

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

CWP No.15641 of 2009 (O&M)

Date of Decision: December 21, 2017

Haryana Rajya Bijlee Board Se Barkhast Karamchari and ors

...Petitioners

Versus

Haryana Vidyut Parsaran Nigam Ltd. and ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Girish Agnihotri, Senior Advocate with
Mr. Saraj Malakar, Advocate and
Mr. Gaurav Mohunta, Advocate,
Ms. Sangita Dhanda, Advocate
Mr. Ashok Kumar Sharma, Advocate
Mr. Tarun Seth, Advocate,
Mr. Lekh Raj Nandal, Advocate,
for the petitioners.

Mr. Chirag Kundu, Advocate and
Mr. Jagdeep Singh Rana, Advocate for
Mr. Vinod S. Bhardwaj, Advocate
Mr. Sukhdev Singh, Advocate
Mr. Ram Bilas Gupta,
for the applicants.

Mr. Chetan Mittal, Senior Advocate with
Mr. Mohinder S. Nain, Advocate,
for respondents no.1 to 4.

Mr. R.K. Doon, AAG, Haryana.

Mr. R.K. Malik, Senior Advocate with
Ms. Rimple Sohi Kadyan, Advocate
for respondents no.9, 22, 24, 27, 29, 30, 31,34, 35, 39, 41, 42,
52, 74, 79, 86, 109, 110, 112, 114, 115, 119, 124, 129, 133,
139, 144, 146 149, 151, 154, 155, 156, 162, 163, 165, 166, 167,
177, 180, 183, 186, 182, 187, 190, 238, 239, 240, 243, 244,
245, 247.

Amol Rattan Singh, J. (Oral)

By this petition, the petitioners have challenged the appointment of respondents no.5 to 287 on posts of Statistical Assistants and Assistant Linesmen for the Power Utilities in the State, as have been impleaded through their Chairman/Managing Directors, as respondents no.1 to 4.

The challenge is to the selection conducted in the year 1997, upon the original selection conducted in the year 1992 having been quashed by a co-ordinate Bench of this Court, in which members of the first petitioner herein, as also petitioners no.2 to 5, were selected to the aforesaid posts.

The selection in the year 1992 was quashed vide a judgment dated 29.11.1995, passed in CWP no.7382 of 1993, with that judgment upheld first by a Division Bench of this Court and thereafter by the Supreme Court in SLP (Civil) no.11947 of 1996, the order of the Apex court having been passed on 18.02.1997.

A copy of that order is annexed as Annexure P-3 with the petition.

2. The primary reason for the selection being quashed by this court, as is not doubted by the counsel appearing in this petition on both sides, was that the selections were made firstly far beyond the number of posts advertised, with no uniform criteria adopted by the Selection Committees constituted in different circles of the erstwhile Haryana State Electricity Board, thereby there being found to be arbitrariness by the Court.

In the aforesaid background, a statement was in fact made before the Supreme Court by the counsel appearing for the Board, that the Board had in fact decided to make the selections on a “statewise basis”, on the basis of

marks obtained in a written examination, with marks also to be given for educational qualifications, experience, extra curricular activities and an interview.

Accepting that statement, their Lordships had not interfered with the judgment of this Court.

However, the following observations were made even while disposing of the SLP:-

“It is, however, made clear that while making appointments the Board shall keep in mind the limit for reservation laid down by this court in the case of *Indra Sawhey & Ors. Vs. Union of India*, 192 Supl. (3) SCC 217. The Board, while making the selection, shall take into account the work of the petitioners as Assistant Lineman/Shift Attendants on the basis of their appointments under the earlier selection for the purpose of awarding marks for experience. Till the selection process is completed and appointments are made on the basis of such selection, the services of the petitioners shall not be terminated. The Special Leave Petitions are disposed of accordingly.”

3. Thereafter, Contempt Petition (Civil) no.119 of 1999 was filed in the Supreme Court by the petitioners in the SLP, alleging therein that while making fresh selections, no weightage had been given for past experience, notwithstanding the positive direction given in that regard by the Court.

That allegation however was rejected by the Apex Court, observing in its last order dated 18.11.1999, as follows:-

“Pursuant to the said direction the records of selection have been produced before us and on going through the same we are satisfied that the appropriate authorities in compliance with our direction have awarded marks in respect of past experience. In that view of the matter, we do not see any truth in the allegation

that they have violated the court's direction.

Contempt petitions are dropped.”

4. That having happened, the first petitioner herein (Morcha/Front) thereafter filed CWP no.4376 of 2001, impugning the fresh selection process also, which petition was thereafter sought to be amended in the year 2009, upon which a co-ordinate Bench virtually rejected the application for amendment, but granted permission to the petitioner organisation to file a fresh petition on the same cause of action.

5. In the present petition, CM no.13237 of 2017 was filed this year, seeking therein that the fresh selection process that is now going on for appointment of Shift Attendants, be stayed (as was argued before this Court), at least to the extent of the posts occupied presently by the petitioner association (i.e. petitioner no.1), as otherwise the petitioners, who have been working on contractual basis, even after their non-selection in the year 1997, would be adversely affected.

Notice having been issued in that application, an order thereafter was passed on 06.10.2017, that in the aforesaid on going selection process (for appointment of more than 1000 Shift Attendants), as many number of posts as are the number of petitioners in this petition, would not be filled up pending the hearing of this petition.

(As a matter of fact, what was intended to be stated in that order was that the number of posts not to be filled up would be to the extent of 251 posts, with 247 affected persons stated to be members of the organisation, i.e. the 1st petitioner, plus 4 individual petitioners as are arrayed as petitioners no.2 to 5. That position was clarified vide an order dated 01.12.2017).

6. When the petition thereafter came up for hearing on 19.12.2017, learned senior counsel appearing of the respondents having raised an objection to the maintainability of the petition itself, the case file of CWP no.4376 of 2001 had been directed to be put up, in view of the fact that liberty is stated to have been granted while disposing of that petition, for a fresh petition to be filed on the same cause of action.

Pursuant to the said order dated 19.12.2017, the case file of CWP no.4376 of 2001 has been put up to this Court, in which it is seen that the sole petitioner was the Haryana Rajya Bijlee Board Se Barkhast Karamchhari Morcha (petitioner no.1 in the present petition), and as in the present petition, the said petitioner (Morcha/front) had impleaded itself through its convener.

7. As already noticed earlier, that petition, filed in the year 2001, was sought to be amended by an application filed under Order 6 Rule 17 of the CPC on 01.09.2009 by way of Civil Misc. no.14817 of 2009, upon filing of which an order was passed by a coordinate Bench on 03.09.2009, noticing the contention of the learned counsel for the applicant-petitioner that the petitioner may be permitted to withdraw the petition with liberty to file a fresh one on the same cause of action, incorporating “all subsequent events”.

That liberty having been granted, the present petition came to be filed in the year 2009, impleading therein not just the petitioner in CWP no.4376 of 2001 but 4 other persons also, who are stated to be employees terminated in the year 1997, pursuant to the selections made in the year 1992 having been quashed by this Court.

8. Thus what is to be first noticed, is that individuals whose services had been terminated in the year 1997 and are stated to have

participated in the 're-selection' process conducted in the year 1997, i.e. petitioners no.2 to 5 in the present writ petition, did not approach this Court at any point earlier, seeking quashing of the termination order. A perusal of the case file of CWP no.4376 of 2001 shows that the prayer therein was that the termination orders issued to the members of the petitioner 'Morcha' be quashed, and further, a writ of mandamus directing the respondents to reinstate them to their respective posts be also issued.

Ms. Sangeeta Dhanda, learned counsel for the applicant in Civil Misc. no.3570 of 2017, submits that as a matter of fact a resolution had been passed in the year 2001, by which the 'Morcha' was formed, consisting of 247 members, whose names are given in Annexure P-1 in the present petition. Therefore, she submits that as regards the *locus*, it cannot be said that the present petition has to be dismissed on the ground that the petitioners have no *locus standi*.

On a specific query to Mr.Gaurav Mohunta, learned counsel for the petitioners, it is admitted that petitioners no.2 to 5, i.e. Dinesh Kumar, Udesb Kumar Bali, Satpal Bhatia and Ashik Kumar, were not on the list of 247 members of the 'Morcha' (petitioner no.1), at the time when the resolution was passed.

That being so, in the opinion of this Court, as regards petitioners no.2 to 5, they having first approached this Court in the year 2009, in respect of a selection process conducted in the year 1997, with their termination orders also passed in the year 1997, the petition has to be dismissed simply on grounds of delay and laches.

9. However, in the present writ petition the termination orders of

247 persons who are stated to be members of petitioner no.1, i.e. the 'Morcha', have been challenged, as the prayer in this petition is for issuance of a writ of certiorari quashing the appointment of the private respondents, i.e. respondents no.5 to 287, who were selected in the year 1997. Further, issuance of a writ of mandamus directing the official respondents/Board/Nigam to nullify the appointment of those candidates is also sought, on the ground that they did not possess the basic qualification required for the post of Assistant Linesmen/Shift Attendants. Yet further, appointments stated to have been made in excess of the advertised posts, are also sought to be quashed.

It has also been prayed for, that the candidature of the members of the petitioner 'Morcha', for appointment/reinstatement to their respective posts, pursuant to their selection in the year 1992, be considered by the respondent Nigam.

A challenge is also made to the selection process of 1997, on the ground that it has been made in contravention of the directions issued by the Supreme Court, as also that it was arbitrary and is also vitiated by mala-fides.

10. As regards the issue of the selected candidates/some of the them not possessing the basic eligibility qualifications required for appointment as Assistant Linesmen/Shift Attendants, that prayer has already been rejected by this court vide its order dated 19.12.2017, the relevant part of which is reproduced as follows:-

“As regards the issue of the private respondents no.5 to 287 not possessing the basic eligibility qualification of an ITI certificate for appointment as Assistant Linesman, that contention is rejected in view of the judgment of a coordinate Bench dated 19.08.2009, passed in CWP no.14779 of 2007, a copy of which has been annexed with the written statement filed by some of the aforesaid respondents as Annexure R-9/3.

In that petition also the issue pertained to qualifications for the same posts as are subject matter of this petition, i.e. Assistant Linesmen, with the same objection raised, that those selected had obtained diplomas in Electrical/Electronic trade but had not passed a certificate course.

This Court having gone into the issue in that petition, after citing an earlier judgment in **Pankaj Singh Rao v. State of Haryana and others** (CWP no.5834 of 2004, decided on 05.08.2004), as also one of the Supreme Court in **Jyoti K.K. And others v. Kerala Public Service Commission**, J.T. 2002(Suppl.1) SC 85, rejected the challenge to the selection of those with the diplomas, holding that the diploma course was one which was higher than a certificate course and therefore those possessing such diplomas could not be ousted from being considered eligible for posts which require a certificate course to have been passed.

Mr. Girish Agnihotri, learned Senior Counsel appearing for the petitioners, submit that the judgment does not deal with the actual course contents of an ITI certificate course and diploma course and therefore may not be laying down law correctly in that respect.

He also refers to a judgment of the Supreme Court in **State of Punjab v. Anita** (MANU/SC/0996/2014), to submit that unless the basic qualification is possessed by a candidate for any post, a higher qualification would not substitute the basic qualification.

Whereas that would be correct in the opinion of this Court, if the higher qualification was of such a level as would not cover the course contents of lower qualification, such as a Post Graduate or a Doctorate degree course, where the basic qualification is a certificate course or a diploma course, however, where the basic course is a certificate course and the higher qualification possessed by a candidate is a diploma, as in the present case, the ratio of the aforesaid judgment could not apply in my opinion. In that case what was required as a basic qualification was a Junior Basic Training Teachers' Course, whereas those who were selected possessed a degree of Bachelor of Education (B.Ed.).

In such a situation, a Junior Basic Training Teacher Course being a course specific to teaching primary classes, with a Bachelor of Education degree covering course content for teaching higher classes, the rationale would be wholly different.

Mr. Chetan Mittal, learned Senior Counsel appearing for the respondent Nigam, has also relied upon a judgment of a Division Bench of this Court, passed in CWP no.6769 of 2004, titled as **Rameshwar v. State of Haryana and others** and other connected petitions, wherein a degree course

in Engineering was held to be sufficient substitution for a diploma course in Engineering, a diploma being the basic qualification, with the degree obviously being a higher qualification in the same field.

Consequently, as regards that issue, the contention of the petitioners, to the effect that those possessing diplomas in the same trade as they were required to possess certificate courses in, (as a basic eligibility condition), are not eligible for appointment, is a contention that is rejected.”

11. Other than what has been held on the issue in the aforesaid order, it may be reiterated that even as per the advertisement Annexure P-5, the basic qualifications required for the post of an Assistant Linesman, are Matriculation with a 2 year ITI certificate “in Electrician/Wiremen Trade”, or alternatively, the candidate should have passed a 2 year vocational course in the trade of Linesman, conducted by the Director, Industrial Training and Vocational Education, Haryana.

Knowledge of Hindi up to the Matriculation level was also required.

As regards posts of Shift Attendants, the qualification prescribed in the advertisement is Matriculation with a 2 year ITI course in the Electrician/Electronics/Wireman trade. A candidate was also required to have knowledge of Hindi up to the Matriculation level.

Hence, considering the aforesaid, for the reason already given in the aforesaid order of this Court dated 19.12.2017, the contention that those who possess a diploma in the relevant trade, (instead of a Certificate), are not eligible to compete for the posts in question, is rejected.

12. As regards the contention that posts beyond the number advertised were filled in, it is seen that as per Advertisement no.CRA 143 (Annexure P-5), 2000 posts of Assistant Linesmen were advertised in various

categories, whereas for Shift Attendants 542 posts were advertised in different categories, and even as per information received by the petitioners under the Right to Information Act, 2005, a copy of which has been annexed as Annexure P-10 (dated 15.06.2009), exactly 2000 Assistant Linesmen and 542 Shift Attendants were appointed pursuant to the said advertisement, Annexure P-5. The same has been reiterated by the respondents in their reply also.

Hence that prayer being wholly without any foundation, is also rejected.

13. Coming next to the first prayer made in the petition, that the appointment of respondents no.5 to 287 be quashed on the ground that their selection was contrary to the directions issued by the Supreme Court in SLP (Civil) no.11947 of 1996, in the opinion of this court, that prayer as a matter of fact is not even maintainable before this Court at this stage, the contempt petition filed by the petitioners in that SLP having been specifically dismissed by the Supreme Court, observing as follows:-

“..... we do not see any truth in the allegation that they have violated the court's direction.”

Hence, the Supreme Court itself having seen that there was no violation of the directions given by it, in the fresh selection process held in the year 1997, this Court will naturally not even go into that issue.

14. As regards the allegation of the selection process being vitiated on account of any arbitrations and mala fides, nothing whatsoever has been shown to this Court to substantiate the aforesaid allegations and therefore, they obviously seem to have been made only for the purpose of making an additional ground of challenge.

15. Consequently, as regards all the prayers originally made in the writ petition, they are non-sustainable, with the petitioners not having any right to be reinstated on the posts from which they were terminated in the year 1997, by replacing any of those who were regularly selected in the re-selection process conducted that year itself, for the reasons stated herein above.

16. The only question which now therefore remains in this petition is as to whether the petitioners, in terms of the different policies of regularization of services issued by the State Government from time to time, would be entitled to the benefit thereof, they having served first from 1992 to 1997 (as candidates selected in the process conducted pursuant to the advertisement issued in the year 1992) and thereafter even after termination of their services upon that selection process having been quashed, having worked from 2004 till date on contractual basis (as contended).

Therefore, while dismissing this writ petition, it is directed that upon the each individual person, whose names are given in Annexure P-1, i.e. the 247 persons listed therein, making a representation to respondents no.1 to 4 within a period of one month and fifteen days from today, seeking regularization on the basis of his length of service, such representation would be considered in terms of the policies issued by the Government from time to time, and orders passed within a period of 4 months thereafter, by the competent authority in the case of each individual who so represents, dealing with each persons' case in terms of the policy applicable.

17. It is to be noticed that this direction is being given despite the dictum laid down by the Constitution Bench in **Secretary, State of Karnataka**

and others Vs. Uma Devi and others, (2006) 4 SCC 1, in view of the peculiar circumstances of the case, inasmuch as, the employees concerned, as already noticed earlier, were regularly selected in the year 1992 and worked for 5 years, after which they have been employed on contractual basis since the year 2004 till date (as contended).

Hence, whether they are covered by any policy issued prior to 2006 or thereafter (if the policy issued in June-July 2014 is also upheld by the Division Bench, there being a challenge thereto), would be something that would be considered by the competent authority in the four electricity corporations of the State.

18. Till such time as the representations are decided, as regards those who actually make representations, the interim orders dated 06.10.2017 and 01.12.2017 would continue to enure, (by which 247 posts from amongst those advertised to be filled in pursuance to the advertisement issued in 2016 for appointment of Shift Attendants, were directed not to be filled in).

It is also clarified that if other than those posts, if other posts remain vacant for any reason, on which employment even for an interim period on contractual basis is required, then the petitioners, in order of their dates of appointment on contractual basis, would be continued and not replaced by other contractual employees, except for reasons of misconduct, for which due procedure would be followed.

19. As regards those applications in this petition, in which the applicants seek to be impleaded as petitioners in the writ petition, the applications are dismissed, they having been filed between the years 2009 to 2016, which is far beyond the date of termination of the applicants in the year

1997, and therefore, for them to become petitioners at this stage, is far too belated.

However, as regards even these applicants, and any other employees working on contractual basis for a sufficiently long period of time, obviously any representation made to the competent authority for regularization of their services, would be considered in terms of the instructions/policy, as per their merit.

Civil Misc. No.3570 of 2017 in CWP no.15641 of 2009

By this application, the applicant seeks a direction to the respondents to appoint him as an Assistant Linesman pursuant to his selection in the year 1997, such selection having been made subsequent to Advertisement no.CRA-143 having been issued.

In the application it is stated that the applicant, Karam Chand son of Sh. Ram Partap, has now obtained information under the Right to Information Act, 2005, to the effect that he was actually placed at merit no.148 of the select list declared at the conclusion of the selection process, in support of which such information received under the RTI Act, 2005, has been annexed as Annexure A-3 with the application.

A perusal thereof shows that indeed, Karam Chand son of Ram Partap Saini, Roll No.50, obtained 74 marks and was accordingly placed at Sr. no.148 of the merit list of selected candidates in the Backward Class Block 'B' category.

No reply has been filed to the application. The original record pertaining to the selection be produced on the next date of hearing.

Application is adjourned to 20.01.2018.

It is made clear that the said issue only, as contained in this application (CM no.3570 of 2017), has been kept alive, in view of the specific fact noticed hereinabove, even though otherwise the application may be highly belated, with the writ petition itself having been dismissed on merits. Otherwise also, the application alone would not be maintainable, in view of the dismissal of the writ petition itself; however, it has been kept alive only in order to determine from the original record, as to whether the petitioner was actually at Sr. no.148 of the merit list or not, though even that would have to be seen alongwith the fact as to whether, in the absence of any plea taken at any earlier point of time by the petitioner with regard to his right to appointment on merit, he would be entitled even at this stage to file a separate petition or not.

For that purpose alone, let the case file be put up on 20.01.2018. Otherwise, as already held hereinabove, the writ petition stands dismissed, with directions given as contained in paragraphs 14 to 19. As regards petitioners no.2 to 5, it also stands dismissed on the ground of delay and laches, for the reasons given in paragraph 8.

However, there shall be no order as to costs.

December 21, 2017
vcgarg/sonia bura

(**Amol Rattan Singh**)
Judge

Whether speaking/reasoned:	Yes
Whether reportable:	Yes