

WP(C) 3282/2007
BEFORE
THE HON'BLE MR. JUSTICE IA ANSARI
JUDGMENT AND ORDER
(oral)

By this common judgment and order, I propose to dispose of the Writ Petition and the Contempt Case, namely, WP(C) No. 3282/2007 and Contempt Case(C) No. 637/2006, inasmuch as both these matters are closely inter-linked and decision, in any of these two cases, will have a bearing on the outcome of the other.

2. I have heard Mr. S. Sarma, learned counsel for the petitioners in WP(C) No. 3282/07, and Mr. B.C. Pathak, learned Standing counsel for the respondents. I have also heard Mr. M. Chanda, learned counsel for the petitioners in Contempt Case (C) No. 637/2006, and Mr. B. C. Pathak, learned counsel, appearing on behalf of the respondents.

3. Before entering into the merit of the Writ Petition and also the Contempt case, it is necessary that the facts, which have given rise to both these proceedings, are taken note of. The material facts, leading to these two proceedings, are, therefore, set out as under:

(i) The petitioners, in Contempt Case (C) No. 637/2006, who are hereinafter referred to as the first set of petitioners, came to this Court with a writ petition made under Article 226 of the Constitution of India. This writ petition gave rise to WP(C) No. 620/2004. By this writ petition, the first set of petitioners had sought for directions be issued to the respondents, particularly, Bharat Sanchar Nigam Limited (known as 'the BSNL', which is, hereinafter, referred to as the 'respondent Corporation') to consider the case of the writ petitioners for promotion to the posts of Telecommunication Technical Assistant (in short, 'TTA'), the case of these petitioners being, briefly stated, thus:

(a) The petitioners were appointed, on different dates, in the year 1993-94, as Telephone Mechanic/Tele-Communication Mechanic. In terms of the Telecom Technical Assistant Recruitment Rules, 1998 (in short, 'the Rules of 1998'), which came into force on 06.02.1999, a Telephone Mechanic/Tele-Communication Mechanic was eligible for consideration for promotion to the post of Telecom Technical Assistant (in short, 'the TTA') on completing five years of regular service in the grade of Telephone Mechanic/Tele-Communication Mechanic.

(b) In terms of the Rules of 1998, the petitioners, having put in requisite period of service of five years in the grade of Telephone Mechanic/Tele-Communication Mechanic, had become eligible for promotion to the post of TTA as far back as in the year 1999, and though vacancies were available in the posts of TTA, the petitioners were not considered for promotion and the qualifying screening test, as envisaged under the Rules of 1998, were not held; whereas similarly situated employees, working in the cadre of Telephone Mechanic/Tele-Communication Mechanic in other circles of the respondent department, including the North Eastern Circle, Shillong, have been considered and promoted to the cadre of TTA, in the year 2000, by holding screening tests in terms of the Rules of 1998. It is also the grievance of the petitioners that the Rules of 1998 were amended by bringing in to force, on 27.07.2002, the Telecom (Technical) Assistant Recruitment Rules, 2001 (in short, 'the Rules of 2001'), whereby promotional avenues of the Telephone Mechanic/Tele-Communication Mechanic has been drastically reconstructed by making 10+2 standard certificate or equivalent certificate as the minimum educational qualification for promotion to the post of TTA from the grade of Telephone Mechanic/Tele-Communication Mechanic. The Rules of 2001 also envisage holding of limited departmental competitive examination for promotion to the post of TTA from the group-C employees, which consists of Telephone Mechanic/Tele-Communication Mechanic too. Though under the Rules of 1998, there was no provision for holding limited departmental competitive examination and though the petitioners, having

become eligible for consideration for promotion to the post of TTA long before the Rules of 2001 came into force, were not required to apply for any limited departmental competitive examination and though the respondents/authorities concerned ought to have held qualifying screening test in terms of the Rules of 1998 for deciding the question of promotion of the petitioners to the post of TTA, the respondents/authorities concerned have been insisting upon the petitioners and other group-C employees to appear in the limited departmental competitive examination as envisaged under the Rules of 2001. Such insistence by the respondents/authorities concerned is, according to the petitioners, unreasonable and impermissible in law inasmuch as the Rules of 2001 are, contend the petitioners, prospective in nature and their cases ought to have been considered, plead the petitioners, in terms of the provisions of the Rules of 1998, particularly, because there were, according to the petitioners, vacant posts available for considering the cases of the petitioners for promotion to the posts of TTA long before the Rules of 2001 came into force.

(ii) Opposing the petitioners' case, the case, which the respondents had set up, was, in brief, thus: With the change in the standard of working of the entire Tele-Communication System, sophisticated equipments are required to be handled by the TTAs and keeping this fundamental requirement of the service, which the respondents provide, the respondents have made, under the Rules of 2001, educational qualification of 10+2 standard certificate mandatory for a Group-C employee to be considered for promotion to the post of TTA. In view of the changes, which the Rules of 2001 have so introduced, those petitioners, who are not holding the minimum educational qualification of 10+2 standard certificate, are not even eligible for being considered for promotion and even those, who have minimum educational of 10+2 standard certificate, are required to participate in the limited departmental competitive examination so that their suitability for promotion to the posts of TTA can be correctly judged and evaluated.

(iii) Having considered the respective cases, which the first set of petitioners and the respondent Corporation had set up, in WP(C) No. 620/2004, this Court observed and directed, inter alia, as follows :-

10. Bearing in mind the fundamental principle governing promotion of a Government servant, when I turn to the Rules of 2001, what becomes evident is that the Rules of 2001 is prospective in nature. Hence, the Rules of 2001 cannot divest the petitioners in their rights, which the petitioners have already acquired under the Rules of 1998. As a corollary thereto, it is not difficult to hold that on completing the eligibility criteria under the Rules of 1998, since the petitioners became eligible for consideration for promotion to the posts of TTA, their cases cannot be considered in terms of the minimum qualifications, which have been imposed by the Rules of 2001; rather, the cases of the petitioners ought to have been considered for promotion in terms of the Rules of 1998. While the Rules of 2001 make 10+2 standard certificate as the minimum educational qualification for promotion to the post of TTA, the Rules of 1998, read with the Rules of 1991, make it clear that a Telephone Mechanic/Tele-Communication Mechanic, having passed 10th standard examination and having put in five years of regular service in the cadre of Telephone Mechanic/Tele-Communication Mechanic, is eligible for consideration for promotion to the post of TTA. When the petitioners had attained the requisite eligibility criteria for the purpose of being considered for promotion to the post of TTA before the Rules of 2001 came into force, their cases ought to have been considered in terms of the Rules of 1998, when their turn for being considered for promotion had arisen.

11. Because of what have been discussed and pointed out above, it is abundantly clear that the respondent Corporation cannot insist upon the writ petitioners that the petitioners shall satisfy the eligibility criteria for promotion to the post of TTA under the Rules of 2001 and/or insist upon the petitioners to appear in any competitive examination except what the Rules of 1998 envisage.

12. As has already been pointed out above, even the Rules of 1998 perceive of holding of qualifying screening test. The syllabus for such test has not been spelt out in the Rules of 1998. However, the respondent Corporation shall have, in terms of the Rules of 1998, liberty to prescribe the syllabus for the screening test. Such qualifying screening test cannot, however, be of the same standard as has been conceived under the Rules of 2001, for, while the Rules of 2001, as already indicated hereinabove, require minimum educational qualification of 10+2 standard certificate, the Rules of 1998 require educational qualification of 10th standard as the minimum qualification for promotion to the post of TTA.

13. In the result and the reasons discussed above, the writ petition partly succeeds. While the respondents are left at liberty to prescribe the syllabus and prepare scheme for holding qualifying screening test in terms of the Rules of 1998, it is made clear that the cases of each of the present writ petitioners shall be considered by the respondents, in terms of the Rules of 1998, for promotion to the posts of TTA. The whole exercise, so directed, shall be completed within a period of 4 (four) months from to-day. Whatever decision is reached on the question of promotion of the petitioners by the respondents/authorities concerned shall be communicated, in writing, to the petitioner concerned. If any of the petitioners feel aggrieved by the decision that may be taken by the respondents/authorities concerned, while carrying out the directions given hereinbefore, the petitioner(s) concerned, who may be so aggrieved, shall be at liberty to approach this Court for appropriate directions.

(Emphasis is supplied).

(iv) Alleging that the respondent Corporation was willfully refusing to comply with the directions, given, on 26-05-2006, in WP(C) No. 620/2004, the first set of petitioners came to this Court with a contempt application on 26-11-2006. This contempt application has given rise to COP(C) No. 637/2006 aforementioned.

(v) Thereafter, the second writ petition, i.e., WP(C) No. 3282/2007, was filed by as many as 10 persons, who too claim to be eligible for consideration for promotion to the posts of TTA in terms of the Rules of 1998, their case too being, inter alia, that they are eligible for promotion to the posts of TTA and that their promotion is required to be considered in terms of the Rules of 1998. As the respondent Corporation was to hold requisite promotional test in terms of the Rules of 1998, the Court passed an order, on 28-06-2007, in WP(C) No. 3282/2007, directing the respondent Corporation to allow the second set of petitioners too to participate in the promotional test, which was to be held on 15-07-2007.

4. It is in the backdrop of the above facts that the present writ petition, namely, WP(C) No. 3282/2007 and the contempt case, namely, Cont. Case (C) No. 637/2006, are, now, required to be considered. On hearing the learned counsel for the parties and upon perusal of the materials on record, there remains no room for doubt, and there is, in fact, no dispute that the petitioners in WP(C) No. 3282/2007, who are hereinafter referred to as the second set of writ petitioners, stand on the same footing as do the first set of petitioners (i.e., the petitioners in WP(C) No. 620/2004, who are also petitioners in Cont. Case (C) No. 637/2006), except the fact that while in the case of first set of petitioners, there was a specific direction given, on 25-06-2006, in WP(C) No. 620/2004, to consider their cases, in terms of the Rules of 1998, in the manner as has been quoted above, no such specific direction was available in respect of the second set of petitioners. What can also not be ignored is that the total number of vacant available posts of TTA is 11 (eleven).

5. What, now, needs to be noted is that in WP(C) No. 620/2004 (i.e., the first writ petition), there were as many as 11 petitioners, but only 10 (ten) of them are still alive. In the second writ petition, i.e., WP(C) No. 3282/2007, the petitioners are as many as 10 in numbers. Thus, while the total number of persons, who were eligible to participate in the promotional test, in terms of the Rules of 1998, were as many as 20 (twenty), the total number of vacant promotional

post is barely 11 (eleven).

6. The limited question, therefore, which falls for consideration, is this: Whether the directions given, on 26-05-2006, in WP(C) No. 620/2004, in favour of the first set of petitioners, can be taken to have had divested the second set of petitioners from either participating in the selection test, which had been held in terms of the Rules of 1998, and/or from being considered for promotion, in terms of the Rules of 1998, in respect of the said 11 (eleven) vacant posts.

7. While considering the above aspect of the case, what is of immense importance to note is that on 30-01-2004, while issuing notice of motion in WP(C) No. 620/2004 (i.e., the first writ petition), the interim direction, which was passed, ran as under :

Pendency of this petition shall not be a bar for the respondents to hold the Screening Test/Limited Departmental Examination for consideration of the petitioners and other similarly situated persons for promotion to the post of Telecom Technical Assistant in Assam Telecom Circle, Assam.

8. From the interim direction, which was passed on 30-01-2004, it becomes clear that the respondent Corporation had been given the liberty to hold the promotional test in respect of not only the cases of the first set of petitioners, but also of other similarly situated persons for promotion to the posts of TTA in Assam Telecom Circle. The interim directions, given, on 30-01-2004, were slightly modified, on 21-10-2004, by the Court inasmuch as the Court allowed the respondent Corporation to hold the selection test, but directed that the result of the selection test shall not be published without leave of the Court.

9. Thus, the interim directions passed in WP(C) No. 620/2004, as noted above, had entitled not only the first set of petitioners, but also the other eligible persons, similarly situated, such as, the second set of petitioners, to participate in the promotional test. No wonder, therefore, that on 28-06-2007, an interim order was passed, even in WP(C) No. 3282/2007, directing the respondent Corporation to allow the second set of petitioners to participate in the promotional test, which was to be held on 15-07-2007. In terms of the directions so given by the Court, both the sets of petitioners have appeared in the promotional test, but their results have been kept withheld as had been directed by this Court.

10. Because of the fact that this Court finds that both the first as well as the second set of petitioners are persons eligible for consideration for promotion to the post of TTA in terms of the Rules of 1998, and because of the fact that no direction was given, in WP(C) No. 620/2004, restraining the respondent Corporation from allowing the second set of petitioners to participate in the said promotional test or restraining the second set of writ petitioners from participating in the promotional test, which was conducted, on 15-07-2007, in terms of the Rules of 1998, and in view also of the fact that both the set of petitioners have, indeed, appeared in the promotional test, held on 15-07-2007, it becomes abundantly clear that the question of promotion of both the set of writ petitioners needs to be decided on the basis of a common merit list to be drawn and prepared subject to the policy of reservation, which may have been in force.

11. Considering, therefore, the matter in its entirety and in the interest of justice, the respondent Corporation is hereby directed to prepare a common merit list by treating both the set of petitioners as one group of employees, who were eligible for being considered for promotion, in terms of the Rules of 1998, to the said 11 (eleven) posts of TTA, announce the result of the promotional test accordingly and make order(s) of promotion in respect of the said 11 (eleven) posts of TTA on the basis of inter se merit of both the set of petitioners subject to any policy of reservation, which may have been in force and are applicable to the participants. The whole exercise, so directed, shall be completed within a period of six weeks from today. It is further directed that the result sheet,

which was submitted to this Court, under sealed cover, by the respondent Corporation, shall be returned, and/or handed over, to the learned counsel for the respondent Corporation.

12. It is also pertinent to point out that upon taking into account the facts and circumstances in their entirety, this Court does not find that any of the actions or omissions of the respondent Corporation and/or its employees reflect willful defiance of the directions/orders passed by this Court. The contempt proceeding is, therefore, closed.

13. With the above observations and directions, the writ petition as well as the contempt proceeding shall stand disposed of.

14. No order as to costs.