

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1416 of 2018

In

Civil Writ Jurisdiction Case No.11096 of 2018

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1. The Bihar State Power (Holding) Company Limited through its Chairman.
2. The Chairman, Bihar State Power (Holding) Company Limited, Patna.
3. The General Manager, (HR/Adm.), Bihar State Power (Holding) Company Limited, Patna. Appellant/s

Versus

1. Md. Asif Hussain Son of Md. Rashid Hussain Resident of at & P.O. Pokhraise, P.S. Manpur, District- Sitamarhi.
2. Vishwajeet Kumar Son of Baleshwar Prasad Resident of Village – Kendua, P.S. Sirdala, District – Nawada.
3. Ranjeet Kumar Son of Upendra Prasad Sinha Resident of Mitra Mandal Colony, P.S, Phulwari, District- Patna.
4. Abhay Kumar Son of Birendra Bajpayee Resident of Village- Sihorwa P.S. Kotwa, District- East Champaran, Motihari.
... .. Respondent/Respondents.....1st Set
5. Bihar Polytechnic Students Association, situated at B- Block, 103, Vidhayak Parisar, Daroga Rai Path, District Patna through its president , Shri Anubhav Raj, Son of Shri Devendra Rai, resident of At-Gangapur Narauli, P.S. Bakhtiyapur, District Patna.
6. Ramesh Kumar, Son of Shri Kailash Rajak, resident of at Kakwara, P.O. Kakawara , P.S. Banka, District Banka.
..... Respondents / Writ Petitioners 2nd Set

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Appearance :

For the Appellant/s : Mr. Anand Kumar Ojha, Advocate
For the Respondent/s: Mr. Prashant Sinha, Advocate
: Mr. Awadhesh Kumar, Advocate
: Mr. Baua Jha, Advocate
For the Intervenors : Mr. Abhiav Srivastawa, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA

MISHRA

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 18-12-2018



This appeal has been filed by the Bihar State Power Holding Company Limited through its Chairman questioning the correctness of the Judgment dated 29th August, 2018 whereby a learned Single Judge of this Court has allowed the writ petition filed by the respondents-petitioners who claim that since they are in possession of a higher qualification of a Degree in Electrical Engineering, they are also entitled to participate in the recruitment process of Junior Electrical Engineers of the Company.

The dispute in short is that the advertisement/employment notice as published by the appellant-company, being Employment Notice No. 6 of 2018 prescribes the requisite qualification for recruitment as Junior Electrical Engineer of full time three years Diploma in Electrical Engineering from a recognized institute/college duly recognized by the State Government/Central Government approved by the AICTE. The degree holders filed the writ petition giving rise to this appeal questioning the action of the appellant-company in confining the eligibility qualification to the diploma holders only.



We have heard Sri Anand Kumar Ojha for the appellants, Sri Prashant Sinha, Sri Awadhesh Kumar and Sri Baua Jha for the private respondents and Sri Abhinav Srivastawa for the intervenors in the writ petition.

The grounds taken for issuance of a writ of mandamus to allow the degree holders to participate in the recruitment process was that a degree in Electrical Engineering was a higher qualification that subsumed in it the three years' diploma course as a degree course was of four years whereas the diploma course was of three years.

It was also urged that this qualification was existing in the revised qualification adopted by the appellant-company in 2016, and not only this when the appellant-company proceeded to invite tenders and requests for proposals for holding of such examinations through agencies. The requisition contained both the qualifications of Degree and Diploma for recruitment to the post of Junior Electrical Engineer. In spite of this, all of a sudden the appellant-company took a decision that was reflected in Employment Notice No. 6 of 2018 to offer the post only to diploma holders thereby unjustifiably excluding the degree holders from participation in the recruitment process. Thus in all the three



writ petitions that give rise to the present appeal, this was the common claim of all the degree holders.

The petitions were resisted by the appellant-company contending that there are a large number of job opportunities for degree holders including that of Assistant Engineers and Executive Engineers which cannot be availed of by diploma holders. Those who hold the qualification of diploma remain confined in their opportunities of employment by way of direct recruitment to the post of Junior Engineer only, and if the degree holders are also included, the same would amount to denying a level of playing field, keeping in view the large number of unemployed diploma holders who are waiting for employment. It was also urged on behalf of the appellant company before the learned Single Judge that Degree is not in line higher qualification. So far as recruitment to the post of Junior Electrical Engineer is concerned, it is also submitted that a conscious decision was taken on 5th of June, 2018 by the Managing Director for adopting the lone qualification of Diploma in supersession of the earlier eligibility criteria. This decision taken by the Chairman-cum-Managing Director was authorized in terms of Section 79(k) of the Electricity Act,



1948 (Central Act) vide a Notification dated 16th of September, 1992 subject to approval by the Board.

The appellant-company also took a stand that the qualifications are different and the employer has the right to fix the qualifications that are required for recruitment and it is therefore open to the employer to exclude any other qualification which in no way causes prejudice or discrimination inasmuch as diploma holders by themselves form a different class of candidates.

It appears from the record that the appellant power holding company through its officials were made respondents in the writ petition. The diploma holders filed an Intervention Application being IA No. 4722 of 2018 through Shri Abhinav Shrivastava, Advocate and a categorical stand was taken in paragraphs 5 to 9 of the affidavit that the course of study in Diploma in Electrical Engineering and that of Degree in Electrical Engineering are substantially different. They also took a stand that in other government departments as well, such a discrimination with regard to qualification prescribed for Junior Electrical Engineers have been maintained.



The learned Single Judge held that since degree holders are not debarred from participating under the advertisement, it cannot be said that the person holding a higher qualification will not be allowed to participate in the selection process of Junior Electrical Engineers. The learned Single Judge has relied on certain decisions to support the plea that degree holders cannot be excluded from participation. The learned Single Judge further went on to hold that the Resolution dated 5th of June, 2018 of the Chairman-cum-Managing Director whereby the modification of dropping the eligibility criteria of degree holders was introduced was not an authorized exercise of power, inasmuch as, the power delegated on the Chairman-cum-Managing Director is not a sub-delegation authorizing him to alter a qualification prescription/rule. The learned Single Judge held that framing of a rule is an act of subordinate legislation and that rule making power is not conferred or sub-delegated to the Chairman-cum-Managing Director. In essence, the learned Single Judge proceeded on the principle that power which is delegated to the Board under the 1948 Act for framing regulations or rules cannot be construed as having the capacity to be further sub-delegated to the Chairman-cum-



Managing Director. In the circumstances, the dropping of that qualification from the proposal was not an authorized act as it was in the domain of the Board hence the said decision will have no legal force. The learned Single Judge further considered the provisions of Section 79(k) of the Electricity Act and held that the aforesaid provision prescribes for framing regulations as specified therein, and it does not deal with the fixing of qualifications for recruitment to the post of Junior Electrical Engineer. Thus the aid taken by the appellant-company on the strength of the Notification dated 16.09.1992 cannot be sustained. The quintessence of arguments is that it was only the Board, and not the Chairman alone, who could have reframed the regulation prescribing qualifications.

It may also be noticed that the learned Single Judge while entertaining the petition had passed the following interim order on 27.06.2018:-

“Let this case be listed on 2nd July, 2018 at the top of the list, subject to part heard.

In the meantime, the Bihar State Power (Holding) Company Limited would accept the application of the degree holder but the process for consideration of their applications for the appointment on the post of Junior



Engineer against the advertisement published will be subject to the result of this writ petition.”

And then on 17.07.2018 passed the following interim order:-

“Let this case be listed on 23.07.2018.

In the meantime, the Board is prevented to proceed with the selection process of any candidate on the post of Junior Engineer with respect to Employment Notice No. 06 of 2018.”

Thus, the entire selection process was withheld.

Learned counsel for the respondents-petitioners has also advanced submissions in addition to the above that since any such resolution of the Chairman-cum-Managing Director was invalid altering the qualifications, then on the date of the advertisement the qualifications already fixed and resolved by the Board on 15.02.2016 were in force which would apply and the recruitment process has to be conducted accordingly by including the Degree holders as well.

The appellants' contention is that diploma holders are to be exclusively given opportunity to participate in the selection process and the degree holders do not have any



enforceable right so as to compel the appellant-company to allow their participation.

There is therefore broadly a two fold submission that deserves consideration on the facts that have emerged on the findings recorded by the learned Single Judge. In order to appreciate the arguments, the aforesaid twin pronged contention can be formulated thus, (I) the appellants' choice to prescribe qualifications for appointment as a Junior Electrical Engineer confining it to Diploma holders and (II) as to whether such choice amounts to an arbitrary exclusion of degree holders resulting in violation of Article 14 and 16 of the Constitution of India and the prescription of such qualification being altered by the Chairman-cum-Managing Director before issuing the advertisement, and whether such power or authority was permissible to be exercised by the Chairman-cum-Managing Director under the delegation dated 16.09.1992.

In our opinion, if the second question is taken up first, the first issue being a matter of consideration in view of the legal principles enunciated by the Supreme Court on similar can be answered conveniently.



The learned Single Judge has posed this question after relying on the judgment of the Supreme Court in the case of **Berium Chemicals Ltd. and another Vs. Company Law Board and others** reported in **AIR 1967 SCC 295**. The learned Single Judge observed that a discretion conferred by statute or by the authority is intended to be exercised by the same authority and by no other, but the intention may be negatived by any contrary intention in the language scope or object of the statute, after exclusively quoting the paragraphs from the aforesaid judgment. The learned Single Judge further relied on in the decision of **A.K. Roy and Another vs. State of Punjab and Others** reported in **AIR 1986 SC 2160** to observe that the power given to do a certain thing in a certain way must be done in that way or not at all. Other modes of performance are necessarily forbidden. The learned Single Judge thereafter quoted some paragraphs of the said judgment and then considered the scope of such exercise of powers by Chairman-cum-Managing Director keeping in view the provisions of Section 79(c) of the Electricity Supply Act, 1948 read with Section 79(k) of the Act and ultimately held that the Chairman-cum-Managing Director could not have altered the qualification or confined it under the resolution



dated 05.06.2018 deriving the source of power under the Notification No. 109 of 16.09.1992. We may put on record that in spite of all these findings no certiorari has been exercised by the learned Single Judge to quash the resolution dated 5th of June, 2018 issued by the appellant under Resolution No. 444 of the Chairman-cum-Managing Director. As a matter of fact there is no specific prayer for quashing of the same even though the information has been criticized by the respondent-petitioners as having been issued on 5th of June, 2018 but was uploaded on 5th July, 2018 after the hearing was conducted by the Court on 2nd July, 2018.

At the outset, it would be appropriate to put on record that rules were framed for appointment of Junior Electrical Engineers by the then Bihar State Electricity Board known as Bihar State Electricity Board Junior Electrical Engineers (General) cadre Rules, 1982. The said Rules were brought on record through the counter-affidavit of the appellants before the learned Single Judge and Rule 7 of the said Rules is extracted hereinunder:-

“7. Manner of Filling up posts in the cadre:- Posts in the Cadre shall be filled by direct recruitment from diploma holders in Electrical Engineering and by absorption of those



Board's employees who, while serving the Board on lower posts secure diploma in Electrical Engineering Appointment by direct recruitment and by absorption shall made against vacancies in a calender year, in the ratio of 75-25. In case, however, if no employee of the Board is available for absorption, in a Calender year, all the vacancies shall be filled up by direct recruitment.

In appointment by direct recruitment and by absorption reservation, according to the Rules shall be available for the members of the Scheduled castes and the Scheduled Tribes. The number of the vacancies in the cadre shall be calculated on an approximate basis in January of each year or as soon as possible thereafter; Depending on the number of vacancies existing in the Cadre there shall be published an advertisement by the Board in the important news papers and the number of vacancies, age and other qualification, preferences as well as reservations for Scheduled Caste and Scheduled Tribes as per the directions of the State Government shall be clearly mentioned in the advertisement. Applications shall be invited by a fixed date.

After receipt of applications as regards eligibility letters of inter-view shall be issued to such numbers of candidates as may be approved by the Chairman.

If a very large number of applications in relation to available vacancies are received the applications may be screened and candidates with higher qualifications or marks or experience or having passed the examination earlier may be called for interview. The principles of scrutiny shall be decided by the Chairman.



The candidates who are called for interview shall be interviewed by a Selection Committee consisting of:

a) Member (Adm.)/Chairman as Chairman

b) Member (Finance) as Member

c) Member Engineering (Dist.) as Member

d) Secretary as Member Secretary

The committee shall prepare three list in order of merit respectively for general Scheduled castes and Scheduled Tribes candidates taking into account the number of vacancies available for each of these categories.

The Panel prepared by the Selection Committee in accordance with the above provide shall be placed before the Board for final selection and issue of appointment letters to candidates from these lists in accordance with the number of vacancies available for general and reserved quota for Scheduled Castes and Scheduled Tribes candidates.

The panel prepared shall be valid for a period of one year from the date of their preparation but the Board may under special circumstances extend this period by a further period not exceeding six months.”

The aforesaid Rule clearly prescribes that the cadre of Junior Electrical Juniors shall be filled up by direct recruitment from Diploma holders in Electrical. The aforesaid



Rule has been framed in exercise of the powers under Section 79(c) of the 1948 Act.

With the coming into force of the Electricity Act, 2003, the same provided for vesting of the properties of the Board in the State Government under a transfer scheme in terms of Section 133 of the 2003 Act. The said Act provides that the service conditions of the employee shall not be made inferior that what existed in the past. The transfer scheme namely the Bihar State Electricity Revised Transfer Schemes, 2012 was formulated in exercise of the powers conferred under Section 131 and Section 133 of the Electricity Act, 2003 and as per clause 6.8 of the Transfer Scheme of the Power Holding Company which stands created w.e.f. 01.11.2012, provides as under:-

*“Subject to the Act and this scheme, the Holding Company **shall be entitled to frame regulations the conditions of personnel transferred to this subsidiary companies under this Scheme and till such time the existing/(as suggested for modification) Service Rules/Regulations of the Board shall apply mutatis-mutandis.**”*

Thus, clause 6.8 saves the rules and regulations of the erstwhile Board till a superseding regulation is issued.



Such regulations are referable to Section 79 of the 1948 Act. The appellant company therefore has the right to frame regulations in terms thereof but till such regulations are framed, the Service Rules/Regulations of the Board shall continue to apply. The 1982 Rules therefore covers the field of recruitment of Junior Electrical Engineers as extracted above.

It is undisputed that the Board of the appellant company passed a Resolution on 30th of January, 2016 in respect of a new recruitment Policy for Assistant Engineers, Junior Engineers and IT Managers that came to be notified under Office Order No. 185 dated 15th February, 2016. For Junior Electrical Engineers this new recruitment policy prescribed the qualification of full time three years Diploma in Electrical or full time four years Degree in B.E./B.Tech/B.Sc in Electrical/Electrical and Electronics from a recognized University/Institute approved by the AICTE. The same is extracted hereinunder:-

*2. **JEE** :- Full time 3 years Diploma in Electrical from a recognized Institute/ College duly recognized by State Govt./ Central Govt.*

Or



Full time 4 yeatrs BE/Btech (Engg) in Electrical /Electrical & Electronics from a recognized University/ Institute approved by AICTE.

JE(Civil):- *Full Time 3 years Diploma in Civil from a recognized Institute/College duly recognized by State Govt./Central Govt.*

Or

Full time 4 years BE/B.Tech/B.Sc (Engg.) in Civil from a recognized University/Institute approved by AICTE.”

It is also undisputed that the appellant company advertised the request for proposal for selection of a bidder for appointment of a Human Resource Agency for recruitment to various posts in the appellant company through an online test. This request for proposal which was notified in the year 2017 in Item Package 2 describes the name of the post of Junior Electrical Engineer at Serial No. 1 and the minimum qualifications indicated are the same as per the Resolution dated 15.02.2016 quoted above.

The dispute commences thereafter according to the respondent-petitioners. The petitioner-respondents contend that once the Board itself had decided as a measure of recruitment policy to include both Diploma and Degree holders, then the same could not have been altered by the



Chairman-cum-Managing Director and even if it is desirable, though not reasonable, the same ought to have been placed before the Board as the Chairman-cum-Managing Director did not enjoy this power to transform and limit the prescription of qualification that stood decided by the Board on 30th of January, 2016 as notified on 15.02.2016.

It is at this juncture, we have to examine as to whether any such alteration could have taken place at the instance of Chairman-cum-Managing Director which the learned Single Judge has ruled that he had no authority to do so.

Section 79 of the Electricity Act which has already been quoted in the judgment of the learned Single Judge is extracted hereinunder for ready reference:-

“79. Power to make regulations:-1 *[The Board may by notification in the Official Gazette, make regulations] not inconsistent with this Act and the rules made thereunder to provide for all or any of the following matters, namely:-*

(a) the administration of the funds and other property of the Board, and the maintenance of its accounts;

(b) the summoning and holding of meetings of the Board, the times and places at which such meetings shall be



held, the conduct of business thereat and the number of members necessary to constitute a quorum;

*(c) the duties of 2 [officers and other employees] of the Board, and their salaries, allowance **and other conditions of service;***

(d) all matters necessary or expedient for regulating the operations of the Board under section 20;

(e) the making of advances to licensees by the Board under section 23 and the manner of repayment of such advances;

(f) the making of contributions by the Board under section 24;

(g) the procedure to be followed by the Board in inviting, considering and accepting tenders;

(h) principles governing the fixing of Grid Tariffs;

(i) principles governing the making of arrangements with licensees under section 47;

(j) principles governing the supply of electricity by the Board to persons other than licensees under section 49;

3[(jj) expending sum not included in statement submitted under sub-section (1) of sub-section (5) of the section 61, under sub-section (2) of the section 62;]

***(k) any other matter arising out of the Board's functions under this Act for which it is necessary or expedient to make regulations:** Provided that regulations under clauses (a) 4[, (d) and (jj)] shall be made only with the previous approval of the State*



Government and regulations under clauses (h) and (i) shall be made with the concurrence of the Authority”.

The learned Single Judge has held that the power to frame regulations as enjoined under the aforesaid provision in relation to conditions of service of officers and employees is contained in sub-section (c) of Section 79 of the Act. This power was exercised by the Board in its Resolution dated 30th January, 2016 as notified on 15.02.2016. The learned Single Judge has held that once this power is exclusively conferred on the Board to frame a regulation then in that event the Chairman-cum-Managing Director could not have resorted to invoke his authority and alter the qualifications in the purported exercise of powers under Section 79(k) of the 1948 Act.

We have carefully perused the aforesaid provisions and we find that specific functions are assigned under various sub-clauses of Section 79. Section 79 (k) of the Act empowers the Board to prescribe regulations in relation to any other matter arising out of the Board's functions under the Act for which it is necessary or expedient to make regulations. The words any other matter has to be read in consonance with the words necessary or expedient to make regulations. According



to the learned Single Judge this would exclude the exclusive duties of the Board already defined under Section 79(c) of the Act that relates to other conditions of service and which would also necessarily include the prescription of qualification. To our mind there is no doubt that the Board does have the power to frame rules entailing conditions of service and for prescription of qualifications for entrance in service, but by itself clause (c) of Section 79 of the 1948 Act would not take away the power of the Board for framing regulation on any other matter “Arising out of the Board’s functions under the Act” which may be necessary or expedient to do so. This residuary power under Section 79 (k) of the Act therefore saves the authority of the Board to frame all regulations except which are relatable to the running of the Company and its commercial operations as well as fixing tariffs and arrangements with the licensees that has to be with the prior approval of the State Government or the authority. We are not concerned with any of the matters referred to in the proviso to Section 79 (k) of the Act. It is only in respect to the general powers preserved therein. Such a residuary power in our opinion was conferred on the Board, as all contingencies in detail could not have been possibly imagined



or stipulated at the time of framing of Section 79 of the Act and therefore the regulation making power was broadly worded. Section 79 (k) of the Act acknowledged the power of the Board to frame regulations on matters arising out of the Board's functions under the Act which includes the function of making prescription of conditions of service and which would also include the prescription of qualification for entry in service. Consequently, we find that the learned Single Judge was not correct in interpreting the provisions of Section 79(k) of the Act to exclude the powers of the Board in framing regulations in relation to matters of conditions of service including the prescription of qualifications. The Board can resort to Section 79 (k) to frame such regulations which it may find necessary or expedient in matters arising out of the functions of the Board under the Act. We, therefore, do not find ourselves in agreement with the conclusion drawn by the learned Single Judge on this score.

The learned Single Judge has then proceeded to hold that the delegation of power under Section 79(k) in terms of the Resolution dated 16.09.1992 is not authorized, inasmuch as, such power has to be exclusively exercised by the Board



as it could not be sub-delegated to the Chairman-cum-Managing Director.

We may at this stage extract the said delegation by way of Notification No. 109 dated 16.09.1992. It is extracted hereinunder:-

“Bihar State Electricity Board: Patna

Department of General Administration.

NOTIFICATION

Notification No. XIII/Misc.3025/92109/EB.,Patna dtd. 16.02.2012

*In exercise of the power conferred under sub-section (K) of Section 79 of the Electricity (Supply) Act, 1948 (Central Act LIV of 1948), the Bihar State Electricity Board **hereby empowers the Chairman, of the Board to anticipate Board's approval and to take suitable action as deemed fit in the interest of Board/public interest in** pursuance of Board's resolution No. 6581 dated 26.8.92, subject to the following conditions:-*

(a) That the matter is of urgent nature and in Board's interest. Further, that the meeting of the Board is not likely to be held in near future.

(b) Such decision should be placed in the immediate next meeting of the Board.

2. This will take immediate effect.

By order of the Bihar State Electricity Board

Sd/-

(R.P. Birnaway)

Secretary”



The said Notification dated 16.09.1992 is not under challenge in this proceeding nor the same has been rescinded or modified but the learned Single Judge has found that the conferment of such delegation does not include the delegation of power to alter the qualifications which relates to the conditions of service, and which could only be exercised by the Board and not by the Chairman-cum-Managing Director.

The learned Single Judge has held that under Section 79 (k) of the Act, the powers of the Board to frame regulations does not stand denuded nor it could have been presumed to have delegated the power on the Board of dealing with service conditions and qualifications. For this, the learned Single Judge also holds that it is for this reason that Section 79(c) of the Act is not mentioned in the Notification dated 16.09.1992. We are unable to uphold this view, inasmuch as, we have already held hereinabove that the power under Section 79(k) to frame regulations on the subject matters under the Act also includes the powers which can be exercised by the Board to frame regulations in relation to service conditions and qualifications under Section 79(c) of the Electricity Act, 1948. Section 79 (k) is in addition and supplemental to the other sub-sections of Section 79 and not



in exclusion of the subject matters referred to therein. Thus, the empowerment conferred under the Notification dated 16.09.1992 on the Chairman of the Board clearly correlates all such matters and functions that are exercisable by the Board, including the power under Section 79(c) thereof. The Chairman-cum-Managing Director therefore has the authority to resolve on matters covered under Section 79(c). The delegation under the Notification dated 16.09.1992 also prescribes that the decision/resolution of the Chairman-cum-Managing Director is subject to the same being placed in the next meeting of the Board and the decisions should anticipate the Board's approval. On a perusal of the Resolution as notified on 15th February, 2016 read with Resolution No. 444 dated 5th June, 2018 it is nowhere in doubt that the said Resolution dated 5th June, 2018 has been issued under approval of the Chairman-cum-Managing Director in anticipation of the approval of the Board of Directors to be obtained in the next meeting. The Resolution dated 5th June, 2018 is extracted as hereinafter:-

“Bihar State Power (Holding) Company Limited
(A Govt. of Bihar Undertaking)
(Department of General Administration)

Resolution No. 444/Patna

Dated: 05.06.2018



H-III/App-AEE-10001/2016

In supersession of the Office Orders No. 185 Dated 15/02/2016 following eligibility criteria and educational qualification is fixed for the recruitment of JEE and JE (Civil) to be made in 2018 and onwards:-

1. JEE:- Full time 3 years Diploma in Electrical from a recognized Institute/College duly recognized by State Govt./Central Govt. approved by AICTE.

2. JE (Civil):- Full time 3 years Diploma in Civil from a recognized Insitute/College duly recognized by State Govt./Central Govt. approved by AICTE.

3. Mode of Selection:-

KEE/JE (Civil) will be selected on the basis of online examination.

4. **In the interest of the Companies this resolution is issued under approval of Chairman-cum-Managing Director, BSPHCL in anticipation of approval of the Board of Directors which will be obtained in next meeting of the BOD.**

By Orders

Sd/-

(Rajiva Ranan Sinha)

GM (HR/Adm.)”

Thus, the Resolution dated 5th of June, 2018 is in conformity with the power delegated to the Chairman-cum-Managing Director to take a decision that was required to be taken urgently in the Board’s interest and keeping in view of the fact that the meeting of the Board was not likely to be held in near future. The argument of the learned counsel for the appellant therefore appears to be correct that the regulation



framing power that fell within the jurisdiction of the Board was rightly exercised by the Chairman-cum-Managing Director under the delegation of powers through the Notification dated 16.09.1992. The learned Single Judge therefore in our opinion erred in construing that the Chairman-cum-Managing Director had acted beyond his authority in confining the prescription of qualification to Diploma holders only.

We also cannot overlook this argument of the learned counsel for the appellant that it was a matter of policy to offer the employment only to Diploma holders who have no avenues that are available to Degree holders. The Degree holders have job opportunities on the post of Assistant Engineers, Executive Engineers and other posts which are not available to Diploma holders and they are confined only to offer themselves for the post of Junior Engineers under the scheme of the conditions of service of the appellant company. Thus, the decision to offer the post of Junior Electrical Engineer to only Diploma holders does not amount to such prohibition against Degree holders that may allow us to invoke Article 14 and 16 of the Constitution of India in favour of the Degree holders who still have other job opportunities.



This is also keeping in view the fact that there are large number of Diploma holders who are in search of jobs and, therefore, opportunity stands confined to such nature of jobs only as presently involved. The rationality of the decision and the prescription of the qualification therefore cannot be said to have no rational nexus with the objective sought to be achieved.

Apart from this, we also find force in the submission of Sri Abhinav Shrivastava who has appeared on behalf of the intervenors in the writ petition, namely the Diploma holders, on taking a stand that the courses and curriculum are different of Diploma and Degree courses. There is a clear assertion in paragraphs 5 to 9 of the affidavit in support of the intervenors' application about the distinction between the two courses and to which no plausible response has been given by the respondent-petitioners so as to demonstrate that by virtue of the character and nature of course, a Diploma in Engineering was necessarily subsumed in the qualification of a Degree in Engineering. In the absence of any such material brought forward, we find that the learned Single Judge could not have arrived at the conclusion that a Degree in Electrical Engineering being a higher qualification automatically



subsumed a Diploma in Electrical. This assumption of the learned Single Judge does not find support from any material brought on record so as to clinchingly establish that the nature of courses pursued in Diploma Engineering would necessarily be included in the Degree courses that have been pursued by the respondent-petitioners. An assumption of fact has to be on objective material and not on mere presumption. Even otherwise such a presumption can be made on an analysis by an expert body.

It can be said that a person who is possessing a qualification of Masters in Electrical Engineering may subsume in it a Degree of Bachelor in Engineering being an in line qualification, but the same cannot be necessarily concluded in respect of a Diploma course inasmuch as a Degree course is not an in line higher qualification of Diploma. For admission in an Engineering Degree course, one has to undergo a different test as compared to for an admission in a Diploma course. Even the minimum qualifications for entry in the courses are different. The category of Diploma courses which is of three years is naturally a lesser qualification with a different curriculum as compared to that of a four years Degree course, but to



conclude that the same course is also included in a Degree course may not be correct unless it is established by way of an objective and empirical analysis. For this, material has to be brought on record and in the instant case in the absence of any such material in spite of an objection taken by the Diploma holders through their intervenor application the respondent-petitioners have failed to successfully rebut the same.

On the legal issue advanced the judgments that have been cited at the Bar and have also been considered by the learned Single Judge would clearly demonstrate that the main plank of the argument of the respondent-petitioners is based on the decision in the case of **Jyoti K.K. and Ors vs. Kerala Public Service Commission and Ors.** reported in (2010) 15 SCC 596, **State of Haryana and Anr vs. Abdul Gaffar Khan & Anr.** reported in (2006) 11 SCC 153 and other judgments.

On the other hand, the appellants have relied on the judgments in the case of **State of Punjab and Ors. vs. Anita & Ors.** reported in (2015) 2 SCC 170, **P.M. Latha & Anr. vs. State of Kerala & Ors.** reported in (2003) 3 SCC 541, **Yogesh Kumar and Ors vs. Government of NCT, Delhi & Ors.** (2003) 3 SCC 548. The said issues have been thrashed



out time and again and in the instant case what we find that in the case of **Jyoti K.K.** (supra) the relevant Rule applicable in that controversy provided for such of those higher qualification which presupposes the acquisition of the lower qualification prescribed for the post. In the instant case, we do not find any such Rule and even otherwise on facts the higher qualification of Degree does not presuppose the acquisition of the lower qualification of Diploma.

Thus, it was open to the appellant employer to prescribe the qualifications and if an alteration was made as against the earlier policy the same cannot be said to be suffering from any act of arbitrariness or violation of the law laid down by the Hon'ble Apex Court. The judgments therefore relied on by the learned counsel for the respondent-petitioners clearly prescribes the Rules which permitted a presupposition whereas in the present case no such Rule exists. The issue at hand came to be decided by a learned Single Judge of the Allahabad High Court in the case of **Alok Kumar Mishra vs. State of U.P. in Service Single No. 6655 of 2016** decided on **2nd of May, 2016** and it was held after following the decisions of the Supreme Court, and consideration of the same judgments that have been cited here



in the present case, that the presumption was misplaced as in order to possess a Degree in Engineering it would not be necessary to pass or possess a Diploma in Engineering. Accordingly, the proposition that the same was an in line qualification or was subsumed, was repelled. The aforesaid judgment was upheld by a Division Bench in an Intra Court Special Appeal No. 229 of 2016 decided on 31st of May, 2016. Special Leave to Appeal filed against the aforesaid judgment before the Apex Court vide Special Leave to Appeal (C) No. (s) 17219/2016 came to be dismissed on 25th of July, 2016.

Thus, in view of the conclusions drawn hereinabove and the judgments cited at the Bar, we find that the judgment of the learned Single Judge cannot be sustained. We, accordingly, allow the appeal and set aside the impugned judgment dated 29.08.2018 and dismiss the writ petition.

(Amreshwar Pratap Sahi, CJ)

Vikash/-

(Anjana Mishra, J)

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	19.12.2018
Transmission Date	NA

