

CWP-14977-2021
Date of decision: 05.04.2024

VERSUS

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Mr. Vikas Chatrath, Advocate with
Mr. BPS Thakur, Advocate;
Mr. Rajbir Singh, Advocate and
Mr. Abhishek Singla, Advocate for the respondent.

NAMIT KUMAR ,J. (ORAL)

1. The present petition has been filed by the petitioners under Articles 226/227 of the Constitution of India for seeking appropriate directions to the respondent to promote the petitioners to the post of Assistant Engineer w.e.f. 12.03.2021 when 44 Assistant Executive Engineers were promoted to the post of Assistant Engineer (Annexure P-3) and whereas the petitioners were left out. Further writ in the nature of certiorari has been sought for quashing the process of recruitment of 32 posts of Assistant Engineers, which have been advertised in excess, as the PSTCL has advertised 43 posts of Assistant Engineer (Electrical) vide CRA No.10/2021 dated 22.04.2021 (Annexure P-6) and whereas in actual only 11 posts are available for direct recruitment quota.

2. On issuance of notice of motion, written statement has been filed by the respondent wherein it has been stated as under:-

"1. That the answering respondent issued an advertisement against CRA 10/2021 dated 22.04.2021 wherein the recruitment process to the posts of Assistant Engineer/OT (Electrical),

Assistant Engineer/OT (Civil) and 10 other categories, was initiated. The total number of 43 posts of Assistant Engineer/OT Electrical stands published to be filled through direct recruitment. The grievance of the petitioners is to the effect that the aforesaid recruitment is violating the Regulation 10.1(b) of Punjab State Electricity Board Service of Engineers (Electrical) Regulation, 1965, however, the submissions are misplaced, since the contention of the petitioners that the total 279 number of posts are available is without any basis total 173 number posts are available in the category of Assistant Engineer (Electrical) with the Corporation. The petitioners have combined the posts of Assistant Executive Engineer (AEE) alongwith that of Assistant Engineer (Electrical), the same is without any basis and foundation, especially as both are separate and distinct cadres. However it is submitted that at present out of total sanctioned 171 posts of AE/Electrical 86 posts (50% of total sanctioned) are meant to be filled by direct recruitment while 85 (50% of total sanctioned) posts are meant to be filled through promotion. Consequently, the assertions by the petitioners by asserting a wrong number of posts under the quota of promotion as Assistant Engineer are misplaced. The writ petition is liable to be dismissed.

2. That as per the Regulations, the total number of posts available for the promotion shall be considered within a particular category in case of promotion as Assistant Engineer independently. The numbers of posts available in the category of Assistant Engineers are to be considered separately, both the posts of AEs and AEEs cannot be clubbed together. Further, the aforesaid Regulation stands amended as per Office Order No. 1027 dated 26.06.2014 wherein the percentage of promotion quota posts for JE-1 (now AAE) has been amended to 26% of the total cadre strength of AEs and AEEs instead of 22.5% as stipulated in the Regulations before the amendment. The relevant extract of the Regulation is reproduced below for the convenience of the Hon'ble Court:-

"The promotion quota posts shall be calculated on 50% strength of AEs and AEEs including BBMB as stood on ending February, before the consideration year. It should be @ 30% for JE-1(AAE) but may not be less than 26% of the total cadre strength of AEs and AEEs, 14% for AMIE/degree, 3% for drawing staff."

The Corporation by taking into-consideration the Regulations and posts available for direct recruitment issued the advertisement dated 22.04.2021 (P-6) for filling up the posts of AE/Electrical. The quota meant for direct recruitment has not been filled up so far, since only 17 posts under AE/Electrical stand filled. Vide advertisement CRA No. 10/2021 dated 22.04.2021 (P-6), 43 posts of AE/Electrical have been advertised which falls well within the quota of direct recruitment. Around 20 posts are the subject matter of various pending court cases. The posts which have been advertised are within the quota falling under the direct recruitment quota, as such, the petitioners have no right of consideration against the said post. The writ petition is liable to be dismissed with cost throughout.

6. *That the petitioners have a mere right of consideration for promotion, however, same cannot be claimed as a matter of right. However, all the petitioners have already been promoted as AE/Elect. vide O/o no. 190 dated 01.04.2022, copy of which is annexed as Annexure-R-1.*

7. *That the petitioners have not laid any foundation for promotions. No junior to the petitioners has been promoted. As such, the writ petition is misconceived. An employee has a right of consideration for promotion which the Corporation would consider as and when the occasion arises. However, all the petitioners have been promoted as AE/Elect. vide O/o no. 190 dated 01.04.2022. Rights claimed by the petitioners through the writ petition cannot sustain, since it is for the employer to decide the source of recruitment. Moreso, there is no malafide alleged in the writ petition in the action of the respondents in issuing the advertisement, reliance is placed on Vinod Kumar and others Vs. State of Punjab and others, 2012 (4) SCT 545 and Union of India Vs. Sukesh Kumar Nayak, 2011 (1) SCT 826 (SC). As such, the writ petition cannot sustain.*

7. *That the contents of Para No.7 of the writ petition are wrong and denied being incorrect. PSTCL promoted 19 JE/Electrical employees as AE/Electrical as per regulation 10.7 of the service of Engineers (Electrical), 1965 against 14% quota in the year 2017 whereas 1 post of AE/Electrical is still lying vacant due to the non-availability of PH category employees. Further, 20 posts under regulation 10.7 stand exhausted, on account of the non-availability of the vacant post under Regulation 10.7, petitioners could not be promoted under said Regulation."*

3. No replication has been filed by the petitioners to rebut the abovesaid averments made by the respondent in the written statement.

4. Since the petitioners have already been promoted vide order dated 01.04.2022 (Annexure R-1) and the respondent has explained in paras 1 and 2 of the written statement about the vacancy position, therefore, instant petition has been rendered infructuous and the same is disposed of accordingly.

05.04.2024
renubala

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No