

CWP-20341-2019 (O&M)

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

**CWP-20341-2019 (O&M)
Date of decision : 17.08.2019**

Jagdish Chander and others

... Petitioners

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sunil Kumar Nehra (Sirsa), Advocate
for the petitioners.

AMIT RAWAL, J.

Challenge, in the present writ petition, is to impugn notices dated 02.07.2019, Annexure P-6 (Colly), whereby petitioners have been ordered to be reverted of having not cleared the Departmental Accounts Examinations (DAE), in pursuance to Regulation 18 of Punjab State Electricity Board Service of Engineers (Electrical) Recruitment Regulations, 1965 (in short 'the 1965 Regulations').

As per facts, emanating from the pleadings, petitioners joined as Junior Engineer (Electrical) in Haryana State Electricity Board and promoted to the post of Junior Engineer-1 (Electrical) and Assistant Engineer (Electrical). As per Chart given in para 2 of petition, petitioners have availed maximum four chance for DAE.

Learned counsel for the petitioners submitted that Regulation 18 of the 1965 Regulations, an Assistant Engineer is required to pass the

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Departmental Account Examination (DAE), but as per amendment in Regulation 18, vide notification dated 17.03.1989, the Members of the Service are required to pass the Accounts Examination prescribed for Engineer Officers of the Board under Appendix-I (L) of the Electricity Board manual of orders, as amended from time to time with a note that an Assistant Engineer, having satisfactory record of service and crossed the age of 50 years, may be considered for exemption from passing DAE. The aforementioned power can be exercised by the Board on the recommendations of WTMs. Petitioners are having satisfactory record and have been discharging their duties with utmost dedication. They have crossed the age of 50 years. After enactment of Haryana Electricity Reform Act, 1997 (in short 'the 1997 Act'), Haryana Government, vide notification dated 14.08.1998, replaced Haryana State Electricity Board as Haryana Power Generation Corporation Limited and Haryana Vidyut Prasaran Limited. Thereafter, vide notification dated 01.07.1999, distribution undertakings of Haryana Vidyut Prasaran Nigam Limited was given two distribution companies i.e. Uttar Haryana Bijli Vitran Nigam Limited (UHBVN) and Dakshin Haryana Bijli Vitran Nigam Limited (DHBVN). DHBVN caused notifications dated 04.04.2006, 19.07.2007 and 05.06.2018, by changing Regulation No.18 purported to be an amendment, but the fact of the matter that only Haryana State Electricity Board was competent to make or amend regulation under Clause C of Section 79 of the Indian Electricity (Supply) Act, 1948 (in short 'the 1948 Act'). Since new Electricity Act, 2003, was notified w.e.f. 02.06.2003, the aforementioned amendment could not have been done. Section 56 of the 1997 Act stipulates that the provisions of the 1948 Act shall not apply in the State, but it does not empower DHBVN to amend regulation. The 1997 Act

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came into force w.e.f. 14.08.1998 and thereafter the 2003 Act, thus, for all intents and purposes, the notifications (Annexures P-3 to P-5) are liable to be ignored. In support of his contentions, reliance has been laid to the para No.13 of the judgment of Hon'ble the Supreme Court rendered in **“Bharathidasan University V/s All India Council for Technical Education” 2001 (4) SCT 704**, to contend that statutory provisions cannot be deviated by drawing the power and implementation, from the regulation. The Court shall be bound to ignore the regulation, when question of enforcement arises.

I am afraid the aforementioned contention would not be applicable as there is no challenge to the aforementioned regulation i.e. of 2007 and 1989, imposing condition of availment of four chances extended upto six within a period of two years. Once the impugned order reflects that petitioners, despite existence of the aforementioned regulation, did not avail the chance, were liable to be reverted. The applicability of provisions of Section 56 of the 1997, would not come into play as tenor and mode of the amendment in the regulation was in terms of provisions of Clause C of Section 79 of the 1948 Act and all other enabling powers, Haryana State Electricity Board, substituted Regulation 8 of the 1965 Regulations, thereafter, DHBVN caused amendment on 04.04.2006, 19.07.2007 and 05.06.2018. It is a settled law that in the absence of any challenge to the regulation, the Court cannot, in such circumstances, ignore the same, in view of the attempt being made by learned counsel for the petitioners seeking quashing of impugned notices dated 02.07.2019 (Annexure P-6, Colly).

Keeping in view the aforementioned facts, I do not find any

substance in the contentions of Mr. Nehra. No ground is made out for interference. The writ petition is devoid of merit and same is hereby dismissed.

17.08.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

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