

ORDER SHEET
**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT HYDERABAD**

CP No. D- 2043 of 2014

DATED **ORDER WITH SIGNATURE OF JUDGE**

16.05.2017

For katcha peshi

Mr. Amjad Ali Sehto, Advocate for petitioner

Mr. Muhammad Arshad S. Pathan, Advocate for HESCO a/w Nasir Ali Khan D.M. HESCO

Mr. Zulfiqar Ahmed Rajput, Assistant Prosecutor General

Zulfiqar Ahmad Khan: J. The petitioner having obtained a Bachelor's Degree in Electrical Engineering in year 1998 from Mehran University of Engineering & Technology Jamshoro was employed by the respondents No.3 (HESCO) as Junior Engineer (BPS-17). Being in the employment of HESCO, the petitioner passed Master of Business Administration (MBA) from University of Sindh Jamshoro in 2010 and also got admitted to a Ph.D Program offered by the University of Sindh Jamshoro, however, converted the said Ph.D decree into an M. Phil program. Having attained the said MBA and M. Phil qualifications at his own expenses, the petitioner having come to know of a Scheme introduced by WAPDA (page 45) where WAPDA offered incentives to its officers who had acquired higher education at WAPDA'S expenses, he put forward his case to HESCO which was forwarded by HESCO to WAPDA on 18.04.2014. WAPDA vide its letter dated 18.08.2014 regretted inclusion of petitioner's name in the list of BPS-19/20 employees on the ground that the integrated seniority lists of BPS-19/20 employees is made country-wide and the list is not open to correction through the manner adopted by the petitioner. The said Scheme is more particularly described in more details between pages 47-55. Of particular relevance is paragraph (a) on page 48 which provided that the Engineers who had attained higher studies of M.Sc., MS, M.Phil, Ph.D would be inducted by way of direct induction @10% in BPS-18 and 10% in BPS-19. The petitioner who claimed he had MBA and M.Phil qualifications,

2. The petitioner having acquired the above referred MBA/M.Phil qualification was of the view that he is over qualified for the present Junior

Engineer (BPS-17) job and he rather should be inducted in the job as a Superintendent Engineer (BPS-19). He accordingly, again made a request for induction in BPS-19 on these grounds to the HR department of the respondent No.3 which made a favourable note and proposed that the said issue be added in the forthcoming Board of Directors Meeting. Accordingly the said item was added to HESCO Board of Directors Meeting where objections were raised by other members, who questioned the relevance of the MBA and M.Phil qualifications acquired by the petitioner on the ground that the petitioner was appointed as an Engineer, whereas the two post graduate qualifications obtained by him were in non-engineering disciplines. The petitioner has approached this court alleging that the respondents have deprived him of the opportunity of being appointed as Superintendent Engineer (BPS-19) since he had higher qualifications, which action (per petitioner) is discriminatory and violative of the principles of natural justice and equal treatment. Accordingly a prayer is made that this court shall direct the respondents to appoint the petitioner at a higher post according to his qualifications namely MBA and M.Phil.

3. Counsel appearing for HESCO opposed the entire scheme envisaged by the instant Constitutional Petition and at the forefront and challenged maintainability of the petition as the petitioner had alternate remedies available to have his grievances addressed. Notwithstanding therewith it was next contended that the petitioner was appointed as a Junior Engineer (BPS-17) and on the basis of non-technical additional qualifications, he could not be inducted as Superintendent Engineer in BPS-19, which position is only filled by following the prescribed criteria laid down by Electrical Engineer Rules, 1965 which provide that the post of Superintendent Engineer BPS-19 be filled by promotion from Senior Engineers in BPS-18 who had degree in Electrical Engineering or electrical qualifications with 12 year's service in BPS-17 and above and 5 years service in BPS-18, or the candidate has to have 7 years experience in BPS-18 with initial recruitment taken place in BPS-18 with qualification of Ph.D & M.Sc. The Rules also require that the post graduate qualification of M.Sc and Ph.D have to be in engineering subjects.

4. The learned counsel further stated that as in the instant case, the petitioner is a Junior Engineer in BPS-17 he would need to be first have himself promoted to BPS-18 as Senior Engineer according to the Rules thereafter if the Rules permit, he could be promoted to BPS-19 however, none of the above would be possible because the petitioner has no engineering qualification other than a bachelor degree in Electrical Engineering on the basis of which he has

already been employed as a Junior Engineer BPS-17. With reference to the incentive Scheme provided by WAPDA, the counsel appearing for the respondents took us to page 48 where to be inducted in BPS-18 or BPS-19, a candidate is required to have M.Sc, M.S., M.Phil or Ph.D degrees in engineering and not in any other discipline. The counsel further contended that in the recent past over a dozen of Junior Engineers have been promoted to Executive Engineers (BPS-18) an example of which has itself been provided by the petitioner on page 101 from where it could be noted that the candidates who were promoted from BPS-17 to BPS-18 they had higher qualification in engineering and not in any other discipline. It was further brought to the knowledge of the court that no candidate has ever been promoted from Junior Engineer (BSP-17) to Superintendent Engineer (BPS-19) directly and such a possibility is non-existent when the applicant has no post graduate or doctoral qualification in engineering or unless he has satisfied the terms of Electrical Engineer Rules 1965 through his long years in service.

5. Heard the counsel perused the record.

6. At the face of it, the instant petition appears to be not maintainable because the petitioner has other venues to have his employment related issues redressed. On the particular point of the incentives provided for WAPDA employees (Engineers) on acquiring higher education, the Scheme is very clear. To be directly inducted in BPS-18 or BPS-19 as Senior Engineer or Superintendent Engineer, an engineering candidate must have M.Sc, M.S, M.Phil or Ph.D qualification in engineering alone. The Electrical Engineer Rules, 1965 embody the specialized promotion mechanism for Electrical Engineers where Rule 1(d) prescribes qualification for the appointment of Senior Engineers. Relevant provision is reproduced here under:-

(d) The posts of Superintending Engineers shall be filled in by promotion from amongst Senior Engineers in BPS-18 who hold a degree in Electrical Engineering or equivalent qualification having:-

i) 12 years service in a post carrying BPS-17 and above including 5 years service in BPS-18

or

ii) 7 years service in BPS-18 where initial recruitment took place in BPS-18

or

Engineers with qualification of Ph.D or M.Sc. (with experience) may be considered for recruitment as Superintending Engineers for research and highly specialized fields like design etc.:-

- i) Ph. D (Engineering) with 5 years experience,
- ii) M.Sc. (Engineering) with 8 years experience.

The posts of Executive Engineers shall be filled in by promotion amongst Junior Engineers in BS-17 who hold a degree in Electrical Engineering or equivalent qualification on the basis of seniority-cum-fitness,

Provided that the Junior Engineer to be promoted has passed the Power Wing Professional Examination and has also put in 5 years of approved service as such under the Authority.

20% vacancies will be reserved for accelerated promotion. After 4 vacancies have been filled in on the basis of seniority-cum-fitness, 5th vacancy will be filled in by a candidate who deserves accelerated promotion by virtue of his being head and shoulders above his colleagues in professional competence (which covers knowledge and experience) integrity and honesty and devotion to duty besides loyalty to WAPDA and the Nation in accordance with prescribed Guidelines. (Appendix-E)

OR

- i. Ph.D (Engineering)
- ii. M. Sc (Engineering) with 3 years experience.

7. A review of the above clearly suggests that growth from a Junior Engineers (BPS-17) to Superintendent Engineer (BPS-19) is envisaged and systematically provided for by the Electrical Engineers Rules, 1965. It is very important to keep in mind that the petitioner is being employed as Electrical Engineer and seeks career growth in the same discipline. Engineering being specialized discipline requires application of mathematics, scientific and practical knowledge in order to invent, design, build, maintain and improve machines, materials, processes and solutions. The post to which the petitioner applied for and the way forward to its promotion in the engineering discipline requires special engineering and technical knowledge which can only be gained either by way of working for long years or by acquiring post graduate or doctoral specialized education in the engineering field. The Rules very clearly require that accelerated promotion and special incentives are available for those who had passed requisite professional examinations or who had shown professional competence or had acquired M.Sc or Ph.D in Engineering. Non-engineering post graduate qualification attained by the petitioner could never be considered in violation of the applicable Rules or failing to meet the

requirement of the job and the responsibilities entrusted upon Senior or Superintendent Engineers.

8. Of relevance in the circumstances at hand is the case of Kamran Ahmad vs. WAPDA (2014 PLC (CS) 332) where the petitioner was appointed as Junior Engineer (BPS-17) in 2006 and had attained qualifications of M.Sc. in terms of Rule 3.1(i)(d) of the Electrical Engineers Rules, 1965. In 2012 he made a representation to his employer GEPCO for seeking induction as Superintending Engineer. Once his representation was rejected on account of failing to meet the criteria prescribed by the Rules, he filed a constitutional petition, which petition was also dismissed not only on account of the lack of constitutional maintainability, but also on merit.

9. Coming back to the present case, by following his interests in non engineering subjects, the petitioner himself has deviated from his career path as an engineer and has shifted his interest towards business management therefore at best he could apply when such business or marketing opportunity arises in the future and if his qualifications and expertise match the then applicable job requirements of any employer, we have no doubt that he would be provided the suitable job on merit. As far as his aspirations to be inducted as Superintendent Engineer just because he has done MBA and M.Phil in non-engineering subjects, these aspiration would sadly have to fail as his qualification (and experience) do not pass the criteria laid down for such induction in the applicable Rules.

10. In view of the above discussion, we find no substance in this constitutional petition and the same is dismissed with all pending applications with no order as to costs.

JUDGE

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