

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE SANJAY DWIVEDI

ON THE 18TH OF NOVEMBER, 2024

WRIT PETITION NO. 31629 OF 2024

BIRENDRA SINGH YADAV

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance :

Shri Mahendra Pateriya – Advocate for the petitioner.

Shri Girish Kekre – Government Advocate for the respondent No.1-State.

Shri Rohit Jain – Advocate for respondent Nos.2 to 4, the contesting respondents.

ORDER

Looking to the issue involved in this petition, it is heard finally.

Petitioner by the instant petition is challenging the action of the respondents as they are not allowing the petitioner to participate in the interview which was scheduled pursuant to the advertisement dated 23.08.2024 (Annexure P/1).

The petitioner filed this petition and claimed interim relief saying that the interview is to be held and he should be granted provisional permission to appear in the same.

The Court vide order dated 15.10.2024 has refused to grant any interim relief and also directed that if ultimately, it is found that the petitioner's claim is justified and he has been denied by the respondents

unreasonably, the respondents shall be directed to arrange a fresh interview for the petitioner.

The respondents have submitted their reply stating therein that in pursuance to advertisement (Annexure P/1) and conditions contained therein, petitioner did not fulfill the requisite period of service on the post of Assistant Engineer to be called in interview for appointment on contract basis after retirement to the post of General Manager (Contractual) in the Project Implementation Unit of Madhya Pradesh Rural Road Development Authority.

Considering the submissions made by learned counsel for the parties and on perusal of the record, the question that emerged to be adjudicated as to whether petitioner has been rightly declined to participate in the interview or has been unreasonably denied.

Shri Mahendra Pateriya, learned counsel for the petitioner has submitted that as per the requirement of advertisement (Annexure P/1), the respective clause very clearly provides that a retired Assistant Engineer having 15 years of experience on the post of Assistant Engineer, out of which 10 years of field experience is the necessary requirement and the petitioner fulfills the same but was not called for interview.

As per the reply submitted by the respondents and submission made by Shri Rohit Jain, learned counsel for respondent Nos.2 to 4 that the application (Annexure P/2) was submitted by the petitioner giving details therein that he has worked as an Assistant Engineer with effect from 07.10.2006 to 03.08.2018 and as such, it is 11 years 9 months and 27 days which fulfills the requirement but Shri Jain further submits that the said period is not the total period worked on the post of Assistant Engineer but it includes the period when the petitioner has performed the duties of

Assistant Engineer not in a substantive capacity but holding the additional charge of that post. He has also submitted that the petitioner at the time of retirement was performing the duties as Executive Engineer and therefore, as per the rider imposed in the condition, the petitioner is disqualified as not entitled to apply under the said clause because at the time of retirement, he was performing his duties as Executive Engineer.

The petitioner on the other hand submits that respondents have wrongly interpreted the clause and denied the petitioner whereas he is otherwise eligible to apply for the post and is also entitled to be called in the interview. As such, this Court is required to consider the respective clause and its interpretation and after interpreting the same, determine whether the petitioner was wrongly denied or he was to be called for interview.

Before deciding the same, it is apt to reproduce the respective clause, which is as under :-

क्र	पदनाम	नियुक्ति का प्रकार	अधिकतम आयुसीमा	न्यूनतम अर्हताएं	अनुमानित पद संख्या	पद स्थापना
2	महाप्रबंधक (सिविल)	से.नि.उपरान्त संविदा	63 वर्ष	महाप्रबंधक के पद हेतु राज्य शासन के कार्य विभागों, म.प्र. राज्य विद्युत मंडल की उत्तरवर्ती कम्पनियों, केन्द्र एवं राज्य शासन के निगम, मण्डल व उपक्रम के अधीक्षण यंत्री/कार्यपालन यंत्री के पद से सेवानिवृत्त डिग्रीधारी सिविल इंजीनियर अथवा ऐसे सेवानिवृत्त सिविल डिग्रीधारी सहायक यंत्री जिन्हें 15 वर्षों का अनुभव सहायक यंत्री के रूप में हो, जिसमें से 10 वर्षों का फील्ड का अनुभव हो इसके अतिरिक्त इससे उच्च पद पर कार्यरत रहते हुये सेवानिवृत्त शासकीय सेवक जैसे- मुख्य अभियंता/प्रमुख अभियंता से सेवानिवृत्त अर्थात ग्रेड पे रू. 8900 से अधिक होने पर आवेदन करने पात्र नहीं होंगे।	36	प्राधिकरण मुख्यालय/ इकाई

From the aforesaid, it is clear that the petitioner, as per the requirement of the said clause, falls within the category of retired civil degree holder of 15 years of working experience as Assistant Engineer. The petitioner submits that he is a retired Assistant Engineer having civil degree of the said post and also worked as an Assistant Engineer for 15

years. The petitioner was initially holding the post of Sub Engineer and vide order dated 30.10.2006, he was sent on deputation on the post of Assistant Engineer in Janpad Panchayat, Office of Madhya Pradesh Rojgar Guarantee Parishad and thereafter vide order dated 03.10.2015, he was promoted to the post of Assistant Engineer by the DPC w.e.f. 29.08.2013. The petitioner, at the time of retirement was also working as In-charge Executive Engineer and retired as such. The respondents in their reply has taken a stand that petitioner did not have 15 years of experience as Assistant Engineer because he got promoted to the post of Assistant Engineer only on 29.08.2013 and worked as Assistant Engineer till 03.08.2018 but his substantive working as Assistant Engineer can be considered from the date of his promotion i.e. 29.08.2013. It is also submitted by Shri Jain that at the time of retirement, petitioner was holding the post of In-charge Executive Engineer and as per the exclusion clause (Rider) contained in the respective clause, the person who is holding the higher post than that of Assistant Engineer, is not eligible to apply for the post. Shri Jain, further submits that petitioner retired when he was performing his duties as In-charge Executive Engineer and therefore, he was rightly denied from participating in the interview.

Although, from the perusal of respective clause, I am not convinced with the submissions of Shri Jain because in my view, the interpretation of the relevant portion of the clause which makes the petitioner eligible for submitting an application is as under :-

“ऐसे सेवानिवृत्त सिविल डिग्रीधारी सहायक यंत्री जिन्हें 15 वर्षों का अनुभव सहायक यंत्री के रूप में हो, जिसमें से 10 वर्षों का फील्ड का अनुभव हो”

On a careful reading of this portion, it can be gathered that the requirement is that the candidate should be retired Assistant Engineer with

the Civil Degree. This fact is not disputed that the petitioner was retired Assistant Engineer with a civil degree.

The subsequent portion of clause 2 reads as under :-

“जिन्हें 15 वर्षों का अनुभव सहायक यंत्री के रूप में हो, जिसमें से 10 वर्षों का फील्ड का अनुभव हो।”

This clause indicates the 15 years experience of working as Assistant Engineer (के रूप में) but that does not mean that the candidate must have substantively held the post of Assistant Engineer. This is not disputed as the petitioner worked as an Assistant Engineer for a period of 15 years, although, in the later period of his service, he worked as an In-charge Executive Engineer but that cannot be a ground to deny the claim of the petitioner because it was a higher qualification for the petitioner to hold the post of In-charge Executive Engineer because he was substantively promoted to the post of Assistant Engineer w.e.f. 29.08.2013. I am not convinced with the submissions made by learned counsel for the respondents that the claim of the petitioner can be denied and he can be held ineligible merely because he has worked as In-charge Executive Engineer. The basic object of the clause can be interpreted that the requirement was of experience of 15 years as an Assistant Engineer and merely because petitioner being an Assistant Engineer performed his duties for some period as In-charge Executive Engineer, it cannot be a disqualification for the petitioner.

The Supreme Court in the case of **Jyoti K.K. and others vs. Kerala Public Service Commission and others (2010) 15 SCC 596** has observed as under :-

“7. It is no doubt true, as stated by the High Court that when a qualification has been set out under the

relevant Rules, the same cannot be in any manner whittled down and a different qualification cannot be adopted. The High Court is also justified in stating that the higher qualification must clearly indicate or presuppose the acquisition of the lower qualification prescribed for that post in order to attract that part of the Rule to the effect that such of those higher qualifications which presuppose the acquisition of the lower qualifications prescribed for the post shall also be sufficient for the post. If a person has acquired higher qualifications in the same Faculty, such qualifications can certainly be stated to presuppose the acquisition of the lower qualifications prescribed for the post. In this case it may not be necessary to seek far.

8. Under the relevant Rules, for the post of Assistant Engineer, degree in Electrical Engineering of Kerala University or other equivalent qualification recognised or equivalent thereto has been prescribed. For a higher post when a direct recruitment has to be held, the qualification that has to be obtained, obviously gives an indication that such qualification is definitely higher qualification than what is prescribed for the lower post, namely, the post of Sub-Engineer. In that view of the matter the qualification of degree in Electrical Engineering presupposes the acquisition of the lower qualification of diploma in that subject prescribed for the post, shall be considered to be sufficient for that post.”

(emphasis supplied)

The Supreme Court reiterated its view in the case of **Chandrakala Trivedi vs. State of Rajasthan and others** reported in **(2012) 3 SCC 159** and opined as under :-

“7. In the impugned judgment, the High Court has given a finding that the higher qualification is not the substitute for the qualification of Senior Secondary or Intermediate. In the instant case, we fail to appreciate the reasoning of the High Court to the extent that it does not consider higher qualification as equivalent to the qualification of passing Senior Secondary Examination even in respect of a candidate who was provisionally selected.

8. The word “equivalent” must be given a reasonable meaning. By using the expression “equivalent” one means that there are some degrees of flexibility or adjustment which do not lower the stated requirement. There has to be some difference between what is equivalent and what is exact. Apart from that, after a person is provisionally selected, a certain degree of reasonable expectation of the selection being continued also comes into existence.”

However, the exclusion clause reads as under :-

‘‘इसके अतिरिक्त इससे उच्च पद पर कार्यरत रहते हुये सेवानिवृत्त शासकीय सेवक’’

This clause clearly indicates that any candidate who has retired from the higher post than that of Assistant Engineer (कार्यरत रहते हुये), however, the petitioner was never promoted to the post of Executive Engineer and this exclusion clause would not be applicable to him because he retired as an Assistant Engineer although he was In-charge Executive Engineer at the time of retirement. There is a drastic difference in the first part of the qualification and the part of exclusion clause. The first part clearly indicates ‘सहायक यंत्री के रूप में’ whereas exclusion clause

provides 'उच्च पद पर कार्यरत रहते हुये'. Thus, it is clear that experience of working of a Assistant Engineer but retired from the higher post than that of Assistant Engineer. The petitioner having an experience of Assistant Engineer for more than 15 years and retired from the post of Assistant Engineer but not from the post of Executive Engineer, therefore, in my opinion, the petitioner was wrongly declared ineligible to participate in the interview. The interpretation as has been made by the respondents, in my opinion is not proper and denying petitioner from participating in the interview is also not proper. His qualification of working on higher post of Executive Engineer cannot be treated to be a disqualification for him. The exclusion clause clearly meant that a person holding a higher post than that of Assistant Engineer cannot apply meaning thereby that any candidate holding a post higher than that of Assistant Engineer would not be eligible to apply but that exclusion clause is not applicable to the petitioner because he was not holding the higher post as he was never promoted to the post of Executive Engineer.

The advertisement (Annexure P/1), in my opinion, is lacking in clarity, precision and is couched in a language which keeps the candidates guessing as to its true impact cannot be countenanced in law. Any advertisement creating ambiguity in regard to the qualification and taking shelter of the same, denial of liberty to the candidate, in my opinion does not seem to be proper. It is expected from the authority to make the clause clear and if prescribed qualification in the advertisement gives vague and ambiguous meaning emanating varying interpretations about the qualification criteria, the benefit should always be given to the candidate but not to the employer especially under the existing

circumstance when apparently the basic object of the respondents is that the said post is available for the retired Assistant Engineer having Degree of Civil and 15 years of work experience as an Assistant Engineer. Thus, denying a candidate on the basis of vague interpretation of prescribed qualification, in any manner, cannot be said to be proper.

Accordingly, I am of the opinion that petitioner was eligible to apply for the said post and he ought to have been called for interview.

The petition is, accordingly, **allowed** directing the respondents to accept the application of the petitioner and arrange a fresh interview for him in which he may be called and thereafter final decision be taken for selecting him to the post which has been advertised as per Annexure P/1. The aforesaid exercise be completed expeditiously before making appointment of other eligible candidates considered in the interview in response to Annexure P/1.

(SANJAY DWIVEDI)
JUDGE

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