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CERTIFIED COMPANY

HARYANA POWER GENERATION CORPORATION LIMITED

Regd. Office: C-7, Urja Bhawan, Sector-6, Panchkula
Corporate Identity Number: U45207HR1997SGC033517
Website: www.hpgcl.gov.in
Telephone No. 0172-5023407 Fax No. 0172-5022432



From

Chief Engineer/Admn.,
HPGCL, Panchkula.

To

1. All Chief Engineers in HPGCL.
2. All Financial Advisors & CAO in HPGCL.
3. SE/FTPS, HPGCL, Faridabad.

Memo No. Ch.104/HPGC/ENG/HPU/C-2023/45/

Dated: 03/11/2023.


Subject: -1. CWP No. 15075 of 1999 titled as Sh. Rajender Prasad Garg Vs UHBVN & Others.
2. CWP No. 6406 of 2022 titled as Sandeep Kumar Vs State of Haryana & Others.
3. LPA No. 1543 of 2016 titled as Sh. Krishan Kumar & Others Vs HVPNL & others.

Kindly refer to the subject noted above.

In this context, enclosed please find herewith a copy of Memo No. 169/LB-2(195) dated 06.10.23 and Memo No. 31/LB-2(4) dated 10.10.23 and Memo No. 302/LB-2(48) dated 17.10.23 along with copies of judgments dated 02.05.2017, 13.07.23, 19.04.23 respectively, passed by Hon'ble High Court, Chandigarh in the subject cited cases, received from the office of LR/HPU, Panchkula for praying dismissal of similar court cases by placing reliance on the ibid judgments.

This issues with the approval of Chief Engineer/Admn., HPGCL.

DA/As above


Xen/Rectt-cum-LNO,
For Chief Engineer/Admn.,
HPGCL, Panchkula


Endst. No. Ch-104/HPGC/ENG/HPU/C-2023/45/

Dated: 03/11/2023

A copy of the same is forwarded to the following for information and further necessary action:-

1. Xen/IT, HPGCL, Panchkula with a request to upload the ibid judgments dated 02.05.2017, 13.07.23, 19.04.23 along with office Memo dated 06.10.23, 10.10.23 and 17.10.23 (copies enclosed) on the official website of HPGCL, please.

DA/As above.


Xen/Rectt-cum-LNO,
For Chief Engineer/Admn.,
HPGCL, Panchkula

CC
PS to Chief Engineer/Admn., HPGCL, Panchkula.

229 XEN/IT
06-11-2023



HARYANA VIDYUT PRASARAN NIGAM LIMITED

Regd. Office : Shakti Bhawan, Plot No. C-4, Sector-6, Panchkula 134109

Corporate Identity Number : U40101HR1997SGC033683

Website : www.hvpn.org.in, E-mail: companysecv@hvpn.org.in

Correspondence E-mail - lr@hvpn.org.in, hvpnlegalofficer2@gmail.com

Telephone No. - 0172-2560769, 0172-2571841

To

1. The CE/Admn. HVPNL, Panchkula
2. The CE/Admn. UHBVN, Panchkula
3. The CE/Admn., DHBVN, Hisar
4. The CE/Admn. HPGCL, Panchkula.

Memo No. 167/LB-2(195)

Dated: 06.10.2023

Subject: CWP No. 15075 of 1999 titled as Sh. Rajender Prasad Garg Vs UHBVN & Others. RB

Attention is drawn to judgment dated 02.05.2017 passed in subject cited case vide which the Hon'ble High Court dismissed the writ petition filed by Sh. Rajender Prasad Garg against Nigam.

The operative part of judgment dated 02.05.2017 is given here under:-

"The petitioner is stated to have appointed as Asstt. Sub Station Attendant on regular basis on 8.9.1970. He was promoted to the post of Sub Station Attendant and Junior Engineer on 24.8.1971 and 3.4.1973. Thereafter, he was promoted to the post of Assistant Engineer on 22.8.1985 on ad-hoc basis. At the same time, 3rd respondent who was appointed on 6.4.1973 as Line Superintendent was regularly promoted to the post of Assistant Engineer on 2.3.1985. Having regard to the entry into service of the petitioner and 3rd respondent, the petitioner is senior to 3rd respondent. Whatever benefit is granted to 3rd respondent is to be extended to the petitioner. In this regard, the petitioner is stated to have made number of representations, no action has been taken by the official respondents. The petitioner had the cause of action on 2.3.1985 on which date 3rd respondent was promoted to the post of Assistant Engineer on regular basis and as and when the petitioner was promoted to the post of Assistant Engineer on 22.8.1985 on ad-hoc basis. In the absence of challenge to the promotion of 3rd respondent, the petitioner is not entitled for promotion on par with 3rd respondent having regard to the cause of action accrued to the petitioner in the month of March and August 1985. The petitioner should have approached this Court in the year 1985 or 1986. Whereas the present petition was filed only in the year 1999. Supreme Court in the case of P. Sada Shiva Swami v. State of Tamil Nadu; 1975 (1) SCC 152 held that in respect of promotion and seniority one must approach Court within reasonable period of six months or one year. Thus, the claim of the petitioner is highly belated and there is delay and laches on the part of the petitioner.

Accordingly, petition stands rejected".

Diary No. 1442 Xen/Rectt.

Dated... 17/10/23

Memo No. 6950
13/10/23

General
& TRG

CE/Admn.,


17/10/23

It is an important judgement on the dismissal of writ petition applying the principle of delay and laches.

The above judgement be circulated to offices under your control for praying dismissal of similar cases by placing reliance on the judgment dated 02.05.2017 passed by Hon'ble High Court. It is also requested to host the Judgment dated 02.05.2017 on the website of concerned Power Utility. A complete copy of judgment dated 02.05.2017 is enclosed herewith for ready reference.

This issue with the approval of L.R.

DA/As Above


Legal Officer,
HPU, Panchkula.

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.15075 of 1999

Date of Decision:02.05.2017

Rajendra Prasad Garg

... Petitioner

Vs.

Haryana Vidyut Prasaran Nigam Ltd. and others

... Respondents

CORAM : HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present : Mr. V.K. Jindal, Advocate for the petitioner.

Mr. Vivek Chauhan, Advocate for respondents No.1 and 2.

P.B. BAJANTHRI J. (Oral)

The petitioner has sought for writ of mandamus to consider his name for promotion to the post of Assistant Engineer from the date of 3rd respondent's promotion and further questioned the validity of letter dated 20.7.2000 (Annexure P-11) relating to grant of time scale for counting ad-hoc service rendered in the capacity of Assistant Engineer and further sought for direction that he is entitled for consequential benefits like arrears of pay etc.

The petitioner is stated to have appointed as Asstt. Sub Station Attendant on regular basis on 8.9.1970. He was promoted to the post of Sub Station Attendant and Junior Engineer on 24.8.1971 and 3.4.1973. Thereafter, he was promoted to the post of Assistant Engineer on 22.8.1985 on ad-hoc basis. At the same time, 3rd respondent who was appointed on 6.4.1973 as Line Superintendent was regularly promoted to the post of Assistant Engineer on 2.3.1985. Having regard to the entry into service of the petitioner and 3rd respondent, the petitioner is senior to 3rd respondent. Whatever benefit is granted to 3rd respondent is to be extended to the

CWP No.15075 of 1999

-2-

petitioner. In this regard, the petitioner is stated to have made number of representations, no action has been taken by the official respondents. The petitioner had the cause of action on 2.3.1985 on which date 3rd respondent was promoted to the post of Assistant Engineer on regular basis and as and when the petitioner was promoted to the post of Assistant Engineer on 22.8.1985 on ad-hoc basis. In the absence of challenge to the promotion of 3rd respondent, the petitioner is not entitled for promotion on par with 3rd respondent having regard to the cause of action accrued to the petitioner in the month of March and August 1985. The petitioner should have approached this Court in the year 1985 or 1986. Whereas the present petition was filed only in the year 1999. Supreme Court in the case of P. Sada Shiva Swami v. State of Tamil Nadu, 1975 (1) SCC 152 held that in respect of promotion and seniority one must approach Court within reasonable period of six months or one year. Thus, the claim of the petitioner is highly belated and there is delay and laches on the part of the petitioner.

Accordingly, petition stands rejected.

02.05.2017
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned Yes/No

Whether reportable Yes/No



HARYANA VIDYUT PRASARAN NIGAM LIMITED

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(102)

To

1. The CE/Admn., HVPNL, Panchkula.
2. The CE/Admn., HPGCL, Panchkula.
3. The CE/Admn., UHBVN, Panchkula.
4. The SE/Admn., DHBVN, Hisar.

Memo No. 31/UB-2(4)
Dated: 10.10.2023

Subject: CWP No. 6406 of 2022 titled as Sandeep Kumar Vs State of Haryana & Ors.

The aforesaid writ petition was filed under Article 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing the impugned order dated 11.03.2022 whereby services of the petitioner were dispensed with as his B.Com degree on the basis of which he was appointed on the post of LDC was found fake with a further prayer to appoint him on lower post.

The Hon'ble High Court dismissed the writ petition with no order as to the costs vide judgment dated 13.07.2023. The operative part of judgment dated 17.05.2023 is given here under:-

11. After carefully reading these conditions, the Petitioner had accepted the offer of appointment vide his acceptance letter dated 03.06.2015 and submitted the educational certificates along with acceptance letter. On the basis of these Certificates/Degree, the petitioner was given appointment on the post of Lower Division Clerk. Out of these Educational Qualification Certificates, the Degree of B. Com. was shown to be obtained by the petitioner from Eastern Institute of Integrated Learning in Management, University Sikkim (EILM). On verification from EIIM University, Sikkim, the Dy. Director/Registrar (IC), EIILMU, Higher Education, Gangtok vide reference No. 238/HE/HRDD dated 09.10.2020 has informed that EIILM University, Sikkim do not have any B. Com. Graduate and B. Com Course was first time started in the Year 2014-15 only and the University got closed down by the Year 2015. It is undisputed fact that the Petitioner's Degree of B. Com. has been shown to be passed in the Session 2011-12 when no such Course of B. Com. was existing in EIILM University, Sikkim which clearly shows that the petitioner has produced a Fake Degree of B. Com. for getting service on the post of Lower Division Clerk under oustees quota which is a clear fraud with the respondent and violation of conditions as mentioned in his offer of appointment.

12. It is crystal clear that the petitioner had secured appointment on the post of Lower Division Clerk based on a degree which was found to be fake and therefore, as per well settled preposition of law, the action of the respondents of dispensing with his services cannot be faulted. In view of settled preposition of law in Avinash

Xen/Recit.

Dated.....17/10/23.....

Memo No.....6951.....
Dated.....13/10/23.....
DS/Estt.
US/NGE
DG/General
E&T&M
HR&TRG
Recit.

CE/Admn.

D. Mandivikar case (supra), the petitioner is not entitled for any equitable relief of appointment on a lower post as per his qualification because no sympathy or equitable consideration can come to rescue of such a person, who had secured service by playing fraud.


13. In view of the discussions made hereinabove, this Court does not find any merit in the present petition, as such the same stands dismissed, with no orders as to costs.

It is an important judgement on the issue that a person who has secured appointment by playing fraud on the basis of a fake degree cannot be entitled for any relief of appointment.

The above judgement be circulated to offices under your control for praying dismissal of similar cases by placing reliance in similarly situated cases praying dismissal of such cases in terms of law laid down by the Hon'ble High Court and also host the same on website of respective utility/corporation.

This issue with the approval of L.R.

DA: As above


Legal Officer
HPU, Panchkula

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2023:PHHC:126610

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-6406-2022 (O&M)
DECIDED ON: 13th JULY, 2023

SANDEEP KUMAR

...PETITIONER

VERSUS

STATE OF HARYANA AND OTHERS

...RESPONDENTS

COARM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Anshul Sharma, Advocate
for the Petitioner.

Mr. Jagbir Malik, Advocate
for the Respondents.

SANDEEP MOUDGIL, J

1. The jurisdiction of this Court under Articles 226/227 of the Constitution of India, has been invoked for issuance of a writ in the nature of *Certiorari* for quashing the impugned order dated 11.03.2022 (Annexure P-9) passed by respondent no. 2 whereby the services of the petitioner have been dispensed with.

2. Brief facts emanating for the disposal of the present petition are that the petitioner was having 115 Kanal 11 Marla of land in revenue estate of the village Dusani. In the Year, 2014, for setting up of Deen Bandhu Chotu Ram Thermal Power Plant, Yamuna Nagar, Government of Haryana has acquired land of village Dusani. As per the Rehabilitation and Resettlement Policy dated 09.11.2010 (Annexure P-10) one member of family of above 18 years, whose land is acquired for the project, is entitled

CWP-6406-2022 (O&M)

for Job based on his educational qualification. The petitioner had submitted his application form dated 23.06.2014 (Annexure P-1) for job under oustee quota, along-with the form, he had submitted Revenue Record of his Land and his Certificate of Matriculation, 10+2, Computer Course and B.Com. On the basis of his education qualification, the petitioner was offered an appointment on the post of LDC. Pursuant to the said offer letter, the petitioner has joined on the post of Lower Division Clerk on 03.06.2015. The petitioner has completed his two years' probation period and served the department with full sincerity and dedication. On 20.01.2022 the petitioner has submitted an application with a request to assign him the job as per his qualifications. On 25.01.2022, respondent No. 2 served a show cause notice (Annexure P-6) upon the petitioner, as the Mark Sheets/Degree submitted by him at the time of joining post of LDC (HO) was not found to be genuine. A reply dated 01.02.2022 (Annexure P-7) to the show cause notice was submitted wherein, it has been clearly mentioned that he had appeared before the Ld. Committee on 25.01.2022 and explained each fact and requested for change of his post as per his qualification of 10+2 but without taking into consideration his genuine request, the services of the petitioner have been dispensed with vide order dated 11.03.2022 (Annexure P-9).

3. It is asserted by learned counsel for the petitioner that the impugned order dated 11.03.2022 (Annexure P-9) is liable to be set aside because while passing the impugned order dated 11.03.2022, no proper procedure for imposing major penalty under Rule 7 of the Haryana Civil Services (Punishment and Appeal) Rules, 2016 has been followed. It is further asserted that the petitioner was appointed in the Year 2015 in return of acquisition of his land by the Government and has already completed his probation period and on the basis of the verification, which is done almost

CWP-6406-2022 (O&M)

after six years of his appointment, passing of impugned order dated 11.03.2022 by which his services have been dispensed with, is impermissible in the eyes of law. The assertion is that Respondent No.2 has neither taken into consideration the reply to show cause notice nor considered his request for change of his post as per his qualification, while passing the impugned order.

4. Learned counsel for the respondents has submitted that the impugned order has been passed by the competent authority, when the B. Com. Degree, on the strength of which, the petitioner was appointed on the post of Lower Division Clerk, was found fake and the appointment of the petitioner was subject to verification of his Character and Antecedents. It is further submitted that the land was acquired for setting up Deen Bandhu Chottu Ram Thermal Power, Yamunanagar for which notification under Section 4 of the Land Acquisition Act, 1894 was issued on 09.06.1982. There were total 135 land oustees, including the petitioner, whose land more than 2 acres, was acquired for the project. Initially, there was no policy for providing employment in lieu of the acquired land. The oustees of the project had represented for giving employment as was given to the land oustees of Rajiv Gandhi Thermal Power Project at Khedar (Hisar) and Indira Gandhi Super Thermal Power Project at Jharli (Jhajjar). The matter was considered by the Council of Ministers, Government of Haryana, and on 17.08.2014, the proposal for providing employment to the land oustees of Deen Bandhu Chottu Ram Thermal Power Plant, Yamunanagar was approved by them (Annexure R-2/1).

5. Learned counsel for the respondents has placed reliance upon the Judgment dated 22.09.2022 passed by this Court in CWP No. 23717 of 2021 titled as *Madhulika Versus Dakshin Haryana Bijli Vitran Nigam*

CWP-6406-2022 (O&M)

and others'. On the strength of the said judgment, he argues that the case of the petitioner is squarely covered by this Judgment as the petitioner therein had secured job on the basis of Degree of EIILM University, Sikkim too and when, on verification, it was found that her degree was fake, she was terminated and the same was upheld by this Court.

6. He further relied upon a Judgment passed by the Hon'ble Sikkim High Court in WP (C) No. 51 of 2018 titled as **'Jyoti Aggarwal Vs. State of Sikkim & Others'** filed by petitioner to declare her Degree of Master of Arts in Mathematics obtained by her from EIILM University Sikkim as legal, genuine and valid and also to quash written communication dated 08.08.2018 issued by Human Resources Development Department, Sikkim to C.M.P. College, Allahabad University, where she was employed. The Court had declared her degree as invalid as it was granted for a non-existent subject by EIILM University.

7. The counsel further relied upon the Judgment in case titled as **'Karan Singh Maharana Vs Assistant General Manager (HRD), OBC, New Delhi'** reported as 2007 (5) SLR 823, wherein the Court had upheld the termination of an employee who had produced Fake Certificate from a Fake University. Drawing attention to above cited Judgments and the *dictum* laid down therein squarely covering the case of the present petitioner. Accordingly, he prays for dismissal of the present petition.

8. The counsel for the respondents has also relied upon the Judgment passed by the Apex Court rendered in the case of **'Bank of India and another Versus Avinash D. Mandivikar and others'** reported as (2005) 7 S.C.C. 690, wherein it has been held that a person who seeks equity must come with clean hands. Equity jurisdiction cannot be exercised in the case of a person who gets appointment on the basis of a false certificate or by

CWP-6406-2022 (O&M)

playing fraud. No sympathy or equitable consideration can come to rescue of such a person. It was further held that compassion cannot be allowed to bend the arms of law where an individual acquired a status by practicing fraud. Fraud and collusion vitiate even the most solemn proceedings in any civilized system of jurisprudence.

9. Heard learned counsel for the parties, at length.

10. The petitioner was offered the post of Lower Division Clerk vide offer of appointment dated 28.05.2015 (Annexure P-4) on the strength of B.Com. Degree awarded by EIILM University, Sikkim. The relevant condition of the offer of appointment, reads as under:

“Para-2, It should be carefully noted by you that the terms and conditions for appointment will be as under:

a) It should be clearly understood that this appointment is temporary in nature and your service will be terminable by one month's notice by the HPGCL on the one side and you on the other side or payment of one month's pay plus allowances by either side in lieu thereof, except in case of misconduct of any description or unsatisfactory work when your services will be terminated without notice and without assigning any reason.

Para-6, this offer is being issued without verifying the character & antecedents in view of Haryana Govt. Letter No. 52/9/94-S (I) dated 07.06.1994 adopted by erstwhile Board Memo No. ch-266/NGE/G-420 dated 19.06.1995 and subsequently adopted by corporation after bifurcation of erstwhile HSEB into four different companies in view of Haryana Reforms Act, 1997. In case, subsequently, any

CWP-6406-2022 (O&M)

adverse facts come to the notice of Corporation/Nigam regarding your character and antecedents, your services are liable to be terminated without any notice."

11. After carefully reading these conditions, the Petitioner had accepted the same vide his acceptance letter dated 03.06.2015 and submitted the educational certificates along with acceptance letter. On the basis of these Certificates/Degree, the petitioner was given appointment on the post of Lower Division Clerk. Out of these Educational Qualification Certificates, the Degree of B. Com. was shown to be obtained by the petitioner from Eastern Institute of Integrated Learning in Management, University Sikkim (EILM). On verification from EIIM University, Sikkim, the Dy. Director/Registrar (IC), EILMU, Higher Education, Gangtok vide reference No. 238/HE/HRDD dated 09.10.2020 has informed that EILM University, Sikkim do not have any B. Com. Graduate and B. Com Course was first time started in the Year 2014-15 only and the University got closed down by the Year 2015. It is undisputed fact that the Petitioner's Degree of B. Com. has been shown to be passed in the Session 2011-12 when no such Course of B. Com. was existing in EILM University, Sikkim which clearly shows that the petitioner has produced a Fake Degree of B. Com. for getting service on the post of Lower Division Clerk under oustees quota which is a clear fraud with the respondent and violation of conditions as mentioned in his offer of appointment.

12. It is crystal clear that the petitioner had secured appointment on the post of Lower Division Clerk based on a degree which was found to be fake and therefore, as per well settled preposition of law, the action of the respondents of dispensing with his services cannot be faulted. In view of settled preposition of law in Avinash D. Mandivikar case (supra), the

CWP-6406-2022 (O&M)

petitioner is not entitled for any equitable relief of appointment on a lower post as per his qualification because no sympathy or equitable consideration can come to rescue of such a person, who had secured service by playing fraud.

13. In view of the discussions made hereinabove, this Court does not find any merit in the present petition, as such the same stands dismissed, with no orders as to costs.

July 13, 2023
sham

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No



HARYANA VIDYUT PRASARAN NIGAM LIMITED

Regd. Office : Shakti Bhawan, Plot No. C-4, Sector-6, Panchkula 134109

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To

Memo No. 7168
Date: 20/10/23
DS/Estt.
US/NGE
DS/General
DS/T&M
XEN/HR&TRG
XEN/Recit.

1. The CE/Admn. HVPNL, Panchkula
2. The CE/Admn. UHBVN, Panchkula
3. The CE/Admn., DHBVN, Hisar
4. The CE/Admn. HPGCL, Panchkula.


Memo No. 302 /LB-2(48)
CE/Admn.,

Dated: 17.10.2023

Subject: LPA No. 1543 of 2016 titled as Sh. Krishan Kumar & others Vs HVPNL & Others. ALMISA

Attention is drawn to judgment dated 19.04.2023 passed in subject cited case vide which the Hon'ble High Court dismissed the writ petition filed by petitioners.

The operative part of judgment dated 19.04.2023 is given here

under:-

"Admittedly, the appellants are claiming their right to be appointed against the 94 Assistant Linemen and 59 Shift Attendants posts (forming part of the 336 Assistant Linemen and 75 Shift Attendants posts), in which reserved category candidates were offered appointments after the decision of this Court on 03.12.2008 in CWP-17812-1997, when these posts remained unfilled, because 94 Assistant Linemen and 59 Shift Attendants did not join.

The appellants cannot rely on the order dt.03.12.2008 in CWP-17812-1997 for the reason that the said order had directed the then HSEB to consider appointments of at least 336 reserved category candidates for the posts of Assistant Linemen and 75 reserved category candidates for the posts of Shift Attendants from amongst candidates of reserved category who may have been ousted as a result of wrong appointments made in the reserved category on account of the fact that though the said candidates of the year 1997 selection belonged to the reserved category had obtained higher marks to the last general category candidate, and instead of being treated in the general category, they were appointed against reserved category posts.

Once, the HSEB/HVPNL had complied with the direction and offered appointments to the next 336 candidates of reserved category among Assistant Linemen and 75 candidates of reserved category among Shift Attendants for filling up 75 Shift Attendants posts, nothing more was required to be done by the respondents.

If some of these posts remained unfilled because the candidates offered such appointments by the respondents did not join, the only course open to the respondents was to take up the fresh selection because the validity of the waiting list of 1997, pursuant to which the appellants had secured marks, had ended in 1998.

Unless the waiting list in law remains live and valid, the appellants could not have been issued appointment orders on 15.11.2012 and 23.11.2012.

They were given such appointment orders only because of the contempt application No.COCP-2987-2012 seeking

Diary No. 1992 Xen/Recit.
Dated: 20/10/23

implementation of the order dt.22.12.2010 passed in CWP-22873-2010.

Once the said order came to be reviewed on 11.12.2014 and was recalled, the services of the appellants had to be terminated, and no fault can be found with the respondents for taking such action.

The learned Single Judge was also right in holding that some of the appellants could not have filed writs in the year 2010 seeking appointment in the vacancies arising out of the 1997 selection, when they were not parties to CWP-17812-1997, and had not approached the Court in 1997 to be considered in those vacancies.

We are of the opinion that the learned Single Judge had properly considered the matter in the right perspective and the order of the learned Single Judge does not warrant any interference by us in exercise of jurisdiction under the Letters Patent Appeal.

Accordingly, all the LPAs are dismissed.

No costs.

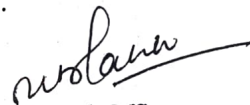
Pending application(s), if any, also stands disposed of accordingly".

It is an important judgment on issue that appellants had no right to be appointed an account of non joining of some candidates pursuant to a selection made way back in 1997 since the validity of the waiting list of the Year-1997 would be over by 1998 as per instruction dt. 20.01.1998.

The above judgment be circulated to offices under your control for praying dismissal of similar cases by placing reliance on the judgment dated 19.04.2023 passed by Hon'ble High Court. It is also requested to host the Judgment dated 19.04.2023 on the website of concerned Power Utility. A complete copy of judgment dated 19.04.2023 is enclosed herewith for ready reference.

This issue with the approval of L.R.

DA/As Above


Legal Officer,
HPU, Panchkula.

2023:PHHC:056119-DB

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

1. Krishan Kumar and others LPA-1543-2016
Versus Appellants
Haryana Vidyut Parsaran Nigam Ltd. and others
**** Respondents
2. Harbans Lal and others LPA-1564-2016
Versus Appellants
Haryana Vidyut Parsaran Nigam Ltd. and others
**** Respondents
3. Chand Ram and others LPA-1695-2016
Versus Appellants
Haryana Vidyut Parsaran Nigam Ltd. and others
**** Respondents
4. Satbir Singh and others LPA-2479-2016
Versus Appellants
Haryana Vidyut Parsaran Nigam Ltd. and others
**** Respondents
5. Krishan Lal and others LPA-2505-2016
Versus Appellants
Haryana Vidyut Parsaran Nigam Ltd. and others
**** Respondents
6. Suresh Singh and others LPA-2506-2016
Versus Appellants
Haryana Vidyut Parsaran Nigam Ltd. and others
**** Respondents

LPA-1543-2016 and other connected cases

- | | |
|--|---|
| <p>7.
Nar Singh</p> <p style="text-align: center;">Versus</p> <p>Haryana Vidyut Parsaran Nigam Ltd. and others</p> | <p>2023:PHHC:056119-DB</p> <p>LPA-207-2017</p> <p>.... Appellant</p> <p>.... Respondents</p> |
| <p>****</p> | |
| <p>8.
Rakesh Kumar</p> <p style="text-align: center;">Versus</p> <p>Haryana Vidyut Parsaran Nigam Ltd. and others</p> | <p>LPA-210-2017</p> <p>.... Appellant</p> <p>.... Respondents</p> |
| <p>****</p> | |
| <p>9.
Sat Pal and another</p> <p style="text-align: center;">Versus</p> <p>Haryana Vidyut Parsaran Nigam Ltd. and others</p> | <p>LPA-586-2017</p> <p>.... Appellants</p> <p>.... Respondents</p> |
| <p>****</p> | |
| <p>10.
Laxman</p> <p style="text-align: center;">Versus</p> <p>Haryana Vidyut Parsaran Nigam Ltd. and others</p> | <p>LPA-587-2017</p> <p>.... Appellant</p> <p>.... Respondents</p> |
| <p>****</p> | |
| <p>11.
Rajesh</p> <p style="text-align: center;">Versus</p> <p>Haryana Vidyut Parsaran Nigam Ltd. and others</p> | <p>LPA-348-2017</p> <p>.... Appellant</p> <p>.... Respondents</p> |
| <p>****</p> | |
| <p>12.
Bhagwam</p> <p style="text-align: center;">Versus</p> <p>Haryana Vidyut Parsaran Nigam Ltd.</p> | <p>LPA-449-2017</p> <p>.... Appellant</p> <p>.... Respondent</p> |

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Reserved on: 22.03.2023
Date of Decision: 19.04.2023

**CORAM: HON'BLE MR JUSTICE M.S. RAMACHANDRA RAO
HON'BLE MRS.JUSTICE SUKHVINDER KAUR**

Present: - Mr. R.K. Malik, Senior Advocate with
Mr. Sunil Hooda, Advocate for the appellants
(in LPAs-1543, 1564, 1695-2016).

Mr. Arihant Goyal, Advocate
for the appellants (in LPAs-2479, 2505, 2506-2016).

Ms. Sangita Dhanda, Advocate
for the appellants (in LPAs-207, 210, 348-2017).

Mr. Anil Dutt, Advocate for
Mr. Sukhdev Singh Gopera, Advocate
for the appellants (in LPAs-586, 587-2017).

Mr. Sanchit Punia, Advocate
for the appellant (in LPA-449-2017).

Mr. B.R. Mahajan, Senior Advocate with
Mr. Prateek Mahajan, Advocate and
Ms. Nikita Goel, Advocate for HVPNL and UHBVNL.

Mr. Hoshiar Singh Jaswal, Advocate
for respondent Nos. 5 and 11 (in LPA-1564-2016).

Mr. Arihant Goyal, Advocate
for respondent Nos. 6 and 8 (in LPA-210, 348-2017).

Ms. Tanisha Peshawaria, DAG, Haryana.

M.S. RAMACHANDRA RAO, J.

In this batch of LPAs, common questions of law arise and so they are being disposed off by this common order.

The appellants in all these cases are seeking quashing of orders passed terminating their services without any show cause notices and opportunity of hearing vide Annexures P-25 and P-26 collectively.

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It is not in dispute that the appellants had been appointed as Assistant Linemen/Shift Attendants in the Haryana Vidyut Parsaran Nigam Ltd. ('HVPNL' for short) and had been working from 1993 to 1996.

Their selection made in the year 1992 was quashed by this Court being faulty and the said decision was also upheld by the Supreme Court.

The judgment in CWP No.17812 of 1997 on 03.12.2008

The selection was quashed by this Court in CWP No.17812 of 1997 on 03.12.2008. This Court had held that 336 Assistant Linemen belonging to reserved category had obtained higher marks to the last general category candidate; so they are to be treated in general category, and the next 336 candidates of reserved category are entitled to be appointed.

Similarly, this Court had also held that 75 Shift Attendants belonging to reserved category had obtained higher marks to the last general candidate and hence, direction was issued that next 75 candidates of reserved category be offered appointments.

Later events

Thereafter, it is not disputed that 336 Assistant Linemen of reserved category were offered appointments and similarly, 75 Shift Attendants were also offered appointments.

Of them, only 94 Assistant Linemen did not join and likewise, 59 Shift Attendants had also not joined.

In the process of implementing the judgment dt.03.12.2008 passed in *CWP No.17812 of 1997*, a fresh merit list was prepared in the year 2009, but the appellants were not selected or given appointment.

The judgment in CWP-22873-2010 and CWP-6101-2010

So they filed Civil Writ Petition bearing No. *CWP-22873-2010 and CWP-6101-2010* before this Court seeking a direction for their selection/appointment on the ground that they have secured more marks i.e. 76 marks against the last selectee under BC category who secured only 63 marks, though according to the respondents, the last selectee secured 70 marks.

Relying on the decision of this Court in *CWP No.5356 of 2010* dt.06.12.2010, the said CWP was allowed and it was held that the only ground of denying appointment to the appellants is that they did not indicate the category in the answer sheet; merely because they did not indicate their category in the answer-sheet, it does not mean that they cannot be considered under the reserved category, while previously they had applied under the reserved category of 'BC' in the year 1992; denying selection/appointment under such circumstances is violative of Articles 14 and 16 of the Constitution of India; and therefore the respondents were directed to declare the appellants as selected, and consequently, issue appointment orders to them against the posts of Assistant Linemen under the reserved category of 'BC-A'.

Review Application No.137 -2011 in CWP-22873-2010 and CWP-6101-2010

An application seeking review of the said order was filed but no stay was granted in the review application.

Thereafter, a contempt case bearing No.*COCP-2987-2012* was filed in which notice of motion was issued for 15.11.2012.

After receipt of notice, the respondent gave appointments to all the appellants in view of the pendency of the contempt petition against the existing

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vacancies vide orders dt.15.11.2012 and 23.11.2012 (Annexures P-17 and P-18 collectively). In some of the appointment letters, a condition was imposed that said appointments would be subject to decision of the review petition.

The review application No.137 of 2011 in *CWP-22873-2010 and CWP-6101-2010* was subsequently allowed on 11.12.2014 vide Annexure P-23. The Court opined that as per record, none of the appellants secured 76 marks as recorded by it in its order dt. 22.12.2010; that the Court had proceeded on a factually incorrect basis before treating the appellants' cases as similar with that of one *Amit Chand*; that it is an error apparent on the face of the record, and the order passed on 22.12.2010 is therefore to be recalled.

Events after the Review Applications were allowed

After the review applications were allowed, the respondents decided to terminate the services of the appellants, even though by then, the appellants had completed their period of probation.

The appellants therefore challenged the termination orders in *CWP-16745-2015, CWP-16751-2015, and CWP-19626-2015*.

The common order of the learned Single Judge

These writ petitions were tagged along with *CWP-22873-2010 and CWP-6101-2010* and were disposed off by a common order by the learned Single Judge.

On 24.02.2016, this Court had directed the respondents to state whether in compliance of the judgment passed in *CWP-17812-1997* dt.03.12.2008, the department was required to prepare a waiting list in case of non-joining of some Assistant Linemen and Shift Attendants and counsel for respondents were also asked to get instructions with regard to availability of

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the posts as the appellants were appointed in the year 2012 during the pendency of the contempt petition which was later disposed of on 15.11.2012 as infructuous.

Thereafter an affidavit dt. 29.03.2016 was filed by the Deputy Secretary/HR & SR, HVPNL, Panchkula, clarifying that pursuant to the directions given in *CWP-17812-1997*, offer of appointment was made to 336 Assistant Linemen and 75 Shift Attendants, but *no waiting list was prepared* as offers were issued pursuant to recruitment process carried out in 1997. It was further stated that *as per instructions dt.20.01.1998, the validity of the waiting list of the year 1997 would be over by 1998; no post pursuant to recruitment carried out in 1997 as per advertisement No.CRA-143, was lying vacant*; after issuing offer of appointment to the 336 reserved category candidates for the post of Assistant Linemen and 75 reserved category candidates for the post of Shift Attendants, requisition for filling up of various posts including Assistant Linemen and Shift Attendants was sent; and subsequently, 2329 posts of Assistant Linemen were advertised on 08.07.2008 by Haryana Staff Selection Commission on behalf of UHBVNL, DHBVNL and HVPNL and recruitment was made in the year 2010.

It was further stated that 1000 posts of Assistant Linemen were again advertised on 19.03.2011 by the Haryana Staff Selection Commission on behalf of UHBVNL and DHBVNL and recruitment had been made in the year 2012.

It was also stated that recruitment process of filling up of 552 posts of Shift Attendants was initiated vide advertisement No.13/2007 and recruitment was made in the year 2010.

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It was stated that the offer of appointment to 12 candidates/appellants was given in compliance of the order dt.22.12.2010 in *CWP-22873-2010* and *CWP-6101-2010* subject to the outcome of Review Application No.137 of 2011 and 138 of 2011; as on 24.02.2016, several posts of Assistant Linemen and Shift Attendants were vacant in UHBVNL, DHBVNL and HVPNL; these vacancies became available in 2012 and no backlog of vacancies was available qua selection carried out in 1997, and so, the appellants cannot be appointed on the above said posts.

The learned Single Judge referred to the above affidavit and also the decision rendered by this Court on 13.01.2016 in *CWP-28663-2013*, wherein the writ petitioner had made a claim that persons junior to him had been appointed and he had a prior right of appointment, and had sought the benefit of judgment dt.03.12.2008 rendered in *CWP-17812-1997*, but the said writ petition was dismissed as withdrawn: that he was not a party to the writ petitions; validity of the waiting list was over by 1998; and so he had no right to be appointed on account of non-joining of some candidates pursuant to a selection made way back in 1997 and the decision given by the Court on 03.12.2008.

The learned Single Judge applied the said judgment and held that appellants had approached the Court in 2010 and were seeking appointment on vacant posts on the ground that persons who had been appointed way back in 1997 had got less marks than them; that their claim was that in the merit list prepared in 1997, they had got higher marks than the selected candidates in SC-A, SC-B, BC-A AND BC-B categories; that *they are seeking accommodation on account of non-joining of some of the candidates*; and

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instead of approaching the Court in 1997, they filed the writ petitions in the year 2010. Reliance was also placed on the decision in *CWP-14137-2010* dt.23.08.2011 holding that candidates who had filed original petition had been given appointments out of the earlier ranking list, and persons who were not parties to the original writ petition had no right to claim appointment on account of non-joining of some candidates.

The LPA

Assailing the same, this batch of LPAs was filed.

Sh. R.K. Malik, Sr. Counsel and other counsel appearing for the appellants sought to contend that the learned Single Judge erred in taking the view that the appellants had no right to continue in service, and the learned Single Judge ought to have held that in the vacancies which remained unfilled after the decision rendered by this Court in *CWP-17812-1997* dt.03.12.2008, the appellants were entitled to be appointed and their services cannot be terminated by the respondents.

The learned Advocate General for the State of Haryana strongly refuted the said contentions and supported the judgment of the learned Single Judge. He pointed out that no post pursuant to recruitment carried out in 1997 was lying vacant; merely because 94 Assistant Linemen posts and 59 Shift Attendants posts remained vacant on account of the fact that the reserved candidates did not join their duties, after being invited to do so after the decision in *CWP-17812-1997*, the appellants cannot claim any right to be appointed in those vacancies because the waiting list had a validity of only one year which lapsed in the year 1998 itself. He contended that the appellants had no right to be appointed on account of non-joining of some candidates,

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pursuant to a selection made way back in 1997, since the validity of the waiting list of the year 1997 would be over by 1998 as per instructions dt.20.01.1998.

Consideration by the Court

We have noted the contentions of both sides.

Admittedly, the appellants are claiming their right to be appointed against the 94 Assistant Linemen and 59 Shift Attendants posts (forming part of the 336 Assistant Linemen and 75 Shift Attendants posts), in which reserved category candidates were offered appointments after the decision of this Court on 03.12.2008 in *CWP-17812-1997*, when these posts remained unfilled, because 94 Assistant Linemen and 59 Shift Attendants did not join.

The appellants cannot rely on the order dt.03.12.2008 in *CWP-17812-1997* for the reason that the said order had directed the then HSEB to consider appointments of at least 336 reserved category candidates for the posts of Assistant Linemen and 75 reserved category candidates for the posts of Shift Attendants from amongst candidates of reserved category who may have been ousted as a result of wrong appointments made in the reserved category on account of the fact that though the said candidates of the year 1997 selection belonged to the reserved category had obtained higher marks to the last general category candidate, and instead of being treated in the general category, they were appointed against reserved category posts.

Once, the HSEB/HVPL had complied with the direction and offered appointments to the next 336 candidates of reserved category among Assistant Linemen and 75 candidates of reserved category among Shift

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Attendants for filling up 75 Shift Attendants posts, nothing more was required to be done by the respondents.

If some of these posts remained unfilled because the candidates offered such appointments by the respondents did not join, the only course open to the respondents was to take up the fresh selection because the validity of the waiting list of 1997, pursuant to which the appellants had secured marks, had ended in 1998.

Unless the waiting list in law remains live and valid, the appellants could not have been issued appointment orders on 15.11.2012 and 23.11.2012.

They were given such appointment orders only because of the contempt application No.*COCP-2987-2012* seeking implementation of the order dt.22.12.2010 passed in *CWP-22873-2010*.

Once the said order came to be reviewed on 11.12.2014 and was recalled, the services of the appellants had to be terminated, and no fault can be found with the respondents for taking such action.

The learned Single Judge was also right in holding that some of the appellants could not have filed writs in the year 2010 seeking appointment in the vacancies arising out of the 1997 selection, when they were not parties to *CWP-17812-1997*, and had not approached the Court in 1997 to be considered in those vacancies.

We are of the opinion that the learned Single Judge had properly considered the matter in the right perspective and the order of the learned Single Judge does not warrant any interference by us in exercise of jurisdiction under the Letters Patent Appeal.

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Accordingly, all the LPAs are dismissed.

No costs.

Pending application(s), if any, also stands disposed of accordingly.

(M.S. RAMACHANDRA RAO)
JUDGE

(SUKHVINDER KAUR)
JUDGE

April 19, 2023.

Mohit Goyal

1. Whether speaking/reasoned?
2. Whether reportable?

Yes/No
Yes/No