

Kerala State Electricity Board

Vs

N. Sukesen and Others

Civil Appeals No. 3967 of 1990 With Nos. 3968, 3974 and 3975 of 1990

(S. C. Agarwal, B. L. Hansaria JJ)

23.07.1996

JUDGMENT

HANSARIA, J.—

1. Kerala State Electricity Board, hereinafter "the Board", had one common establishment prior to 1964. A need having been felt to have a separate and distinct establishment, named as Secretariat Establishment, the same came to be formed with effect from 1-4-1964, vide order of the Board dated 31-3-1964. With a view to ensure smooth functioning of the Secretariat Service so formed, the Board, in exercise of power conferred by Section 79(c) (k) of the Electricity (Supply) Act, made certain regulations which, inter alia, laid down the principle of inter se seniority in its clause VII reading as below:

"VII. The inter se seniority of all categories of persons so appointed initially to the Secretariat will be determined and finalised with reference to the relative general seniority they held in the parent department and their services in the parent department will count for all purposes in the Secretariat Service also."

2. It was, however, felt that the separate service was not conducive to the smooth and efficient discharge of the administrative functions of the Board; and so, by order dated 14-1-1981 the separate and independent status of the Secretariat Service was brought to an end by making regulations called the Kerala State Electricity Board (Integration of Board Secretariat Establishment and General Establishment) Regulations, 1981. In these regulations the principle of seniority was laid down as below in clause 5(c) :

"5. (c) Subject to clause (f), relative seniority of persons drawn from the Secretariat Establishment and General Establishment including Accounts Wing and holding equated posts shall be determined on the basis of their length of service in the cadre/category concerned at the time of integration."

3. This principle was amended to read as below by order of 7-11-1985:

#" (a) \* \* \*##

(b) the relative seniority of persons drawn from the Secretariat Establishment and the General Establishment including the Accounts Wing shall be determined based on their ranking in the advice list of the Kerala Public Service Commission or the Board, as the case may be, at the time of initial recruitment by the Kerala Public

Service Commission or the Board to the respective establishments under the Board subject to the application of rules regarding obligatory departmental tests. " This virtually required length of service to be taken note of for determining inter se seniority.

4. The High Court of Kerala was approached mainly by officers of the erstwhile Secretariat Service challenging the revised principle of seniority as laid down in 1985. The High Court, by the impugned judgment, held that the principle was hit by Article 14 as unequals were treated as equals and has, therefore, quashed the same. These appeals are by the Board and by some persons of the General Establishment.

5. Shri Poti, the learned Senior Counsel appearing for the Board, has urged that the High Court was not justified in setting aside the principle of 1985, as such a principle had indeed been found valid by this Court in *Om Prakash Sharma v. Union of India*, [1985 Supp SCC 218 : 1985 SCC (L&S) 854] which was wrongly distinguished by the High Court. Shri Iyer, the learned Senior Counsel appearing for the private respondents has, however, urged that *Om Prakash case*' was different on facts and the High Court was right in not following the same to sustain the principle of inter se seniority as spelt out in 1985.

6. In our opinion, the decision in *Om Prakash case*[1985 Supp SCC 218 : 1985 SCC (L&S) 854] has to be applied in the instant appeals as well, because there the accelerated promotion which some of the respondents got in the cadre of Head Clerks because of the trifurcation was not required to be given weight after the different services/departments were amalgamated again. Here too, the principle of inter se seniority in the order of 1985 has basically sought to do the same by requiring the inter se seniority to be determined on the basis of the length of service in the cadre/category at the time of integration, and not by taking note of promotions earned in the Secretariat Service.

7. We have another reason to sustain the aforesaid principle and the same is that we are not quite satisfied if, while forming the Secretariat Service, the selection of the optees was really on the basis of merit, ability and suitability as was required to be. We have said so because the Chairman of the Board, who had played a pivotal role in the selection, had stated before the arbitrator, whose award was pressed into service by Shri Iyer and to which we shall advert later, thus: "No tests were conducted for these appointments nor interviews. The selection for this wing was made by me taking into consideration their fidelity, the confidence that I can have on them. Only persons known to me were selected. " In view of this, the award of the arbitrator dated 14-3-1967 holding that there was no mala fide or victimisation while making actual selection is not much significant.

8. Shri Iyer's main concern was that the aforesaid principle of inter se seniority, if sustained, would result in reversion of the persons who had got accelerated promotion in the Secretariat Service. This was illustrated by the learned counsel by drawing our attention to equation of posts as finding place at p. 66 of the paper-book of CA No. 3974 of 1990, wherein the post of Assistant Secretary of the Secretariat Establishment has been shown as equal to Assistant Accounts Officer - the next post below whom in the General Establishment being of Senior Superintendent. Learned counsel contended that the aforesaid principle would require reversion of the Assistant Secretary of the Secretariat Service to Senior Superintendent of the General Establishment, as the latter may be senior to the former if the ranking at the time of the initial recruitment alone was to be taken into consideration. According to us, however, this is not the correct reading of the principle inasmuch as that only speaks about fixation of relative seniority, and does not visualise any reduction in rank or reversion. It may be that the following of 1985 principle would make the Assistant Secretary of the

illustration junior to the Senior Superintendent, but that would not require the Assistant Secretary to be demoted to the post of Senior Superintendent.

9. In the aforesaid view of the matter, we set aside the impugned judgment of the High Court, subject to the clarification/observation made above. In the facts and circumstances of the case, we leave the parties to bear their own costs.