



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12906 OF 2023

01. Amol S/o Govindsing Maher
age 32 years, occ. Assistant Engineer,
R/o R. H. No. 102, Kasliwal Marvel
Near MIT College, Beed bypass
Satara Parisar,
Aurangabad
Tq. & Dist. Aurangabad.
02. Niranjan s/o Ashok kumar Barabote
Age 35 years, Occ. Assistant Engineer
R/o Nityanand, HIG-18, Ramkrupa Colony
MHADA, Darga Road, Aurangabad
Tq. & Dist. Aurangabad.
03. Dhammanad S/o Shivajirao Bansode
Age 32 years, Occ Assistant Engineer
R/o Plot No. 1, Gut No. 144, Urja Nagar
Near Ayappa Mandir, Satara Parisar
Tq. & Dist. Aurangabad.
04. Umeshsingh S/o Chainsingh Maher
Age 30 years, Occ. Assistant Engineer
R/o R. H. No. 29, Hariram Nagar
Satara Parisar, Beed bypass Road,
Aurangabad
Tq. & Dist. Aurangabad.
05. Saurabh S/o Kailas Pujari
Age 33 years, Occ. Assistant Engineer,
R/o N-11, E-4/2, Mayurnagar,
HUDCO, Tq. & Dist. Aurangabad.
06. Prasad s/o Bharat Bhurkar
Age 32 years, Occ. Assistant Engineer
R/o Near Railway Station Fly Over
Flat No. I B-1, Tirupati Supreme Enclave
Jalannagar,
Tq. & Dist. Aurangabad.
07. Priyanka d/o Raju Rajput

Age 32 years, Occ. Assistant Engineer
R/o Flat No. 134, MHADA Colony
Bansilal Nagar, Aurangabad
Tq. & Dist. Aurangabad.

08. Swapnil S/o Govindsing Hajari
Age 32 years, Occ. Assistant Engineer
R/o Flat No. 7, C3, Sara Pride, Ranjit Nagar
Kalda Corner, Aurangabad.
Tq. & Dist. Aurangabad.

09. Abhijit S/o Arjunrao Mundhe
Age 34 years, Occ. Assistant Engineer
R/o R.H. No. 48, Hariiram Nagar
Beed bypass Road, Satara Parisar
Aurangabad
Tq. & Dist. Aurnagabad.

.. Petitioners

Versus

01. MSEB Holding Co. Ltd.
Through its Chairman,
Hongkong Bank Building,
3rd and 4th Floor,
M.G. Road, Fort,
Mumbai 400 001.
02. Ministry of Energy,
Through its Principal Secretary,
Govt. of Maharashtra
Mantralaya, Madam Kama Road,
Mumbai 400 032.
03. MSEB Holding Co. Ltd.
Through its Managing Director,
Hongkong Bank Building,
3rd and 4th Floor,
M.G. Road, Fort,
Mumbai 400 001.
04. Maharashtra State Electricity Transmission
Company Ltd.
Through its Chairman and Managing Director,
'PRAKASHGANGA', C-19,
E Block, Bandra Kurla Complex,
Bandra (E),

Mumbai 400 051.

05. Maharashtra State Electricity Transmission Company Ltd.
Through its Director (HR) Human Resource,
Plot No. C-19, 'Prakashganga' 7th Floor,
Bandra Kurla Complex,
Bandra (E),
Mumbai 400 051.

.. Respondents

Mr. V. D. Sapkal, Senior Advocate instructed by Mr. S. R. Sapkal,
Advocate for the Petitioners.
Mr. S. K. Tambe, AGP for the State.
Mr. S. V. Adwant, Advocate for Respondent Nos. 1, 3, 4 and 5.

**CORAM : RAVINDRA V. GHUGE AND
R. M. JOSHI, JJ.**

DATE : 29th FEBRUARY, 2024.

ORAL JUDGMENT :

1. **RULE.** Rule made returnable forthwith and heard finally with the consent of the parties.

2. The Petitioners before us are 9 candidates who seek employment with Respondent Nos. 4 and 5, as Additional Executive Engineer (Transmission) [AAE, in short]. An Advertisement No. 05/2023, dated 4th October, 2023, was published inviting applications from the candidates for recruitment to the 25% posts by direct appointment and 75% by promotions. The Petitioners are aggrieved by the modifications in the experience qualifications (pre-

requisite) and, therefore, the Petitioners have put forth prayer clauses 'B', 'C', 'D' and 'E' as under :-

B) To quash and set aside the circular bearing no. 465 dated 09.02.2016 issued by Maharashtra State Electricity Transmission Company Ltd., by issuing appropriate writ order direction as the case may be.

C) To quash and set aside the employment advertisement bearing no. 05/2023 issued by Human Resources Department, Maharashtra State Electricity Transmission Company Ltd. on dated 04.10.2023, by issuing appropriate writ order direction as the case may be.

D) To direct the respondent No. 5 to correct the advertisement no. 05/2023 published on dated 04/10/2023 and allow all Assistant Engineer to participate in selection on the basis of 7 years experience in Transmission, by issuing appropriate writ order direction as the case may be.

E) To grant interim stay to the employment advertisement bearing no. 05/2023 issued by Human Resources Department, Maharashtra State Electricity Transmission Company Ltd., on dated 04.10.2023, pending hearing and final disposal of this Writ Petition.

3. This matter has been heard for almost 4 hours. Considering the entire submissions of the learned Senior Advocate and the Advocates for the respondents, we find that the issue turns upon as to whether the pre-requisites set out in the Advertisement are sustainable considering the legal relationship between the Maharashtra State Electricity Board Holding Company Limited (hereinafter referred to as the “Holding Company”) and the Maharashtra State Electricity Transmission Company (hereinafter referred to as the “Transmission Company”).

4. It is undisputed that in 2005, the erstwhile Maharashtra State Electricity Board (MSEB) underwent a trifurcation. The Holding Company was the focal point. The Transmission Company, the Maharashtra State Electricity Distribution Company Ltd. (MSEDCL) and the Maharashtra State Electricity Generation Company (MSEGCL), were the three companies that emerged from the erstwhile Maharashtra State Electricity Board.

5. The Electricity Act, 2003, defines the ‘Board’ under Section 2(7) to mean the State Electricity Board, constituted before the commencement of that Act, under sub-section (1) of section 5 of

the Electricity (Supply) Act, 1948. Clause No. (i) of the Maharashtra State Electricity Board (Classification and Recruitment) Regulations 1961 (hereinafter referred to as the “1961 Regulations”), defines the ‘Appointing Authority’ to mean the authority to whom powers are delegated by the Board to make appointments on the recommendation of the appropriate Selection Committee and in cases where such powers are not delegated, includes the Board itself. In this context, Clause No. (ii) defines the Board to mean the M S E B. Clause (v) defines the Competent Authority to mean the Board or any other authority to which authority is delegated by the Board for the purposes of any of these Regulations.

6. The MSETCL Employees’ Service Regulations, 2012 (hereinafter referred to as the “2012 Service Regulations”) are placed before us. Below Chapter I, Regulation 1(a) indicates that these regulations shall replace the Maharashtra State Electricity Board Employees’ Service Regulations, 1963 by which the employees of the Transmission Company were hitherto governed. Regulation 4 indicates that the Board shall be the authority competent to interpret these Regulations and its decisions shall be final. For the purpose of 2012 Service Regulations, the term Board has been defined under

Regulation 9(5) to mean the Board of Directors of the Company. As such, when it comes to making appointments of employees of the Transmission Company, the Board of such Transmission Company would have the powers to make such appointments.

7. Considering the extensive submissions canvassed before us by the parties, it would be appropriate to refer to submissions relevant to the issues raised before us. Following are the issues before us :-

- A] Whether this Writ Petition suffers from delay and laches?
- B] Whether the Transmission Company has altered the pre-requisites/eligibility qualification? and Whether such change was permissible without the approval of the Holding Company?

8. The learned Advocate Mr. Adwant has cited the following judgments :-

- i) Zahoor Ahmad Rather vs. Seikh Imtiyaz Ahmed
(2019) 2 Supreme Court Cases 404
- ii) Chief Manager, Punjab National Bank & another
vs. Anit Kumar Das
(2021) 12 SCC 80
- iii) Dr. Prit Singh vs. S. K. Mangal & others
1993 Supp (1) Supreme Court Cases 714

- iv) Maharashtra Public Service Commission vs. Sandeep Shriram Warade & others
(2019) 6 SCC 362.
- v) State of Gujarat & others vs. Arvindkumar T. Tiwari & another
(2012) 9 SCC 545
- vi) State of Orissa & another vs. Mamata Mohanty
(2011) 3 SCC 436
- vii) Chennai M.W. Supply and Sewerage Board vs. T.T. Murali Babu
AIR 2014 SC 141
- viii) Balwant Rai Saluja and another vs. Air India Limited And Others
(2014) 9 Supreme Court Cases 407
- ix) T. Devadasan vs. M/s Gordon Woodroffe And Co. Pvt. Ltd. & others
(1972) 3 Supreme Court Cases 700.

9. The judgments cited at Serial Nos. (i) to (v) hereinabove, pertain to the right of an employer to fix the eligibility criteria while selecting the employees as per its requirement. This right has to be recognised by law. We have perused the relevant Regulations applicable to the Transmission Company. In this case, the Transmission Company submits that there is no conflict between the Holding Company and the Transmission Company, and the Holding

Company does not assert a right to make appointments. Hence, the Transmission Company has the power to decide the requisite qualifications.

A] Whether this Writ Petition suffers from delay and laches?

10. The judgments cited at Serial Nos. (vi) and (vii), are on the point of delay, in support of the contention of the Transmission Company that this petition should not be entertained purely on the ground of delay. The judgments at Serial Nos. (vii) and (ix) pertain to the relationship between the Holding Company, vis-a-vis its employees, in relation to complete, effective and absolute control, supervision and direction of the employer over its employees. One more issue in these two judgments is as regards the concept of 'functional integrality' which is concerned with the workers employed, their service conditions including supervision and control and the aspect of closure of a factory. The law laid down by the Hon'ble Supreme Court in Workmen of The Strawboard Manufacturing Company vs. M/s Strawboard Manufacturing Company, **AIR 1974 SC 1132 : 1974(4) SCC 881** holds the field even today.

11. We would deal with the strenuous submissions made by Respondents/Companies as regards the delay on the part of the Petitioners in approaching this Court. The factual matrix is plain and simple. All the Petitioners before us became Assistant Engineers some time in 2015-2016. A minimum of 7 years' experience is necessary for these employees to seek appointment as Additional Executive Engineer (AEE). The Advertisement at issue is dated 4th October, 2023. The Petitioners have achieved the pre-requisite qualification of 7 years of employment/experience as Assistant Engineers, in the 'Power Transmission' , in 2022-2023. The contention of the Company before us is that the Transmission Company issued an Administrative Circular No. 465 dated 9th February, 2016 vide which, the earlier experience/pre-requisite to be eligible for being considered for appointment as AEE, was altered by the Transmission Company and, therefore, the limitation begins from the issuance of this Circular no. 465.

12. The contention of the learned Senior Advocate on behalf of the Petitioners is that as on the date of the Circular, which is 9th February, 2016, some of the Petitioners had put in about one year of service as an Assistant Engineer. Had they challenged the said

Circular in the year 2016 by filing a Writ Petition, they would have faced the first obstacle as regards the cause of action and the legal injury. As per the learned Senior Advocate, the fate of the Writ Petition would have been of 'dismissal', since none of these Petitioners had any cause of action in the year 2016, save and except, by contenting that after they would gather 7 years of experience as Assistant Engineer in the Transmission Company, the cause of action would have arisen. The Petition would have been branded as being premature.

13. Per contra, the contention of the learned Advocate for the Companies is that no litigant can be permitted to behave like "Kumbhakarna" as observed in Paragraph No. 17 of the judgment of the Hon'ble Supreme Court in the case of Chennai Metropolitan Water Supply & Sewerage Board vs. T. T. Murali Babu (supra). For ready reference, we reproduce Paragraph Nos. 16 and 17 of the said judgment hereunder :-

16. *Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a*

constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the court would be under legal obligation to scrutinise whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the court. Delay reflects inactivity and inaction on the part of a litigant – a litigant who has forgotten the basic norms, namely, “procrastination is the greatest thief of time” and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis.

17. *In the case at hand, though there has been four years’ delay in approaching the court, yet the writ court chose not to address the same. It is the duty of the court to scrutinise whether such enormous delay is to be ignored without any justification. That apart, in the present case, such belated approach gains more significance as the respondent employee being absolutely careless to his duty and nurturing a lackadaisical attitude to the responsibility had remained unauthorisedly absent on the pretext of some kind of ill health. We repeat at the cost of repetition that remaining innocuously oblivious to*

such delay does not foster the cause of justice. On the contrary, it brings in injustice, for it is likely to affect others. Such delay may have impact on others' ripened rights and may unnecessarily drag others into litigation which in acceptable realm of probability, may have been treated to have attained finality. A court is not expected to give indulgence to such indolent persons – who compete with “Kumbhakarna” or for that matter “Rip Van Winkle”. In our considered opinion, such delay does not deserve any indulgence and on the said ground alone the writ court should have thrown the petition overboard at the very threshold.

14. The learned Advocate Mr. Adwant has then relied upon the judgment delivered in State of Orissa & another vs. Mamata Mohanty (supra) and he specifically drew our attention to Paragraph Nos. 52, 53 and 54 which read as under :-

52. In the very first appeal, the respondent filed writ petition on 11-11-2005 claiming relief under the Notification dated 6-10-1989 w.e.f. 1-1-1986 without furnishing any explanation for such inordinate delay and on laches on her part. Section 3 of the Limitation Act, 1963, makes it obligatory on the part of the court to dismiss the suit or appeal if made after the prescribed period even though the limitation is not set up as a defence and there is no plea to raise the issue of limitation even at the appellate stage

because in some of the cases it may go to the root of the matter. (See Lachmi Sewak Sahu v. Ram Rup Sahu and Kamlesh Babu v. Lajpat Rai Sharma.)

53. *Needless to say that the Limitation Act, 1963 does not apply in writ jurisdiction. However, the doctrine of limitation being based on public policy, the principles enshrined therein are applicable and writ petitions are dismissed at initial stage on the ground of delay and laches. In a case like at hand, getting a particular pay scale may give rise to a recurring cause of action. In such an eventuality, the petition may be dismissed on the ground of delay and laches and the court may refuse to grant relief for the initial period in case of an unexplained and inordinate delay. In the instant case, the respondent claimed the relief from 1-1-1986 by filing a petition on 11-11-2005 but the High Court for some unexplained reason granted the relief w.e.f. 1-6-1984, though even the Notification dated 6-10-1989 makes it applicable w.e.f. 1-1-1986.*

54. *This Court has consistently rejected the contention that a petition should be considered ignoring the delay and laches in case the petitioner approaches the Court after coming to know of the relief granted by the Court in a similar case as the same cannot furnish a proper explanation for delay and laches. A litigant cannot wake up from deep slumber and claim impetus from the judgment in cases where some diligent person had approached the Court within a*

reasonable time. (See Rup Diamonds v. Union of India, State of Karnataka v. S.M. Kotrayya and Jagdish Lal v. State of Haryana.)

15. If these Petitioners would have been before this Court in 2016, alleging that the change in the pre-requisite qualifications would seriously impact their career after they become eligible for the said posts 7 years hence, what would have been the reaction of the Court? We would have assessed as to whether the cause of action could have been considered on the premises that the Petitioners would become qualified for being appointed as AEE 7 years hence and, therefore, whether they would have been justified in approaching this Court 5 to 6 years before they could be termed as being eligible or qualified to be considered for direct appointment. When 7 years experience of working in Power Transmission was the required qualification, the Petition would have normally been branded as being premature since it was filed 5 to 6 years prior to achieving the qualification, when, in fact, none of these Petitioners would have been eligible.

16. The Petitioners have now gathered the qualification of 7 years of experience and some of them have also completed 8 years

service. The Advertisement introduces changes in the pre-requisites and after noticing that their chances of competing for the post of AEE by direct selection to the extent of 25% of the available seats, were likely to be jeopardised, that the Petitioners have approached this Court.

17. In the above facts and circumstances of the case, we conclude that this Writ Petition does not suffer from delay, much less, laches.

B] Whether the Transmission Company has altered the pre-requisites/eligibility qualification? and Whether such change was permissible without the approval of the Holding Company?

18. While considering the pleadings of the parties before us, we find that the Petitioners have specifically put forth the following grounds :-

1) That, the long standing practice the regulation and circular no. 352 shows that, employee of MSETCL having 7 years experience in power transmission was eligible to appear in exam held for direct recruitment for the post of Additional Executive Engineer.

II) That, the Assistant Engineer after 6 years tenure of service gets the pay scale of Dy. Executive Engineer under general orders. Many times when the post of Additional Executive Engineer and Deputy Executive Engineer are vacant, that time Assistant Engineers are posted as in charge of the post of Additional Executive Engineer and Deputy Executive Engineer.

III) That, even when Assistant Engineer are facing the problem of stagnation, MSETCL issued Administrative circular No. 465 dated 09.02.2016 and barred the Assistant Engineer of their own company from appearing in the exams for direct recruitment to the post of Additional Executive Engineer. Only Deputy Executive Engineer of the MSEDCL can appear for direct recruitment for the post of Additional Executive Engineer.

IV) That, MSETCL has no power to make such modification in pre-requisites for direct recruitment by introducing impugned circular.

V) That, as per the Admin. Circular No. 465 dated 09.02.2016 issued by MSETCL, does not show that approval of holding company was obtained for such change.

VI) *That, the reasons given in the circular for the change in experience criteria are vague and not convincing.*

VII) *That, the Admin. Circular No.465 dated 09.02.2016 itself is illegal and cannot be used by transmission company for conducting direct recruitment for the post of Additional Executive Engineer.*

VIII) *That, the employment advertisement by MSETCL is a violation of basic principal of uniformity among three subsidiaries of MSEB holding company Ltd.*

IX) *That, as per the advertisement bearing no. 06/2018 of distribution company, MSEDCL, any technical cadre employee holding Engineering degree and 7 years post qualification experience can appear for exam held for recruitment to the post of Additional Executive Engineer.*

X) *That, similarly, as per the advertisement bearing No. 09/2022 by MSPGCL, generation company, any technical cadre employee holding Engineering degree and 7 years post qualification experience can appear for exam held for recruitment to the post of Additional Executive Engineer.*

XI) *That, the uniformity is disturbed by MSETCL, Transmission Company.*

XII) That, due to this the Assistant Engineer of MSETCL, Transmission Company, are being discriminated from their counterparts in MSEDCL and MSPGCL without giving any justification for aforesaid and other reasons which may be urged at the time of hearing.

XIII) That, as per the clause of 13.19 stated in the employment advertisement bearing no. 05/2023 dated 04.10.2023 issued by the MSETCL, that, "any dispute pertaining to this recruitment process shall be within the jurisdiction of the Hon'ble High Court, Mumbai."

XIV) That, said clause 13.19 is contrary to the law and the said clause deprives the right of the individual to contest the legal proceedings against this advertisement within the statutory jurisdiction of each individual of Maharashtra State.

XV) That, the petitioners will rely on the additional grounds at the time of hearing.

19. The learned Senior Counsel refers to the contents of the affidavits in reply filed by the Holding Company and the Transmission Company and specifically contends that there is no answer to the core contentions and grounds of the Petitioners that the Transmission Company could not have altered the pre-requisites

(as is the term used by the Transmission Company to define the eligibility qualifications), without placing the said Circular No. 465 (proposing the changes), before the Holding Company. In support of his submissions, he draws our attention to the Administrative Circular No. 352 dated 5th January, 2013 issued by the Transmission Company and more particularly, Clauses 1 to 9 which are as under :-

1. The MSEB Holding Company Ltd. under its Board Resolution No. 239 dated 28.04.2011 has resolved that there must be uniformity in the ratio of filling in vacancies for all posts, pre-requisites, reservation for different categories and method of selection etc. in all Three companies and any change therein must be submitted to the MSEB Holding Company for approval.

2. Pursuant to above resolution, a Committee of the concerned Directors and Executive Director (HR) of three companies was constituted for review of the pre-requisites and method of filling in vacancies of the posts in Technical Cadre. Accordingly, the committee deliberated over the existing pre-requisites, method of filling in vacancies etc., of the posts in Technical Cadre and submitted its recommendations. After approval of Managing Directors of the three companies, the proposal was submitted to the MSEB Holding Company Ltd. for bringing uniformity in the pre-requisites and method of filling in vacancies etc., for the posts in Technical Cadre.

3. Now, the MSEB Holding Company Ltd. under its Resolution No. 263 dated 30.04.2012 has accorded approval to prescribe upper age limit of the posts in Pay Gr. I to IV in Technical Cadre & also to prescribe method of filling & pre-requisites viz., qualification and experience for direct recruitment of the posts in Technical Cadre.

4. The Board of Directors of MSEB Holding Company Ltd. has also authorized the MD, MSEB Holding Company Ltd. to make any modifications/changes to the above pre-requisites/issue clarification, if required in consultation with M.D. of the concerned Company. However, the Board directed that there shall be uniformity in any amendment/modification issued hereinafter.

5. Accordingly, on the basis of the approval of MSEB Holding Company Ltd. the revised Upper age limit, method of filling in vacancies & pre-requisites viz., qualification and experience etc. for posts in Technical Cadre in MSETCL & General Rules that are consistent with MSETCL are prescribed and indicated in **Annexure -A** (Transmission Cadre) **Annexure - B** (Civil Cadre) & **Annexure -C** (General Rules) attached herewith.

6. Consequently, the pre-requisites and method of filling in vacancies of posts in Technical Cadre mentioned in Schedule A-1 of the MSEB Classification and

Recruitment Regulations, 1961 shall stand modified to the above extent.

7. All provisions / Circulars regarding upper age limit, pre-requisites and method of filling in vacancies of the posts in Technical Cadre issued previously shall stand superseded to the above extent.

8. These pre-requisites, method of filling in vacancies of the posts in Technical Cadre and General Rules shall come into force with immediate effect.

9. This Circular is issued with the approval of the C.M.D. in consultation with Director (Project), Director (Operations), Director (Finance) and Executive Director (HR).

20. There is no dispute that the Administrative Circular is available on the Transmission Company's website. We find that the Transmission Company itself acknowledged in Clause 1 reproduced above, that the Holding Company had resolved in its Board Resolution No. 239 dated 28th April, 2011 that there must be uniformity in the ratio of filling in vacancies and most importantly, the pre-requisites (qualification / eligibility criteria) for the different categories in all the three companies should be uniform and, any

change therein must be submitted to the MSEB Holding Company for approval. The Transmission Company acknowledges this mandate of the MSEB Holding Company and surprisingly, it has failed to place the Circular No. 465 before the Holding Company, despite actually changing the pre-requisites vide the said Circular No. 465.

21. The learned Advocate for the companies has strenuously contended that there is no change in any nature whatsoever, since the pre-requisite, i.e. the candidate must have experience of 7 years, is not changed. The learned Senior Advocate quickly points out that there is a change even in this clause since, earlier, the 7 years' experience was to be gathered as an Assistant Engineer while working in the Transmission Company. Now, the words 'Power Transmission' have been replaced by the words 'Power Sector'. This is a general term and which may include any company/factory/industry which may be active in the power sector.

22. The learned Advocate for the companies points out that the company had a very bad experience in some of its earlier examination processes. 7 years' experience in Transmission Company was the pre-requisite and several employees procured

fictitious and bogus certificates and acquired employment. The Transmission Company had to resort to an investigation and upon realising that there were several mischiefs played by various candidates who secured employment, the company had to adopt a harsh stand and resort to reverting the selected candidates to their original lower positions from where they had succeeded in getting promotion to the extent of 75% of the available posts on the basis of such fictitious certificates. We are of the view that it is for the Employer to screen its employees while granting promotions. This cannot be a justification for altering the eligibility qualifications. In fact, we find that the Company has diluted the eligibility requirement of experience in 'Power Transmission' by replacing it with 'Power sector', when the recruitment was meant for the Transmission Company.

23. It is specifically canvassed by the Transmission Company in its affidavit-in-reply dated 19th October, 2023 that the said change by the Transmission Company does not amount to making any change in the existing pre-requisites. We are of the considered view that, (a) insisting for 7 years' experience in "*Power Sector*", (b) out of which "*at least 4 years experience in the area of*

power transmission as a Deputy Executive Engineer and Assistant Engineer” OR (c) “2 years’ experience in the area of power transmission as a Deputy Executive Engineer”, is indeed a drastic change in the original pre-requisite as was settled by the Holding Company for all the 3 Companies. This fact is not denied by the Transmission company before us.

24. In the above backdrop, we deem it appropriate to refer to the earlier uniform experience/requisite qualification prescribed by all these three companies (including the Respondent Transmission Company). The Holding Company passed a resolution in the meeting of the Board of Directors held on 30th April, 2012. Item No. 3 therein, pertains to the approval of the Board for uniformity in pre-requisites to the posts in technical cadre. The said resolution passed by the Holding Company on 17th May, 2012, is reproduced hereunder :-

Ref: MSEBHCL/CS/item 3

Date : 17/5/12

Copy of Resolution passed at the meeting of Board of Directors held on 30/04/2012.

Item No. 3 : Approval of Board for Uniformity in pre-requisites of posts in Technical Cadre

Resolution 263 : *The Board considered the note submitted to it with a view to have uniformity in pre-requisites of Technical Cadre in 3 companies. After consideration, the Board accorded approval :*

1) *To prescribe upper age limit for the posts in Pay Gr. I to IV category and other general rules as indicated in Annexure - A to the note.*

2) *To prescribe method of filling vacancies and pre-requisites viz qualification and experience for the direct recruitment for the posts in Technical Cadre as indicated in Annexure-1 to Annexure-15 with the note.*

The Board of Directors has also authorized the MD, MSEB Holding Co to make any modifications/change to the above pre-requisites / issue clarification, if required in consultation with MD of the concerned company. However, the Board directed that there shall be uniformity in any amendment/modification issued herein after.

The Board of Directors also authorized the Director (F), MSEB Holding Co to forward above resolution to subsidiary companies for its implementation.

Company Secretary (Addl Charge)

MSEBHCL

[Emphasis supplied]

25. The Holding Company, thereafter declared the pre-requisite qualification for direct recruitment for all the three companies under Annexure – 5, with regard to the post of Deputy Executive Engineer. It is undisputed that a revision in the nomenclature of various posts took place on 8th July, 2014 vide Administrative Circular No. 411. This was a circular issued by the Transmission Company. For the sake of brevity we are reproducing the existing nomenclature and the revised nomenclature as under :-

Sr. No.	Existing Nomenclatures	Revised Nomenclatures
1.	Sub Engineer दुय्यम अभियंता (14500-650-17750-675-24500-710-40120)	Junior Engineer कनिष्ठ अभियंता (14500-650-17750-675-24500-710-40120)
2.	Junior Engineer कनिष्ठ अभियंता (19110-840-23310-885-46320)	Assistant Engineer सहाय्यक अभियंता (19110-840-23310-885-46320)
3.	Assistant Engineer सहाय्यक अभियंता (24010-975-28885-1060-54325)	Deputy Executive Engineer उप कार्यकारी अभियंता (24010-975-28885-1060-54325)
4.	Deputy Executive Engineer उप कार्यकारी अभियंता (26710-1060-32010-1125-60135)	Additional Executive Engineer अतिरिक्त कार्यकारी अभियंता (26710-1060-032010-1125-60135)

26. It is, thus, undisputed that the pre-requisite for direct recruitment in the three companies under Annexure – 5, for Deputy

Executive Engineer, was made applicable to the post of Assistant Executive Engineer (AEE) in view of the change/upgradation in the nomenclature. We are reproducing the said pre-requisite under Annexure -5 hereunder :-

DY. EXECUTIVE ENGINEER

Pre-requisites for direct recruitment for three Companies

Pre-requisites	MSEDCL	MSETCL	MSPGCL
Method of filling in vacancies	75% by departmental promotion & 25% by direct recruitment.	75% by departmental promotion & 25% by direct recruitment.	75% by departmental promotion & 25% by direct recruitment.
Qualification	Bachelors Degree in Electrical Engineering / Technology.	Bachelors Degree in Electrical Engineering/ technology.	Bachelors Degree in Electrical/Mechanical / Instrumentation / Electronics / Computer Engineering Technology or its equivalent.
Experience	7 years experience in Power Distribution	7 years experience in Power Transmission	7 years experience in Power Generation.

27. It is, thus, obvious that experience is a pre-requisite not only for direct recruitment to 25% of the available posts, but even for 75% departmental promotional posts. This uniform pre-requisite was company centric, in our view. For the Power Distribution Company, the experience was 7 years in 'Power Distribution'. For the Power Transmission Company, it was 7 years' experience in 'Power Transmission' and for the Power Generation Company, it was 7 years' experience in 'Power Generation'. In view of the above, we deem it

appropriate to reproduce the revised pre-requisites for the Transmission Company, as under :-

(ii) Pre-requisites for the post of Additional Executive Engineer (Trans) under Director Recruitment :-

Existing	Clarification
7 years experience in power transmission	Total 7 years experience in Power Sector, out of which at least; 4 years experience in the area of Power Transmission as a Deputy Executive Engineer & Assistant Engineer. OR 2 years experience in the area of Power Transmission as Deputy Executive Engineer.

28. In view of the above, we find from the affidavit in reply, that the attempt of the Transmission Company to defend it's unilateral action in modifying the pre-requisites, can not be justified. It is apparent from the clarification reproduced above, which infact is a modification of the existing 7 years' experience in Power Transmission into 3 sub-categories. The 7 years' experience in 'Power Transmission' is replaced by 'Power Sector'. The other modification is by introducing 4 years of experience in the Power Transmission and with a rider that the said experience must be as a Deputy Executive Engineer and Assistant Engineer or 2 years of experience in the area of Power Transmission as Deputy Executive Engineer. Nevertheless, the challenge is to the action of the

Transmission Company of unilaterally modifying the pre-requisites without the approval of the Holding Company.

29. We do not have any reason to reject the submission of Mr. Adwant that the Transmission Company has the power to modify the pre-requisites, however, subject to the requirement of obtaining the approval of the Holding Company, which is not denied before us by both the entities, through the affidavits in reply. At the same time, we outrightly reject the submission of the Transmission Company that the modification in the pre-requisites is no modification.

30. It cannot be ignored that the same Transmission Company has acknowledged in its Administrative Circular No. 352 that the MSEB Holding Company has mandated uniformity in pre-requisites (qualification and experience) while making appointments in all the three companies. In Clause No. 4 of the Circular No. 352, which is reproduced above, the company has also acknowledged that the Board of Directors of MSEB Holding Company has authorised the MD of the MSEB Holding Company to make any modification or changes to the above pre-requisites, with a clarification, that this has

to be done in consultation with the MD of the concerned company. However, the mandate emerging from Clause No. 4 is that the Board had directed that there shall be uniformity in any amendment/modification issued hereinafter, for all the 3 companies.

31. The Administrative Circular No. 465 introduced by the Transmission Company is dated 9th February, 2016 which is after the above mandate of the Holding Company was declared. The said circular was issued by the Executive Director HR. It is mentioned in the said Circular that a Committee was constituted under the Chairmanship of Director (Operations) and few other subordinate officers which made a recommendation for altering the requisite qualification. There is no legal foundation for constituting such a committee. The area in which the alteration was recommended was (i) Term of Power Transmission experience, (ii) experience prescribed for the post of Additional Executive Engineer (Transmission), without changing total required experience and (iii) consideration of Power Transmission experience. The Transmission Company itself has recorded in Paragraph No. 3 that it is modifying Administrative Circular No. 352 to the extent of the qualification at Clause No. 3 in the said Circular. Clause No. 5 of the said Circular indicates that the

Circular is issued with the approval of the CMD in consultation with the other directors for Project, Operations, Finance and HR. Much to the contrary, the MD of the Holding Company was empowered to initiate the process for modification in consultation with the MD of the Transmission Company.

32. It is, thus, an admitted position that the said Circular is neither a part of the uniform pre-requisite for all the three companies as mandated by the Holding Company, nor has the Transmission Company taken a stand that the Board Resolution No. 239 dated 20th April, 2011 issued by the Holding Company is not binding upon the Transmission Company.

33. It is quite conspicuous that the Transmission Company, which has filed an extensive affidavit-in-reply before us, does not even whisper that it is no longer under the umbrella of the Holding Company or that it is a completely 'stand alone' company having no relationship with the Holding Company. So also, the specific averment of the Petitioners that the change in the pre-requisites could not have been introduced without the sanction of the Holding Company, is not even remotely denied. The Transmission Company

in its affidavit-in-reply has resorted to the famous line “beating around the bush”. A direct answer which was expected by the Court to meet the straight forward contention of the Petitioners, is wholly missing.

34. Be that as it may, in the affidavit-in-reply filed on behalf of the Holding Company through Ms.Rupali Bhaskar Gole, who claims to be the authorised signatory for the Holding Company, dated 12th December, 2023 the following stand has been taken in Paragraph Nos. 5 to 12 :-

5. I say that the MSEB Holding Company Ltd. is a Government of Maharashtra owned Company incorporated under the Companies Act, 1956, after trifurcation of the erstwhile Maharashtra State Electricity Board (“MSEB”). The primary object of the Respondent No. 1 Company is to invest in the companies engaged in the field of Generation, Transmission and Distribution and trading of electricity or any or all of these activities.

6. I say that MSEB Holding Company is the Holding Company of its Wholly-owned Subsidiaries viz., Maharashtra State Electricity Distribution Company Limited (MSEDCL), Maharashtra State Power Generation Company Limited (MSPGCL) and Maharashtra State electricity

Transmission Company Limited (MSETCL) working in the energy sector in the State of Maharashtra.

7. *I say that MSETCL is a subsidiary company of the Maharashtra State Electricity Board Holding Co. Ltd (MSEB) formed for efficient and effective business management.*

8. *I say that the Respondent No. 1 – MSEB Holding Company, formulates certain broad guidelines for recruitment, service conditions and the general conduct of business, on the threshold of which, the subsidiary companies lay down their parameters with their respective specialization, in tune with the guidelines and not in contravention with them.*

9. *I say that the respondent No. 1, while passing Board Resolution No.263 dated 17.5.2012 laid down the pre-requisites for direct recruitment of its officers for the three subsidiary companies, which provided 7 years' experience for Dy. Executive Engineer in Power Distribution, Power Transmission and Power Generation.*

10. *I say that as per Note 3 below Regulation No. 38 of MSEB Classification and Recruitment Regulation, 1961, a subsidiary company has the right to prescribe the pre-requisites for various posts in the organization, as per their need and requirement, without violating the basic structure doctrine.*

11. I say that the work experience as given in Clause 4.1 of Advertisement No. 05/2023, do not run counter to the Board Resolution No. 263 dated 17.5.2012 of the respondent No. 1, as the core pre-requisite has not been disturbed or tinkered with by the respondent Nos. 4 and 5, therefore the claim raised in the petition sans merit.

12. I say that the decision making process of the respondent Nos. 4 and 5 while arriving at the experience criteria for the specific post, is to ensure that best available talent is recruited without changing the core criteria and is therefore within their domain and authority, thus the challenge of the petitioners deserves no consideration.

35. It is obvious from the stand taken by the Holding Company that after the trifurcation, the primary object of the Holding Company was to invest in the companies engaged in the field of generation, transmission, distribution and trading of electricity. It is acknowledged in Paragraph No. 6 that MSEB is the Holding Company of its wholly owned subsidiaries which include the Transmission Company. Paragraph No. 7 is on the same lines. In Paragraph No. 8, it is stated that the Holding Company formulates certain broad guidelines for recruitment, service conditions and the general conduct of business, on the threshold of which, the

subsidiary companies lay down their parameters. It is conceded in Paragraph No. 9 that the Holding Company, has passed the Resolution No. 263 prescribing 7 years' experience for all the three subsidiary companies in Power Distribution, Power Transmission and Power Generation.

36. In Paragraph No. 10, it is canvassed on behalf of the Holding Company that the subsidiary company has a right to prescribe a pre-requisite for various posts as per their need and requirement "*without violating the basic structure doctrine*". Conspicuously, in Paragraph No. 11, it is submitted that the impugned Advertisement does not run counter to the Board Resolution No. 263 dated 17th May, 2012 and the core pre-requisite has not been disturbed. We are sad to record that Paragraph No. 11, is an attempt to camouflage the truth.

CONCLUSION

37. We conclude that the original pre-requisite has been vastly disturbed by the Circular No. 465 issued under the signature of Executive Director HR, when it was a mandate that the MD of the

Holding Company would introduce alterations, in consultation with the MD of the concerned company. Instead, the Directors of Operations, Project, HR and General Manager of three limbs of the Transmission Company sat together as a Committee and prescribed the change, without the approval of the Holding Company.

38. In view of above, it is obvious that the Advertisement is based on unsustainable introduction of new pre-requisites. The same cannot be sustained and deserves to be quashed and set aside.

39. This **Writ Petition is allowed in terms of prayer clauses 'B' and 'C'**. The Circular No. 465, on account of it's unsustainability discussed above, stands quashed and set aside. Rule is made partly absolute in the above terms. No order as to costs.

40. At this stage, we deem it appropriate to record that if the Transmission Company desires to have tailormade pre-requisites, (eligibility criteria), they would be at liberty to follow the due procedure as is applicable in view of the scope and jurisdiction of the Holding Company. Based on the same, they may publish a fresh advertisement for the said posts. However, we also clarify that these

observations would not mean that we have expressed any opinion about the legality and validity of the change in the pre-requisites, if introduced. If challenged, it would be open to judicial review.

41. The dictation of this judgment was concluded, one hour beyond the regular rising time of the Court. Considering the length of judgment, it would take time to be formalised and uploaded. As this judgment has been dictated in the open Court, the parties shall act in terms thereof.

(R. M. JOSHI)
JUDGE

(RAVINDRA V. GHUGE)
JUDGE

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