

A RAKESH RANJAN VERMA AND ORS. ETC. ETC.
v.
STATE OF BIHAR AND ORS. ETC. ETC.

APRIL 10, 1992

B [N. M. KASLIWAL AND R. M. SAHAI, JJ.]

Electricity (Supply) Act, 1948 : Sections 15 and 78-A.

C *Bihar State Electricity Board Junior Electrical Engineer (General) Cadre Rules, 1982—Rule 7—As amended by Notification dated 14.10.1988.*

D *Electricity Board—Recruitment of Junior Electrical Engineers—Panel—Appointment of some candidates in order of merit—But candidates lower in merit could not be appointed due to non-availability of vacancies—Appointment of such candidates on the lower post of Operator—Undertaking by them that they will not claim in future the post of Junior Electrical Engineer—Subsequent claim by such candidates and direction by State Government under Section 78-A to appoint and absorb them in the post of Electrical Engineer—Held direction given by State was encroachment on Boards power under Section 15—Undertaking given by candidates would not estop them from being considered for future posts—Direction to fill the posts in the ratio of 75% by direct recruitment and 25% by absorption as contemplated under Rule 7.*

E *Service Law—Recruitment—Panel—Filling of vacancies—Mere existence of vacancies is not sufficient—Employer can decide how many posts are to be filled.*

F **The Bihar State Electricity Board invited applications for the posts of Junior Electrical Engineers and on the basis of a written test and oral test prepared a panel of 790 candidates in the year 1984 which was valid for one year. Out of this panel, 447 candidates were appointed according to merit but the remaining posts could not be filled due to non-availability of posts. Since the position of the appellants was lowerer in the merit list they were also not appointed. However, they were appointed against the vacant posts of Operators, for which the requisite qualifications was Diploma in Engineering, on their giving a specific undertaking that they would not make any claim for appointment as Junior Electrical Engineer.**

By its advertisement dated 29.7.89 the Electricity Board invited applications for the posts of Junior Electrical Engineers which fell vacant later. The appellants made their claim for appointment as Junior Electrical Engineers and the State Government issued instructions under Section 78-A of the Electricity (Supply) Act, 1948 to the Electricity Board to appoint and absorb them. A

The Electricity Board failed to comply with the State Government's direction and the appellants filed petitions in the High Court of Patna for quashing the advertisement dated 29.7.89 and for a direction to appoint and absorb them in the vacant substantive posts of Junior Electrical Engineers. The High Court dismissed the petitions holding that (i) the power under Section 78-A is to be exercised by State Government only when some questions of policy are involved and it cannot be exercised for directing that a particular individual or a group of persons be appointed as officers of the Board and; the Board has power to make appointments under Section 15 and it was not bound to follow the directions of the State Government because it would amount to encroachment on its power under Section 15; (ii) the appellants were appointed as Operators on their undertaking and at a later stage they could not claim appointment against the posts of Junior Electrical Engineers; (iii) in view of the amended rule 7 of the Bihar State Electricity Board Junior Electrical Engineer (General) Cadre Rules, 1982 the appellants could not be absorbed without consideration of *inter-se* merit by Selection Committee. B C D E

In appeal to this Court, it was contended on behalf of the appellants that (i) the direction issued by the State Government under Section 78-A of the Act was on questions of policy and was binding on the Electricity Board; (ii) the undertaking given by the appellants cannot deprive them from being appointed on future vacancies and the undertaking was violative of Article 16 of the Constitution; (iii) the posts of Junior Electrical Engineers were vacant even before the expiry of panel and the Board should have absorbed the appellants against the aforesaid posts. F G

On behalf of the Electricity Board it was contended that (i) under section 78-A of the Act the State can issue directions only on questions of policy and it cannot direct the Board to make appointments dehors the Rules; (ii) the panel for Junior Electrical Engineers was valid for one year and the appellants had no legal right to be appointed on the basis of their H

A inclusion in the expired panel.

Dismissing the appeals, this Court,

B HELD : 1. Section 78 of the Electricity (Supply) Act, 1948 clearly lays
down that the Board shall be guided by such directions on questions of
policy as may be given to it by the State Government. In the circumstances
of the case the directions given by the State Government cannot be con-
sidered as directions on any questions of policy. Therefore, the view taken
by the High Court that the direction given by the State Government to the
Electricity Board to appoint the appellants as Junior Engineers does not
C involve any matter of policy and was an encroachment on the powers of
the Board under Section 15 of the Act is correct. [524D-H, 525A]

D 2. The life of the panel was one year which came to an end after one
year and that being so no right can be claimed by the appellants after one
year on the basis of inclusion of their names in the panel list for the posts
of Junior Electrical Engineers. But the giving of any undertaking cannot
estop the appellants from being considered for the future vacancies of
Junior Electrical Engineers and the appellants cannot be deprived for all
times to come. Therefore, the Board cannot deny the right of the appellants
for appointment on the posts of Junior Electrical Engineers sought to be
E filled on the ground that they had given any undertaking at the time of
their appointment as Operators. [525A-C, 526B]

F 3. As contemplated in Rule 7 of the Bihar State Electricity Board
Junior Electrical Engineer (General) Cadre Rules, 1982 read with modifica-
tion made by Notification dated 14.10.1988 issued under Section 79(c) of the
Act, the Board has to make appointments for the posts of Junior Electrical
Engineers both by way of direct recruitment from Diploma holders in
Electrical Engineering and by absorption of the Board's employees serving
on lower posts in the ratio of 75 : 25 and the appellants would also have a
right to be considered for such appointments. [525C, 526B-C]

G 3.1. Accordingly the Electricity Board is directed to issue a fresh
advertisement for filling of the posts of Junior Electrical Engineers having
fallen due and to make appointments in the ratio of 75 per cent by direct
recruitment and 25 per cent by absorption as contemplated under Rule 7.
Age bar should not be considered as disqualification in respect of all those
H persons who were included in the panel of 1984. [526E-F]

4. It is no doubt correct that vacancies in the general and GTO cadres of Junior Electrical Engineers were existing when the panel was operative but it lies with the Board to decide as to how many posts are required to be filled. Merely existence of vacancies alone is not sufficient until the Board considered it necessary as to how many posts were required to be filled in any year in order to carry out its functions and duties. [527A-B]

A.M. Mani v. Kerala State Electricity Board, A.I.R. 1968 Kerala 76; The Andhra Pradesh State Electricity Board and Anr. v. N. Ramachandra Rao and Anr., A.I.R. 1969 AP 328, cited.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1627 & 1628 of 1992.

From the Judgment and Order dated 12.12.90 of the Patna High Court of Jundicature in C.W.J.C. No. 7348 & Civil Writ Petition No. 7183 of 1989.

Dr. Y.S. Chitale, Anil Jha and Raju Rama Chandran for the Appellants.

K.K. Venugopal, P.P. Tripathi and Pramod Swarup for the Respondents.

The Judgment of this Court was delivered by

KASLIWAL, J. Special leave granted.

Appeal in SLP No. 3859 of 1991 arises out of the judgment of the Patna High Court dated 12.12.1990 in Writ Petition No. 7348 of 1989 and Appeal in SLP No. 7642 of 1991 arises out of the judgment dated 12.12.1990 given by the Patna High Court in Writ Petition No. 7183 of 1989. Both the above appeals are disposed of by one single order as both arise in identical circumstances and are intimately connected with each other.

Rakesh Ranjan Verma and 120 other persons working as Operators in the Bihar State Electricity Board filed a Writ Petition No. 7348 of 1989 in the High Court for quashing the advertisement dated 29.7.1989 issued by the Bihar State Electricity Board (in short 'the Board') for filling up vacancies of Junior Electrical Engineers by direct recruitment and for a

A direction to the Board to comply with the directions of the State Government dated 18.7.1988 and 5.5.1989 to appoint/absorb the petitioners in the vacant substantive posts of Junior Electrical Engineers.

B The Board issued an advertisement No.1/83 dated 26.5.1983 in newspapers inviting applications from eligible candidates for appointment to 447 posts of Junior Electrical Engineers. The petitioners applied for the said posts of Junior Electrical Engineers. On 22.10.1983 a competitive written test was held and 840 candidates including the petitioners were declared successful in the written test. The successful candidates were called for an interview which was held on different dates in the year 1984.

C On the basis of the above written and oral test a panel of 790 candidates was prepared. Out of the aforesaid panel, 447 candidates, according to the merit list were given appointment on the posts of Junior Electrical Engineers. As no posts of Junior Electrical Engineers were available for the remaining 343 candidates which included the petitioners, they could not be

D appointed on the posts of Junior Electrical Engineers. As number of posts of Operators were also vacant and for which the requisite qualifications was Diploma in Electrical Engineering, it was, therefore, decided that the vacant posts of Operators may also be filled up by such candidates who were willing to opt for that employment but would not claim the post of Junior Engineer on the ground that they had applied for appointment to the post of Junior Engineer. The petitioners opted for the posts of Operators with a specific undertaking that they would not claim for the posts of Junior Electrical Engineers by virtue of their having applied for appointment to the posts of Junior Engineers and having technical qualifications. The petitioners subsequently made claim before the Board

F and the State Government that they should be absorbed against the vacant posts of Junior Electrical Engineers on the basis of the merit list and panel prepared in the year 1984. The State Government having convinced with the claim of the petitioners by communication dated 18.7.1988 wrote to the Board that as the petitioners had appeared in the written test for being appointed against the posts of Junior Electrical Engineers, any undertaking

G given by them on the eve of their appointments as Operators was an unreasonable restriction, as such they may be absorbed against the posts of Junior Electrical Engineers, which became available later during the years 1984 and 1985. It was mentioned in the above communication that the said direction was being issued in exercise of the power under Section

H 78-A of the Electricity (Supply) Act, 1948 (hereinafter referred to as 'the

Act'). Another communication of a similar nature was issued by the State Government on 5.5.1989 reiterating the earlier direction given vide letter dated 18.7.1988. The Board did not comply with the aforesaid direction of the State Government as such the petitioners filed a Writ Petition in the High Court with the prayer to quash the advertisement dated 29.7.1989 and to appoint/absorb the petitioners to the vacant substantive posts of Junior Electrical Engineers.

The stand taken by the Board in the counter affidavit before the High Court was that only 447 posts of Junior Electrical Engineers were advertised for appointment and according to the merit list 447 posts were filled and the position of the petitioners being lower in the merit list, they could not be appointed. Thereafter, on the recommendation of a Committee, the petitioners were appointed against the posts of Operators in Thermal Power Stations with a specific condition that they shall not later make any claim for appointment as Junior Electrical Engineer. When the petitioners accepted the said condition, they were appointed as Operators. The panel/merit list which was prepared in the year 1984 lost its validity on 13.9.1985 after the lapse of one year. The posts of Junior Electrical Engineers which fell vacant later have been advertised by the advertisement dated 29.7.1989 and fresh applications have been invited to fill the posts in accordance with the Rules. It was further stated by the Board that the State Government had no power to give such direction under Section 78-A of the Act. The Board itself has power to make appointments of officers and employees under Section 15 of the Act.

The High Court held that the Board is a statutory authority constituted by the State Government under Section 5 of the Act. Section 15 of the Act in clear and unambiguous words vests power in the Board to appoint its officers and employees as may be required to enable the Board to carry out the functions under the Act. The appointment of the Secretary of the Board alone is subject to the approval of the State Government. So far as other officers and employees of the Board are concerned, no approval is required to be taken from the State Government. The High Court further held that the power under Section 78-A of the Act is to be exercised by the State Government only when some questions of policy are involved. Such power is not to be exercised for directing that particular individual or a group of persons be appointed as officers of the Board. The Board being an autonomous authority clothed with the power to make

- A appointments of its officers and employees under Section 15 of the Act is not bound to follow the directions given by the State Government which amounted to an encroachment on the power of the Board vested under Section 15 of the Act. The High Court in taking the aforesaid view placed reliance on a Full Bench authority of the Kerala High Court in *A.M. Mani v. Kerala State Electricity Board*, AIR 1968 Kerala P.76 and a Division Bench authority of Andhra Pradesh High Court in *The Andhra Pradesh State Electricity Board and Another v. N. Ramachandra Rao and Another*, AIR 1969 Andhra Pradesh P.328. The High Court also held that whenever vacancies exist in public offices an opportunity should be given to all persons eligible on the date such posts are to be filled up, for being considered for appointment against such posts. Neither any assurance was given nor it was represented to the petitioners that later they shall be appointed or absorbed against the posts of Junior Electrical Engineers. On the other hand, they were appointed as Operators on undertaking being given by them individually that at later stage they shall not claim for being appointed against the posts of Junior Electrical Engineers. The High Court further held that under Rule 7 of the Bihar State Electricity Board Junior Electrical Engineer (General) Cadre Rules, 1982 as amended by a new Rule 7 by Notification dated 14.10.1988 issued under Section 79 (c) of the Act a Selection Committee has to consider the cases of Diploma holders who had acquired the Diploma before joining the lower posts under the Board or have acquired Diploma while in the service of the Board for being appointed against the posts of Junior Electrical Engineers. In view of this amended Rule which had come into force on 14.10.1988, now there was no question of absorption of the petitioners outright without consideration of *inter se* merit by the Selection Committee. The High Court in the view taken above passed the following operative order :

- G "For the reasons mentioned above, it is not possible to hold that the two communications dated 18.7.1988 and 5.5.1989 shall be deemed to be a direction on question of policy by the State Government so that this Court may issue a writ of mandamus directing the Board to comply with those Directions. It is also not possible for this Court to issue a direction to the Board to absorb the petitioners straightway against the posts of Junior Electrical Engineers : of course, it will be open to the Board to consider the cases of the petitioners along with others for appointments to the posts of Junior Electrical Engineers in

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accordance with the new Rule 7 referred to above.

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This writ application is, accordingly, dismissed. In the circumstances of the case, there shall be no order for costs."

We have heard learned counsel for the parties at length and have perused the record. Dr. Chitale, Learned Senior Advocate appearing on behalf of the appellants contended that the direction issued by the State Government vide letters dated 18.7.1988 and 5.5.1989 under Section 78-A of the Act was binding on the Board. It was contended that the directions given in the aforesaid letters was on questions of policy and the State Government was fully authorised to give such directions to the Board in exercise of its powers conferred under Section 78-A of the Act. It was further submitted that the appellants were selected for the posts of Junior Electrical Engineers after passing the written and oral examination and were kept in the merit/panel list of 1984. It was contended that merely because the appellants gave an undertaking while being appointed as Operators that they would not lay any claim on the posts of Junior Electrical Engineers, cannot deprive them from being appointed on future vacancies of Junior Electrical Engineers. The undertaking was unconscionable and violative of Article 16 of the Constitution. It was submitted that some of the appellants have become over age and it would not be possible for the appellants to compete with the fresh incumbents in case the posts are filled by direct recruitment. It was contended that all the appellants are Diploma holders and have additional advantage of experience on the post of Operators and in these circumstances the appellants should be absorbed against the vacant posts of Junior Electrical Engineers without competing with the direct recruits.

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On the other hand, Learned Counsel appearing for the Board supported the judgment of the High Court and contended that the panel of 1984 exhausted after one year and thereafter the appellants had no right or claim whatsoever on the posts of Junior Electrical Engineers to be filled now through advertisement issued on 29.7.1989. It was further submitted that the Board had shown a gesture of goodwill by giving appointment to the appellants on the post of Operators and now the appellants cannot put forth a legal right for being appointed as Junior Electrical Engineers after a period of more than 4 years on the basis of inclusion in the panel of 1984. They have to compete with other fresh competitors who have become

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A eligible for such posts to be filled by direct recruitment according to the Rules. It has been submitted that Section 78-A of the Act empowers the State Government to issue directions on questions of policy and no direction under such power can be given to the Board to make appointment of the appellants de hors the Rules.

B Section 78-A of the Act reads as under :-

"Directions by the State Government. - (1) In the discharge of its functions, the Board shall be guided by such directions on questions of policy as may be given to it by the State Government.

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(2) If any dispute arises between the Board and the State Government as to whether a question is or is not a question of policy, it shall be referred to the Authority whose decision thereon shall be final."

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The above provision clearly lays down that the Board shall be guided by such directions on questions of policy as may be given to it by the State Government. In the circumstances of the case before us the directions given under letters dated 18.7.1988 and 5.5.1989 cannot be considered as directions on any questions of policy. So far as the appointment of staff is concerned, Section 15 empowers the Board to appoint such officers and employees as may be required to enable the Board to carry out its functions under the Act. Section 15 of the Act reads as under :-

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"Appointment of staff. - The Board may appoint a Secretary and such other officers and employees as may be required to enable to Board to carry out its functions under this Act :

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Provided that the appointment of the Secretary shall be subject to the approval of the State Government."

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Thus, under the proviso to Section 15, it is only the appointment of the Secretary which is subject to the approval of the State Government. So far as other staff is concerned, it lies with the Board to make appointment of all officers and employees as may be required to enable the Board to carry out its functions under the Act. Thus, we agree with the view taken by the High Court in this regard that the direction given by the State

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Government to appoint the appellants as Junior Engineers by the Board

does not involve any matter of policy and it would be an encroachment on the powers of the Board given under Section 15 of the Act. It is not in dispute that the life of the panel was one year which came to an end on 13.9.1985 and that being so no right can be claimed by the appellants after 13.9.1985 on the basis of inclusion of their names in the panel list of 1984 for the posts of Junior Electrical Engineers. So far as giving of any undertaking is concerned, we are in agreement with the contention of the Learned Counsel for the appellants that such undertaking cannot estop the appellants from being considered for the future vacancies of Junior Electrical Engineers and the appellants cannot be deprived for all times to come. The post of Junior Electrical Engineer is now governed by the Bihar State Electricity Junior Electrical Engineer (General) Cadre Rules, 1982 and specially Rule 7 read with modification made by Notification dated 14.10.1988 issued under Section 79 (c) of the Act which reads as follows :-

"Appointments to the posts of Junior Electrical Engineers from amongst the employees of the Board having Diploma in Electrical Engineering will be made on the basis of the recommendations of a Selection Committee which will be constituted by the Chairman for the purpose. The Selection Committee will examine the records and interview the candidates who obtain diploma in Electrical Engineering while in the service of the Board along with those employees who had obtained diploma in Electrical Engineering before joining the service of the Board."

Thus, by a combined reading of Rule 7, posts of Junior Electrical Engineers (General) Cadre shall be filled by direct recruitment from Diploma holders in Electrical Engineering and by absorption of the Board's employees serving on lower posts. Appointment by direct recruitment and by absorption shall be made against vacancies in a calendar year in the ratio of 75-25. Now in case of appointment to the posts of Junior Electrical Engineers if made by absorption from amongst the employees of the Board serving on lower posts that has to be made through a process of screening by a Selection Committee. So far as appointment to be made by direct recruitment, the candidates have to be selected on the basis of merit after going through the process of written and oral examination and the appellants shall have to compete with all the Diploma holders who would compete for such posts of Junior Electrical Engineers to be filled

A by direct recruitment. The Board in this regard has clearly stated in the counter affidavit filed before this Court that the appellants who apply for the posts of Junior Electrical Engineers as and when advertisement is issued and appear at the competitive examination to be held again by the Board for appointment to the posts of Junior Engineers and in case they compete, they would be appointed against the posts of Junior Electrical Engineers. The Board, of course, cannot deny the right of the appellants for appointment on the posts of Junior Electrical Engineers now sought to be filled on the ground that the appellants had given any undertaking at the time of their appointment as Operators. The Board has to make appointments for the posts of Junior Electrical Engineers both by way of direct recruitment from Diploma holders in Electrical Engineering and by absorption of the Board's employees serving on lower posts in the ratio of 75- 25 as contemplated in Rule 7 and the appellants would also have a right to be considered for such appointments. We have been informed during the course of argument on behalf of the Board that no written or oral examination has been conducted to fill the posts of Junior Electrical Engineers in pursuance to the advertisement issued on 29.7.1989.

Thus, taking in view the entire facts and circumstances of the case and in order to do full justice to all the persons concerned, we direct the Board to issue a fresh advertisement for filling of the posts of Junior Electrical Engineers having fallen due upto 31st March, 1992 and to make appointments in the ratio of 75 per cent by direct recruitment and 25 per cent by absorption as contemplated under Rule 7. It is further directed that age bar would not be considered as disqualification in respect of all those persons who were included in the panel list of 790 persons prepared in 1984.

So far as appeal in SLP No.7642 of 1991 is concerned, it arises out of the writ petition No.7183 of 1989 filed before the High Court by 65 persons. These 65 persons are also those persons who were included in the panel of 790 person prepared in 1984 and who did not qualify in merit for being appointed on 447 posts of Junior Electrical Engineers. Thus, they are also falling in the same category as that of 121 appellants of appeal arising out of SLP No.3859 of 1991. The appellants in this case have put forth an additional ground that 116 posts of Junior Electrical Engineers had fallen vacant even before the expiry of one year and the Board ought to have absorbed the appellants against the aforesaid 116 posts of Junior

Electrical Engineers. It is no doubt correct that 116 vacancies in the general and GTO cadres of Junior Electrical Engineers were existing as on 31.12.1985, but in our view it lies with the Board to decide as to how many posts of Junior Electrical Engineers are required to be filled to enable the Board to carry out its functions under the Act. Merely existence of vacancies alone is not sufficient until the Board considered it necessary as to how many posts were required to be filled in any year in order to carry out its functions and duties. There is no allegation that the posts were not released for appointment with any *mala fide* intention or in order to give benefit to any person by virtue of postponement of filling such vacancies. Thus, in our view the appellants of this case also would be governed by the same direction which has been given in the case of appeal arising out of SLP No.3859 of 1991.

Both the appeals are therefore dismissed in the manner indicated above. There will be no order as to costs in the circumstances of the case.

T.N.A.

Appeals dismissed.