

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

**CWP-15855-2013
DECIDED ON: 19.07.2023**

RAVINDER RAI

...PETITIONER

VERSUS

DAKSHIN HARYANA BIJLI VITRAN NIGAM AND ORS.

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Pankaj Maini, Advocate
for the petitioner.

Mr Hitesh Pandit, Advocate
for respondents No. 1 to 3.

Mr. Karan Nehra, Advocate and
Mr. Harvinder, Advocate
for respondent No. 4.

SANDEEP MOUDGIL, J

1. The jurisdiction of this Court has been invoked under Article 226 of the Constitution of India for issuance of a writ in nature of certiorari for quashing the letter dated 17.05.2013 (Annexure P-16) and letter dated 24.06.2013 (Annexure P-19) vide which the tentative seniority list and revised ranking list has been issued by the Respondent-DHBVN. The petitioner has further sought issuance of writ in the nature of mandamus for revision of the seniority list and consequential inclusion of the name of the petitioner therein.

2. Learned counsel for the petitioner contends that name of the petitioner was shown at Sr. No. 47 of the Tentative ranking list of technical subordinates who have acquired qualifications of AMIE/B.E./3 years Diploma in Elect. Engg. but are working on lower posts than J.E. beyond 01.08.2011 to 31.07.2012 and at the same time, the name of petitioner was reflected at Sr. No. 47 of the List of technical subordinates whose application has not been

considered for ranking list but later on, the name of the petitioner was excluded from the revised ranking list issued vide letter dated 24.06.2013 (Annexure P-19). He submitted that the petitioner had completed the diploma course in Electrical engineering in June, 2012 and the provisional certificate was issued to the petitioner on 24.08.2012 even then, the name of the petitioner has not been considered by the respondents.

3. On the other hand, the respondents have in their written statements, averred that the provisional certificate was issued to the petitioner after the cut-off date for submission of documents i.e. 31.07.2012 as such, the petitioner was not having the requisite documents/qualification certificate as on cut-off date and the certificate has been issued at a later stage.

4. Heard learned counsel for the parties and gone through the record.

5. Short question for consideration in the present petition is whether or not, the petitioner is entitled for promotion to the post of Junior Engineer with reference to Annexure P-6 having regard to the fact that the petitioner has passed 4 year Diploma in the month of June, 2012 and the certificate was issued on 24.8.2012. For the purpose of eligibility for the post of Junior Engineer promotion, passing date is relevant or the date of issuance of certificate by the University/ Institute is relevant?"

6. The purpose and intent behind grant of seniority to Diploma holders is required to be looked into, which clearly is the acquisition of requisite knowledge of the subject. The knowledge is not achieved on the issuance of the certificate but on the passing of all the exams. It is evident that before the cut-off date all the examinations were conducted and the marksheets were submitted by the petitioner to the respondents. The issuance of the certificate is a procedural formality and a natural corollary of passing the exams. As

such, if the argument of the respondent is accepted, it would defeat the very scheme and the purpose of giving seniority to the diploma holders like the petitioner herein.

7. The observations made by the Hon'ble Apex Court in ***Charles K. Skaria v. Dr. C. Mathew [1980 AIR (SC) 1230]***, reproduced hereinbelow squarely apply to the facts and circumstances of the present case:

*“21. Before the selection committee adds special marks to a candidate based on a prescribed ground it asks itself the primary question, has he the requisite qualification? if he has, the marks must be added. The manner of proving the qualification is indicated and should ordinarily be adopted. **But, if the candidate convincingly establishes the ground, though through a method different from the specified one, he cannot be denied the benefit. The end cannot be undermined by the means. Actual excellence cannot be obliterated by the choice of an incontestable but unorthodox probative process. Equity shall overpower technicality where human justice is at stake.***

... ..

26. To sum up, the applicant for post-graduate degree course earns the right to the added advantage of diploma only if (a) he has completed the diploma examination on or before the last date for the application, (b) the result of the examination is also published before that date, and (c) the candidate's success in the diploma course is brought to the knowledge of the selection committee before completion of selection in an authentic or acceptable manner. The prescription in the prospectus that a certificate of the diploma shall be attached to the application for admission is directory, not mandatory, a sure mode, not the sole means. The delays in getting certified copies in many departments have become so exasperatingly common that realism and justice forbid the iniquitous consequence of defeating the applicant if, otherwise than by a certified copy, he satisfies the committee about his diploma. There is nothing improper even in a selection committee requesting the concerned universities to inform them of the factum and get the proof straight by communication therefrom - unless, of course,

this facility is arbitrarily confined only to a few or there is otherwise some capricious or unvaracious touch about the process.”

8. In light of the observations and case law cited above, the present writ petition is allowed and the tentative seniority lists dated 17.05.2013 and 24.06.2013 (Annexures P16 and P19, respectively) qua the petitioner is hereby quashed and the respondents are directed to consider the seniority of the petitioner retrospectively. However, as the petitioner would not have actually performed the duties of the senior official on account of non-consideration of the seniority of the petitioner at the relevant point in time, such conferment of benefits shall be made on notional basis only. The financial benefit, if any, may be granted prospectively.

9. Let the needful be done within a period of six weeks from the date of receipt of certified copy of this order.

19.07.2023
V.Vishal

- 1. Whether speaking/reasoned?
- 2. Whether reportable?

(Sandeep Moudgil)
Judge

Yes/No
Yes/No