

PETITIONER:
BHAGIRATHDAN

Vs.

RESPONDENT:
STATE OF RAJASTHAN AND ORS.

DATE OF JUDGMENT 14/08/1992

BENCH:
BHARUCHA S.P. (J)
BENCH:
BHARUCHA S.P. (J)
THOMMEN, T.K. (J)

CITATION:
1992 AIR 1949 1992 SCR (3) 882
1992 SCC (4) 64 JT 1992 (4) 533
1992 SCALE (2) 179

ACT:

Civil Service-Mines and Geology Department-Post of Deputy Drilling Engineer-Promotion-Requirements-Better educational qualification whether obviates the prescribed practical experience-Non-mentioning of performance of what work from time to time in the pleadings before the Court-Affidavit at last moment of hearing in Supreme Court-Effect of.

Rajasthan Mines and Geological Service Rules, 1960-Schedule-Entry 6-Post of Deputy Drilling Engineer-Promotion-Requirements-Better educational qualification whether obviates the prescribed practical Experience-Absence of what work performed in the pleadings before the Courts-Affidavit at last moment of hearing in Supreme Court-Effect of.

HEADNOTE:

The appellant in C.A. Nos. 2946-47 of 1992 was appointed as an Assistant Engineer in the State Woolen Mill on 18.7.1992. On 12.12.1975, upon being declared surplus therein, he was appointed as an Assistant Mechanical Engineer in the Mines and Geology Department of the State Government (the first respondent).

On 25.9.1973, the appellant in C.A. No. 2948 of 1992 was appointed as an Assistant Mechanical Engineer in the Mines and Geology Department.

On 30.9.1977, two posts of Deputy Drilling Engineer fell vacant. The appellants filed writ petitions in the High Court praying that the State Government be directed to consider their cases for promotion to the post of Deputy Drilling Engineer and, if found suitable, to be so promoted with effect from the date upon which the vacancies occurred. The appellant also challenged the appointments of the third and fourth respondents to take charge of the vacant posts of Deputy Drilling Engineer on the ground that the respondents were much junior to them.

The promotions to the post of Deputy Drilling Engineer were regu-

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lated by Entry 6 of the Schedule to the Rajasthan Mines and Geological Service Rules, 1960. It was amended on 20.5.1977 and again on 11.8.1982.

On 17.2.1984 the State Government issued an order banning promotions to the post of Deputy Drilling Engineer, for the period 20.5.1977 to 31.3.1983.

On 7.3.1984, the writ petitions were allowed, inter alia, holding that the appellants were eligible for promotion to the post of Deputy Drilling Engineer as they possessed the necessary qualification and experience. The Single Judge of the High Court rejected the contention of the respondents that the amendment to the Entry 6 of the Schedule was retrospective in operation and held that it did not debar the appellants from being considered for promotion against vacancies existing before 6.11.1982.

Appeals were filed by the respondents. Pending the disposal of the appeals, on 17.12.1986, the third and fourth respondents were promoted to the posts of Deputy Drilling Engineer upon a temporary basis and they were confirmed on 19.12.1987. On the same day, the appellants were promoted to the post of Mechanical Engineer.

The Division Bench of the High Court rejected the contention of the appellants that the experience of five years prescribed thereby was only for diploma-holders and there was no requirement of any experience of drilling or of maintenance of drilling machines for degree-holders and set aside the judgment of the Single Judge.

The present appeals were filed by special leave challenging the judgment of the Division Bench of the High Court.

The appellants contended that it was clear from the Entry 6 of the Schedule that there was no necessity of five year's experience of drilling or of maintenance of drilling machines in the case of degree-holders such as the appellants; that the experience of five years that was prescribed was only in respect of diploma-holders; and that the appellants possessed the necessary experience of five years in the maintenance of drilling machines.

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Dismissing the appeals, this Court

HELD : 1.01. The qualification that an Assistant Drilling Engineer or an Assistant Mechanical Engineer had to possess for being promoted to the post of Deputy Drilling Engineer was (a) a diploma in Mechanical Engineering and (b) five year's experience of drilling or of maintenance of drilling machines. The qualification prescribed was two-fold : educational and practical experience. A better educational qualification does not obviate the need for the prescribed practical experience.

(887F)

1.02. The Entry 6 of the Schedule speaks of the practical experience that each Assistant Mechanical Engineer must possess to qualify him for promotion to the post of Deputy Drilling Engineer, it does not say that every Assistant Mechanical Engineer of five years standing would qualify for such promotion.[888F]

1.03. The acquisition of a qualification cannot be equated with practical experience. The fact that the appellant (in C.A. No. 2948 of 1992) had acquired the additional qualification does not ipso facto lead to the conclusion that he had or must have had the requisite practical experience prescribed in the Entry 6 of the Schedule. [889D]

1.04. Neither before the Division Bench nor in the Special Leave Petitions have the appellants stated what work they did from time to time since their appointment as Assistant Mechanical Engineers. Such an averment would have shown with precision whether or not they had five years'

experience of maintenance of drilling machines. That they did not so ever even after the Division Bench dismissed their writ petitions on the very ground must be considered significant. [887G-888A]

1.05. At the very last moment of the hearing the appellant (in C.A. Nos. 2946-47 of 1992) filed an affidavit which stated that he had been posted at the Central Workshop ever since he was absorbed in the Mines and Geology Department and his job had included the repair and maintenance, inter alia, of drilling rigs. This last minute attempt to cure the defect cannot be countenanced as the averment cannot at this stage be confirmed or denied. [889A-B]

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JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 2946-47 of 1992.

From the Judgment and Order dated 28.4.1988 of the Rajasthan High Court in D.B. Civil Special Appeals No. 199 and 203 of 1984.

WITH

Civil Appeal No. 2948 of 1992.

T.S.K. Iyer, Manu Mridul, R.S. Suri (NP) and S.K. Jain for the Appellant.

Arun Jaitley, Aruneshwar Gupta, Indra Makwana and Rajendra Mal Tatia for the Respondents.

The Judgment of the Court was delivered by BHARUCHA, J. Leave to appeal granted.

These two appeals arise upon a common judgment delivered by a Division Bench of the Rajasthan High Court and they can be decided together. By that judgment the Division Bench set aside the judgment and order of the learned Single Judge upon the writ petitions filed by the appellants in these two appeals and dismissed the same.

The appellant Bhagirathdan (in S.L. Ps (C) Nos. 10451-52 of 1988) was appointed an Assistant Engineer in the State Woolen Mill at Bikaner on 18th July 1972. Upon being declared surplus therein he was appointed an Assistant Mechanical Engineer in the Mines and Geology Department of the State of Rajasthan (the first respondent) on 12th December 1975. On 25th September 1973 the appellant Himmat Singh (in S.L.P (C) No.11711 of 1988) was appointed an Assistant Mechanical Engineer in the Mines and Geology Department.

Between 20th May 1977 and 11th August 1982 promotions to the post of Deputy Drilling Engineer were regulated by Entry 6 of the Schedule to the Rajasthan Mines and Geological Service Rules, 1960, as amended on 20th May 1977. The said Entry read thus :

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Sl. No.	Name of the Post.	Method of recruitment with percentage age	Minimum qualification & experience for direct recruitment.	Post of posts from which appointment by promotion is to be made.	Minimum qualification & experience required for promotion.	Remarks
1	2	3	4	5	6	7

6. Deputy 100% by
Drilling promotion
Engineer

1. Asstt. Drilling Diploma in
Engineer. Mechanical
2. Asstt. Mechani- Engineering
cal Engineer with 5 years
experience of
maintenance of
drilling machin

es on the post
mentioned in
col.5 and 7
year's exper-
ience of dril-
ling in case of
Matriculates .

On 30th September 1977 two posts of Deputy Drilling engineer fell vacant. The appellants filed writ petitions in the Rajasthan High Court praying that the State Government be directed to consider their cases for promotion to the post of Deputy Drilling Engineer and, if found suitable, to be so promoted with effect from the date upon which the vacancies occurred. The appellants also challenged the appointment of the third and fourth respondents to these appeals to take charge of the vacant posts of Deputy Drilling Engineer on the ground that these respondents were much junior to them.

On 11th August 1982, the State Government issued a notification amending the said Entry 6 of the Schedule and thereby, in column 5, the words "Assistant Mechanical Engineer" were deleted. On 17th February 1984 the State Government issued an order banning promotions to the post of Deputy Drilling Engineer in the Mines and Geology Department for the period 20th May 1977 to 31st March 1983.

On 7th March 1984 the writ petitions were allowed. The learned Single Judge held, inter alia, that the appellants were eligible for promotion to the post of Deputy Drilling Engineer as they possessed the necessary qualification and experience. The learned judge rejected the contention on behalf of the respondents that the amendment to the said Entry 6 of the Schedule was retrospective in operation and held, therefore, that it did not debar the appellants from being considered for promotion against vacancies existing before 6th November 1982. The order of the learned Judge directed the State Government to fill the vacancies in the post of Deputy Drilling Engineer by making a selection from amongst persons who were eligible for consideration at the time when the vacancies occurred.

Appeals were filed by the respondents. Pending the disposal of the

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appeals, on 17th December 1986, the third and fourth respondents were promoted to the post of the Deputy Drilling Engineer upon a temporary basis (which appointments, we are told at the Bar, were confirmed on 19th December 1987). On the same day, the appellants were promoted to the post of Mechanical Engineer.

By the Judgment and order under appeal the Division Bench considered the qualifications of the appellants for appointment to the post of Deputy Drilling Engineer having regard to what the said Entry 6 of the Schedule prescribed during the period between 20th May 1977 and 11th August

1982. The Division Bench rejected the contention on behalf of the appellants that the experience of five years prescribed thereby was only for diploma-holders and there was no requirement of any experience of drilling or of maintenance of drilling machines for degree-holders. The Division Bench found that the appellants had not averred in their writ petitions that they had five years' experience of drilling or of maintenance of drilling machines on 30th September 1977, when the two posts of Deputy Drilling Engineer fell vacant, or before the amendment of the said Entry 6 of the Schedule by deleting the words "Assistant Mechanical Engineer" there from. Accordingly, the Division Bench set aside the judgment of the learned Single Judge and dismissed the appellants' writ petitions.

It was contended before us by learned counsel for the appellants that it was clear from the said Entry 6 of the Schedule that there was no necessity of five years' experience of drilling or of maintenance of drilling machines in the case of degree-holders such as the appellants. The experience of five years that was prescribed was only in respect of diploma-holders. As we read the said Entry 6 of the Schedule, the qualification that an Assistant Drilling Engineer or an Assistant Mechanical Engineer had to possess for being promoted to the post of Deputy Drilling Engineer was (a) a diploma in Mechanical Engineering and (b) five years' experience of drilling or of maintenance of drilling machines. The qualification prescribed was thus, two-fold: educational and practical experience. A better educational qualification does not obviate the need for the prescribed practical experience.

It was contended in the alternative that the appellants possessed the necessary experience of five years in the maintenance of drilling machines. Neither before the Division Bench judgment nor in the Special Leave

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Petitions have the appellants stated what work they did from time to time since their appointment as Assistant Mechanical Engineers. Such an averment would have shown with precision whether or not they had five years' experience of maintenance of drilling machines. That they did not so aver even after the Division Bench dismissed their writ petitions on the very ground must be considered significant.

Reliance was placed upon a pamphlet issued by the Rajasthan Public Service Commission in respect of the recruitment of an Assistant Mechanical Engineer. It stated that the candidates' qualification should be a degree in Mechanical Engineering and three years' experience in "maintenance and repair of compressor, tractors, material handling equipments and other drilled mining machineries". The nature of duties that an Assistant Mechanical Engineer would have to perform was also stated in the pamphlet, thus: he would have "responsibility for all the machines and other mining equipments of the department at various working sites and in various stores under his charge and maintenance and repairs of all the equipments and machineries of mining and prospecting under his charge". Reliance was also placed upon a Manual published by the Department of Mines and Geology, Rajasthan, regarding the functions and duties of its organisation. That Manual states that the duties of Assistant Mechanical Engineers include assistance to "the Mechanical Engineer in all matters pertaining to maintenance and repair of machinery in the Department". It was submitted that the appellants had performed these duties and it was clear, therefore, that they had prescribed practical experience.

The said Entry 6 of the Schedule speaks of the practical experience that each Assistant Mechanical Engineer must possess to qualify him for promotion to the post of Deputy Drilling Engineer; it does not say that every Assistant Mechanical Engineer of five years standing would qualify for such promotion. The appellants should, therefore, have averred what they had in fact done as Assistant Mechanical Engineers and not relied only upon what Assistant Mechanical Engineers might expect to be called upon to do, as set out in the aforementioned pamphlet and manual.

In the case of the appellant Bhagirathdan, our attention was drawn to the averment made by him in reply to the respondents' submission that he was not eligible to the post of Deputy Drilling Engineer in July 1977. Reliance was placed by him upon the specification of an Assistant

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Mechanical Engineer's duties in general terms in the aforementioned pamphlet but no attempt was made to give the lie to the respondents' submission by making a detailed and precise specification of his experience in the maintenance of drilling machines. At the very last moment of the hearing before us Bhagirathdan filed an affidavit which stated that he has been posted at the Central Workshop ever since he was absorbed in the Mines and Geology Department and his job had included the repair and maintenance, inter alia, of drilling rigs. This last minute attempt to cure the defect cannot be countenanced as the averment cannot at this stage be confirmed or denied.

In regard to the appellant Himmat Singh, our attention was drawn to the fact that it was averred by him, and not denied, that he had acquired the qualification of Drilling Engineer from the Institution of Engineers, Calcutta, in the year 1976 and had been permitted by the Assistant Secretary, Mines, to take that examination. The acquisition of a qualification cannot be equated with practical experience. The fact that Himmat Singh had acquired this additional qualification does not ipso facto lead to the conclusion that he had or must have had the requisite practical experience prescribed in the said Entry 6 of the Schedule.

In the result, the appeals are dismissed. There shall be no order as to costs.

V.P.R.

Appeals dismissed

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