

Haryana State Electricity Board

Vs

State of Punjab and Others

Civil Appeal No. 455 of 1970

G. K. Mitter, A. N. Grover JJ )

17.04.1972

JUDGMENT

GROVER J. –

1. This is an appeal from a judgment of the Punjab and Haryana High Court which one of the main question relating to the interpretation of Rule 7-A of the Punjab Service of Engineers (Electricity Branch) (Condition of Service) Rules, 1939, hereinafter called the 'Rules' has been discussed in the connected matter i.e., Civil Appeal No. 456 of 1970 in which the judgment is being announced today.

2. The facts may be shortly stated. In August 1949 certain posts of Assistant Engineers Class II were advertised. In March, 1950, B. K. Puri respondent No. 10 along with B. N. Rampal respondent No. 3 and others were selected in consultation with the Punjab Public Services Commission. On March 23, 1950, B. K. Puri joined service as Officiating Assistant Engineer Class II. On April 5, 1950, B. N. Rampal respondent No. 3 joined the service as Officiating Assistant Engineer Class II. Other Respondents Nos. 4 to 9 joined the service after B. K. Puri as Officiating Assistant Engineers Class II 1953 and 1954 the Punjab Public Services Commission 3 to 9 for appointment to Class I (Junior) on officiating basis. According to the appellant, the case of B. K. Puri was considered each occasion but he was found unsuitable and was passed over for certain reasons. On April 6, 1956, B. K. Puri was also selected and appointed a Officiating Assistant Engineer Class I (junior). On May 11, 1956 Respondents 3, 4, 6 and 9 along with others were confirmed as Assistant Engineers Class II with effect from October 1, 1955. B. K. Puri was not confirmed as Assistant Engineer Class II for the reason that he had not passed the Safety Code Examination, which it is stated was a condition precedent to confirmation. A memorandum was issued to 15 persons including B. K. Puri and Respondents 5, 7 and 8 that their cases for confirmation would be considered after they had passed the said examination. On November 11, 1956 the erstwhile States of Punjab and Pepsu were merged. Thereafter before March, 1958, Respondents 5, 7 and 8 were confirmed as Assistant Engineers Class II with effect from October 1, 1955. B. K. Puri wrote a letter to the Chief Engineer on March 16, 1958 for his seniority being resorted. On March 21, 1958, 28 persons in Class I including respondents 3 to 6, 8 and 9 were confirmed with effect from September 1, 1956. Respondent No. 7 was also confirmed subsequently in class I with effect from the same date. B. K. Puri was not confirmed in Class I as till that time he had not been confirmed as Assistant Engineer, Class II. On August 18, 1958, B. K. Puri was confirmed as Assistant Engineer Class II with effect from October 1, 1955. In 1959 Respondents 3 to 9 were promoted as officiating Executive Engineers. In January, 1959, B. K. Puri made a representation against the confirmation in Class I of Respondent 3 to 9 who were junior to him in Class II. On December 19, 1959, notwithstanding that B. K. Puri had not been confirmed till then in Class I he was also promoted as Officiating Executive

Engineer. But as mentioned before that was done after Respondent 3 to 9 had been so promoted. In January 1960 representation made by B. K. Puri was rejected by the Government. In 1963 B. K. Puri made another representation to the Minister of Irrigation and Power. On June 27, 1963 he was confirmed in Class I but with effect from April 7, 1957. Respondents 3 to 7 had been confirmed as Executive Engineers with effects from various dates between March 1, 1961 to December 17, 1963. Respondent No. 8 was confirmed after them with effect from December 17, 1963. On May 11, 1965, B. K. Puri and Respondent No. 9 were confirmed as Executive Engineers with effects from January 1, 1965. On June 22, 1965 B. K. Puri made a representation to the Minister of Irrigation and Power for restoration of his seniority in Class I. That representation was forwarded to the Chairman of the Electricity Board. In June 22, 1966 B. K. Puri made a representation to the Minister for Irrigation and Power for restoration of his seniority in Class I. That representation was forwarded to the Chairman of the Electricity Board, In June 1966, B. K. Puri was informed that his request for confirmation in Class I with effect from September 1, 1956 instead of April 7, 1957 and the restoration of his seniority in Class I on the basis of his position in Class II had been considered but was being rejected. On April 29, 1986, inter-se seniority list of officer of the old State of Punjab and Pepsu was gazetted which did not disturb the inter-se seniority of B. K. Puri vis-a-vis Respondents 3 to 9 who were working in the old State of Punjab. On August 6, 1966, B. K. Puri filed a petition under Article 226 of the Constitution in the High Court.

3. The case of B. K. Puri-writ petitioner-before the High Court clearly was that he was admittedly senior to Respondents 3 to 9 in the cadre of Assistant Engineers, Class II and therefore he was entitled to have the same seniority in the class of Assistant Engineers Class I which would give him seniority as Executive Engineer as a whole. The main Prayer was that a suitable direction or order be issued for restoring the seniority of the writ petitioner vis-a-vis Respondents 3 to 9 in the class of Executive Engineers in the light of Rule 7-A of the Rules and on the basis that the petitioner should be deemed to have been confirmed as Assistant Engineer Class I with effect from September 1, 1956. In the return which was filed by the appellant it was maintained that the matter of seniority between the writ petitioner and Respondent 3 to 9 had been settled a long before the service of those officers were transferred to the appellant Board with effect from March 1, 1963. It was also asserted that there had been a lot of delay and laches and the writ petitioner had acquiesced in his position when he became junior to Respondents 3 to 9. He was, therefore, not entitled to seek any relief under Article 226. It was admitted that some of the contesting respondents had been confirmed by the Government in class II on May 11, 1956. The writ petitioner had not been so confirmed at that time because he had not passed the Safety Code test and also because the decision regarding the adverse remarks against him was pending. Another reason for delay was that the necessary report had not been received from the Himachal Pradesh Administration where he was on deputation. Although the writ petitioner was senior to Respondents 3 to 9 in Class II he had been superseded by them in class I because at the time of promotion his name was considered but he was not promoted due to unsatisfactory record of service. Ultimately he was promoted with effect from April 6, 1956, but he was not confirmed till April 7, 1957. In the meantime Respondents 3 to 9 had been confirmed with effect from September 1, 1956. The case of the writ petitioners confirmations in Class II was taken up in 1968 on receipt of his report for the period ending March 31, 1956, from the Himachal Pradesh Government and he was then confirmed. It was admitted that the post in Class I fell vacant with effect from September 1, 1956, due to the confirmation of T. S. Madan as Executive Engineer on June 13, 1961. Another plea that was taken was that the writ petitioner was confirmed with effect from April 7, 1957, on completion of his period of probation for one year in place of T. S. Madan. It was denied that Rule 7-A was applicable to the writ petitioner. As the writ petitioner had been confirmed in Class I on June 27, 1963, with effect from April 7, 1957

Respondent 3 to 9 had become senior to him under the provisions of Rule 7-A. In the case of Executive Engineers also the writ petitioner became junior to Respondents 3 to 9 since they had been confirmed with effect from earlier dates.

4. The High Court was of the view that when B. K. Puri - the writ petitioner was confirmed in Class II with effect from October 1, 1955, by the order, dated August 18, 1958, he indisputably became senior to respondents 3 to 9 in class II. It was found that there was a vacancy in Class I with effect from September 1, 1956 and the writ petitioner could have been easily confirmed from that date. But the reason given by the appellant for not confirming him earlier than April 7, 1957, was that he could not be so confirmed unless he has completed one years probation with effect from April 6, 1956, when he had been promoted to Class I an officiating capacity. In was, however, conceded by counsel for the appellant that there was no rule fixing probationary period and that in the case of some of the other respondents no such rule was followed of completing a period of probation after promotion, i.e. in the cases of M/s. S. L. Sood and Pritam Singh who were confirmed with effect from September 1, 1956, when they had been promoted to Class I in an officiating capacity in April, 1956. In other words they had been confirmed in less than five months period from the date of their officiating appointment after promotion. On this the High Court held that the reason given by the appellant for not confirming B. K. Puri with effect from September 1, 1956, from which date Respondents 3 to 9 had been confirmed had no basis, and was extraneous and irrelevant. For these reasons the order confirming B. K. Puri with effect from April 7, 1957, was considered to be illegal. Another matter pointed out by the High Court was that B. K. Puri had passed the Safety Code Examination on October 8, 1956. There was no reason, therefore, for making an order relating to his confirmation in class II on August 18, 1958, whereas the other respondents were confirmed in May 1956. This is what the High Court proceeded to observe :

"Be that as it may, when the petitioner was admittedly confirmed in that Class II on August 18, 1958, his case for confirmation in Class I should have been immediately taken up. In this connection, it would be pertinent to observe that K. B. Bhatia was confirmed in Class II on January 13, 1960 and on the same date he was confirmed in Class I also."

5. On the question of laches various representations and petitions which B. K. Puri had been making consistently were referred to by the High Court and it was considered that it was not a case where relief could be declined on the ground of laches or delay. The High Court quashed the order, dated June 27, 1963, confirming B. K. Puri in Class I with effect from April 7, 1957 and issued a writ of Mandamus to consider the case for confirmation in class I with effect from September 1, 1956, or a date earlier than that and refix his seniority vis-a-vis Respondents 3 to 9 in Class I and that of Executive Engineers in the Light of interpretation of Rule 7-A as given in the judgment. It may be mentioned that this interpretation was the same as has been accepted by us as correct in the connected appeal, i.e. C.A. 456 of 1970. ((1974) 3 SCC 96)

6. It appears to us that the judgment of the High Court in this case does not call for any interference. The main stress that was laid by the learned counsel for the State was on the laches and delay on the part of B. K. Puri in filing the petition in the High Court. From the resume of the various dates which has already been given it is apparent that he kept on making representation and moving the appropriate authorities at all stages and the only reason which has been suggested for confirming him in Class I subsequent to Respondents 3 to 9 is that he had been passed over on the ground which has already been mentioned. The High Court has dealt with that aspect fully and in view of the interpretation of the provision to Rule 7-A which has already been discussed in the connected appeal by us it is difficult to disagree with the High Court that there was no justification for not

confirming B. K. Puri in Class I from the same date on which the other Respondent (3 to 9) were confirmed namely, September 1, 1956. There are several distinguished features in this case from the connected appeal (C.A. 456 of 1970) for not applying the rule in S. G. Jaisinghani v. Union of India and Others, ((1967) 2 SCR 703 : AIR 1967 SC 1427 : (1967) 2 SCJ 102 : 65 ITR 34) about not disturbing the seniority of those Executive Engineers who were confirmed by orders made some years prior to the filing of the writ by B. K. Puri.

7. This appeal fails and it is dismissed. The costs shall be paid in accordance with the previous Order of his Court, dated March 9, 1970.

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