

WP(C) 3464/2010

MCMCBEFORE

HON'BLE MR. JUSTICE B K SHARMA

All the writ petitions having raised the one and the same issue have been heard analogously and are being disposed of by this common order.

The petitioners involved in the writ petitions were engaged as Accredited Engineers under National Rural Employment Guarantee Scheme (NREGS). Their appointment is contractual and initially was for a period of six months upon execution of agreements. However, their services have been extended and it is submitted that their term of office will come to an end in some cases on 30.09.2010 and in some cases on 31.10.2010.

The petitioners were appointed on the basis of the employment notice inviting applications for contractual appointment as Accredited Engineer. One such notice is dated 19.12.2008. It is an admitted position that the petitioners have rendered services in between six months and eighteen months.

In the employment notice it was stated that the engagement would be on contractual basis. The required qualifications indicated was HSSLC(Science)/Diploma in Engineering. It was also indicated that Diploma holder in Engineering would be given preference. In the employment notice it was indicated that the normal duration of the contractual appointment would be for a period of six months.

After interview/selection etc. the petitioners were engaged on contractual basis as Accredited Engineer for a period of six months by order dated 27.08.2009. It is submitted that, before such engagement the petitioners had executed agreements for such contractual appointment accepting the terms and conditions laid down therein. It is also submitted that although their initial appointment was for a period of six months but their services had been extended with the stipulation that the same would come to an end w.e.f 30.09.2010 and 31.10.2010.

The petitioners are aggrieved by the advertisement dated 19.05.2010 by which the applications have been called for, for appointment as Accredited Engineer for which, the educational qualification has been prescribed as Diploma in Civil Engineering. Since the petitioners are not Diploma holders in Civil Engineering but are only HSSLC passed, they being not eligible to apply for the post of Accredited Engineer have filed this writ petition making a grievance against the said qualification of Diploma in Engineering (Civil) which will naturallyoust the petitioners from the race. Be it stated here that, in WP(C) No.3464/2010, the petitioners are Diploma holders in Engineering and it is their stand that the impugned advertisement ought not to have been made applicable to them since they have already been engaged as Accredited Engineer taking into account their qualification which is Diploma in Civil Engineering.

According to the petitioners involved in the said writ petition the respondents ought to have excluded the petitioners from the purview of fresh advertisement and the selection thereto. At this stage the learned counsel for the petitioners appearing in the WP(C) No.3481/2010 submits that some of the petitioners are also Diploma holders in Mechanical and Electrical Engineering.

The respondents have filed their counter affidavit justifying their action towards issuance of impugned advertisement insisting for the qualification of Diploma in Civil Engineering. The basic reason for replacing the earlier contractual engagement and insisting on the qualification of diploma in civil Engineering is that the works involved are highly technical in nature. For example making of road, culverts, check dam, anti erosion measures etc. which requires preparation of estimates, taking measures, filling up of MRs/MBs. Accordingly, it is strictly necessary to have a qualified person for engagement as Accredited Engineer. According to the respondents, the Civil Engineering Diploma holders conform

to the requirement of job involved for Accredited Engineer.

The respondents in their counter-affidavit have stated thus.

4. That the basic reason for replacing the earlier engaged, adhoc employees were that the MGNREGA programme deals with works which are highly technical in nature for example making road, culverts, check dam, anti erosion measures etc. This requires preparation of estimates, taking measures, filling up of MRs/MBs. These are all highly technical in nature. It is, therefore, felt that a normal science graduate will not be able to do justice to the work. The science graduates were earlier engaged on contractual basis with clause of termination as well. Now that the proper system is in place, the Govt. like to engage Accredited Engineer (Diploma Holders) in civil Engineering and earlier engaged people are to be replaced.

5. That the works under MGNREGA needs a very active and dynamic person since all the works are mainly of fieldwork in nature which require extensive journey and site visit. It is, therefore, felt that a young and energetic person only could take the workload. It is also instructed that the earlier Accredited Engineer will be terminated on selection of the Diploma Holder. However, it is expected that there would be a shortage of Diploma Holder. The shortage may be met by the existing Accredited Engineer till Diploma Holders can be engaged in all the districts. For the Accredited Engineers being terminated they may adjust if otherwise educationally qualified in the other categories of persons engaged vide Commissionerate referred order and fulfilling the age criteria as on 01.10.2010. The terminated Accredited Engineer may also be engaged as Mate as they would have already gathered the required experience and skill for implementation of MGNREGA.

I have heard Mr. A M Majumder, learned Sr. Counsel assisted by Mr. B Chakraborty, learned Advocate, Mr. C Baruah, Mr. R Duarah and Mr. I Rafiq, learned counsels appearing for the petitioners. I have also heard Ms. R Chakraborty, learned Additional Senior Government Advocate representing the respondents.

While the learned counsel representing the petitioners emphasised on the need for continuation of the services of the petitioners in terms of the earlier advertisement and engagement, Ms. R Chakraborty, learned State Counsel submits that since the petitioners were appointed on contractual basis for limited duration they cannot insist for indefinite continuation in service and that too without having the required qualification.

Mr. C Baruah, learned counsel for the petitioners has placed reliance on the decision of the Apex Court reported in (1972) 1 SCC 267 (State of Haryana V S Rajindra Sareen), to bring home his point of argument that the appointment of the petitioners being co-terminous with the particular scheme, their services are required to be continued till the scheme comes to an end. Before dealing with such a contention raised, the petitioners will have to bear in mind that they are not regular employees. Their engagement is on contractual basis under the particular scheme called NREGS. In the first advertisement itself it was clearly indicated that the duration of the contractual appointment would be for a period of 6 months. In the said advertisement the qualification for the post of Accredited Engineer was laid down as HSSLC (Science)/Diploma in Engineering with the stipulation that Diploma holders in engineering would be given preference. Thus, as per the said advertisement, the candidates with the qualification of HSSLC (Science) and Diploma holders in Engineering were both eligible. The Diploma holders in Engineering were to be given preference.

The petitioners were engaged for a period of six months on execution of agreement with the clear stipulation that their engagement would be for a period of six months. However, their services were extended which will come to an end w.e.f 30.09.2010 and 31.10.2010. After the initial engagement under the scheme,

the authority at the helm of affairs experiencing the practical reality felt it necessary to engage Accredited Engineers having Diploma in Civil Engineering. The particular policy decision to emphasise on the qualification of diploma in Civil Engineering was communicated to all concerned by the Government of Assam in the Department of Panchayat and Rural Development. In this connection, the petitioners involved in WP(C) No.3411/2010 have placed on record the Annexure-12 circular letter dated 07.05.2010 annexed to the additional affidavit filed by the petitioners. In the said letter the need for enhancement of quality and utility of manpower was emphasised. As per the said letter, if sufficient numbers of diploma holders in Civil Engineering are not available then the existing Accredited Engineers may be considered for fresh engagement till such time the adequate numbers of Diploma holders in Civil Engineering become available. Another observation made in the said letter that, the appointment of the Accredited Engineers may be considered as Mates taking into account the experience they have already gathered under the scheme.

As to what should be the educational qualification for engagement of Accredited Engineers and that too on contractual basis is up to the policy makers having regard to the practical reality with the experience in the practical field. In the counter affidavit the respondents have clearly spelt out the reason for insisting on the qualification of diploma in Engineering (Civil). It is another thing that the petitioners have gathered some experience but to say that the Government cannot insist for the particular qualification of Diploma in Civil Engineering as the same is arbitrary and contrary to the scheme of engagement is not at all acceptable.

As per the provisions of NREGS launched by the Central Government, the procedure and qualification for engagement of Accredited Engineers have been left to the discretion of the State Government. Although at the initial stage of employment the Government of Assam in the Panchayat and Rural Development Department allowed participation of HSSLC passed candidates for appointment as Accredited Engineers along with the Diploma holders but on the basis of the practical experience in the field when it was found that the Diploma holders in Engineering would be more suitable for appointment as Accredited Engineers, the Government decided to insist on the said qualification which in my considered view cannot be said to be arbitrary and/or illegal requiring interference of this Court exercising its power of review under Article 226 of the Constitution of India.

The decision on which Mr. C Baruah, learned counsel for the petitioner has placed reliance i.e. Rajindra Sareen (Supra) is totally indifferent context. In that case, the particular appointment was co-terminus till continuance of the post. In the instant case, truly speaking no permanent post is involved. The petitioners have been engaged under a particular scheme for limited duration and the petitioners were all aware about their term of engagement, which was for six months. It is another matter that they are still continuing in service with the extension granted to their services.

As regards the plea of the Diploma holders in Civil, Mechanical and Electrical Engineering it is submitted that, their services are required to be continued as they fulfil the requirement laid down in the advertisement, suffice it to say that their engagement being purely on contractual basis for a limited duration, they cannot insist for continuation and if they are eligible to apply for the post of Accredited Engineers in terms of the impugned advertisement, it will be open for them to do so for respondents for consideration.

In the circular letter dated 07.05.2010 referred to above, it has been spelt out that in case of dearth of qualified Diploma holders candidates, even the existing Accredited Engineers may be considered for their engagement. Provisions have also been made for engagement in some other jobs. In such a situation, I am of the considered opinion that the Government has taken a fair policy decision.

on and the same does not require any interference of this Court.

In view of the above, the writ petition is disposed of. Interim order, if any, stands vacated. However, the respondents shall bear in mind the stipulations made in the aforesaid circular letter dated 07.05.2010, while taking the follow up action.