

PETITIONER:
MADHYA PRADESH ELECTRICITY BOARD

Vs.

RESPONDENT:
S.S. MODH & OTHERS

DATE OF JUDGMENT: 03/09/1997

BENCH:
K. VENKATASWAMI, V. N. KHARE

ACT:

HEADNOTE:

JUDGMENT:
Present:

Hon'ble Mr. Justice K. Venkataswami

Hon'ble Mr. Justice V.N. Khare

G.L. Sanghi, Sr. Adv., Vivek Gambhir and S.K. Gambhir, Advs.
with him for the appellant

S.S. Khanduja, Adv. for the Respondents

J U D G M E N T

The following Judgment of the Court was delivered:

K. Venkataswami J.

The first respondents in the appeal moved the High Court of Madhya Pradesh at Jabalpur, by filing M.P. No. 281/80 under Article 226/227 of the Constitution of India challenging the correctness of the order dated 18.4.1979 and for a positive direction to the appellant to absorb him as Assistant Engineers like all other Junior Engineers belonging to his cadre in the Chambal Hydel Project and for consequential benefits accruing therefrom.

Brief facts leading to the filing of the said Miscellaneous Petition may now be noted.

The first respondent was appointed as a Sub-Overseer in the year 1951 in Chambal Hydel Scheme, Gandhisagar, by the erstwhile State of Madhya Bharat. In the year 1954, he was promoted as Overseer by the State Government. Upon re-organization of the State of Madhya Pradesh, the first respondent was absorbed as Overseer in the year 1956 and as such he was working in Chambal Hydel Scheme. While so, on 4.12.1960, a decision was taken for the transfer of Gandhisagar Power Station to the appellant Board (Madhya Pradesh Electricity Board), hereinafter referred to as the 'Board' with effect from 19.11.1960. It was also decided that the Chambal Project Authorities will maintain the Power Station on behalf of the appellant till 31.3.1961. It was also decided that the transmission lines and sub-stations be handed over by the Chambal Project Authorities to the Board by 20.1.1961 and with effect from the said date all employees associated with the execution of the work pertaining to the transmission system and sub-stations will be deemed to have been provisionally transferred to the appellant Board.

The services of the first respondent were transferred

visionally in the light of the decision taken by the State Government as mentioned above to the Board with effect from 1.4.1961 along with other employees of Chambal Project. At the time of absorption, the respondent no. 1 was holding the post of Overseer (S.G.) in the pay-scale of Rs. 290-370/-. The post of Chambal Project was equated with the post of overseer under the Board carrying the pay-scale of Rs. 170-315/-. However, as the pay-scale of Overseer (S.G.) was higher than the pay-scale of the post of Supervisor / Overseer under the Board, it was decided to treat the post of Overseer (S.G.) as isolated so that the effect, and order was passed on 10.6.63. As the transfer of the services of the employees of the Chambal Hydel Project/Scheme to the Board was only provisional, the employees were required to exercise through option in writing within 30 days of the Notification dated 22.1.1962. Such employees were given the option either (i) to accept the services under the M.P. Electricity Board in accordance with the Board's Service Regulation and Conditions of Service as a whole or (ii) if the terms offered by the Board are not acceptable to treat their services terminated after expiry of 30 days from the date of exercising such option. Accordingly, the first respondent opted for the service of the Board and gave a declaration in writing on 21.2.1962 accepting the services under the M.P. Electricity Board in accordance with the Board's Service Regulations & Conditions of Service as a whole.

However, after exercising the option as above, first respondent has been claiming that he ought to have been absorbed as Assistant Engineer from 1.4.1961 as according to him all his other colleagues, except himself, were absorbed as Assistant Engineers. This claim of the first respondent was not accepted by the Board right from the beginning on the ground that he did not possess the minimum educational qualification required for being appointed as Assistant Engineer under the Board. Hence the impugned communication dated 18.4.1979 was sent to him. The letter dated 18.4.1979 reads as follows :

"Sub: Representation of Shri SS
Modh Line Sup. Cr. I.

Shri S.S. Modh, LS Cr. I has passed two years course for Electrical Engg. Examination 1949 from the Gambhirmal Industrial Institute, Indore. The said two years course is not recognized by the Institute of Engineers (India). The Secretary, M.P.E. Board of Technical Education, Bhopal has also confirmed that the two years course for Electrical Engg. Examination 1949 from the Gambhirmal Industrial Institute, Indore is not equivalent to the three years diploma course. In view of above, Shri S.S. Modh is not eligible for promotion to the post of Assistant Engineer. As regards his absorption under the MPEB, it has been examined and seen that no injustice was done in his case. He may please be informed suitably.

S/- Jt. Secretary (T)
M.P. Electricity Board
Central Training Institute

M.P. Electricity Board"

However, as and when his promotion was due, he was given promotion in a different manner not in the regular promotional avenue so as to safeguard his financial interest.

It is under these circumstances the first respondent moved the High Court by filing M.P. No.281/80.

The Board brought to the notice of the High Court the reason for not absorbing the first respondent as Assistant Engineer and it was also brought to the notice of the High Court that all others who were absorbed as Assistant Engineers were either degree holders or holders of diploma recognized by the Institute of Engineers (India). It was also made clear before the High Court that the promotions given to the first respondent has nothing to do with the representations made by the first respondent claiming to be absorbed as Assistant Engineer.

The High Court on a wrong premise held that the first respondent and others formed a consolidated cadre and were discharging identical duties and, therefore, the Board was not justified in discriminating the first respondent in not absorbing him as Assistant Engineer. Before the High Court, Annexures P-3 and P-5 corresponding to Annexures VII and VIII filed herein were produced to show that Overseers (S.G.) and Junior Engineers formed two different categories. However, the High Court misconstruing the documents erroneously held that they formed one category. The High Court in this connection observed as follows:-

"From documents (Annexures P-3 and P-5), it appears that it was intended to create posts of Overseer (S.G.) by reducing equal number of posts of Junior Engineers and as long as this was not done, select grade Overseers were to be counted against the Junior Engineer's post. Otherwise, Overseers were having the prospect of being promoted to the post of Junior Engineers. Thus, both Overseers (S.G.) and junior Engineers formed a consolidated cadre. They were also classified as belonging to class III Non-Gazetted cadre. These facts are stated in paras 5, 6 and 7 of the petition and are not disputed."

(Emphasis supplied)

From a reading of the above extracted portion from the High Court judgment. It will be seen that the High Court fell into error in treating Overseers (S.G.) and Junior Engineers as one cadre. We have perused the Annexures VII and VIII and it is seen that Overseers were promoted to the post of Overseers (S.G.) which was on a separate pay-scale. It appears, for want of vacancies in Overseers (S.G.), temporarily the persons selected as Overseers (S.G.) were counted against Junior Engineers' post. This was wrongly construed by the High Court to mean that Overseers (S.G.) and Junior Engineers formed one cadre.

The High Court also has noticed the fact that the first respondent was not possessing the minimum qualification for the purpose of Assistant Engineer. That was an admitted position as the High Court itself observed as follows:

"It appears that the respondent-Board's stand is that it has

prescribed some minimum educational qualifications for the post of Assistant Engineer, which qualification the petitioner does not have. This position is also not disputed by the petitioner who submits that educational qualification are relevant for purposes of direct recruitment only and not for absorption or promotion."

The High Court did not rightly accept the submission that the minimum qualification was relevant for direct recruitment only and not for absorption or promotion.

The High Court also noticed the fact that the first respondent did not object to his absorbing as an Overseer (S.G.) and accepted the same without any protest. It was also brought to the notice of the High Court that all his representations before the authorities were for his promotions. The appellant also raised the question of laches on behalf of the first respondent in approaching the court, the delay of nearly 19 years.

The High Court proceeded on a wrong premise that the first respondent and others who were absorbed as Assistant Engineer belonged to same cadre and misconstruing the promotion given in due course by the Board as one recognizing the merit in the case of the first respondent. The High Court granted the relief directing the Board to absorb the first respondent as Assistant Engineer right from the date of absorption, namely 1.4.1961 and also to give all consequential benefits including the monetary benefits.

We have notice that the first respondent admittedly was not qualified to be appointed as Assistant Engineer and, therefore, he has no case to claim to be absorbed as Assistant Engineer. The requisite qualification was given below :-

"Candidate must be a Graduate in Elec. & Mech. Engg. from a recognised College or University or the Diploma in Electrical Engineering of the Indian Institute of Science, Bangalore; the Degree or Diploma of any other Institution in Elec. Engg. will be considered provided the same is accepted by the Institute of Engineers (India) as exempting from Section A & B of the Associate Membership Examination. Candidates who have passed Section A & B of the A.M.I.E. Examination provided they have basis Engineering qualification gained after matriculation or a three or four years Collegiate Engineering Course will be considered."

The first respondent was not possessing the requisite qualification.

The High Court also proceeded on a wrong assumption that certain allegations made by the first respondent in the Writ Petition had not been controverted by the appellant herein. Factually, all the allegations were controverted in the return filed on behalf of the appellant before the High Court. We have perused the affidavit and the return filed by the first respondent and the appellant respectively before

the High Court and we are satisfied that the High Court was not right in observing that allegations in paragraph 5 to 7 of the Writ Petition were not controverted by the Board.

We have also noticed that the employees of the Project were given option to accept the service of the Board without any objection and to serve in accordance with the Board's Service Regulations & Conditions of Service as a whole. The first respondent has submitted written declaration to that effect. When the service regulations provide that candidates holding engineering degree or equivalent thereto to be appointed as Assistant Engineer, the first respondent without possessing such qualification cannot put forward a claim to be observed as Assistant Engineer. His claim lacks foundation.

The High Court was aware of the fact that the first respondent did not possess the minimum qualification for being absorbed as Assistant Engineer. Nevertheless the High Court has granted relief by observation as follows:-

"The only reason for treating the petitioner separate from others in his category, is his lesser educational qualifications. This, however, is not permitted. Under the circumstances, it must be held that the petitioner has been treated illegally by the respondent-Board by not absorbing him as an Assistant Engineer like all others in his category. The petitioner is, thus, clearly entitled to the benefits from the same date when all others in his category have been given."

The above observation cannot be sustained in the face of the admitted fact that the first respondent has no qualification required for being appointed as Assistant Engineer.

In the circumstances, we have no hesitation to hold that the judgment of the High Court cannot be sustained and accordingly the same is set aside. The appeal is allowed. However, there will be no order as to cost.

While granting interim stay, this Court has directed the appellant to deposit certain amounts in a nationalised bank and permitted the first respondent to withdraw the amount of interest accruing therefrom. As we are allowing the appeal, the appellant will be entitled to withdraw the deposited amount and in the facts of this case, the appellant shall not recover the interest received by the first respondent, accrued from the amount deposited by the appellant.