

CWP No.13035 of 2013

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high court

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

CWP No.13035 of 2013

Date of Decision: 07.09.2017

Shiv Goyal

....Petitioner

Versus

Punjab State Power Corporation Limited
and others

....Respondents

CWP No.21424 of 2013

Taruna Garg

....Petitioner

Versus

Punjab State Power Corporation Limited
and another

....Respondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Chanchal K. Singla, Advocate
for the petitioner.

Mr. Vishal Chaudhri, Advocate
for respondents No.1 and 2
in ***CWP No.13035 of 2013.***

Mr. Vikas Chatrath, Advocate
for the respondents
in ***CWP No.21424 of 2013.***

Mr. H.S. Sethi, Advocate
for respondent No.3.

DAYA CHAUDHARY, J.

By this judgment, two petitions bearing ***CWP Nos.13035 of 2013*** and ***CWP No.21424 of 2013*** shall be disposed of as common question of law is involved in both the cases.

However, for the sake of convenience, the facts are being derived from **CWP No.13035 of 2013**.

The prayer in the present petition is for issuance of a writ in the nature of *certiorari* quashing impugned order dated 24.05.2013 (Annexure P-14), whereby, the respondents have decided to fill up the remaining 62 vacancies of Junior Engineer-II (Electrical) by way of promotion.

The petitioner is claiming his right on the ground that total 153 posts were advertised and his name figured at serial number 18 of the merit list after qualifying written test by securing 113.5 marks out of total 200 marks.

The grievance of the petitioner is that he is possessing AMIE degree, whereas, the requirement is of diploma in Electrical Engineering and that he has a right to be appointed as Junior Engineer (Electrical) from the date other candidates have been selected and appointed.

Briefly, the facts of the case, as made out in the present petition, are that the respondents issued an office order dated 05.12.2011 for filling up 153 posts of Junior Engineer-II (Electrical) from the employees having diploma in Electrical Engineering and working as SSA, LM, MR, ALM/RTM, Mechanic, Telephone Mechanic, Telephone Attendant and other technical category having three years' experience on their respective posts and matric with ITI and experience of eight years as LM. The promotions were to be made by conducting a departmental test annually.

The petitioner has claimed that he is a degree holder in Electrical Engineering and has also appeared in the test conducted by respondents vide order dated 05.12.2011, wherein, he secured 113.5 marks and was shown at number 18 in the merit list of the General category

candidates. The appointment to said post was to be made only on the basis of written examination and no marks for interview were provided. Petitioner and other selected candidates from General category were asked to come present for checking of documents on 14.06.2012. However, the petitioner was not issued an appointment letter as he was having a degree in Electrical Engineering and not diploma as per requirement of the office order. He made representations stating that he was having degree which is equivalent or higher to diploma but still no appointment was offered to him.

Learned counsel for the petitioner submits that the petitioner is possessing AMIE degree, which is higher to diploma in Electrical Engineering. He was working as Laboratory Assistant and was entitled to be promoted as Junior Engineer (Electrical) as he had qualified the test and was at serial no.18 of the merit list. Other similarly situated persons have been appointed and no reason, whatsoever, has been mentioned/given for not appointing the petitioner as Junior Engineer (Electrical).

Learned counsel for the petitioner has also relied upon the judgment of Full Bench of this Court in case ***Manjit Singh vs State of Punjab and others 2011(1) SLR 583.***

Learned counsel for the respondents submits that a notice was circulated to all the employees to apply for appearance in the departmental examination. Said examination was meant for those technical employees, who were possessing a Diploma in Electrical Engineering or ITI Trade certification and also have worked as Lineman for eight years. Learned counsel also submits that departmental examination was not meant for those employees who were having degree in Electrical Engineering as possessed by the petitioner. The degree holders have a right for promotion as SDO

(AE/Elec.) on the basis of seniority only. The purpose of internal departmental examination was to give chance to those employees who had been working against the lower posts with Punjab State Power Corporation and did not possess a degree. Learned counsel also submits that such employees will not have any promotional avenues in the field of Junior Engineers. The purpose was to give chance to the deserving and qualified candidates from the lower cadres to join the main stream for the post of Junior Engineers (Electrical). The office order dated 21.08.2006 was circulated only for the purpose that diploma holder/ITI holder may be given the chance to appear for the post of Junior Engineer (Electrical). Learned counsel also submits that during checking of the documents, the petitioner was found to be degree holder and hence, he was not found to be eligible. He could not be declared ineligible because of submission of online application. Learned counsel also submits that the judgment of Full Bench of this Court in **Manjit Singh's** case (supra) is not applicable in the present case as it was not a case of promotion from internal employees having specific qualifications. In said case, the advertisement was for the post of Junior Engineer (Electrical) under direct recruitment quota, whereas, the case of the petitioner is of promotion on the basis of internal departmental test.

At the end, Mr. H.S. Sethi appearing for respondent No.3 also submits that the petitioner was not eligible for promotion only on the basis of higher qualification as nowhere, it was mentioned in the advertisement that the diploma in Electrical Engineering or its equivalent was required. Moreover, the petitioner did not challenge the advertisement. Learned counsel also submits that Hon'ble the Apex Court in case **Prakash Chand**

Meena and others vs State of Rajasthan and others 2015(2) SCC (L&S)

821 has held that the candidates who are well aware about the advertisement have no right to claim on the post on the basis of higher qualifications. It was not mentioned in the advertisement that the candidates having equivalent or higher qualification would also be eligible to apply.

Heard the arguments of learned counsel for the parties and have also perused the documents available on record.

Facts of the case are not disputed. Admittedly, vide Memo dated 05.12.2011, the posts of Junior Engineer-II (Electrical) were to be filled up by way of promotion. Out of total posts, 25% were to be filled up by way of direct recruitment from the open market, 5% by way of promotion from diploma holder LM and 30% posts were to be filled up by way of promotion from Board employees, who were having diploma in Electrical Engineering and were working as SSA, LM, MR, ALM/RTM Test Mechanic, Telephone Mechanic, Telephone Attendants and other technical categories with an experience of three years on their respective posts or matric with ITI and having experience of eight years as LM. The posts, in dispute, were required to be filled up by way of departmental recruitment test, which was to be conducted annually by preparing panel. The purpose was to give chance to those deserving and qualified candidates from lower cadres to join the main stream beginning from the posts of Junior Engineers. The office order was circulated only for the purpose that the diploma/ITI holders may be given chance.

The petitioner is claiming his right only on the basis of having AMIE degree, not being equivalent but higher *viz-a-viz* diploma.

It is also relevant to mention here that during pendency of the

writ petition, an application bearing **C.M. No.1211 of 2016** was moved for impleading respondent No.3 as party respondent. Said applicant could not be appointed on the post as it was ordered to keep a post reserved as per directions issued in this case.

An office order for filling up 153 posts of Junior Engineer-II (Electrical) through Departmental Examination for promotion to the post of Junior Engineer-II (Electrical) was issued, wherein, it was specifically mentioned that the candidates who fulfilled the criteria for the said post may appear in the annual examination. The requisite qualification/criteria for the aforesaid posts vide Memo No.109240/110740 Departmental Examination through promotion was 3/4 years diploma in Electrical Engineering with minimum experience of three years on their respective posts as SSA, Lineman, Meter Reader, ALM/RTM, Test Mechanic, Telephone Mechanic, Telephone attendant and other technical category. It was also mentioned that in case, the candidate was having ITI along with Matric and having experience as Lineman for eight years, he was also eligible. All eligible candidates were asked to appear for written test conducted on 27.05.2012, result of which was declared/published on the same day. Thereafter, all selected candidates were asked to appear for verification of their documents.

By considering the submissions made by learned counsel for the parties and on perusal of percentage of seats to be filled up by way of different modes, it is held that it is for the employer to prescribe academic qualifications as per requirement of the job. Simply by saying that the person is possessing higher qualification or its equivalent than the prescribed, the cause of action would not accrue to a person for pressing his

right for consideration. Nowhere, it was mentioned that the candidates having higher qualification or equivalent would be considered against those posts, which were to be filled up out of employees of different categories. Their quota was fixed and the petitioner being more qualified or having higher qualification has no right to be considered. Same issue was there before this Court in case ***Sukhwinder Singh vs State of Punjab and others*** 2015(5) SLR 207.

The Full Bench of this Court has also dealt with the same issue in case ***Som Dutt vs State of Haryana and another*** 1983(3) SLR 141. In said case, the employee was possessing higher qualifications but not the prescribed minimum qualification. It was held that the qualifications in a different field or branch cannot be considered to be a better qualification. In that case, the petitioner was claiming his right on the basis of higher qualification but he was not fulfilling the criteria of minimum qualification. It was held that an employer can insist to prescribe minimum qualifications.

Similar issue was there in another judgment of Hon'ble the Apex Court in case ***Jyoti K.K and others vs Kerala Public Service Commission and others*** 2010(15) SCC 596. In that case, the appellants were holding B.Tech or Bachelor's Degree in Electrical Engineering. It was observed by the Commission that those candidates were not possessing necessary qualifications. It was not mentioned in the notification that degree holder shall not be eligible to apply for such post. The relevant portion of the judgment, as mentioned in paras No.9 and 10, is reproduced as under :-

“9. It is no doubt true, as stated by the High Court that when a qualification has been set out under the relevant rules, the same cannot be in any manner whittled down and a different qualification cannot be adopted. The

High Court is also justified in stating that the higher qualification must clearly indicate or presuppose the acquisition of the lower qualification prescribed for that post in order to attract that part of the rule to the effect that such of those higher qualifications which presuppose the acquisition of the lower qualifications prescribed for the post shall also be sufficient for the post. If a person has acquired higher qualifications in the same faculty, such qualification can certainly be stated to presuppose the acquisition of the lower qualifications prescribed for the post. In this case it may not be necessary to seek far. Under the relevant rules, for the post of assistant engineer, degree in electrical engineering of Kerala University or other equivalent qualification recognised or equivalent thereto has been prescribed. For a higher post when a direct recruitment has to be held, the qualification that has to be obtained, obviously gives an indication that such qualification is definitely higher qualification than what is prescribed for the lower post, namely, the post of sub-engineer.

10. In that view of the matter the qualification of degree in electrical engineering presupposes the acquisition of the lower qualification of diploma in that subject prescribed for the post, shall be considered to be sufficient for that post. In the event the Government is of the view that only diploma holders should have applied to post of sub-engineers but not all those who possess higher qualifications, either this rule should have excluded in respect of candidates who possess higher qualifications or the position should have been made clear that degree holder shall not be eligible to apply for such post. When that position is not clear but on the other hand rules do not disqualify per se the holders of higher qualifications in the same faculty, it becomes clear that the rule could be understood in an appropriate manner as stated above. In

that view of the matter the order of the High Court cannot be sustained. In this case we are not concerned with the question whether all those who possess such qualifications could have applied or not. When statutory rules have been published and those rules are applicable, it presupposes that everyone concerned with such appointments will be aware of such rules or make himself aware of the rules before making appropriate applications. The High Court, therefore, is not justified in holding that recruitment of appellants would amount to fraud on the public.”

It is a well settled proposition of law that the employer has the absolute right to lay down the qualifications for the post advertised and it is for the Selection Committee to ascertain as to whether a particular candidate has the requisite qualifications or not. The rule making authority is the best judge of the needs of a particular job and is well equipped to prescribe the requisite qualifications. The Courts do not have to prescribe the requisite qualifications for the post.

Same issue was there before the Hon'ble Apex Court in case ***State of Madhya Pradesh vs Dharam Bir 1998(6) SCC 165.***

It has also been held in various judgments that in case, the respondents, in exercise of its executive power, has created certain posts, it is for it to prescribe the mode of appointment or the qualifications which have to be possessed by the candidates before they are appointed on those posts.

The Division Bench of this Court in case ***Hemant Jasuja vs State of Punjab and another 2016(4) SCT 584*** has held that prescribing the source and mode of recruitment and qualification and criteria of selection for post are matter which fall within the domain of employer. It may not be a ground to challenge the action of the respondents in treating a person with

higher qualifications.

On perusal of documents including office memo as well as required qualification, it appears that the petitioner does not fulfill the qualification as mentioned in Annexure P-1. As per requirement, the qualification should be diploma in Electrical Engineering with three years experience on the post mentioned in the advertisement or ITI along with Matric with eight years experience as Lineman.

Admittedly, the petitioner does not fulfill the criteria of qualification and is not entitled for consideration for appointment. In the writ petition, he is claiming his right only on the basis of higher or equivalent qualification but nowhere in the memo dated 05.12.2011 (Annexure P-1), it is mentioned that the equivalent qualification can be considered. The petitioner cannot be considered on the basis of equivalent qualification and accordingly, he was declared ineligible. Petitioner, himself, was well aware about his qualification and was not eligible as per qualification mentioned in Annexure P-1. Neither the advertisement nor any process undertaken by respondent was challenged and participated in the process only on the basis of equivalent qualification or higher qualification. The purpose of internal departmental examination was to give a chance to those employees who had been working against lower posts with Punjab State Power Corporation Limited and were not possessing a degree. It was decided by respondent-department that such employees will never have any promotional avenues in the field of Junior Engineers as promotions are made from the persons who were having degrees. The purpose was to provide a chance to the deserving and qualified candidates from lower cadres to join the main stream beginning from the post of Junior

Engineers (Electrical). No doubt, the petitioner appeared in the test, secured 113.5 marks and was at rank No.18. However, the post was not meant for the candidates having degrees and was meant for diploma holders therefore the petitioner was not considered being ineligible. Even he was not eligible to sit in the departmental examination but only on the date of verification of documents, it was found that he was degree holder and was not eligible for appearance in the written examination.

In view of the facts and law position as discussed above, there is no merit in the contentions raised by learned counsel for the petitioner and as such, the petition, being devoid of any merit, is hereby dismissed.

07.09.2017
gupreet

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No