

Director, Lift Irrigation Corporation Ltd. and Others

Vs

Pravat Kiran Mohanty and Others

Civil Appeal No. 699 of 1985 with Civil Appeal Nos. 700-01 of 1985

(Kuldip Singh, K. Ramaswamy JJ)

12.02.1991

JUDGMENT

K. RAMASWAMY, J. –

1. These three appeals are against the judgment of the Orissa High Court in O.J.C. No. 936 of 1979. The Division Bench allowed the writ petition and quashed the gradation lists of Sub-Assistant Engineers (Electrical) and Sub-Assistant Engineers (Mechanical), Annexures 5 and 6 before the High Court and the promotions given to the respondents 4 and 5 therein Annexure 7. The government and the corporation were directed to consider the question of promotion treating the write petitioner and the respondents as belonging to two cadres of Sub-Assistant Engineer (Electrical) and (Mechanical). These three appeals were filed, one by the Corporation, another by the State Government and the third on by the aggrieved employees.

2. The facts are simple. Shri Bidura Charan Mohapatra, respondent 6/appellant 1 in the third appeal, a diploma holder in Mechanical and Electrical Engineering, was appointed as Mechanical Supervisor on August 24, 1962 in the pay scale of Rs. 215-396. Shri Parijay Ray, respondent 7/appellant 2, equally possessed of diploma in Electrical and Mechanical Engineering, was appointed in the same scale of pay as a Mechanical Supervisor on November 5, 1962. Shri P. K. Mohanty, the writ petitioner in the High Court and the respondent in these appeals holds diploma in Electrical Engineering and was appointed as Hand Driller in the pay scale of Rs. 100-155, on October 23, 1963 and Sub-Assistant Engineer (Electrical) in the pay scale of Rs. 185-325 on September 1, 1965. The Lift Irrigation Corporation Ltd., a part of the government organisation, was carved out separately and the three persons along with others were drawn on deputation from the government service to the Corporation in the year 1963. Three categories of services were existing in the Corporation, namely, Mechanical, Electrical and Mechanical-Electrical composite unit. In the year 1971, three tentative gradation lists were prepared for classification purpose of those three divisions as Sub-Assistant Engineer (Mechanical), Sub-Assistant Engineer (Electrical), Supervisors, Electrical and Mechanical which includes Electrical Supervisors, Mechanical Supervisor, Drilling Supervisors and Foreman-cum-Instructors. In 1977 the Corporation decided to reorganise its set up and to classify the employees into two categories, namely, Sub-Assistant Engineer (Electrical), Sub-Assistant Engineer (Mechanical) to attend to the respective works, namely, mechanical and electrical. The corporation invited objections to amalgamate Composite Electrical and Mechanical Engineering Diploma Holders, either in Electrical or Mechanical Wing. Options were called for from the persons holding only the composite diploma, namely, Mechanical and Electrical Engineering Supervisors. The respondent-write petitioner did not file any objection to the scheme. On consideration of the objection filed by others, two gradation lists were prepared in the order of seniority from the respective dates of appointment to the posts and higher scale of pay held by

respective persons and fitted them in the respective lists as per options. As stated earlier the respondent questioned their gradation in the Electrical Wing in the High Court and the High Court quashed it and the appellants obtained leave of this Court under Article 136.

3. The contention of the appellants is that the respondent has no right to be kept in a particular wing. The corporation, with a view to create two categories, namely, Mechanical and Electrical sought to amalgamate the third Composite Mechanical/Electrical Wing and sought for options from the persons holding the composite posts. This was taken due to administrative exigency. The corporation has power to carve out by amalgamating three sections, into two divisions and to prepare the seniority lists from the respective date of their initial appointment, etc. The High Court, therefore, was unjustified to quash the gradation lists. It was contended for the respondent by Shri Misra, his learned counsel, that the persons from the three wings are only deputationists holding lien on government posts. The corporation did not frame any scheme of its own to appoint its own employees, nor given options to all the deputationists for confirmation as its employees. So long as the employees are continuing on deputation, they are entitled to have seniority in the respective wings. The writ petitioner admittedly had been working on the Electrical Wing and was No. 2 in the order of seniority as Sub-Assistant Engineer (Electrical). His right to seniority, cannot be disturbed by taking Mechanical Supervisor into the Electrical Wing, offending his right to promotion enshrined under Articles 14 and 16 of the Constitution.

4. The writ petitioner holds only diploma in Electrical Engineering. Shri Bidura Dharan Mohapatra and Shri Parijat Ray hold double diploma of Mechanical and Electrical Engineering. It is settled law that the government or the corporation, due to administrative exigencies, is entitled to and has power to reorganise the existing cadres or amalgamate some or carve out separate cadres. The pre-existing three separate cadres, namely, Electrical, Mechanical and the composite cadre, namely, Electrical-Mechanical were sought to be amalgamated into two cadres by absorbing the personnel working in the composite cadre, namely, electrical-Mechanical in either Electrical cadre or Mechanical cadre. Options have been called for in that regard from all the persons working in the Electrical-Mechanical cadre and the appellants exercised their options for absorption in Electrical cadre. The employees working in the Electrical and Mechanical cadre were also award of the same. It was, therefore, open to the respondent to raise any objection to the policy at that stage. But he failed to do so. The decision to amalgamate the existing cadres by reorganising into two cadres was a policy decision taken on administrative exigencies. The policy decision is not open to judicial review unless it is mala fide, arbitrary or bereft of any discernible principle. On account of the amalgamation and adjusting the composite Electrical-Mechanical cadre in either of the Electrical or Mechanical cadre as per the options given, the order of seniority of the employees working in Electrical or Mechanical cadres is likely to be reviewed. When the persons in the composite Electrical-Mechanical cadre opted to the Electrical cadre, they are entitled to be considered for their fitment to the cadre as per the seniority from the date of their initial appointment vis-a-vis their scale of pay. This was the procedure adopted by the corporation in fixing the inter se seniority. The procedure adopted is just, fair and reasonable and beneficial to all the employee without affecting their scales of pay or losing the seniority from the date of initial appointment. Undoubtedly, in this process the respondent/writ petitioner lost some place in seniority which is consequential to amalgamation. He has not been deprived of his right to be considered for promotion, only his chances of promotion have receded. It was not the case of the respondent that the action was actuated by mala fide or colourable exercise of power. There is no fundamental right to promotion, but an employee has only right to be considered for promotion, when it arises, in accordance with the relevant rules. From this perspective in our view the conclusion of the High Court that the gradation list prepared by the corporation is in violation of the right of the respondent/writ petition

to equality enshrined under Article 14 read with Article 16 of the Constitution, and the respondent/writ petitioner was unjustly denied of the same is obviously unjustified.

5. The appeals are accordingly allowed and the write petition stands dismissed. But in the circumstances, parties are directed to bear their respective costs.

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