

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CWP No.19273 of 2013(O&M)
Date of Decision: 12.10.2017

Subhash Chand

--Petitioner

Versus

Punjab Water Resources Management &
Development Corporation Ltd.and others

--Respondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. Manish Dadwal, Advocate for the petitioner.

Mr. J.S. Puri, Advocate for the respondents.

TEJINDER SINGH DHINDSA.J

C.M. No.4631 of 2017

Application is allowed as prayed for.

Documents at Annexures P-7 and P-8 are taken on record.

Complete copy of the application along with Annexures P-7 and P-8 already stands furnished to the counsel opposite.

Main Case

Petitioner, who is serving as a Tubewell Operator under the Punjab Water Resources Management & Development Corporation Ltd. (herein after to be referred to as the Corporation), has filed the instant petition assailing the order dated 22.10.2012 (Annexure P-5), whereby private respondents no.4 to 6 have been promoted to the post of Junior Engineer. Petitioner claims himself to be senior to the private respondents and accordingly seeks the issuance of a Writ of Mandamus for directing the respondents to promote him to the post of Junior Engineer w.e.f. the date the private respondents have been so promoted with all consequential benefits.

Brief facts, which are not in dispute are that the petitioner was initially appointed as a Junior Operator on 22.9.1982. After a period of one year petitioner was promoted to the post of Tubewell Operator.

Appointment to the post of Junior Engineer is governed by the Punjab State Tubewell Corporation Employees Service Bye Laws, 1977 (herein after to be referred as the 1977 Bye Laws). Appointment to various posts under the Corporation including that of Junior Engineer is on the basis of qualifications/experience as laid down in Appendix 'B'. The relevant extract of Appendix 'B' covering the post of Junior Engineer is as follows:-

Sr. No.	Designation of the post	Scale of Pay (Rs.)	Qualification of direct recruitment	Experience for direct recruitment	Minimum experience for promotion/Transfer/Deputation	Remarks/Amendments
23.	Junior Engineer	5800-9200	90% by direct recruitment of 3 years Diploma in Electrical/Civil/Mechanical Engineering from recognized Institute	-	i) 5% by promotion from in service employees having 3 years Diploma in Electrical/Civil/Mechanical Engineering from recognized university/Institute with 5 years service experience in PSTC (now PWRM&DC) ii) 5% by promotion from in service employees having Matric qualification with Punjabi and 2 years ITI Diploma in Electrician/Fitter /Surveyor Trades with 20 years service experience in the Corporation.	As per decision of the B.O.D taken in its 125 th Meeting (Item No.125.13) held on 13.12.1995 . As per decision taken by B.O.D in its 129 th Meeting (Item No.129.12) held on 30.9.1996

A bare perusal of the relevant extract of Appendix 'B' reproduced herein above shows that 90% posts of Junior Engineers are to be filled up by resorting to the mode of direct recruitment. Out of the balance

10%, 5% of posts of Junior Engineer are to be filled up by promotion from in-service employees having Matric qualification with Punjabi and 2 years I.T.I Diploma in Electrician/Fitter/Surveyor Trade with 20 years service experience in the Corporation.

The entire case set out on behalf of the petitioner is that he possesses the essential prescribed qualification for promotion to the post of Junior Engineer under the 5% quota for promotion under Appendix 'B' to the 1977 Bye Laws as also experience in the Corporation in excess of 20 years and by virtue of being senior to the private respondents was vested with a prior right to be considered for promotion to the post of Junior Engineer. In so far as seniority is concerned, counsel appearing for the petitioner would contend that the golden rule of continuous length of service would govern and since the petitioner has joined service with the Corporation prior in point of time as compared to the private respondents, he would rank senior to them.

Per contra, learned counsel appearing for the respondent-Corporation would urge that the question of seniority would not be of any consequence inasmuch as the petitioner does not possess the essential qualification to be considered for promotion under the 5% quota and as such, was not eligible and thereby was overlooked at the time of issuance of the impugned order of promotion dated 22.10.2012 at Annexure P-5.

Having heard counsel for the parties at length and having perused the pleadings on record, the short issue that arises for determination before this Court is with regard to eligibility of the petitioner under the 1977 Bye Laws for promotion to the post of Junior Engineer.

Petitioner claims eligibility as regards qualifications on the strength of documents at Annexure P-1 (colly) i.e. a provisional certificate dated 23.8.2011 issued by Vishwakarma Institute of Technical Education and Industrial Training Centre, Talwara, District Hoshiarpur and which certifies him to have appeared in the final examination of an Electrical Technical Trade (course of one year duration). Reliance has further been placed upon Annexure P-6, issued by Dr. C.V. Raman University, Bilaspur (Chhatisgarh) certifying the petitioner to have attended a Certificate Course in Electrical Technician Trade for the duration July, 2009 to June, 2011. Heavy reliance has been placed by counsel for the petitioner upon document at Annexure P-7 which has been issued by Vishwakarma Institute of Technical Education and Industrial Training Centre, Talwara (Hoshiarpur) dated 10.5.2016 stating that Dr. C.V. Raman University, Bilaspur (Chhatisgarh) is a statutory university under section 2 (f) of the U.G.C Act and that the two years certificate possessed by the petitioner under the Electrician trade to be equivalent to the I.T.I Diploma being courses of similar nature and training.

In the considered view of this Court, it is for the employer to prescribe qualifications for a particular post. In the present case such qualifications stand codified under the 1977 Bye Laws. The requirement under the 1977 Bye Laws is for an incumbent to possess a two years I.T.I Diploma in Electrician/Fitter/Surveyor Trade. The petitioner while claiming consideration for promotion to the post of Junior Engineer would not be vested with an inherent right to seek the benefit of equivalence or matching qualifications in the absence of a clear stipulation inserted in the relevant rules/bye laws indicating the power with the respondent authorities to

consider and promote such incumbents, who possess such qualifications. Under Appendix 'B' of the 1977 Bye Laws, there is no such stipulation of an employee possessing equivalent/matching qualifications to a two years ITI Diploma in the Electrician/Fitter/Surveyor Trade to be also considered eligible for promotion to the post of Junior Engineer. In taking such view, this Court would draw support from a Division Bench judgement of this Court in *Ajay Kumar Vs. State of Haryana & others, 2004(1) S.C.T, 888*.

Even otherwise, in matters of eligibility and possessing requisite qualifications it would be the view of the employer/respondent Corporation that should prevail. This Court lacks expertise to go into the question of equivalence and to thereafter record an opinion that the two years certificate possessed by the petitioner in the Electrician Trade is a matching/equivalent qualification to the one prescribed and laid down under Appendix 'B' of the 1977 Bye Laws i.e. a two years ITI Diploma in Electrician/Fitter/Surveyor Trade.

It is not even the case of the petitioner that any other incumbent, who does not possess the two years ITI Diploma and to the contrary has a two years certificate course, has been considered eligible by the respondent Corporation for promotion to the post of Junior Engineer.

For the reasons recorded above, this Court does not find any basis for interference in the matter. No infirmity is found in the action of the respondent Corporation in taking a view that the petitioner is not eligible for promotion to the post of Junior Engineer under the 1977 Bye Laws.

Petition is dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

12.10.2017

lucky

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