

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN  
AT JAIPUR BENCH JAIPUR

(1) D.B. Special Appeal (Writ) No.1369/2014  
Hindustan Copper Limited & Anr.

**Versus**

Neeraj Singh & Anr.

(2) D.B. Special Appeal (Writ) No.1370/2014  
Hindustan Copper Limited & Anr.

**Versus**

Manoj Kumar & Anr.

(3) D.B. Special Appeal (Writ) No.1371/2014  
Hindustan Copper Limited & Anr.

**Versus**

Vikash Kumar & Anr.

(4) D.B. Special Appeal (Writ) No.1372/2014  
Hindustan Copper Limited & Anr.

**Versus**

Manoj Kumar & Anr.

(5) D.B. Special Appeal (Writ) No.1373/2014  
Hindustan Copper Limited & Anr.

**Versus**

Vinod Kumar & Anr.

(6) D.B. Special Appeal (Writ) No.1374/2014  
Hindustan Copper Limited & Anr.

**Versus**

Ram Niwas & Anr.

(7) D.B. Special Appeal (Writ) No.1375/2014  
Hindustan Copper Limited & Anr.

**Versus**

Ajay Kumar Yadav & Anr.

(8) D.B. Special Appeal (Writ) No.1376/2014

Hindustan Copper Limited & Anr.

**Versus**

Kailash Chand & Anr.

(9) D.B. Special Appeal (Writ) No.1377/2014

Hindustan Copper Limited & Anr.

**Versus**

Khyali Ram & Anr.

DATE OF ORDER : 31/05/2016

HON'BLE MR. JUSTICE M.N. BHANDARI  
HON'BLE MR. JUSTICE J.K. RANKA

Mr. A.K. Bhandari, Sr. Adv. with Mr. S.S. Rathore, for appellant/s  
Mr. Ashok Gaur, Sr. Adv. with Mr. Ajay Choudhary, for non-appellant/s

By these bunch of special appeals, judgment of the learned Single Judge dated 1<sup>st</sup> August, 2014 has been challenged.

The appellant-company issued an advertisement for appointment on various posts which includes the post of Loader-cum-Loco Operator (Trainee) and Loader-cum-Loco Assistant Operator (Trainee). In pursuance to the advertisement dated 24<sup>th</sup> June, 2011, all the petitioner-non-appellants submitted applications apart from many others. After scrutiny of their applications, petitioners were appointed as Loader-cum-Loco Operator (Trainee)/Loader-cum-Loco Assistant Operator (Trainee). The appointment was for the period of 18

months. On successful completion of training, provision for regular appointment in the pay scale was made. After the interview and trade test, offer of appointment was given to the non-appellants. The non-appellants had worked for substantial period and almost at the end of the period of 18 months, they were served with the show cause notice on 13<sup>th</sup> March, 2013. Reply to it was given by each non-appellants. After getting explanation from the non-appellants, the appellant-company issued another show cause notice on 11.04.2013. Their services were terminated vide order dated 23.04.2013. The termination was precisely on the ground that non-appellants were not in possession of the experience of Loco Tramming Operation of Loaders. The order of termination was challenged by maintaining writ petitions and have been allowed.

Learned counsel for appellant-company submits that as per the terms of advertisement, a candidate was required to possess four years experience in the underground mines and out of which, one year of "Loco Tramming Operation of Loaders, High reflex quality and capacity for sustained work essential". For the post of Loader-cum-Loco Assistant Trainee, the required period of experience was three years in all and out of which, six months of Loco Tramming Operation of Loaders, High reflex quality and capacity for sustained work essential.

The non-appellants furnished experience certificates which were not issued by the competent authority and otherwise not indicating their working experience to operate Loaders. When the appellant-company could detect the aforesaid, show cause notices were given to the non-appellants because in absence of required experience, the appointment on training for 18 months was illegal.

Learned counsel further submits that learned Single Judge found that the experience certificates were issued by the competent authority and the non-appellants were in possession of required experience. It was in ignorance of the fact that experience certificate can be issued only by a owner, agent or manager of the company and not by a contractor. In the instant cases, the experience certificates were not issued by the owner, agent or manager of the company. In view of above, certificates cannot be said to be of a competent person. In absence of it, the experience certificates should not have been considered.

A reference of definition of "owner" given under Section 2 (l) of the Mines Act, 1952 (in short "**the Act of 1952**") has been given. In the instant cases, the non-appellants were engaged by a contractor. The contractor was not competent to issue experience certificate. On the aforesaid ground itself, the

experience certificates should have been discarded. A further reference of Regulation 39 of the Metalliferous Mines Regulations, 1961 (in short "**the Regulations of 1961**") has been given. As per the aforesaid regulation, the appointment of a person in a mine can be made only by an owner, agent or manager. In the instant cases, experience certificates submitted by the non-appellants are by none of them. For the reason aforesaid also, learned Single Judge should have discarded the certificates. The finding of learned Single Judge about competence of contractor to issue certificate is contrary to the Act of 1952 as well as Regulations of 1961, thus needs to be set aside.

The other issue is as to whether the non-appellants were having experience of one year to operate Loaders. All the certificates invariably make reference of their working for a period of four years and undertaking the work of drilling, blasting and mucking in the underground mining project of the appellant-company. It is not for operation of Loaders. In absence of required experience, appointment of the non-appellants becomes illegal. For the aforesaid reason also, impugned order deserves to be set aside.

Lastly it is contended that if a person is lacking in qualification or eligibility and even if it is subsequently

possessed, cannot be taken as a ground to justify the initial appointment. The aforesaid argument is supported by the judgment of the Apex Court in the case of **Khub Ram Vs. Dalbir Singh & Ors., reported in (2015) 8 SCC 368**. A prayer is accordingly made to allow the appeals by setting aside the order of the learned Single Judge.

Learned counsel for non-appellants has supported the judgment of the learned Single Judge. He submits that so far as the competence of the authority to issue certificate is concerned, it was not taken up by the appellant-company while issuing show cause notice on 11.04.2013. The said show cause notice was the basis for passing of the order of termination. When the issue aforesaid was not taken in the final show cause notice, the appellants should not have raised the aforesaid ground before the learned Single Judge and also before this court.

It is further submitted that as per definition of "owner" given under Section 2(l) of the Act of 1952, the contractor is also included therein. In the light of definition of "owner", the certificate given by the contractor cannot be questioned by the appellants. It is moreso when certificates so produced were scrutinised by the officer of the company itself and when they felt satisfied, offer of appointment was given. The appellant-

company should not be allowed to take the issue aforesaid. The reference of Regulation 39 of the Regulations of 1961 has been given. Therein, competence is for the appointment of officials and not for issuance of the certificates. The allegation in the show cause notice was not that the non-appellants were not appointed by the competent authority or that certificate was issued by the competent person. It nowhere provides that if one is engaged through contractor and gained required experience, the certificate issued by the competent person or contractor would not be taken into account. In view of above, the first argument raised by learned counsel for appellants may not be accepted.

The second issue is regarding required experience of one year/six months to operate Loaders. The certificates produced by the non-appellants show that petitioners had gained required experience of four years or three years, as the case may be and one year/six months of Loco Tramming Operation of Loaders. The work of mucking include work to operate Loaders. The learned Single Judge has thus rightly allowed the writ petitions.

It is further stated that during pendency of the writ petitions, the certificates were further produced to show required experience of Loader. It was as per direction of the

High Court. If those certificates are taken into consideration, it would prove that non-appellants were in possession of the required experience to operate Loaders. Accordingly, this court may not interfere in the order of the learned Single Judge.

In the alternate, it is submitted that if this court comes to the conclusion that non-appellants were not in possession of the required experience to operate Loaders with the duration of six months or one year, as the case may be, they have gained experience to operate Loaders after their appointment and also during pendency of these appeals. It should be taken into consideration towards required experience. The appellant-company be directed to consider experience of the non-appellants after their appointment in the year 2011 and also reinstatement after vacation of the stay order by the Division Bench on 6<sup>th</sup> May, 2015. If services of the non-appellants are found to be satisfactory and no adversity exists, they should be appointed in the pay scale given in the order of appointment.

We have considered rival submissions made by the parties and perused the record.

The facts in brief have already been narrated thus need not to be reiterated. Two questions have been raised by learned counsel for appellants. The first is whether the experience certificate has been issued by a competent person?

The second issue is as to whether non-appellants were in possession of required experience of Loco Tramming Operation of Loaders. In one or two cases, the issue of manipulation in the experience certificate and also of the age has been raised.

We are considering the first issue about competence of authority who has issued certificates. The second show cause notice dated 11.04.2013 is perused. The perusal of show cause notice does not reveal allegation about competency of the officials for issuance of the experience certificate. The first issue raised by the appellant-company can be rejected summarily on the aforesaid ground itself. We however find that the learned Single Judge has taken pains to deal with the issue aforesaid, thus needs finding by this court also on the aforesaid issue. The reference of Section 2(l) of the Act of 1952 and Regulation 39 of the Regulations of 1961 has been given to show competence and authority to issue experience certificate. The perusal of Regulation 39 of the Regulations of 1961 does not provide about competence to issue certificate. The regulation aforesaid talks about competence to make appointment. It is not the case of the appellant-company that non-appellants were not appointed by the competent authority while working under the contractor. In view of aforesaid, we are of the opinion that Regulation 39 of the Regulations of 1961 has no application to

the present case.

So far as definition of "owner" given under Section 2(l) is concerned, it includes contractor as well. Neither the Act of 1952 nor Regulations of 1961 provides about competence for issuance of experience certificate. In absence of any provision, it cannot be said that experience certificate can be issued only by the owner, agent or manager of the company. It is to be further noted that advertisement issued by the appellant-company nowhere makes reference that experience certificate should be issued by the owner, agent or manager for its acceptance. When the advertisement is also silent on the issue then how the argument about competence of the authority can be raised.

We are not even inclined to accept the plea of the learned counsel for appellants that the contractor cannot issue experience certificate. There is no restriction under the Act of 1952 or Regulations of 1961 to command or mandate issuance of certificate other than the contractor. The appellants should have concentrated on the requirement of experience of four years or three years for the respective post and out of which, one year or six months to operate Loaders, as the case may be.

The second issue is as to whether the non-appellants were in possession of the required experience of Loco

Tramming Operation of Loaders of the duration given in the advertisement. We are required to consider the certificates produced by the non-appellants along with applications. The certificates make a reference of working experience of drilling, blasting and mucking in almost majority of the cases. It does not make reference of experience to operate Loaders for duration of one year or six months as is required in a given case. During pendency of the writ petitions and as per direction of the learned Single Judge, a certificate was further produced to show the experience of non-appellant. The aforesaid certificate only shows experience of working in the area pertaining to "Loco Tramming Operation of Loaders". Even the aforesaid certificate does not satisfy the requirement for appointment on the post in dispute. It does not say that non-appellants had operated Loaders for a period required for the respective post. In absence of required experience, non-appellants cannot be said to be eligible for appointment even for training purpose followed by appointment in regular pay scale. We find nothing on record to show that while undergoing work of mucking, it includes the "Loco Tramming Operation of Loaders".

Learned counsel for non-appellants has failed to place on record to show that work of mucking include operation of

Loaders. In absence of material, we cannot accept the argument of the non-appellants about required experience of non-appellants. In absence of required experience, they were not liable to be appointed. The show cause notice specifically makes allegation on the issue aforesaid and when explanation was not found to be satisfactory, the order of termination was passed. We find no illegality in the action of the appellants therein and thus need to interfere in the finding of the learned Single Judge. If a candidate was not possessing required experience, was not liable to be appointed.

The fact however remains that despite production of certificates by the non-appellants showing about their experience in drilling, blasting and mucking, the appointment was given to the petitioners. It is alleged to be on account of bungling of the officers. On asking about action against other officers, learned Senior Counsel Shri Bhandari could not give proper explanation other than to state that inquiry has already been initiated by the vigilance. We find that action against such officials has been initiated now after lapse of almost 2 to 3 years while action was immediately taken against the non-appellants. The anxiety was not shown by the company to take action against their own officers. In view of above, we can safely conclude that action was taken against the non-

appellants but it was without touching the officers simultaneously. In any case, now action has been initiated, thus the company is directed to conclude the inquiry immediately and in no case later than six months. The report of it would be submitted before the court in this disposed of appeals because the company cannot be allowed to make discrimination in their action.

A copy of this order should be sent to the Chairman of the Company for immediate action in the matter.

Learned counsel for non-appellants however submitted that non-appellants have gained required experience to operate Loaders thus a direction be given to the company to reconsider their case in the light of development took place during pendency of this litigation and even prior to it, when non-appellants were appointed and undertaken the work on Loaders. We find justification in the prayer made by the appellants.

In the light of aforesaid, while interfering in the order of the learned Single Judge, we issue direction to the appellant-company to consider case of each non-appellants separately as to whether they can be continued in service if possessed required experience during the intervening period i.e. after their appointment and now during pendency of the appeals.

The company would take an appropriate decision. If it is taken favourable to the employees, the appointment would be given afresh and would not relate back to the initial appointment. We hope and trust that a decision on the aforesaid would be taken appropriately and without pre-determination. If any of the non-appellants is found fit to work on the post concerned, it would be expected from the company to use their experience excluding those who are not found fit. In doing so, the company would be at liberty to take a decision as to whether the period of work undertaken by the non-appellants while working as trainee should be counted towards 18 months training required for appointment in the regular pay scale.

It is however made clear that while undertaking the exercise given above, the company would be at liberty to exclude those who made manipulation in the certificate. The decision would be taken appropriately and after proper scrutiny. It is for the reason that show cause notice does not contain allegation of manipulation in certificate thus it would be appropriate for the company to take a decision and even to call for the explanation of concerned petitioners. If they fail to explain the allegation of manipulation, the company would be at liberty to exclude such petitioners from the consideration.

So far as issue of age of candidate is concerned, we leave it on the company to take a decision for relaxation, if provided under the rules. While undertaking the said exercise, they would take into account the experience gained by the non-appellants during the intervening period.

The special appeals are accordingly disposed of.

With the final disposal of the appeals, applications moved by the non-appellants no more survive and are treated as disposed of.

A copy of this order be placed in each connected file.

[J.K. RANKA], J.

[M.N. BHANDARI], J.

FRBOHRA

Certificate:

"All corrections made in the judgment/order have been incorporated in the judgment/order being emailed."

**Fateh Raj Bohra, Private Secretary**

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