

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (S) No.843 of 2013

Neeraj Vaishya, S/o Shri Revaram Ji Vaishya, aged about 34 years,
R/o Qtr. No.C-163, HTPS Colony, CSPGCL, Korba West, Police
Station Darri, Korba, District Korba (C.G.)

---- Petitioner

Versus

1. Chhattisgarh State Power Holding Company Ltd., a Govt. of Chhattisgarh undertaking, a successor company of Chhattisgarh State Electricity Board, through its General Manager, Raipur (C.G.)
2. Assistant General Manager (HR), Chhattisgarh State Power Holding Company Ltd., Raipur.
3. The Superintending Engineer (HRD), Office of the Chief Engineer (Gen.), HTPS, CSPGCL, Korba West, Korba (C.G.)
4. Bharat Gadpale, aged about 36 years, posted as Assistant Engineer (G) in the office of Chief Engineer (Generation), Korba West, District Korba.
5. Laxmi Narayan Suryavanshi, aged about 35 years, posted as Assistant Engineer (G) in the office of Chief Engineer (Generation), Korba East, District Korba.
6. Prachi Agrawal Sinha, Age about 30 years, Posted at Shed No.3, O/o C.E. (HR), Vidyut Seva Bhawan, CSEB, Daganiya, Raipur (C.G.)
7. Najariyas Lakra, aged about 32 years, posted as Assistant Engineer (G) in the office of Chief Engineer (Generation), DSPM TPS Korba (E), Korba.
8. Kailash Kumar Dhruv, aged about 33 years, posted as Assistant Engineer (G) in the office of Chief Engineer (Generation), Korba (W).
9. Nalini Pahari, aged about 30 years, posted as Assistant Engineer (G) in the office of Chief Engineer (Generation), Korba (W), Korba.
10. Mahima Minj, aged about 31 years, posted as Assistant Engineer (G) in the office of Chief Engineer (Generation), Korba (W), Korba.
11. Kunwar Sai Kujur, aged about 35 years, posted as Assistant Engineer (G) in the office of Chief Engineer (Generation), DSPM TPS Korba (E), Korba.
12. Lochan Singh, aged about 33 years, posted as Assistant Engineer (G) in the office of Chief Engineer (Generation), Korba (W), Korba.
13. Vikash Lakra, age about 34 years, Posted at A.E. (G) in O/o Chief Engineer (Generation), Korba East, Korba (C.G.)

14. Urmila Toppo, aged about 29 years, posted as Assistant Engineer (G) in the office of Chief Engineer (Generation), Korba (E), Korba.
15. Pratibha Sonwani, aged about 31 years, posted as Assistant Engineer (G) in the office of Chief Engineer (Generation), Korba (W), Korba.
16. Amit Kumar Gupta, aged about 33 years, posted as Assistant Engineer (G) in the office of Chief Engineer (Generation), DSPM TPS Korba (E).
17. Panchram Vaarte, aged about 31 years, posted as Assistant Engineer (G) in the office of Executive Engineer (Co-Generation Project), Kawardha.
18. Sushil Yadu, aged about 32 years, posted as Assistant Engineer (G) in the office of Chief Engineer (Generation), Korba (W), Korba.
19. Sneha Kshatriye, aged about 31 years, posted as Assistant Engineer (G) in the office of Chief Engineer (S&P Generation), Raipur.
20. Lalit Kumar, aged about 31 years, posted as Assistant Engineer (G) in the office of Chief Engineer (Generation), Korba (W), Korba.
21. Dinesh Kumar Dewangan, aged about 31 years, posted as Assistant Engineer (G) in the office of Chief Engineer (Generation), DSPM TPS, Korba (E), Korba.
22. Shivpal Nath Patel, aged about 31 years, posted as Assistant Engineer (G) in the office of Chief Engineer (Generation), Korba (W), Korba.
23. Shailesh Choudhary, aged about 34 years, posted as Assistant Engineer (G) in the office of Chief Engineer (Generation), DSPM TPS, Korba (E), Korba.
24. Dharmendra Kumar Banjare, aged about 32 years, posted as Assistant Engineer (G) in the office of Chief Engineer (Generation), DSPM TPS, Korba (E), Korba.

---- Respondents

For Petitioner: Mr. Kanwaljeet Singh Saini, Advocate on behalf of
Mr. Sanjay Agrawal, Advocate.

For Respondents No.1 to 3: -
Mr. K.R. Nair, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

06/10/2021

1. Invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, the petitioner has called in question the order

dated 2-11-2012 (Annexure P-10) by which the petitioner's representation seeking seniority from 10-7-2007 has been rejected finding no merit.

2. The respondent Company initiated recruitment process for filling up of the posts of Assistant Engineer (Generation) in which the petitioner and other private respondents participated and all were interviewed on 8-5-2007 and they were selected and on 12-7-2007, provisional list of selected candidates was uploaded in the official website of the respondent Company in which the petitioner's name was shown at serial No.10, however, on 10-7-2007, appointment order of 19 successful candidates i.e. the private respondents herein on the post of Assistant Engineer (Trainee) was issued and the petitioner by letter dated 12-7-2007 was informed that he has been provisionally shortlisted for the post of Assistant Engineer (Trainee) and he was asked to submit caste certificate duly verified by the High Power Caste Scrutiny Committee which he submitted on 18-7-2007, thereafter appointment order was issued in favour of the petitioner on 12-9-2007 appointing him on the post of Assistant Engineer (Trainee) in Mechanical Branch and he was posted in the Office of the Chief Engineer (Generation), Korba West, Korba. Thereafter, the petitioner was also confirmed on the post of Assistant Engineer (Generation) by order dated 22-6-2009 showing his date of appointment as 24-9-2008. On 18-5-2012, provisional gradation list as on 1-10-2010 has been published mentioning the petitioner's name at serial No.215, which the petitioner objected holding that he is entitled for seniority from 10-7-2007 and his representation has been rejected by order dated 2-11-2012 against which this writ petition has been preferred.
3. Return has been filed by respondents No.1 to 3 opposing the writ

petition stating inter alia that the petitioner did not submit the duly verified original caste certificate by the High Power Caste Scrutiny Committee within the stipulated period, however, by letter dated 12-7-2007, he was asked to submit the duly verified caste certificate, which he submitted on 18-7-2007 and thereafter, on 12-9-2007, he was appointed on the post of Assistant Engineer (Trainee) and he was confirmed and finally appointed as Assistant Engineer (Generation) in the Electrical Generation Department by order dated 22-6-2009. As such, since the petitioner has been appointed as Assistant Engineer (Trainee) as back as on 12-9-2007, therefore, he is not entitled for seniority along with the private respondents herein and the writ petition is liable to be dismissed.

4. Mr. Kanwaljeet Singh Saini, learned counsel appearing for the petitioner, would submit that the petitioner is entitled for seniority on the post of Assistant Engineer (Generation) with effect from 10-7-2007 when the private respondents were appointed, as the petitioner was selected along with the private respondents and his representation has been rejected purely on untenable grounds. He would rely upon the judgment of the Supreme Court in the matter of C. Jayachandran v. State of Kerala and others¹ to buttress his submission.
5. Per contra, Mr. K.R. Nair, learned counsel appearing for respondents No.1 to 3, would support the impugned order and would submit that the petitioner having been appointed on 12-9-2007 has rightly been granted seniority from that date and he is not entitled for seniority prior to the date he borne on the cadre of Assistant Engineer (Trainee), as such, he is not entitled any relief.
6. I have heard learned counsel for the parties and considered their rival

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submissions made herein-above and also went through the record with utmost circumspection.

7. As stated, though the petitioner was selected along with the private respondents herein on the post of Assistant Engineer (Trainee), but the private respondents were appointed on 10-7-2007, however, the petitioner could not be appointed as on 10-7-2007 for want of duly verified caste certificate by the High Power Caste Scrutiny Committee for which he was asked to submit the same on 12-7-2007, which he submitted on 18-7-2007 and ultimately, he was appointed on 12-9-2007 and accordingly, his name has been placed in the seniority list below the private respondents herein, and thereafter, by order dated 22-6-2009, the petitioner and other private respondents have been informed that they are confirmed on the post of Assistant Engineer (Generation) in which the date of appointment of the petitioner has been shown as 24-9-2008, as on that date, he has completed one year of probation on the post of Assistant Engineer (Trainee), as such, the private respondents have been given seniority with effect from 10-7-2007, whereas the petitioner has been given seniority with effect from 12-9-2007.
8. The petitioner by way of representation has claimed that his appointment has occurred late on account of late information given to him for submission of duly verified caste certificate by the High Power Caste Scrutiny Committee and the interview letter did not contain such provision of submitting the duly verified caste certificate, otherwise, it could have been submitted right in time, however, he submitted the caste certificate on 18-7-2007, therefore, he is entitled for seniority along with the private respondents. The representation of the petitioner has been rejected holding that he has been appointed on

12-9-2007 after submission of caste certificate on 18-7-2007.

9. The submission of learned counsel for the petitioner relying upon the decisions of the Supreme Court in C. Jayachandran (supra) and State of Rajasthan and others v. Jagdish Narain Chaturvedi² in support of his submission, deserves to be rejected for more than one reason. The petitioner was appointed on 12-9-2007 after submission of the duly verified caste certificate and he was also confirmed on the post of Assistant Engineer (Generation) on 24-9-2008 and formal order has also been issued on 22-6-2009. The petitioner did not question the order dated 22-6-2009 despite the said order clearly indicates that the private respondents have earlier been confirmed on the post of Assistant Engineer (Generation) prior to the petitioner and he continued on the same date of appointment and allowed the said order to be continued further, but when the provisional gradation list as on 1-10-2010 was published, then only he decided to make representation claiming that he is entitled for seniority with the private respondents which was not granted. The petitioner ought to have been vigilant, he should have questioned the appointment right in time particularly when he was appointed on 12-9-2007 and immediately thereafter, he could have sought modification claiming appointment with the private respondents with effect from 10-7-2007 which he did not question even after he was confirmed on 22-6-2009 in which his date of appointment has been shown as 24-9-2008. The petitioner even did not question the order dated 22-6-2009 and he continued to work on the same post with date of appointment as 12-9-2007 and on the same seniority, but only when the provisional gradation list was published on 18-5-2012, he decided to question his seniority by

making representation on 2-6-2012 and thereafter by submitting reminders on 2-11-2012 and 1-12-2012, which have been rejected. The question for consideration would be, whether the petitioner is entitled for seniority from retrospective date when he was not borne in the cadre of Assistant Engineer (Generation).

10. In the matter of Ganga Vishan Gujrati and others v. State of Rajasthan and others³ it has been held by the Supreme Court that retrospective seniority cannot be granted to employee from date when employee was not borne on cadre and seniority amongst members of same grade has to be counted from date of initial entry into grade.

Paragraph 27.5 of the report states as under: -

“27.5. The service jurisprudence emanating from Articles 14 and 16 of the Constitution provides that seniority has to be reckoned from the date of the substantive appointment. However, if a statutory rule so provides, it can be reckoned from a retrospective date. Retrospective operation of seniority, however, has to be confined to appointment by promotion and cannot extend to competitive examinations. Candidates in competitive examinations cannot be given seniority from a retrospective date because they are not borne on the cadre. Candidates drawn from the source of competitive examinations are borne on the cadre from the date of substantive appointment after undergoing probation and confirmation. In the present case, the appellants were selected by open competitive examination from Patwaris for the post of LRI. If retrospective seniority was to be given from the date on which the vacancy arose, it would lead to a situation where a person who is not qualified to take the examination on the date when the vacancy arose would get seniority. In the present case, some persons were recruited by departmental examinations from the feeder cadre. The statutory rules did not envisage retrospective seniority from the date when the vacancy had arisen. The grant of seniority is not a facet of a fundamental right. Hence, there is no violation of a fundamental right when a person who takes a competitive examination is given seniority from the date of substantive appointment.”

11. The decision rendered by the Supreme Court in Ganga Vishan Gujrati (supra) has been followed by their Lordships of the Supreme Court in a recent decision in the matter of State of Bihar and others v. Arbind Jee⁴ and it has been held that when the denial of analogous appointment is found to be arbitrary and legally incorrect, the benefit of notional seniority may be conferred on the deprived individual.

12. Reverting to the facts of the present case in the light of the aforesaid legal position, it is quite vivid that the petitioner was borne in the cadre of Assistant Engineer (Trainee) only on 12-9-2007 and he was confirmed on the post of Assistant Engineer (Generation) on 24-9-2008 which is apparent from the order dated 22-6-2009 and which he has challenged by submitting representation only after publication of seniority list / provisional gradation list as on 1-10-2010, on 18-5-2012. As such, respondents No.1 to 3 have rightly held that the petitioner has only born in the cadre of Assistant Engineer (Generation) on 12-9-2007 and therefore he cannot be given seniority with effect from 10-7-2007 when he was not borne in the cadre of Assistant Engineer (Generation) and denial of analogous appointment to the petitioner with effect from 10-7-2007 is based on correct and legal ground and it cannot be held to be arbitrary. The said finding recorded by respondents No.1 to 3 is in accordance with law and I do not find any illegality or perversity in the said finding. In that view of the matter, the ratio laid down in the judgment of C. Jayachandran (supra) will be of no assistance to the learned counsel for the petitioner.

13. In that view of the matter, I do not consider that the impugned order dated 2-11-2012 (Annexure P-10) needs interference of this Court. Thus, no interference is warranted in the order impugned in exercise

of the extraordinary jurisdiction under Article 226 of the Constitution of India. I do not find any merit in this writ petition. The writ petition deserves to be and is accordingly dismissed leaving the parties to bear their own cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

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