

Punjab State Electricity Board, Patiala and Another

Vs

Ravinder Kumar Sharma and Others

And

Gurdial Singh and Others

Vs

Punjab State Electricity Board, Patiala and Others

With

Punjab State Electricity Board, Patiala

Vs

Ravinder Kumar Sharma

Civil Appeal Nos. 3341-42 of 1983 and Special Leave Petition (Civil) No. 2693 of 1984

(A. P. Sen, B. C. Ray JJ)

27.10.1986

JUDGMENT

B.C. RAY, J. -

1. These two appeals by special leave one by the Punjab State Electricity Board, Patiala and the other by Gurdial Singh and others who were defendant-respondents 3, 4, 6 and 7 in Civil Suit No. 293T/16-1-181/17-7-80 passed in R.S.A. No. 254/38 whereby the judgments and the decrees of the courts below were affirmed decreeing the plaintiff-respondent's suit declaring that the plaintiff-respondent be deemed to have been promoted from the date when his juniors as mentioned in the suit were promoted to the posts of Line Superintendents.

2. The case of the plaintiff in short is that the plaintiff-respondent Ravinder Kumar Sharma joined the service under respondent 1, Punjab State Electricity Board as a Lineman on December 25, 1969 and he worked as apprentice Lineman from December 29, 1969 to December 28, 1970 on a fixed salary of Rs. 140 per month. Thereafter he was allowed regular scale of pay of Rs. 110-330 since the date of his joining as a Lineman. The terms and conditions of the service of the Linemen as well as of the Line Superintendent are governed by the rules framed by the Punjab Government in exercise of its powers under Article 309 of the Constitution of India which were termed as P.W.D. (Electricity Branch) Provisional Class III (Subordinate Posts) Rules, 1952. Subsequently the State Electricity Board came into being and the Electricity Department came under the administration of the State Electricity Board.

3. The plaintiff has stated in the plaint that as a Lineman he had been performing his duties efficiently and honestly and there was never any complaint against his work. His work and conduct had always been appreciated by his superiors from time to time. He possesses the following qualifications :

1. B.A.
2. I.T.I. (in the trade of Electrician 2 year's duration).
3. National Apprentice Certificate in the trade of Lineman (3 year's duration).

All the Linemen under defendant 1, that is, Punjab State Electricity Board are either diploma holders or I.T.I. trained or non-diploma holders and they form and constitute one common cadre known as Linemen and in the same scale of Rs. 110-330. The seniority list of all these Linemen is common and joint. It has been further alleged that defendant 1 had been promoting officials from Linemen to the Line Superintendent on a pick and choose basis in consideration of the qualifications by fixing a quota between the diploma holders and non-diploma holders and this has resulted in arbitrary discrimination between the diploma holder and non-diploma holder Linemen thereby adversely affecting the promotional prospect of the non-diploma holder Linemen. It has been further stated that this policy of defendant 1 was set aside by the Punjab and Haryana High Court in L.P. Nos. 618, 619 of 1975 fixing the quota between diploma holder and non-diploma holder Line Superintendents by orders dated January 12, 1965 and June 27, 1974. The minimum qualification for promotion of Lineman to Line Superintendent is however matriculation. The plaintiff also stated that by order dated July 12, 1977 respondent 1 promoted Gurdial Singh whose name appeared at serial Number 1451 in the common seniority list and also the defendant Jaswant Singh whose name appeared at serial Number 1546 in the said list as well as Ramesh Kumar standing at serial Number 2309 in the said seniority list to the post of Line Superintendent even though the plaintiff's position in the seniority list was at serial Number 995 and he was senior to these officials. Thus the plaintiff was passed over while his juniors were promoted. This policy of pick and choose, it has been stated, in promoting the officials is wholly illegal and discriminatory. It has been further pleaded that by office order Number 899 dated August 17, 1977 defendant 2, that is, the Chief Engineer of the Electricity Board further promoted Sudesh Kumar and Virender Kumar whose name stand at serial Numbers 1877 and 2279 in the joint seniority list as Line Superintendent from the Lineman. The petitioner, therefore pleaded that the action of defendants 1 and 2 in fixing the quota between diploma holder and non-diploma holder Linemen for the purpose of promotion to the post of Line Superintendent and promoting the defendants 3 to 7 to the posts of Line Superintendent from Lineman is wholly illegal, unconstitutional and arbitrary. The plaintiff, therefore, prayed for a decree declaring that the orders dated July 12, 1977 and August 17, 1977 promoting the defendants 3 to 7 are illegal, discriminatory and null and void as it arbitrarily affects the rights of the plaintiff who is senior to them in not being promoted to the cadre of Line Superintendent. The plaintiff also prayed for a direction that he be promoted to the post of Line Superintendent from the date defendants 3 to 7 were promoted to the said post.

4. Defendants 1 and 2 contested the claim of the plaintiff by filing written statement that the terms and conditions of service of Linemen and Line Superintendent are governed by the rules framed by the Punjab State Government under Article 309 of the Constitution and are termed as P.W.D. (Electricity Branch) Provisional Service Class III (Subordinate Posts) Rule 1952. It has been further stated that the State Electricity Board by office order dated May 14, 1970 prescribed a quota of 5 per cent for diploma holder Linemen for promotion to the post of Line Superintendent. This quota of diploma holder Linemen was increased to 20 per cent by the Board by order dated July 2, 1973. On May 9, 1974 the quota of diploma holder Linemen for promotion to the Post of Line Superintendent was further increased to 33 per cent whereas the quota for promotion of non-diploma holder Linemen to the post of Line Superintendent was fixed at 33 per cent. It has been stated that according to this quota defendants 3 to 7 have been promoted and the fixation of quota on the basis of educational qualification cannot be questioned as arbitrary or discriminatory.

5. After hearing both the parties the Subordinate Judge, Ist Class, Patiala, held that the plaintiff was entitled to promotion to the post of Line Superintendent and the orders dated July 12, 1977 and July 17, 1977 whereby defendants 3 to 7 were promoted even though they were junior to the plaintiff are illegal and in violation of the rights of the plaintiff. The suit was decreed and the plaintiff was declared to have been promoted from the date when his juniors mentioned in the plaint were promoted to the post of Line Superintendent.

6. Against this judgment and decree the Punjab State Electricity Board, Patiala filed an appeal being C.A. Number 4368 of 1982. The Additional District Judge, Patiala after hearing the parties dismissed the appeal with costs holding that there was no reasonable nexus by fixing quota for promoting diploma holder Linemen to the post of Line Superintendent even though the non-diploma holders as well as the diploma holders formed the joint cadre of Linemen for promotion to the post of Line Superintendent. The judgment of the trial court was affirmed and it was also held that the appeal was not competent inasmuch as there was no resolution of the board authorising the filing of the appeal. The cross-objection filed by the plaintiff-respondent was allowed.

7. Against this Judgment and decree defendants 1 and 2 preferred an appeal being R.S.A. 254 of 1983. The said appeal was dismissed by the High Court of Punjab and Haryana and the judgment and decrees of the court below were affirmed. It is against this judgment and decree the aforesaid two appeals on special leave petition have been filed in this Court.

8. The only issue raised in this appeal is whether defendant 1, that is, the Punjab State Electricity Board is competent to discriminate between diploma holder and non-diploma holder Linemen forming the common cadre of Linemen having a common seniority list in promoting these Linemen on the basis of quota fixed by the order of the State Electricity Board even though the requisite qualification for promotion for Lineman to the post of Line Superintendent is either the holding of diploma or certificate for electrical engineering from a recognised institute or the non-diploma holders having passed one and half year's course in the trade of Electrician/Lineman/Wireman from recognised Industrial Training Institute and are matriculates and have worked for four years as Lineman continuously and immediately before promotion, as has been provided by the office order Number 97/ENG/BET/G-33 dated October 22, 1968 the relevant excerpt of which is quoted hereinbelow :

For Direct Recruitment :

a) Possess 3 years, certificate or diploma course in Electrical Engineering from any

recognised Institute, or a certificate of having passed the N.C.C. Test conducted by the State Board of Technical Education/All India Council for Technical Education.

b) Have passed examination of the Institution of Engineering (India) Exam with Elementary Electrical Engineering as the optional paper.

For Promotion

c)(i) Have passed 1 1/2 years course in the Electrical Trades of Electrician/Lineman/Wireman from recognised Industrial Training Institutes and are matriculates and have worked for 4 years as a Lineman continuously and immediately before promotion.

(ii) Have passed 1 1/2 years course in the Electrical Trades of Electrician/Lineman/Wireman from recognised Industrial Training Institutes and are non-matriculates but are capable of preparing estimates, writing up measurement books accurately, keeping store accounts etc. and have worked for 4 years as a Lineman continuously and immediately before promotion.

(iii) Persons holding diploma in Electrical Engineering of 3 to 4 years duration recruited as Lineman against the reservation of 60 per cent fixed for recruitment of persons holding certificate of 1 1/2 years course in the Electrical Trades of Electrician/Lineman/Wireman from recognised Industrial Training Institutes, have worked as Lineman for 3 years continuously and immediately before promotion. On promotion as Line Superintendent they will be given weightage of 2 years' service as compared to non-diploma holders, at the time of fixation of their seniority and pay in accordance with the instructions contained in Board's Memo Number 88774/84/BET/(33)L dated December 29, 1967.

d)(i) Matriculates Lineman having a total continuous service of 9 years as at ALM and Lineman out of which they should have worked as Lineman for 4 years continuously and immediately before promotion.

(ii) Non-matriculates Lineman having a total continuous service of 11 years as ALM and Lineman out of which they should have worked as Lineman for four years, continuously and immediately before promotion, provided they are capable of preparing estimates, writing up measurement books accurately keeping store accounts and in addition are conversant with Consumer Accounts or possess a special experience for transmission line work.

9. The State Electricity Board by its order dated May 14, 1970 introduced the following quota for promotion to the cadre of Line Superintendents :

1. Direct recruitment from the open market 62 per cent.
2. Diploma holder Linemen 5 per cent.
3. Linemen non-diploma holders 33 per cent.

This quota of promotion for diploma holder Lineman to the post of Line

Superintendent was further increased by office order Number 244 dated July 2, 1975 by fixing the quota for promotion of diploma holder Linemen already in service of the Board from 5 per cent to 20 per cent. Again by office order Number 78 dated May 9, 1974 the State Electricity Board further increased the quota of promotion of diploma holder Lineman already in the service of the Board from 20 per cent to 33 per cent.

10. There is no dispute, rather it is not controverted that the position of the plaintiff-respondent in the joint seniority list of Lineman in the scale of Rs. 110-330 of the Punjab State Electricity Board from June 1, 1967 to August 31, 1974 which has been filed as additional document by the Punjab State Electricity Board in C.A. No. 3341 of 1983 that the plaintiff-respondent's name was mentioned at serial No. 995 whereas names of defendants 3 to 7 appear in the said list in serial Nos. 1451, 1546, 2309, 1877 and 2279 respectively. Therefore all the defendants 3 to 7 are undoubtedly junior to the plaintiff-respondent as Linemen in the joint seniority list of Linemen comprising of both diploma holder and non-diploma holder Linemen in the same cadre. It is also clear and evident from the office order No. 97 dated October 22, 1968 that the qualification for promotion to the post of Line Superintendent from Lineman is either holding certificate or diploma in electrical engineering from any recognised institute or having passed 1 1/2 years course in the electrical trade of Electrician/Lineman/Wireman from recognised Industrial Training Institute and are matriculates and have worked as Lineman for four years continuously and immediately before the promotion. The petitioner who is an Arts Graduate and has I.T.I. Certificate (in the trade of electrician 2 years' duration) and also has National Apprentice Certificate in the trade of Lineman 3 years' duration is eligible for promotion to the post of Line Superintendent as he has fulfilled all the requisite qualifications. There is no gainsaying that all the Linemen either diploma holders or non-diploma holders are performing the same kind of work and duties and they belong to the same cadre having a common/joint seniority list for promotion to the post of Line Superintendent. The orders dated July 12, 1977 being order No. 73 promoting defendants 3, 4 and 5 as well as office order No. 898 dated August 17, 1977 promoting defendants 6 and 7 on the basis of quota from diploma holders as fixed by the order of the State Electricity Board dated May 9, 1974 is wholly arbitrary, illegal, discriminatory and violative of the equality clause contained in Articles 14 and 16 of the Constitution of India inasmuch as it purports to promote defendants 3 to 7 who are admittedly junior to respondent 1 in service as Lineman in the State Electricity Board. It has been rightly held by following the decision in Shujat Ali case [Mohd. Shujat Ali v. Union of India, (1975) 1 SCR 449, 480 : (1975) 3 SCC 76, 106 : 1974 SCC (L&S) 454, 484 : AIR 1974 SC 1631] that the promotion of defendants 3 to 7 who are admittedly junior to the plaintiff-respondent in the service as Lineman to the post of Line Superintendent is illegal, arbitrary and discriminatory and so bad. It is pertinent to refer to the observations of this Court in the said case which read as follows : (SCC p. 106, SCC (L&S) p. 484, para 28)

But where graduates and non-graduates are both regarded as fit and, therefore, eligible for promotion, it is difficult to see how, consistently with the claim for equal opportunity, any differentiation can be made between them by laying down a quota of promotion for each and giving preferential treatment to graduates over non-graduates in the matter of fixation of such quota. The result of fixation of quota of promotion for each of the two categories of Supervisors would be that when a vacancy arises in the post of Assistant Engineer, which according to the quota is reserved for graduate Supervisors, a non-graduate Supervisor cannot be promoted to that vacancy, even if he is senior to all other graduate Supervisors and more suitable than they. His opportunity for promotion would be limited only to vacancies available for non-graduate Supervisors. That would clearly amount to denial of equal opportunity to him.

11. This observation applies with full force to the present case, and it has been rightly held by the High Court of Punjab and Haryana that the promotion of defendants 3 to 7 who are junior to the plaintiff-respondent from Lineman to the post of Line Superintendent is wholly bad and discriminatory and directed that the petitioner be deemed to have been promoted to the post of Line Superintendent from the date the said defendants 3 to 7 had been promoted from Lineman to Line Superintendent. In our considered opinion there is no infirmity in the judgment of the High Court affirming the judgment and decree of the courts below and we agree with the reasonings and conclusions arrived at by the courts below. The appeals on special leave are, therefore, dismissed with costs, quantified at Rs. 5000 to be paid by the appellant of C.A. No. 3341 of 1983 to respondent 1.

12. The Punjab State Electricity Board, Patiala also filed Special Leave Petition (Civil) No. 2693 of 1984 against the judgment and order dated February 14, 1984 passed in Civil Revision No. 407 of 1984 by the High Court of Punjab and Haryana dismissing the revision petition. This revision petition was filed against the order rejecting the appellant's application for correction of the decree. As we have already dismissed the appeals there is no merit in this special leave petition and the same is accordingly dismissed

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