}	
MSEDCL	}	
	}	
6. The Chief General Manager	}	
(Tech.), MSEDCL	}	
	}	
7. The Chief General Manager	}	
(H. R.), MSEDCL	}	
	}	
The Respondent nos. 1 to 7	}	
having Corporate Office at	}	
Prakashgad, Plot No. G-9,	}	
Prof. Anant Kanekar Marg,	}	
Bandra (E), Mumbai - 400 051	}	

8. The Director, }
 Institute of Banking Personnel }
 Selection, IBPS House, Plot No. }
 166, Behind Thakur Ploytechnic, }
 Off. Western Express High Way, }
 Kandivali (East), }
 Mumbai - 400 010 }
9. Shubhangi Digambar }
 Harmalkar, }
 Age - Major, Occu. Service }
 R/o. Commercial Intelligence }
 Wing, Astralla batteries Building, }
 Dharavi, Matunga, Mumbai }
10. Sanjay s/o. Bapurao Wakade }
 Age - major, Occu. Service, }
 R/o. Office of Executive Engineer, }
 MSEDCCL, Deori Division, }
 Pune, Dist. Pune }
11. Kundan s/o. Pandurang Bhise }
 Age - Major. Occu. Service, }
 R/o. Office of Executive Engineer, }
 MSEDCCL, Yavatmal Division, }
 Yavatmal, Dist. Yavatmal }
12. Sukhdeo s/o. Narayan }
 Sherkar }
 Age - Major, Occu. Service, }
 R/o. Office of Executive Engineer, }
 MSEDCCL, Rastapeth Division, }
 Pune, Dist. Pune }

Respondents

Mr. Vishal Kanade with Mr. Satish Raut
 for the petitioner.

Mr. Sukanta Karmakar - AGP for
 respondent no. 1.

Mr. Prashant Chavan with Mr. Nirav
 Shah i/b. M/s. Little and Co. for
 respondent nos. 2 to 7.

**CORAM :- S. C. DHARMADHIKARI &
B. P. COLABAWALLA, JJ.**

**Reserved on 18th November, 2016
Pronounced on 9th March, 2017**

Judgment :- (Per S. C. Dharmadhikari, J.)

1. By this petition under Article 226 of the Constitution of India, the petitioner seeks the following reliefs:-

“b) The final selection list dt. 15/6/2013 for the post of Executive Engineer (Dist.) pursuant to the advertisement No. MSEDCL-10/2012 by Maharashtra State Electricity Distribution Company Ltd./Respondent No. 1 to 7 authorities may be pleased to quashed and set aside.

c) This Hon'ble court may be pleased to hold that Respondent no. 9 to 12 i.e. sr. no. 3 to 6 in select list and sr.no. 1 of the select list are ineligible for appoint to the post of Executive Engineer under advertisement No.MSEDCL-10/2012 by Maharashtra Electricity Distribution Company Ltd.

d) The Respondent No. 1 to 7 may pleased be directed to cancel selection of Respondent No. 9 to 12 and Sr. No. 1 of select list and declare the petitioner as selected by drawing next below list of four candidates those who are only complying prerequisite condition of advertisement for appointment of Executive Engineer (Dist.)”

2. The facts and circumstances in which these reliefs are sought are briefly set out hereinbelow:

3. The petitioner states that he has completed his Graduation in Bachelor of Engineering (Electrical) in the year 1983. He was working as Lecturer from September 1983 to 3rd October, 1986 with different private as well as Government Engineering College.

The petitioner was appointed as a Junior Engineer with the Maharashtra State Electricity Distribution Company Limited (MSEDCL) i.e. respondent No.3 to 7 authority from October 1986 to May 2004. The petitioner was working as Assistant Engineer with MSEDCL from May 2004 to September 2012. Thereafter, the petitioner is working as a Deputy Executive Engineer with MSEDCL since October, 2012 till this date and has gained experience of more than 27 years in the field of Power Distribution and more than 9 years in the post of Assistant Engineer and Deputy Executive Engineer. A copy of the Experience Certificate issued by the Chief General Manager (HR-Tech) MEDCL is annexed at Exhibit-A to the paper-book. In 2012, the respondent authorities issued one advertisement No.MSEDCL-10/2012 for about 09 posts under Direct Recruitment. A copy of the said advertisement is annexed as Exhibit-B to the paper-book. The petitioner being an eligible candidate for the post of Executive Engineer (Dist.) applied online as per the guidelines given in the advertisement. A copy of the online application form is marked as Exhibit-C to the paper-book. As per the advertisement for the post of Executive Engineer (Dist.) more than 200 candidates submitted their applications. A copy of the list of candidates who applied for Executive Engineer (Dist.) is annexed as Exhibit-D to the paper-book.

4. After scrutiny of the applications received on-line being carried out by the respondent Nos.2 to 6, the petitioner qualified for the written test. The written examination for the said post was conducted on 13th January, 2013. After the written test was conducted, the list of qualified candidates for the interview was published without disclosing the marks obtained by the candidates. A copy of the list of candidates who appeared for the interview along with the schedule of all the candidates selected for interview is annexed as Exhibit-E to the paper-book.

5. The petitioner states that he had applied for the post of Executive Engineer in Distribution (Code : EED) against vacancies reserved for Other Backward Class category. The indicated vacancies in the advertisement for the post of Executive Engineer (Dist.) are 12, considering the projected vacancies upto September, 2013, out of which 4 vacancies are for Other Backward Class category. The petitioner was surprised because he was not called for the personal interview initially. The petitioner was confident that he will be selected for interview. Thereafter the petitioner came to know that the respondent authority has selected some non-qualified candidates for interview for the reasons best known to them. When the petitioner pointed out the said facts to the respondent authority

vide letter dated 22nd March, 2013, the respondent thereafter included the name of the petitioner along with other 10 candidates in the list of candidates who were called for interview at the last moment. A copy of the letter dated 22nd March, 2013, addressed to respondent Nos.5 to 7 is marked as Exhibit-F to the paper-book and a copy of the second list of 11 candidates who were called for the interview is marked as Exhibit-G to the paper-book.

6. The petitioner further states that he was selected in the written test and called for the interview on 6th April, 2013, but the marks obtained by the petitioner as well as the other candidates were not disclosed / displayed. The respondent No.8 has also not published marks obtained by the petitioner and other candidates in the interview. In fact, select list should consist of total marks obtained by the candidates in the written examination and the personal interview and also, the marks obtained by the candidates in the interview shall also be displayed on the Notice Board or on the official website of MSEDCL on each day of the interview as per Appendix-P of Classified and Recruitment Regulation 2005 correction slip by Notification vide C.S. No. 271 dated 1st April, 2000 to GSO 112 dated 12th February, 1962. A copy of the said Notification is marked as Exhibit-H to the paper-book.

7. The petitioner states that the advertisement as well as Classification and Recruitment Regulations, 2005, lays down the criteria for candidates to be called for the interview against the number of candidates to be selected and that ratio is 1:3. Initially, 29 candidates were called for the interview for the post of Executive Engineer (Dist.). This seems to be not as per the ratio.

8. The petitioner then states that the petitioner pointed out vide Exhibit-F that the shortlisted candidates who were selected for the interview were not eligible for the post of Executive Engineer (Dist.) as per the advertisement clauses because as per advertisement clause No.2 the applicant for the post of Executive Engineer (Dist.) must possess "9 years experience in power sector, out of which 5 years should be in the capacity of Assistant Engineer or 2 years Deputy Executive Engineer". As per clause 6.8 of the advertisement, selection of departmental candidates was subject to verification of disciplinary action and vigilance enquiry, if any, in process / completed and other service record. In response to the petitioner's letter dated 22nd March, 2013, 11 candidates including the petitioner were called for the interview for the post of Executive Engineer (Distribution) on 6th April, 2013. As such respondent concealed the genuine merit to give scope for appointment of unsuitable and desired candidate,

respondent Nos.2 to 8. However, some of these candidates are also not eligible for the post of Executive Engineer (Dist.) as per advertisement and also not as per ratio provided in clause 6.1 of the advertisement.

9. The petitioner states that he submitted a representation dated 21st May, 2013, to respondent Nos.4 to 7 to exclude the name of one shortlisted candidate for the interview, namely, Mr. Manish Bapurao Thakare who was meanwhile promoted as Executive Engineer (Dist.) in departmental promotion while preparing select list of direct recruitment for the post of Executive Engineer (Dist.) and requested to update the wait listed candidate. A copy of the said letter dated 21st May, 2013, is annexed as Exhibit-I to the paper-book.

10. The petitioner states that after the interviews were conducted, the Final List of selected candidates for various posts along with the post of Executive Engineer in Distribution was published on 15th June, 2013, without marks obtained in written test and personal interview of the selected candidates including the name of Mr. Manish Bapurao Thakare after a lapse of two months which is in contravention of rules provided in Appendix-P. A copy of the final list of selected candidates for the post of Executive Engineer in Distribution is annexed as Exhibit-J to the

paper-book. The petitioner further states that inspite of the petitioner bringing to the notice of the respondent that Mr. Manish B. Thakare has been included in the final list which disturbs the preference merits list of selected candidates, the said fact was overlooked by the respondent authority and it displayed the wrong list for the post of Executive Engineer (Dist).

11. The petitioner further states that the petitioner applied for the marks obtained by the candidates vide application dated 23rd July, 2013, under clause 3 of The Right to Information Act, 2005. However, the Public Information Officer (PIO), Assistant General Manager (HR-Tech) of respondent Nos.2 to 7 has not supplied the information. The petitioner preferred an appeal dated 27th August, 2013, against the decision of the PIO. As per the said order of the appellate authority, it was held that the marks obtained by the candidates in the written test and oral interview are not confidential and hence be supplied as per order No.93/2013 dated 27th September, 2013. However, the marks given by the respondent's Public Information Officer are not as per rules and demands. They were not forwarded within a specific time and the document was received on 18th October, 2013. The copies of the appeal dated 27th August, 2013, order dated 27th September, 2013 and the list along with the total

marks dated 18th October, 2013, respectively, are annexed as Exhibits – K, L and M to the paper-book.

12. The petitioner further submits that the candidates non-confirming the pre requisites which have been pointed out earlier due to which additional selection list was drawn for interview contains the names of non-eligible candidates mainly respondent Nos.9 to 12. They appear in the final list and are selected. The application dated 20th June, 2013, indicating the complete details of irregularities of the candidates those who are not fulfilling the pre requisites was submitted by the petitioner to the respondent Nos.3 to 7 before issuance of the appointment order to the selected candidate. A copy of the representation of the petitioner dated 20th June, 2013, is annexed as Exhibit-N to the paper-book. The selection of the Executive Engineer (Dist.) after the short listing, the written examination, to the final stage is not transparent and respondents appear to be concealing the genuine meritorious candidates.

13. The petitioner further states that condition No.6.8 of the advertisement No.10/2012 expressly mentions that the selection of departmental candidates shall be subject to verification of disciplinary action , vigilance enquiries in process / completed and other service records. However, candidates, namely, Mr.

Sherekar S.N., Mr. Bhise K.P., Mr. Chitale S.N., Mr. Damse C.S. and Mr. Salunkhe have committed number of irregularities and hence facing/contemplating disciplinary action. As such in absence of the transparency in publishing merit list from time to time, the selection of these candidates is against the existing rules and hence be quashed and cancelled. The departmental regular promotion is not given to the candidates in MSEDCL if departmental action is in process. However, the candidates facing disciplinary action have been selected under direct recruitment. The various irregularities appearing in the select list were brought to the notice of the respondent Nos.1 to 3 on 25th August, 2013, by the petitioner and also by other listed and not listed candidates. A copy of the representation of the petitioner dated 25th August, 2013, along with the status report of disciplinary actions against the selected candidates is annexed as Exhibit-0 to the paper-book.

14. The petitioner submits that he reproduced Correction Slip 41 dated 15th February, 2013, to Classified & Recruitment Regulation to form selection committee for reviewing and deciding the seal cover of cases of employees who have been selected for promotion / under direct recruitment irrespective of exoneration / punishment imposed on the employees whose

disciplinary action cases have been finalised; (1) state seniority posts; (2) ED (HR); (3) one functional member of the CSC. However, the petitioner submits that the said list of candidates who were selected inspite of the charges pending against them was not sent to the Review Committee as per the provisions prescribed above. The petitioner further submits that the respondent authority has urgently made appointment order and simultaneously asked to relieve the candidates on the same day. Copies of the Correction Slip and the order dated 4th July, 2013, respectively are annexed as Exhibits – P and Q to the paper-book.

15. The petitioner submits that he raised his voice against these irregularities vide his application dated 25th August, 2013, and thereafter the appointment order of some candidate has been cancelled and simultaneously kept in sealed cover vide Order No.319 dated 30th September, 2013, which is self contradictory. The petitioner further submits that the act of the said cancellation of orders stating that the appointment of candidates are cancelled and on the other hand in the same order mentioning that the case has transferred to seal cover also shows patently irregularities/illegalities committed at the time of correcting the erroneous appointments. A copy of the order dated 30th September, 2013, is annexed and marked as Exhibit-R to the paper-book.

16. The petitioner submits that the respondent No.9 Mrs. Subhangi Digamber Harmalkar is selected and appointed as Executive Engineer (Dist.) under Horizontal Reservation of OBC category, although not complying with the work experience as declared in the advertisement 10/2012. She joined the MSEDCL on 7th October, 2003, as a Junior Engineer. After that in the direct recruitment of Deputy Executive Engineer she was selected and appointed to MSEDCL on 15th April, 2010 and serving in the MSEDCL. The experience required as per the advertisement 10/2012 is 9 years experience in power sector as on 15th December, 2012. She was on study leave vide order No.109 dated 15th June, 2006, for 15 months. Considering her study leave, her requisite experience for the advertised post is of 7 year 11 months 8 days. As such, she is ineligible for appointment as Executive Engineer (Dist.). In spite of the above, she was selected and appointed for the post of Executive Engineer. A copy of the study leave order dated 15th June, 2006, is annexed as Exhibit-S to the paper-book.

17. The petitioner further submits that in the advertisement it is specifically mentioned that candidates should produce current year's Non-Creamy Layer Certificate, if not attached with the application, then, at least at the time of interview. However, in

respect of the above candidate the certificate was not even produced at the time of interview, but produced thereafter. In spite of the said facts, she was selected and appointed by the respondents for reasons best known to them. A copy of the said certificate obtained under the Right to Information Act is annexed as Exhibit-T to the paper-book. A copy of the service regulation of MSEDCL in respect of the study leave is annexed as Exhibit-U to the paper-book.

18. The petitioner states that respondent No.10 Mr. Sanjay Manohar Wakade is selected and appointed as Executive Engineer (Dist.) under Vertical Reservation of OBC category, although not fulfilling the prerequisite as declared in the advertisement 10/2012. Respondent No.10 had joined MSEDCL on 11th July, 2006, as an Assistant Engineer. He was on study leave vide order No.HRD/MDI/PGDBM/2487 dated 8th June, 2007, for 15 months. After that, he is selected as a Management Trainee from 1st September, 2009 to 31st August, 2011 by MSEDCL order No.306 dated 24th August, 2011. After completion of the training, he was absorbed as a Deputy Executive Engineer (Dist.) from 12th September, 2011, and placed in the seniority list. Thus, his study leave period of 15 months and two years of management training period needs to be discounted from his work experience as below:

A. Mr. S.M.Wakade has joined as Deputy Executive Engineer on 12th September, 2011, did not complete two years as 15th December, 2012.

B. He was Management Trainee for period of two years with effect from 1st September, 2009 to 31st August, 2011, which is not to be considered as work experience.

He was on study leave for a period of 15 months with effect from 14th July, 2007 to 3rd November, 2008 which also is not to be considered as work experience.

Actual experience in the post of Assistant Engineer with effect from 29th July, 2006, to 13th July, 2007, i.e. less than one year.

19. The petitioner states that as such, the respondent No.10 is not having experience of 9 years as per prerequisites in the advertisement but he was selected and appointed. Copies of the study leave, order of management trainee and clarification of management trainee scheme are annexed as Exhibit-V to the paper-book.

20. The petitioner then submits that the respondent No.11 Mr.Kundan Pandurang Bhise, who does not satisfy condition No.6.8 of the advertisement No.10/2012 is shortlisted and appointed as Executive Engineer (Dist.). The departmental disciplinary action was ongoing at the time of his name

declaration in final select list and still in progress. In spite of the above fact he was appointed as Executive Engineer (Distribution). After the petitioner brought this irregularity to the notice of the respondent, respondent Nos.3 to 7 cancelled the appointment and on the other hand in the same order mentioned that the case has been transferred to seal cover. This act also shows the patent illegalities or irregularities committed at the time of correcting the erroneous exercise. The petitioner further submits that thereafter the respondent Nos.3 to 7 should have given priority to the down below candidates, however, the same was not done by the respondent Nos.3 to 7.

21. The petitioner further submits that the respondent No.12 is having three charge-sheets issued by the authority and out of which in two charge-sheets, he was punished. In spite of the said fact, he was selected and appointed to the post of Executive Engineer (Dist.) mentioned in Exhibit-Q.

22. It is on the above allegations and the grounds set out in para 24 that the petitioner alleges gross illegalities and serious irregularities in the selection process.

23. An affidavit in reply has been filed by the contesting respondent-MSEDCL to this petition, in which, it is stated as under:-

“3.1) I say that in October, 1986, the Petitioner joined the erstwhile Maharashtra State Electricity Board as a Junior Engineer. I say that in the year 2004, Petitioner was promoted to the post of Assistant Engineer. I say that pursuant to the Scheme framed in accordance with the proviso of Section 131 of the Electricity Act, 2003, the Distribution undertaking of erstwhile MSEB was taken over by MSEDCL. I say that the Petitioner's services continued with MSEDCL.

3.2) I say that in October, 2012, MSEDCL had published an advertisement for filling up various posts under direct recruitment including the post of Executive Engineer (Distribution). The Petitioner applied for the post of Executive Engineer (Distribution) under direct recruitment. I say that Twelve (12) posts were available for direct recruitment in respect of Executive Engineer (Distribution), out of which One (1) was reserved for SC Category, Four (4) post for ST Category, One (1) post for VJA Category, One (1) post for NTB Category, Four (4) post for OBC Category and One (1) post was available for Open Category. I say that the Petitioner applied under the OBC Category. I say that the Written Examination for the post of Executive Engineer (Distribution) was conducted on 13.01.2013.

3.3) I say that the selection was carried out by an independent agency namely IBPS. I say that the Petitioner was called for interview along with other qualified candidates after Written Examination. I say that after interview the list of selected candidates for the post of Executive Engineer (Distribution) as well as other post was published. I say that accordingly Twelve (12) candidates were selected for the post of Executive Engineer (Distribution) and Seven (7) candidates were kept on waiting list. The said Select List is annexed at Exhibit “J” to the above Petition.

3.4) I say that as per the procedure the Recruitment Agency had included names of all the selected candidates in the select list irrespective of any ongoing disciplinary action against any of the candidates. I say that verification of service details was to be carried out after receipt of Selection List.

3.5) I say that the Appointment Order was issued to various selected candidates. I say that the Appointment Order was issued on 04.06.2013 and the selected candidates were directed to relieve on or before 12.06.2013. I say that there is no merit in the contention of the Petitioner that the Respondents had made the appointment urgently and had simultaneously asked the selected candidates to be relieved on the same day.

3.6) I say that the process of cancellation of Appointment Order and keeping them in the seal cover was not solely influenced by the Complaint of the Petitioner. I say that the process of verification of the service details was started before receipt of the Complaint of the Petitioner. I say that after verification of service details, the Appointment Orders of some of the selected candidates were cancelled as per the Rules and their cases were kept in the sealed cover for the purpose of following the sealed cover procedure as per Regulation 29 of the MSEDCL (Classification and Recruitment) Regulations, 2005. The said order of cancellation of appointment has been annexed at Exhibit "R" to the above Petition.

3.7) I say that in Paragraphs 20 to 23, the Petitioner has raised the question about eligibility of the Respondent nos.9 to 12 for the post of Executive Engineer (Distribution). I say that there are no merits in the said contentions and all the candidates were fulfilling the eligibility criteria for the post of Executive Engineer (Distribution). The table below details the eligibility criteria vis-a-vis the said four Respondents.

<u>Sr. No.</u>	<u>Criteria as per Advt.</u>	<u>Particulars of selected candidates</u>	<u>Remarks</u>
1	Qualification:- Bachelor's Degree in Electrical Engineering / Technology	Smt. Shubhangi Harmarkar BE (Electronics) PGDBM Wakade Sanjay Manohar BE (Electronics) PGDBM Kundan Bhise BE (Electronics) M. Tech. MBA Sherkar Sukhdeo BE (electronics) MBA (Marketing)	All candidates are fulfilling the required criteria
2	Experience:- 9 Years of Experience in Power Sector out of which at least 5 years in the area of Power distribution as Dy. EE & Asstt. Engineer or 2	Smt. Shubhangi Harmarkar Total Exp: 9 yrs. & 4 Months As Dy. EE 2 Yrs. & 9 Months Wakade Sanjay Manohar Total Exp: 15 yrs. & 4 Months As Dy. EE 1 Yrs. & 3 Months As AE - 5 Yrs & 2 Months	All candidates are fulfilling the required criteria

	years as Dy. Ex. Engineer.	Kundan Bhise Total Exp: 18 yrs. & 8 Months As Dy. EE 1 Yrs. & 2 Months As AE – 8 Yrs. & 0 Months	
		Sherkar Sukhdeo Total Exp: 13 yrs. & 4 Months As Dy. EE 6 Yrs. & 4 Months	
3	Age limit as on 15.12.2012:- 40 Years Age Limit relaxable by 5 years for candidates belonging to Backward Class Class. Departmental candidates upper Age limit is 57 years.	Smt. Shubhangi Harmarkar (OBC Category) 34 Yrs. & 8 Months Wakade Sanjay Manohar (OBC Category) 42 Yrs. & 1 Months Kundan Bhise (OBC Category) 47 Yrs. & 11 Months Shekhar Sukhdeo (OBC Category) 38 Yrs. & 1 Months	All candidates are fulfilling the required criteria

3.8) It is submitted that none of the prevailing Rules/Regulations of MSEDCL expressly provide that study leave period would be excluded from the experience period to be considered for the purpose of eligibility. Hence, in absence of any such provisions the MSEDCL treats these period as continuous working period and included as work experience as per Rules.

3.9) I say that the Petitioner has raised objection to the appointment of the Respondent No. 10, Shri. Sanjay Manohar Wakade in Paragraph 21 of the Petition contending therein that he was Management Trainee for the period of 2 years and on study leave of period of 15 months. I say that as pointed out in preceding paragraph that none of the prevailing Rules/Regulations of MSEDCL expressly provides that study leave period would be excluded from the experience period to be considered for the purpose of eligibility. Hence, in absence of any such provisions the MSEDCL treats these period as continued working period and included as work experience as per Rules. Hence, Shri. Sanjay Wakade is eligible for appointment under direct

recruitment as he has more than 2 years' experience as Deputy Executive Engineer.

3.10) I say that the Petitioner has raised objection to the appointment of the Respondent No. 11, Shri. Kundan Pandurang Bhise in Paragraph 22 of the Petition. I say that the appointment of Shri. Bhise has already been cancelled vide order dated 30.09.2013 and the selection is kept in seal cover and seal cover procedure will be followed as per Regulation 29 of MSEDCL (Classification and Recruitment) Regulations, 2005. The said order dated 30.09.2013 has been annexed at Exhibit "R" to the above Petition.

3.11) I say that the Petitioner has raised objection to the appointment of the Respondent No. 12, Shri. Sukhdeo Narayan Shekar in Paragraph 23 of the Petition contending therein that 3 Charge Sheets have been issued to him out of which he was punished in respect of 2 Charge Sheets. It is submitted that all the disciplinary action cases against Shri. Shekar were finalised at the time of issuing the appointment order. Hence, as per Rules he was eligible for the appointment under direct recruitment."

24. The petitioner has purported to deal with this affidavit in reply by filing a rejoinder. In the rejoinder, the petitioner more or less repeats and reiterates the contents of and the averments in the writ petition. In paragraph 4 of the affidavit in rejoinder, the petitioner states that he has impleaded all necessary parties as respondents to this petition. However, he maintains that since he belongs to Other Backward Category (OBC), therefore, OBC candidates are made parties to this writ petition. He submits that the petition cannot be dismissed on any technical ground. Secondly, he submits that respondent-MSEDCL has not adhered to the rules and regulations while effecting the promotions.

25. A perusal of the rest of the sub-paras of para 4 would reveal that the petitioner reiterates his allegations in the writ petition and alleges gross irregularities and illegalities in the selection and appointment process.

26. We have, with the assistance of Mr. Kanade and the counsel appearing for the respective parties, carefully perused the writ petition and its annexures and the affidavits. We have also perused the representation by the petitioner dated 20th June, 2013, copy of which is at Exhibit 'N' at page 64 of the paper book. The petitioner has thanked the Managing Director of the respondent for considering his earlier representation dated 22nd March, 2013. He also proceeds to allege that the candidates Wakade Sanjay Manohar and Shubhangi Digambar Harmalkar were not qualified as they do not possess the required work experience. The non-qualifying candidates selected for the post of Executive Engineer (Distribution) ranked as Sr. Nos. 5 and 6, according to the petitioner, do not possess minimum 9 years experience in power sector. Both Wakade Sanjay and Shubhangi Harmalkar have to possess at least 5 years work experience in the area of power distribution as Deputy Executive Engineer and Assistant Engineer or 2 years experience as Deputy Executive Engineer. Being a direct recruitment, according to the petitioner,

experience denotes working experience and not a period of study leave. Mr.Kanade, appearing for the petitioner highlights this aspect of the matter regarding the two candidates. He has submitted that Wakade Sanjay was on study leave for 15 months with effect from 14th July, 2007 to 3rd November, 2008, which does not amount to work experience. Similarly, Shubhangi Harmalkar was on study leave for two years. Therefore, she completes less than 7 years experience in power sector.

27. On the other hand, inviting our attention to the affidavit in reply, it is submitted by Mr. Chavan that the allegations with regard to these two candidates are totally incorrect. It is submitted that both are highly qualified as they hold Bachelors Degree in Engineering (Electronics). The total experience of Shubhangi Harmalkar is 9 years and 4 months and as Deputy Executive Engineer 2 years and 9 months. The total experience of Sanjay Wakade is 15 years and 4 months and as Deputy Executive Engineer as 1 year and 3 months and as Assistant Engineer it is 5 years and 2 months. The advertisement stipulated the work experience and having found that there was complete transparency in the process, the petitioner also participating in the same, it is improper on his part to allege any irregularities or illegalities.

28. We are concerned with a direct recruitment and not promotion. We will focus only on the same. After perusal of the relevant criteria as enumerated in the advertisement, copy of which is at Exhibit 'D' at page 26 of the paper book, what we have noted is that Executive Engineer (Distribution) is the post, to which the petitioner stakes his claim. He has enumerated in the petition as to how he was one of the candidates and in the process. The post is Executive Engineer (Distribution). The requirement is Bachelors Degree in Electrical Engineering/Technology. The 9 years experience in power sector is the experience criteria. Out of this, at least 5 years in the area of power distribution as Deputy Executive Engineer and Assistant Engineer is required or 2 years as Deputy Executive Engineer. As is apparent in the case of both, Mr. Wakade and Ms. Harmalkar, Mr. Wakade had worked as Deputy Executive Engineer. On 12th September, 2009, he has also an experience as Assistant Engineer from 29th July, 2006 to 13th July, 2007. The petitioner does not dispute that 9 years experience in power sector is the broad criteria for experience, out of which, at least 5 years in the area of power distribution as Deputy Executive Engineer and Assistant Engineer. If what is alleged by the petitioner is correct, then, Mr. Wakade has worked as Deputy Executive Engineer and prior to that, he was an Assistant Engineer. This experience, together with the period on

which he was on study leave has been reckoned and as far as Ms. Harmalkar is concerned, the petitioner concedes that she completed 2 years experience in the post of Deputy Executive Engineer. She had joined the erstwhile MSEB on 7th October, 2002 as Junior Engineer. However, she was on study leave for two years, as such she completed less than 7 years experience in power sector. What is required is 9 years experience in power sector, out of which, at least 5 years in the area of power distribution as Deputy Executive Engineer and Assistant Engineer or 2 years as Deputy Executive Engineer. Whichever way we look at this stipulation, we do not think that the respondents were in error or they acted arbitrarily in selecting the two candidates. The explanation provided in the affidavit and particularly with regard to these candidates is not vitiated by any perversity or any error of law apparent on the face of the record. We do not see any justification for the complaint of the petitioner, inasmuch as in para 3.8 of the reply affidavit, the respondents have clarified that Ms. Harmalkar was deputed by the respondents themselves to undergo the 15 months' Executive Post Graduate Diploma in Business Management-Energy Management as a specialisation in power distribution at Management Development Institute Gurgaon after passing the qualifying examination. The applicable rules and regulations of

the MSEDCL, do not contemplate exclusion of the study leave period for reckoning and computing the total experience. That is why that period spent on study leave so as to acquire higher training has been taken into consideration. We do not think that such an approach of the respondents can be faulted. It is a possible way of construing and interpreting the requirement of work experience as stipulated in the advertisement. Similarly, with regard to Mr. Wakade, it is pointed out by the respondents that his study leave period was also reckoned and taken into consideration while computing the work experience. The explanation in para 3.9 of the reply affidavit with regard to Mr. Wakade enables us to conclude that he was also eligible for appointment under direct recruitment as he has more than 2 years' experience as Deputy Executive Engineer.

29. The mistake with regard to another candidate Mr. Kundan Pandurang Bhise has already been corrected by the respondents, as pointed out in para 3.10 of the affidavit in reply.

30. Once the settled parameters for interfering in writ jurisdiction are not attracted in the facts and circumstances of the present case, then, we do not find any merit in the writ petition. It is, accordingly, dismissed, but without any order as to costs.

(B.P.COLABAWALLA, J.) (S.C.DHARMADHIKARI, J.)