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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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**Date of decision: 12.10.2020**

+ W.P.(C) 7797/2020 and CM Nos.25669-25670/2020

MAHENDRA SINGH & ORS. .... Petitioners

Through: Mr. Biraja Mahapatra, Advocate

versus

ENERGY EFFICIENCY SERVICES LTD

& ANR

..... Respondents

Through: Mr. Raman Kapur, Sr. Advocate with  
Mr. Varun Kapur, Advocate for R-1.

Mr. Arun Bhardwaj, CGSC with Mr. Abhishek  
Sharma and Mr. Nikhil Bhardwaj, Advs. for  
R-2.

**CORAM:**

**HON'BLE MS. JUSTICE JYOTI SINGH**

**JYOTI SINGH, J. (ORAL)**

1. Short issue involved in the present petition is whether Energy Efficiency Services Ltd. (EESL)/ Respondent No.1 is entitled to issue fresh advertisement and conduct interviews for the regular posts against which the Petitioners have been appointed earlier and were awaiting absorption and regularization.

2. Present petition has been filed by 64 Junior and Middle Level Executive and Non-Executive Fixed Tenure employees of EESL, a joint venture of 4 Public Sector Undertakings i.e. NTPC Ltd., PFC, REC and

Power Grid under the Ministry of Power, seeking quashing of the advertisement dated 15.10.2019.

3. Respondent No.1 from time to time has been notifying for conduct of interviews for regularization of fixed tenure employees. The Petitioners joined Respondent No.1 as fixed term employees on various dates between 2015 and 2018, the details of which have been elaborated in a tabular form in the writ petition. The interviews for regularization of the Petitioners, as averred in the petition, were scheduled between 24<sup>th</sup> to 26<sup>th</sup> June, 2019. The said regularization/absorption process, was in accordance with Clause 9.3 of the Recruitment Policy and Procedure. Para 9.3 reads as under :-

*"9.3 In addition to the above, induction of executive and specialist non-executive personnel may be made as deemed necessary and appropriate by the authority competent to create the posts from one or more of the following sources:*

*(a) Deputation from Central / State Government / Electricity Boards and Public Sector Organisations where suitable personnel on terms offered by the Company may not be available at the right time from other sources and where the time and cost involved in processing recruitments through open advertisements may not be justified in view of the number or nature of posts to be filled.*

*(b) Campus interview and recruitment in the level of El grade or below and the post of Executive Trainees/Supervisor trainees from reputed Engineering/Management/Polytechnic institutions, may also be resorted to. Colleges should be selected on Region-wide basis on specific criteria advertised on open press*

*advertisement. List of such colleges from which Campus recruitment is proposed, shall have to be approved by the Chairman with information to the Board of Directors.*

*(c) Through absorption of Fixed Tenure Employees in regular scales, when they have completed minimum one year of service in EESL, provided their performance has been satisfactory and their PMS score is not less than Excellent or equivalent. However, they shall have to meet the minimum eligibility criteria as described under Schedule II. They shall have to appear for interview before duly constituted committee and score more than 75% marks. In case the concerned Fixed Tenure Employees do not fulfil the post experience criteria, they can be fitted into appropriate lower Pay scale/Grade. All such absorptions shall be made at the start of the scale. Such Fixed Tenure employees who fail to qualify to be absorbed may continue to be on the same position for the balance period of the tenure on the recommendation by the Appointing authority, after which his/her services will terminate. In special cases, based on exigencies of work, the Fixed Tenure employees tenure may be extended further based on approval by Managing Director for not more than two years and with the approval of Chairman for not more than three years. Notwithstanding the above, Board of Directors shall be intimated of such absorptions. Such absorption should not be a rule and shall be done only in exceptional circumstances, subject to proper business justification.*

*(d) Through absorption of manpower, employed by Outsourcing agencies and deployed in EESL for more than two years, based on exigencies of work and requirement of skilled and experienced manpower. All such absorptions would be done at positions below Supervisory levels (S4 or below)*

*on fixed tenure basis based on written examination and/or interview. Such positions shall be circulated internally and written exam, GD/interview shall be conducted. Only such candidates who meet the specified standards would be considered for absorption. Notwithstanding the above, no such absorption of Outsourced Employees into Fixed Tenure Pay scales of the company, shall be done without the prior intimation to the Board of Directors. Such absorption should not be a rule and shall be done only in exceptional circumstances, subject to proper business justification."*

4. It is the case of the Petitioners that after the interviews they were informed that offer letters were ready for dispatch by Respondent No.1 but on account of some administrative reasons, the process of absorption was kept in abeyance. However, instead of issuing the absorption letters, Respondent No.1 issued an advertisement dated 15.10.2019 for filling up 235 regular vacancies which included the posts against which the Petitioners were seeking regularization. This led to the Petitioners filing RTI applications and making representations.

5. Respondent No.1 had notified 13.03.2020 as the date for written test pursuant to the said advertisement. However, the same was not conducted and was postponed. On account of the Pandemic Covid 19, no interviews were held for several months and it is only now that the Petitioners learnt that the written test has been scheduled for 23.10.2020.

6. Challenge in the writ petition is laid to the filling up of the vacancies in the posts against which the Petitioners were awaiting regularization on the ground that the Petitioners were eligible and

successfully cleared the interviews and therefore they have a right to be absorbed against the said posts. The tenure of the Petitioners ends between December 2020 and March 2021 respectively and if the posts are filled through the impugned advertisement, grave prejudice shall be caused to them. Learned counsel for the Petitioners argues that the act of Respondent No.1 in not absorbing the Petitioners is malafide and the Petitioners are being illegally ousted despite being eligible for absorption.

7. A writ of certiorari is sought for quashing the Advertisement dated 15.10.2020 issued by Respondent No.1 as well as a Mandamus commanding the Respondents to absorb the Petitioners after declaring the result of the interviews held between 24.06.2019 and 26.06.2019 and also of the non-executive petitioners on the basis of their ACRs and performance.

8. Mr. Arun Bhardwaj learned counsel appearing on behalf of Respondent No.2 submits that the Ministry does not have any role in the controversy raised in the present petition.

9. Mr. Raman Kapur Learned Senior Counsel appearing on behalf of Respondent No.1 takes a preliminary objection to the maintainability of the present petition on account of delay and laches. He submits that the impugned advertisement was issued way back on 15.10.2019. Thereafter, the Petitioners had sought information under the RTI Act, which was furnished to them in November 2019. He further submits that all necessary steps have now been taken to carry out the selection process pursuant to the advertisement and the written examination is scheduled for 23.10.2020. All the arrangements have been made, centres have been

allocated and intimations have been sent to the Applicants. Petitioners have approached the Court after a delay of one year and cannot be permitted to challenge the advertisement and / or stall the process at the last minute, which will adversely affect the interest of Respondent No.1 as well as those who have applied against the advertisement.

10. I have heard Learned Senior Counsel for Respondent No.1 and the counsel for the Petitioner.

11. From a bare perusal of the writ petition, it is apparent that the impugned Advertisement was issued on 15.10.2019 and exactly a period of one year has elapsed. Petitioners were well aware of the Advertisement when it was issued and even subsequently relevant information was furnished to them in November 2019. No steps were taken by the Petitioners after the issue of the Advertisement and they have chosen to approach the Court belatedly. I also find force in the contention of Mr. Raman Kapur that having slept over their rights for one year the Petitioners cannot be permitted to stall the selection process when the examination is scheduled to take place on 23.10.2020. No reason / explanation has been offered in the writ petition to approach the Court belatedly, except for learned counsel for the Petitioner stating that from March 2020 onwards, on account of Pandemic COVID-19, Petitioners could not approach this Court.

12. In my view, even this argument cannot inure to the advantage of the Petitioners for the reason that between October 2019 to March 2020 there was no Pandemic COVID-19. If the petitioners were serious about challenging the advertisement, the same should have been done as soon

as the advertisement was issued in October 2019 or at least in November 2019 when the RTI information was received by them. However, no steps were taken by the Petitioners at the relevant time. The petition is barred by delay and laches and cannot be entertained at this stage.

13. Petition alongwith the applications filed herewith is accordingly dismissed.

**JYOTI SINGH, J**

**OCTOBER 12, 2020**

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