

Karnataka Electricity Board

Vs

Gulam Mohiuddin

Civil Appeal No. 144 of 1977

(CJI M.H. Beg, A.C. Gupta, P.S. Kailasam JJ)

12.04.1977

JUDGMENT

KAILASAM, J. -

1. This appeal is by the Karnataka Electricity Board by its Secretary by special leave granted by this Court against the judgment of the Karnataka High Court allowing the writ petition filed by the respondent and issuing a writ of mandamus to the appellant to consider the case of the respondent for promotion as an Accounts Superintendent as on December 30, 1966, and to promote him to that post with effect from that date.

2. The respondent was serving as an Accountant, Grade II, in the Electricity Department of the former State of Hyderabad. On the reorganisation of the States in pursuance of the States Reorganisation Act, 1956, he was allotted to the new State of Mysore (now Karnataka) with effect from November 1, 1956. The post which he held came to be equated with that of I Division Clerk in the former State of Mysore. On October 1, 1957, the Mysore State Electricity Board now Karnataka State Electricity Board, was constituted under the Indian Electricity (Supply) Act. An option was given to the respondent to continue in the Government service or to opt to the Board. On October 1, 1957, the respondent opted to the service under the Board and ceased to be an employee of the Government with effect from that date.

3. In the year 1960 the Board framed Recruitment and Promotions Regulations in the exercise of its powers conferred on it under section 79(c) of the Act. The amended Rules prescribed that the posts of Accounts Superintendents were to be filled by promotion of I Division Clerks on the basis of seniority-cum-merit on their having passed Part I and Part II of the S. A. S. examination.

4. On December 20, 1966, some persons junior to the respondent were promoted on their having passed S. A. S. examination while promotion was denied to the respondent as he had not passed the examination. The respondent made several representation, one such representation being on December 24, 1970. On November 21, 1972, the respondent's representations were rejected. The respondent thereafter filed a writ petition before the High Court on February 13, 1973. The learned Single Judge who heard the petition dismissed it and the respondent preferred an appeal to a Bench of the Karnataka High Court. On behalf of the appellant, Karnataka Electricity Board, it was contended before the court that the writ petition ought to be dismissed on the ground of inordinate delay and laches on the part of the respondent and also on the ground that in view of the later Resolution of the Board dated January 5, 1970, it was not longer open to the respondent to rely on the Resolution dated May 19, 1969. The Bench of the Karnataka High Court held that the writ petition cannot be thrown out on the ground of delay. On a consideration of the two Resolutions of

the Board, namely that of May 19, 1969 and January 5, 1970, it found that the respondent as an allottee was exempted from complying with the requirements of passing the examination and therefore allowed the writ petition.

5. We do not see any ground for not accepting the view of the High Court that in the circumstances of the case the relief to the respondent should not be denied on the ground of delay and laches.

6. The only ground therefore on which the order of the High Court was challenged by the appellant is that the court was in error in construing the relevant provisions of the Regulations and the Resolutions and holding that the respondent is exempted from passing the S. A. S. examination before qualifying for the promotion. Before referring to the two Resolutions the relevant provisions of the law and Regulations made thereunder may be referred to. The Electricity (Supply) Act, 1948, by Section 79 empowers the Board to make Regulations not inconsistent with the Act and the rules made thereunder to provide for all or any of the matters referred to in clauses (a) to (k) of the section. Sub-clause (c) empowers the Board to make Regulations regarding the duties of officers and servants of the Board, and their salaries, allowances and other conditions of service. By virtue of the powers conferred on the Board it framed Mysore State Electricity Board Recruitment and Promotion of Employees of the Board Regulation, 1960. The method of recruitment prescribed for promotion to Accounts Superintendents is prescribed in Chapter V of Annexure-2. The method of recruitment is by promotion from the cadre of I Grade Clerks on the basis of seniority-cum-merit. The minimum qualification prescribed is that the candidate ought to have passed S. A. S. examination Part I and Part II. This provision which was enacted in 1960 continued to be in force during the relevant time. If this Regulation is applicable, the respondent's plea has to be rejected as it is incumbent on him to pass the S. A. S. examination. The Resolution of the Board relied on by the respondent is dated May 19, 1969 and the material paragraph runs as follows :

It is hereby directed that the candidates appointed to Government/Board Service for the first time after the date of States Reorganisation i.e., 1st November, 1956 (as they are not allottees) should pass the Departmental Examinations and Kannada Language Tests for purposes of earning increments and for promotion.

The Resolution requires the passing of the examination and Kannada language test for the purpose of earning increments and for promotion for candidates appointed after November 1, 1956. But as it is not made applicable to the allottees, it is contended that the allottees are by implication exempted from passing the Departmental Examination and Kannada language test. This contention cannot be accepted for the Resolution is silent regarding the allottees and is not made applicable to them. It is not possible to infer from the Resolution that the allottees are exempted from passing the Departmental Examination and the Kannada language test. The Resolution was passed by the Board in pursuance of certain proceedings of the Government referred to in the Resolution itself. Paragraph 2 of the Resolution reads thus :

Approval is accorded for the adoption of the Government Order Nos. (1) GAD 123 SSH 66 dated 21-11-1966 (2) GAD 2 SSR 67 dated 3-8-1967 and (3) GAD 72 SSR 67 dated 20-7-1968.

The three Government orders referred to in the Resolution relate to the requirement of passing of the Departmental Examination and Kannada language test as a consequence of the judgment of the High Court of Mysore and the Supreme Court. The orders specifically states that unless in the Recruitment Rules relating to the service concerned Departmental Examination had been

incorporated and prescribed and unless it is clearly specified for what purpose the tests are prescribed viz., whether for increments or promotions, the passing of Departmental tests cannot be legally insisted upon for grant of increments or for according promotion to higher posts. The three Government orders make it clear that the relaxation of the rule relating to passing of the Departmental Examinations and Kannada language test is only as regards services where the rules do not specifically require the passing of the examinations and the language test. These G. Os. do not apply in the present case as the Regulations framed by the Board under Section 79(c) specifically prescribe the passing of the S. A. S. test. We are unable to construe the Resolution dated May 19, 1969 as exempting the allottees from passing the test. In any event the plea of the respondent will have to fail on the ground that the Regulations framed under Section 79(c) of the Board requiring the passing of the examination were not relaxed by amending the Regulations. The passing of the Resolution by the Board cannot have the effect of modifying a Regulation which was passed by the Board in the exercise of the powers conferred by the statute. Apart from this circumstance by a subsequent Resolution the Board itself considered the question in all its aspects and resolved that passing of the S. A. S. Examination for promotion to the cadre of Accounts Superintendents as before be insisted. Whatever might have been the purport of the Resolution dated May 19, 1969, the Board by a subsequent Resolution had resolved on insisting on the passing of the examination. The High Court found that the later Resolution did not affect the earlier Resolution on the ground that the subsequent Resolution did not make any reference to the earlier Resolution and that there is no reference to the allottees at all. Relying on the words "the passing of the S. A. S. Examination for promotion to the cadre of Accounts Superintendents as before be insisted" the Court found that it would mean that where the passing of the S. A. S. Examination was insisted prior to that Resolution the same shall continue to be insisted in future also, and if passing of the S. A. S. Examination was not insisted prior to that Resolution in the case of allottees for promotion to the cadre of Accounts Superintendents, the Resolution dated January 5, 1970, cannot be understood as altering the position existing "as before". This reasoning is erroneous for, as pointed out by us the earlier Resolution was not intended to cover the case of allottees and merely because the allottees were excluded from the operation of the Resolution the inference that the allottee were exempted from the passing of the examination is not justified. Further, before the Resolution there is nothing to indicate that the allottees were not required to pass the examination. The conclusion of the High Court cannot be upheld as the binding nature of the Regulations passed by the Board under Section 79(c) has not been taken due note of. This is the view taken by the Single Judge of the High Court.

7. In the result to allow the appeal, set aside the judgment of the lower appellate Court and restore that of the Single Judge. There will be no order as to costs.

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