

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11096 of 2018

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1. Md. Asif Hussain Son of Md. Rashid Hussain Resident of at & P.O. Pokhrai, P.S. Manpur, District- Sitamarhi.
 2. Vishwajeet Kumar Son of Baleshwar Prasad Resident of Village- Kendua, P.S. Sirdala, District- Nawadah.
 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, Distict- East Champaran, Motihari.

.... Petitioner/s

Versus

1. The Bihar State Power (Holding) Company Limited 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.

.... Respondent/s

4. 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. Bakhtiyarpur, District Patna.
5. Ramesh Kumar, son of Shri Kailash Rajak, resident of At Kakwara, P.O. Kakwara, P.S. Banka, District Banka

.....Intervenors/Respondents.

with

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Civil Writ Jurisdiction Case No. 12088 of 2018

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Ashwini Ranjan, son of Pramod Kumar Singh, resident of Village- Hasanura, PO + P.S. Beur, District Patna

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary Department of Energy State of Bihar, Patna
2. The Principal Secretary, Department of General Administration, State of Bihar, Patna.
3. The General Manager (H.R/Adm. BSPHCL) Vidyut Bhawan Bailey Road, Near Income Tax Gomenber, Patna

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 12382 of 2018

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Shailputri, daughter of Sri S.N. Singh, resident of House No.4/A, Type V, Macdonald Road, New Capital Area Patna 800001 (Bihar)



.... Petitioner/s

Versus

- 1. Bihar State Power (Holding) Company Limited, having its office at Vidyut Bhawan, Bailey Road, Patna 800001 (Bihar) through the Chairman-cum-Managing Director
- 2. The Chairman-cum-Managing Director, Bihar State Power (Holding) Company Limited, Vidyut Bhawan, Bailey Road, Patna 800001 (Bihar)
- 3. The General Manager (HR/ADMIN), Bihar State Power (Holding) Company Limited, General Administrative Department, Vidyut Bhawan, Bailey Road, Patna 800001 (Bihar)
- 4. The Officer on Special Duty (HR/ADMIN), Bihar State Power (Holding) Company Limited, General Administrative Department, Vidyut Bhawan, Bailey Road, Patna 800001 (Bihar)

.... Respondent/s

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Appearance :

(In CWJC No.11096 of 2018)

- For the Petitioner/s : Mr. Prashant Sinha, Advocate
Mr. Awadhesh Kumar, Advocate
Mr. Bava Jha, Advocate
- For the Respondent(BSPHCL)/s : Mr. A.K. Oja, Standing Counsel
Mr. A.K. Karna, Advocate
- For the Intervener : Mr. Abhinav Shrivastava, Advocate
Mr. Ujjawal Bhushan, Advocate
Mr. Kushagra Raj, Advocate.

(In CWJC No.12088 of 2018)

- For the Petitioner/s : Mr. Pramod Kumar Singh, Advocate
Mr. Virendra Kumar, Advocate
- For the State : Mr. Kinkar Kumar, SC 9
- For the Company : Mr. Vinay Kirti Singh, Advocate

(In CWJC No.12382 of 2018)

- For the Petitioner/s : Mr. Munna Pd Dixit, Advocate
Mr. S.K. Dixit, Advocate
Mr. Sanjay Kumar Chaubey, Advocate
Mrs. Swastika, Advocate.
Mr. Sunil Kumar
Mr. Shailendra Kumar

- For the Company : Mr. Anand Kumar OJha. SC
Mr. A. K. Karna, Advocate.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

CAV JUDGMENT

Date: 29.8.2018

Heard the parties.

- 2. In all three cases common issues have been raised and



with the consent of the parties all the case are being heard together and disposed of at the admission stage by this common order.

3. For convenience, the facts of case of C.W.J.C. No. 11096 of 2018 is taken into consideration, whenever there will be need the Court may take help of the facts mentioned in another writ petition.

4 An interlocutory application vide I.A. No. 4744 of 2018 has been filed by the persons who are holding the qualification of Diploma in Electrical Engineering have objected the application filed by the petitioners having stated that action of the Power Holding Company is correct in refusing to allow the Degree Holders to participate in selection process.

In view of the plea that has been taken by the interveners, I.A. No. 4744 of 2018 is allowed and they have been heard accordingly.

5. In the present case, the petitioners are the degree holder B.Tech Electrical Engineering are challenging the notification of Clause 1 of the employment notice no. 6 of 2018 published in the month of June-2018 by the Bihar State Power (Holding) Company Limited (hereinafter referred to as 'Power Holding Company'), whereby the qualification for the Junior Electrical Engineer has been limited to those who have full time 3 years Diploma Course



in the Electrical from a recognized Institute / College duly recognized by State Government / Central Government approved by AICTE. Further a prayer has made that the decision of limiting the qualification only upto Diploma, amounts to exclusion of the candidate holding the higher degree which is against to the general instruction issued by the Power Holding Company in which apart from persons holding Diploma Degree, the candidates having qualification of Degree were also declared eligible and further prayer has been made for a declaration of the Power Holding Company excluding the higher qualification then the Diploma is completely unsustainable and requires interference by this Court.

6. All petitioners are Degree Holders in B.Sc. Engineering in electrical branch and they are intending to participate in the recruitment process meant for appointment of Junior Electrical Engineer and they have taken a plea that the action of the Board is a calculated move excluding the person holding the qualification of B. Tech to participate in the fray of selection of Diploma Holder is completely arbitrary exercise of power, having stated that, in the year 2016 the Power Holding Company had published an advertisement for the posts of Junior Engineer, in that selection, the minimum qualification was fixed for the post of Junior Engineer, three years Diploma course or four years of degree



course in the branch of Electrical Engineer and wherein the Degree Holders were allowed to participate in selection of Junior Electrical Engineering, further stated that for selection of Junior Engineer including recruitment on different posts, the Power Holding Company was intending out source selection process to Agency and to select the Human Resources Agency for that purpose the Power Holding Company has issued the Request For Proposal from its department of General Administration. In the Request For Proposal, the details of several posts corresponding qualification have been mentioned for the recruitment in those categories of post and one of the post mentioned therein is Junior Electrical Engineering, wherein the minimum qualification has been mentioned full time three years Diploma in Electrical or Electronics in recognized University/Institution from State Government and Central Government or four years Engineering Degree (BE/B.Tech/B.Sc. Engg.) in Electrical in Electrical or Electronics from the recognized University / Institute approved by AICTE.

7. The Power Holding Company published an employment notice vide notice no. 6 of 2018 for recruitment on 400 posts of Junior Electrical Engineering, provided in Clause 1 of the employment notice the requisite minimum qualification is



three years Diploma in Electrical from a recognized institute/college duly recognized by State Government/Central Government approved by AICTE and the application has to be filled up through online process. When the petitioners opened the window for filling up the Online application in the column of the qualification the Power Holding Company has limited to qualification of Full time 3 years diploma course in Electrical Engineer from recognized institute/college duly recognized by State Government/Central Government approved by AICTE no option has been provided for the Degree Holders course to submit his Online application, the hard copy has been annexed as Annexure 5 showing that only caption has been made for the Diploma Holders and there is no caption meant for the Degree Holders.

8. The petitioners have challenged the rationality of the Power Holding Company in confining the qualification to three years Diploma course for Junior Engineer excluded and not provided the Degree Holders to participate in selection of Junior Engineer Electrical.

9. The Power Holding Company filed its counter affidavit and submitted that the Board has taken a policy decision that for recruitment of Junior Engineer Electrical it will be limited to the



three years Diploma Holders and it will not be extended to the Degree Holders as this policy has been taken in consideration of past experience that those Degree Holders who are selected but in quick succession they used to resign from the post as they got an opportunity of better avenue ultimately, the Board is the sufferer on account of dropping out from the cadre of Junior Engineer. Several examples have been given, the State of Bihar by way of policy decided, for recruitment to the post of Junior Engineer, division has been made Diploma Holder 75 percent and Degree Holder 25 percent. Further stated that Ministry of Railway, U. P. Power Corporation, West Bengal Electricity Board all have prescribed the qualification for the appointment of Junior Engineer as Diploma Holder, aforesaid organizations have excluded the qualification of four years B. Tech course from recruitment submitted that, in such view of the matter, the decision which has been taken by the Power Holding Company is based on rationality taking into consideration past experience there is no unreasonableness in excluding Degree Holders from participation in the selection of Junior Engineer. If the Degree Holder is allowed to participate in selection, Diploma Holder will be marginalized as four years Degree Holder will eat away the major chunk of post of Junior Engineer Electrical.



10. Another question has been raised, earlier in 2016, the Power Holding Company has not excluded the Degree Holders to participate in selection rather they were allowed as in the advertisement it has been mentioned in the column the minimum qualification, fixed three years Diploma course in Electrical Engineer and four years Engineering Degree (BE/B.Tech/B.Sc. Engg.) which is pursuance of resolution no. 44-14 passed by the Board Director of Power Holding Company which was notified vide Office Order No.185 dated 15.2.2016 (Annexure-2©) when this document was brought to the notice of the learned counsel for the Power Holding Company requested for adjournment to take instruction.

11. During the course of argument, learned counsel for the Power Holding Company filed a supplementary counter affidavit and brought a resolution vide office order no. 444 dated 05.6.2016 which stipulates that this office order has been issued in supersession of office order 185 dated 15.02.2016 whereby and whereunder the qualification for recruitment of Junior Engineer Electrical and Junior Engineer (civil) has been modified as this matter is only confined to the Junior Engineer Electrical. It will be relevant to mention the amendment of resolution which runs as follows:



“Junior Engineer Electricals, full time 3 years Diploma in Electrical from a recognized Institute / College duly recognized by State Government / Central Government approved by AICTE”.

12. So the thrust has been made by the Power Holding Company that by this amendment the person who is holding the Degree in Electrical Engineer will not be eligible to participate in the recruitment of Junior Engineer as it has been confined to those who are only holding the qualification of Diploma in Electrical Engineering, then the question arose that how the Chairman will have a jurisdiction to over turn or supersede the decision of the Board of Director of the Power Holding Company which is earlier taken decision providing an opportunity to Degree Holder, as qualified person to participate in the recruitment of Junior Engineer and it has not been confined to the person who is holding only qualification of Diploma in the Electronic Engineering. So, the subsequent resolution cannot be superseded or cannot be recognized as valid piece of document prescribing qualification, confining to Diploma Holders and further question has been raised under what authority Chairman-cum-Managing Director would exercise the power for passing such resolution in supercession of earlier resolution.

13. The Power Holding Company in order to substantiate the



authority of Chairman, showing source of power, produced the notification vide memo no.109 dated 16.9.1992 which has been issued in exercise of power conferred under Section 79(K) of the Electrical (Supply) Act, 1948 (hereinafter referred to as the 'Act') wherein the Board has empowered the Chairman of the Board in anticipation of Board's approval and to take suitable action as it deem fit in the interest or of Board/public interest in pursuance of the Board's Resolution No.6581 dated 26.8.1982, subject to the following conditions: 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 nature.

14. So, it is submitted under that source of power, emanating from this authorization made by the Board to the Chairman in the matter of urgent nature and is in the interest of the Board, the Chairman will have a jurisdiction to frame the regulation under Section 79(K) of the Act. Further he has submitted that after the enforcement of Electricity Act, 2005 led to unbundling of erstwhile Board, assets and liability was transferred to the Government subsequently it was transferred to the Power Holding Company and other subsidiaries, has placed reliance on the notification no.17 dated 13.10.2012 which speaks of Bihar State Electricity Reforms Transfer Scheme, 2012, drawn



the attention to Clause 6.8 wherein it has been provided that subject to the Act and this Scheme, the Power Holding Company shall be entitled to frame the regulations governing the conditions of personnel transferred to the subsidiary companies under this Scheme and till such time the existing service rules/regulations framed by the Board shall apply mutatis-mutandis.

15. In nutshell submission has been made though earlier Diploma Holders as well as Degree Holders were allowed to participate in the selection of Junior Engineer, but subsequently by policy decision it has only been confined to the Diploma Holder and the person who is holding B.Tech degree has been excluded from the recruitment of Junior Engineer Electrical.

16. Private respondent representing the cause of Diploma Holders has by and large argued in the same term and tenor and submitted that the decision has been taken by the Power Holding Company to exclude the Degree Holders cannot be said to an arbitrary exercise of power or any way it is discriminatory in nature nor it is required to be interfered by this Court.

17. Submission has been raised by the petitioners that Chairman cannot supersede or over turn the decision of the Board when the Board has fixed a qualification it can only be modified or superseded by the Board's alone, not the Chairman in view of



such submission it has to be examined the provision of 79 of the Electric Supply Act, its contour, to examine whether the Chairman in exercise of power under Section 79(K) of the Act has jurisdiction to modify the qualification for selection to the post of Junior Engineer. He has further submitted that as Section 79(K) of the Act cannot be pressed in service as Rule 79(K) of the Act does not deal with condition of service, in view of specific provision i.e. 79 © has been provided dealing with service condition of the employee of the Board, in such circumstances, when special provision has been made dealing with the service condition then, in that circumstances Rule 79(K) of the Act which is residuary in nature cannot be applied on the principle the special will exclude general inasmuch as 79K gives residuary power, cannot only be exercised when item dealing with service condition has specifically been authorized under Section 79(C) of Act.

18. The power conferred in Rule 79, as per the petitioner, legislative in nature, and that power has been delegated to the Board, that power can only be exercised by the Board and that power cannot be sub-delegated.

19. In the present case the question has been raised, as to where the person holding the qualification of B.E/B.Tech/B.Sc. Engineering can be allowed to participate in the selection of



Junior Engineer, as the employment notice prescribes, the qualification of eligibility, Full time three years Diploma in electrical from a recognized institute/college duly recognized by the State Government/Central Government approved by AICTE in view of fact, as neither there is a exclusion of higher qualification for being entitled to participate in the recruitment process of Junior Engineer, second point has to be decided as to whether the Chairman-cum-Managing Director has jurisdiction to make an amendment to the qualification which was prescribed by the Board of Director of Power Holding company for recruitment of Junior Engineer as in the meeting held on 31.1.2016 prescribed the qualification of eligibility, also included the qualification of full time 4 years BE/B.Tech./B.Sc. (Engg.) in Electrical/Electrical & Electronics from a recognized University/Institute approved by AICTE has been allowed to participate in the recruitment of Junior Engineer, incidentally point has also been raised, when the statute has empowered and authorized the highest body i.e. Board of Director to frame the rule, can that power be sub delegated to the Chairman for the purposes of framing the rule re-fixing the qualification.

20. For deciding first point as has been framed this Court will have to examine, the earlier qualification of eligibility and



amendment made therein.

21. As it appears that that Bihar State Electricity Board Junior Electrical Engineers (General) Cadre Rule, 1982 provides the procedure for recruitment as well as the eligibility qualification for selection to the post of Junior Engineer as in the present case the qualification is a singular consideration for deciding the present issue, as in the Junior Electrical Engineer (General) Cadre Rule 1982, provides that the posts of Junior Engineer in the cadre shall be filled up by direct recruitment from Diploma Holders in Electrical Engineering and by absorption of those employees who while serving the Board on the lower posts has acquired diploma in Electrical Engineering. Appointment by direct recruitment and by absorption was/is the mode provided for filling up the vacancies in a calendar year in the ratio of 75-25. Rule prescribes requisite qualification of Diploma in Electrical Engineering or the person acquired that qualification during service period will be considered for recruitment to the post of Junior Engineer.

22. After enforcement of Electricity Act, 2005 the Board of Director of Power Holding Company Limited in its 44th meeting made amendment in the requisite qualification prescribed the educational qualifications of eligibility for different posts. But in the present case the qualification of Junior Engineer is relevant for



consideration for present case, for the post of Junior Engineer, the only qualification of three years Diploma in Electrical Engineer from a Institute/College recognized by State Government/Central Government has been amended, included those who have qualification of full time Four years course in BE/B.Tech./B.Sc. (Engg.) in Electrical/Electrical & Electronics from a recognized University/Institute approved by AICTE. The Power Holding Company decided to make recruitment on different posts through H.R. Agency in pursuance thereof, for selection of Agency, invited application, in the document of Request of Proposal, different qualification has been mentioned for different posts for recruitment through online examination for BSP(H)CL. Under the heading for post of Junior Engineer Electrical, the qualification of full time 3 years Diploma in Electrical from a recognized Institute/College duly recognized by the State Government/Central Government or full time 4 years BE/B.Tech./B.Sc.(Engg.) in Electrical/Electrical & Electronics from a recognized University/Institute approved by AICTE has been allowed to participate in the recruitment of Junior Engineer. But the Employment Notice No.6/18 for recruitment and selection of Junior Engineer the requisite educational qualification has been mentioned, full time 3 years Diploma in Electrical Engineering



from a recognized Institute/College duly recognized by the State Government/Central Government approved by AICTE. In this qualification it does not provide any bar for a candidate for participation to those having BE/B.Tech qualification. Point has been raised by the petitioner that employment notice cannot fix the eligibility criteria de hors to the recruitment rule framed by the Board of Director and the amendment made to qualification through resolution no. 444 dated 5.6.2018 whereby the Chairman-cum-Managing Director has modified the qualification as the qualification of four years BE/B.Tech. has been dropped from the recruitment rule. The power of Chairman-cum-Managing Director to make an amendment to the Rule will be examined at a later stage as presently it is only confined as to whether the person who is degree holder can participate in the selection of Junior Engineer.

23. On scrutiny of the qualification fixed either under the amended rule or the advertisement inviting application from interested person to participate in the recruitment does not debar Four years Degree Holder or prescribes the qualification of Diploma of three years in Electrical Engineer, will only be entitled to participate in the fray, unless the qualification by specific term debar the higher qualification or by specific stipulation, only the qualification of three years Diploma in Electrical Engineering has



been mentioned in the rule or in the advertisement, only Diploma has been allowed to participate, in absence of such prohibition or confinement of that degree, it cannot be said that the person holding higher qualification will not be allowed to participate in the selection of Junior Engineer. For the post of Assistant Engineer or Executive Engineer the minimum qualification has been prescribed, four years degree course in the BE/B.Tech and there is provision for those persons having qualification of degree of BE/Bech, will be entitled for promotion as Assistant Electrical Engineer. So it pre-supposes that the person who has entered into service as Junior Engineer will have an opportunity for promotion to the higher grade of Electrical Engineer. The issue of minimum requisite qualification can be considered from different angles, in the back drop of fact that these days even a candidate from humble background used to acquire qualification of B. Tech. degree through bank assistance if restriction is invoked confining the qualification of Diploma then last segment of society who acquired the qualification of B. Tech. by struggle and toil will go waste by depriving them for participation in recruitment, thereby taking away right, will be of an employment put them in difficult situation to those has to return the loan amount to the bank. So on two counts, it can not construed that Degree Holder cannot be



allowed to participate in the recruitment of Junior Engineer as this qualification has not been debarred to participate as well as Power Holding Company has not restricted the qualification of Diploma in Electrical Engineering only, in such view of the matter, the plea of restricting qualification to Diploma cannot be accepted that the candidate having higher qualification has been excluded from participation and only confined to the person who has qualification of Diploma in Electrical Engineering.

24. The aforesaid view as mentioned hereinabove is fortified from different judgment of the Hon'ble Supreme Court and this Court in the case of *Mohd. Riazul Usman Gani and others. V. District & Sessions Judge, Nagpur and others*, reported in *AIR 2000 SC 919*. The Apex Court has taken view in paragraph 18 of the said judgment that the appointment of a candidate to the post of peon cannot be restricted to the qualification of Class VII and persons having better qualification cannot be excluded from participation in that context, the Court has held that higher qualification cannot become disadvantage to the candidate. If an employee having higher qualification does not perform the duties attached to the post, disciplinary action can certainly be taken against him. An employer cannot throw up his hands in despair and devise a method denying appointment to a



person who otherwise meets the requisite qualifications on the ground that if appointed, he would not perform his duties as the qualification prescribed is minimum. Further the Court taken a view that if the appointment of a candidate to the post of peon is restricted to his having qualified up to Standard VII he will have no chance of promotion to the post of Regional Language Section Writer and a Clerk, it is not that qualifications required for Regional Language Section Writer and Clerk are to be acquired by a peon during the course of his service. The Court has taken a note of the fact that some persons working therein, for appointment to the post of clerk, since they had acquired the qualification for that post, prayed for their matter be considered for appointment to the post of clerk. So the persons from humble background have acquired a better qualification cannot be deprived for participation in the selection to the post of Junior Engineer. It will be relevant to quote paragraph nos. 18 to 23 of the aforesaid judgment:

“18.If the appointment of a candidate to the post of peon is restricted to his having qualified up to Standard VII he will have no chance of promotion to the post of Regional Language Section Writer or a Clerk. It is not that qualifications required for Regional Language Section Writer and Clerk are to be acquired by a peon during the course of his service. During the course of hearing we were referred to a few applications submitted by peons



who are already working wherein they had prayed for their being considered for appointment to post of clerks since they had acquired requisite qualifications for that post. On this an argument is sought to be based that those peons with higher qualifications are not interested in their work as peons. We can give no credence to such an argument when Recruitment Rules themselves prescribe that post of a clerk can be a promotional post for a peon having requisite qualification. There is nothing wrong if a peon sends in his request for being considered to be promoted as a clerk.

19. We do not know what are the duties attached to the post of a peon. But perhaps one thing peons are not required to do the work of sweepers or gardeners. Qualifications for gardeners and sweepers have been separately provided in the Recruitment Rules and the only qualification for both the categories of these posts is "good physique and also to carry out the duties attached to the post."

20. If an employee does not perform the duties attached to the post disciplinary proceedings can certainly be taken against him. An employer cannot throw up his hands in despair and devise a method denying appointment to a person who otherwise meets the requisite qualifications on the ground that if appointed, he would not perform his duties. Qualification prescribed is minimum. Higher qualification cannot become a disadvantage to the candidate.



21. A criterion which has the effect of denying a candidate his right to be considered for the post on the principle that he is having higher qualification, than prescribed cannot be rational. We have not been able to appreciate as to why those candidates who possessed qualifications equivalent to SSC examination could also not be considered. We are saying this on the facts of the case in hand and should not be understood as laying down a rule of universal application.

22. We do not think, therefore, that the criterion four as laid by the Advisory Committee constituted under the Rules and upheld by the High Court is in any way reasonable or rational. By adopting such a course High Court has put its stamp of approval to another type of reservation for recruitment to the service which is not permissible. A poor person can certainly acquire qualification equivalent to S.S.C. Examination and not that he cannot go beyond Standard VII. Perhaps by restricting appointment to candidate having studied only up to Standard VII High Court may not be encouraging dropouts.

23. Considering whole aspect of the matter we must upset the fourth criterion laid by the Advisory Committee. Appellants have been wrongly denied of their right for being considered for the post of peon. However, in the counter affidavit filed before us by the Additional Registrar (Legal), High Court on behalf of the District & Sessions Judge and the High Court it has been stated that



process of selection of peon has already been completed and the candidate from the select list are being posted as peons. In this view of the matter, we would not like to disturb the appointment of the candidates already selected. Thus, though we set aside the impugned judgment of the High Court, we will not issue any further directions for cancelling the appointments of the candidates already selected and for starting of the whole selection process afresh”.

25. Reliance can also be placed to the following judgments:

(i) ***Mohd. Riazul Usman Gani and others. V. District & Sessions Judge, Nagpur and others***, reported in 2000 (2) BLJ 581 and ***Y. Srinivasa Rao v. J. Veeraiah and Ors.***, reported in 1992(2) SCR 780.

26. In all those decision identical view has been taken that persons having higher qualification cannot be disqualification for participation in recruitment.

27. In the case of ***Jyoti K.K. and others v. Kerala Public Service Commission and others***, reported in (2010) 15 SCC 596 the identical problem arose about refusing to accept the application on the person holding B. Tech degree in Electrical Engineering, on the basis that they were not possessing necessary qualifications the Commission took the view that they are not qualified person to participate in the selection. There also, the



question arose whether possession of higher qualification is disqualification and, therefore, non consideration of their candidature can be said to be valid exercise of jurisdiction. There also the Commission had taken stand that graduates in Engineering or persons possessing other qualifications may not be taken as higher qualifications, they are not equivalent qualifications prescribed for that post and persons who possessed higher qualifications can only be taken note of in cases where they acquired such higher qualifications after acquiring the prescribed qualifications.

28. In this case also an advertisement was made prescribing requisite qualification as Diploma Holders of recognized University. The High Court took the view that person holding degree of B. Tech is not requisite qualification and further held that the qualification possessed by B. Tech. does not presuppose the acquisition of prescribed lower qualifications and when qualifications have been prescribed for a post, the same cannot be diluted and persons not possessing those qualifications cannot be permitted to be eligible. The Hon'ble Supreme Court has approved the view of the High Court that 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 and



also justified the view of the High Court 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 qualification which presuppose the acquisition of the lower qualifications prescribed for that post shall also be sufficient for the post. The Hon'ble Supreme Court has further held if a person has acquired higher qualification in the same faculty, such qualifications can certainly be stated to presuppose the acquisition of the lower qualifications prescribed for the post. In the same manner qualification for the post of Assistant Engineer the requisite qualification is B. Tech which is post of promotion for Junior Engineer prescribes qualification of Diploma in Electrical Engineer, in that circumstances, the person holding B. Tech. qualification which is higher qualification presuppose the acquisition of lower qualification will not be a bar for participation of those having better qualification and will not be excluded from consideration for recruitment to the post of appointment of Junior Engineer. It will be relevant to quote paragraph nos. 7 to 9 of the aforesaid judgment:

“7. 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.

8. 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. 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.

9. 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”.

29. In view of above discussion, in the present case also, the person holding qualification of B. Tech. Engineering is supposed to have lower qualification of diploma, cannot be excluded from the participation in the selection of Junior Engineer, as there is nothing in the Rule or in the advertisement prescribes the exclusion clause or confining to those who are holding diploma qualification in Engineering will be treated to be only requisite



qualification for that post. In such circumstances, there cannot be a restriction only to those, having a qualification of diploma in Electrical Engineer and as such, the plea that has been taken by the Power Holding Company as well as intervenor that portal has not prescribed any column for any other qualification indicate exclusion of other qualification is wrong, perverse and illegal decision has been taken by the Power Holding Company failure to provide proper portal to the candidates having B. Tech. qualification.

30. Dealing with the second point it has to be understood mechanism of statutory provision while enacting an Act the legislature makes provision for framing rule and regulation through subordinate legislation to carry out the aim and object of provisions of an Act, and efficiently carry out the same authorizing the appropriate Government or prescribes authority to frame the Rule. The exercise of power in framing Rule is an Act of subordinate legislation by delegation of power, strictly to be adhered, confining the power to frame Rule to that authority who has been prescribed or authorized. The power of framing Rule cannot be sub delegated to another authority unless it is mentioned with specification, in such circumstances, any authority other than the prescribed authority under the Act will not be treated to have



been authorized to frame the rule or regulation, on the principle, a delegated power cannot further be delegated unless authorised. This principle can be imported from Latin Maxim “*delegata potestas non potest delagari*” (Lat) (2 Inst.579) Advanced Law Laxicon, by P. Ramnath Aiyar. A delegated authority cannot be redelegated.

31. A delegated power cannot be delegated. Delegation by an agent, that his entrusting to another person by an agent of exercise of a power or duty entrusted to him by his principal, is in general prohibited, under the maxim *delegatus non potest delegare*, without the authority of a principal or authority derived from statute.

32. This principle has been considered by Hon’ble Supreme Court in the case of ***Berium Chemicals Ltd. and another Vs. Company Law Board and others***, reported in ***AIR 1967 SC 295***. The Court has held that if the statute direct that certain acts shall be done in a specified manner or by certain persons, their performance in any other manner than that specified or by any other person than one of those named is impliedly prohibited. A discretion interested by Parliament to an administrative organ must be exercised by that organ itself. If a statute entrusts an administrative function involving the exercise of a discretion to a



Board consisting of two or more persons it is to be presumed that each member of the Board should exercise his individual judgment on the matter and all the members of the Board should act together and arrive to a decision and reiterated as aforesaid. The Court has further held that maxim “*delegatus non potest delegare*” does not embody a Rule of law it indicates a Rule of construction of a statute or other instrument conferring an authority. A discretion conferred by a statute or any authority is intended to be exercised by that authority and by no other. But the intention may be negated by any contrary indication in the language, scope or object of the statute. The construction that would best achieve the purpose and object of the statute should be adopted. It will be relevant to quote paragraph no. 34 to 37 of the aforesaid judgment:-

“34. Bachawat, J. The order dated May 19, 1965 was passed by the Chairman of the Company Law Board Mr. Setalvad submitted that only the Board could pass an order under s. 237, the Central Government could delegate its function under s. 237 to the Board but it had no power to authorise the Chairman to sub-delegate this function to himself and consequently, the Company Law Board (Procedure) Rules, 1964 made by the Central Government on February 1, 1964 and the Chairman's order of distribution of business dated February 6, 1964 delegating the function of the Board



under s. 237 to the Chairman are ultra vires the Companies Act and the impugned order is invalid. The learned Attorney-General disputed these submissions.

34A. As a general rule, whatever a person has power to do himself, he may do by means of an agent. This broad rule is limited by the operation of the principle that a delegated authority cannot be redelegate, delegates non protest delegate. The naming of I delegate to, do an act involving a discretion indicates that the delegate was selected because of his peculiar skill and the confidence reposed in him, and there is a presumption that he is required to do the act himself and cannot redelegate his authority. As a general rule, "if the, statute directs that certain acts shall be done in a specified manner or by certain persons, their performance in any other manner than that specified or by any other person than one of those name is impliedly prohibited." See Crawford on statutory Construction, 1940 Edn., art. 195, p. 335:- Normally, a discretion entrusted by Parliament to an administrative organ must be exercised by that organ itself. If a statute entrusts an administrative function involving the exercise of a discretion to a Board consisting of two or more persons it is to be presumed that each member of the Board should exercise his individual judgment on the matter and all, the members of the Board should act together and arrive at a joint decision. Prima facie, the Board must act as a whole and cannot delegate its function to one of its members.



35. *The learned Attorney-General submitted that a distribution of business among the members of the Company Law Board is not a delegation of its authority, and the maxim has no application in such a case. I cannot accept this submission. In Cook v. Ward(1887) 2 CPD 255,, the Court held that where a drainage board constituted by an Act of Parliament was authorised by it to delegate its powers to a committee, the powers so delegated to the committee must be exercised by them acting in concert and it was not competent to them to apportion those powers amongst themselves and one of them acting, alone, pursuant to such apportionment, could not justify his acts under the statute. Lord Coleridge, C. J. said at p. 262:- "It was not competent to them to delegate powers, which required the united action of the three, to be exercised according to the unaided judgment of one of them." Again, in Vine v. National Dock Labour Board(1957) AC 488, the House of Lords, held that a local board set up, under the scheme embodied in the schedule to the Dock Workers (Regulation of Employment) Order, 1947 had no power to assign its disciplinary function under cls. 15(4) and 16(2) of the scheme to a committee and the purported dismissal of a worker by the committee was a nullity. In my opinion, the distribution of the business of the Board among its members is a delegation of its authority.*

36. *But the maxim "delegatus non potest delegare" must not be pushed too far. The maxim does not*



embody a rule of law. It indicates a rule of construction of a statute or other instrument conferring an authority. Prima facie, a discretion conferred by a statute, on any authority is intended to be exercised by that authority, and by no other. But the intention may be negated by any contrary indications in the language, scope or object of the statute. The construction that would best achieve the purpose and object of the statute should be adopted.

37. Under ss. 10E(1) and 637(1)(a), the Central Government has power to constitute a Company Law Board and to delegate its functions to the Board. The Board can consist of such number of persons not exceeding five as the Government thinks fit. One of the members of the Board has to be appointed a Chairman and this necessarily implies that the Board shall consist of at least two members. As a matter of fact, the Government constituted a Board consisting of two members and appointed one of them as Chairman. To this Board the Government delegated its function under s. 237. Section 637 shows that the function under s. 237 can be delegated to the Board and to no other authority. The function under s. 237(b) involves the exercise of a discretion. Prima facie, all the members of the Board acting together were required to discharge this function and they could not delegate their duty to the Chairman. However, under ss. 10E(5) and 642(1), the Central Government may frame rules regulating the procedure of the Board and generally to



carry out the purposes of the Act. In the context of s. 10E, I am inclined to construe this rule-making power liberally. The Central Government has power to constitute the Company Law Board, to delegate its functions to the Board and to control the Board in the exercise of its delegated functions. In this background, by conferring on the Central Government the additional power of framing rules regulating the procedure of the Board and generally to carry out the purposes of s. 10E, the Parliament must have intended that the internal Organisation of the Board and the mode and manner of transacting its business should be regulated entirely by rules framed by the Government. The Government had, therefore, power to frame the Company Law Board (Procedure) Rules, 1964 authorising the Chairman to distribute the business of the Board. In the exercise of the power conferred by this rule, the Chairman assigned the business under s. 237 to himself. The Chairman alone could, therefore, pass the impugned order. Act No. 31 of 1965 has now inserted sub-s. (4A) in s. 10E authorising the Board to delegate its powers and functions to its Chairman or other members or principal officer. The power under sub-s. (4A) may be exercised by the Board independently of any rules framed by the Central Government. We find, however, that the Central Government had under ss. 10E(5) and 642(1) ample power to frame rules authorising the Chairman to distribute the business of the Board. The wide ambit of



this rulemaking power is not cut down by the subsequent insertion of sub-s. (4A) in s. 10E”.

33. In the case of ***A.K. Roy and another v. State of Punjab and others***, reported in ***AIR 1986 SC 2160*** the Court says that if the requirements of a statute which prescribe the manner in which something is to be done are expressed in negative language, that is to say, if the statute enacts that it shall be done in such a manner and in no other manner, it has been laid down that those requirements are in all cases absolute, and that neglect to attend to them will invalidate the whole proceedings. The power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. Other modes of performance are necessarily forbidden. The intention of the Legislature in enacting S. 20(1) was to confer a power on the authorities specified therein which power had to be exercised in the manner provided and not otherwise. It will be relevant to quote paragraph nos. 10 to 12 of the aforesaid judgment:

“10. A careful analysis of the language of s. 20(1) of the Act clearly shows that it inhibits institution of prosecutions for an offence under the Act except on fulfillment of one or the other of the two conditions. Either the prosecutions must be instituted by the Central Government or the State Government or a



person authorised in that behalf by the Central Government or the State Government, or the prosecutions should be instituted with the written consent of any of the four specified categories of authorities or persons. If either of these two conditions is satisfied, there would be sufficient authority for the institution of such a prosecution for an offence under the Act. The provision contained in s. 20(1) of the Act does not contemplate the institution of a prosecution by any person other than those designated. The terms of s. 20 (1) do not envisage further delegation of powers by the person authorized, except that such prosecution may be instituted with the written consent of the Central Government or the State Government or the person authorized. The use of the negative words in s. 20(1) "No prosecution for an offence under this Act.. shall be instituted except by or with the written consent of" plainly make the requirements of the section imperative. That conclusion of ours must necessarily follow from the well known rule of construction of inference to be drawn from the negative language used in a statute stated by Craies on Statute Law, 6th edn., p. 263 in his own terse language:

"If the requirements of a statute which prescribe the manner in which something is to be done are expressed in negative language, that is to say, if the statute enacts that it shall be done in such a manner and in no other manner, it has been laid down that those requirements are in all cases



absolute, and that neglect to attend to them will invalidate the whole proceeding."

Where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. Other modes of performance are necessarily forbidden. The intention of the Legislature in enacting s. 20(1) was to confer a power on the authorities specified therein which power had to be exercised in the manner provided and not otherwise.

11. The first part of s. 20(1) of the Act lays down the manner of launching prosecutions for an offence under the Act, not being an offence under s. 14 or s. 14A. The second part provides for delegation of powers by the Central Government or the State Government. It enables that prosecutions for an offence under the Act can also be instituted with the written consent of the Central Government or the State Government or by a person authorized in that behalf, by a general or special order issued by the Central Government or the State Government. The use of the words 'in this behalf' in s. 20(1) of the Act shows that the delegation of such power by the Central Government or the State Government by general or special order must be for a specific purpose, to authorize a designated person to institute such prosecutions on their behalf. The terms of s. 20(1) of the Act do not postulate further delegation by the person so authorized; he can only give his consent in writing when he is satisfied that a prima facie case exists in the facts of a particular case



and records his reasons for the launching of such prosecution in the public interest.

12. In the case of statutory powers the important question is whether on a true construction of the Act, it is intended that a power conferred upon A may be exercised on A's authority by B. The maxim delegatus non potest delegare merely indicates that this is not normally allowable but the Legislature can always provide for sub-delegation of powers. The provision contained in ss. 24(2) (e) enables the State Government to frame a rule for delegation of powers and functions under the Act but it clearly does not envisage any sub-delegation. That apart, a rule framed under s. 24(2) (e) can only provide for delegation of minor administrative functions e.g. appointment of Food Inspectors, Food (Health) Authority etc. In the case of important executive functions like the one contained in s. 20(1) of the Act to authorize launching of prosecutions for an offence under the Act which is in the nature of a safeguard, the Courts may be disposed to construe general powers of delegation restrictively. Keeping in view the language of s. 20(1) and 24(2) (e) of the Act, r. 3 of the Punjab Rules can be treated to be a general order issued by the State Government to authorise the Food (Health) Authority i.e. the Director of Health Services to institute prosecutions for an offence under the Act. Unfortunately, the draftsmen of r. 3 more or less employed the language of s. 20(1) of the Act. If r. 3 were to be literally interpreted, the



words "to authorize the launching of prosecutions" may lead to the consequence that the Food (Health) Authority who had been delegated the power of the State Government under s. 20(1) of the Act could, in his turn, sub-delegate his powers to the Food Inspector. Such a consequence is not envisaged by s. 20(1) of the Act. It is well-settled that rules framed pursuant to a power conferred by a statute cannot proceed or go against the specific provisions of the statute. It must therefore follow as a logical consequence that r. 3 of the Prevention of Food Adulteration (Punjab) Rules, 1958 must be read subject to the provisions contained in s. 20(1) of the Prevention of Food Adulteration Act, 1954 and cannot be construed to authorize sub-delegation of powers by the Food (Health) Authority, Punjab to the Food Inspector, Faridkot. If so construed, as it must, it would mean that the Food (Health) Authority was the person authorised by the State Government to initiate prosecutions. It was also permissible for the Food (Health) Authority being the person authorized under s. 20(1) of the Act to give his written consent for the institution of such prosecutions by the Food Inspector, Faridkot as laid down by this Court in State of Bombay v. Parshottam Kanaiyalal, [1961] 1 SCR 458 and The Corporation of Calcutta v. Md. Omer Ali & Anr., [1976] 4 SCC 527.

34. So from the aforesaid judgments it is very much clear



that if the legislature does not provide or prescribe a power of sub delegation, the authority to whom the power has been delegated, he cannot sub delegate its power. In such view of the matter, this Court has to examine whether the amendment made by the Chairman-cum-Managing Director will have legal force in the eye of law. As having stated that this power has been exercised in view of the notification no.109 dated 16.9.1992 which has prescribed that the power has been conferred on the Chairman of Board to take suitable action as has been deemed fit in the interest of the Board/ public interest in pursuance of Board Resolution No. 6581 dated 26.8.1992. It will be relevant to quote the notification itself which has been issued in exercise of power under Section 79K of the Electricity Supply Act, 1948:

“(a) That the matter is of urgent nature and in Board is 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.

35. For resolving this issue, it has to be examined as to whether Chairman has power and jurisdiction to amend the requisite qualification prescribed by the Board of Director earlier, prescribing of qualification of B.E./B.Tech for participation in



requirement of Junior Engineer and for that it has to be examined the provision of Clause 79 of the Electricity Supply Act, 1948, which provides as follows:

“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”.

36. It has been submitted that power has been exercised under Clause 79K of the Act, which authorize that any matter arising out of Board function under the Act for which it is necessary or expedient to make regulation provided that regulation under Clause 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”. So, on forensic examination of Clause 79K of the Act which restrictly prescribes for framing of regulation for Clause (a), 4(d) and 4(jj) and Clause (h) and (i). So, it does not deal with the fixation of qualification for recruitment of Junior Engineer, whereas, Clause 79(c) of the Act, itself prescribes the duties of officers and other



employees of the Board and their salary allowances and other condition of service, so this is a proper clause for prescribing the manner of selection of employee of the Board is inclusive of fixation of qualification. So far Clause (h) of the Act is for fixation of grid tariffs, does not anyway related to fixation of qualification. So it is very much clear that the power can not be exercised for fixation of qualification taking aid of the notification dated 16.09.1992. It is for other purposes than the fixation of qualification of recruitment of different class of employee. It is very much clear from the provision of Rule 79, it is the Board alone can make amendment of qualification under Clause 79 (c) of the Act, does not extend or delegate its power to other authority and it is also very much clear that the Rule for recruitment was framed by the Board, subsequently the Chairman before issuance of advertisement has modified the qualification which has been done without authority of law, when statutory provisions are very much clear, only the Board has been authorized to frame rule would have jurisdiction not to any other authority.

37. So this Court is of the view, it is only the Board which could have modified the qualification prescribing or excluding of such qualification for recruitment of Junior Engineer.

38. In such view of the matter, this Court finds force in the



argument of the petitioners and the same is accepted. This Court directs to take necessary step by proper authority to create new portal for person having qualification of BE/B.Tech. degree, thereby allow them to participate in recruitment process of selection of Junior Engineer.

39. Accordingly these writ petitions are allowed.

(Shivaji Pandey, J)

Vinay/Sunny

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