

SUPREME COURT OF INDIA

Kerala State Electricity Board

Vs.

Mr.Saratchandran P.

C.A.No.5813 of 2008

(S.B. Sinha and Cyriac Joseph JJ.)

18.09.2008

ORDER

Leave granted.

1. The Kerala State Electricity Board constituted and incorporated under the Electricity(Supply) Act, 1948 is before us aggrieved by and dissatisfied with a judgment and order dated 14.12.2005 passed by a Division Bench of the Kerala High Court in Writ Appeal No. 1622/2005 modifying the judgment and order dated 2.3.2005 passed by a learned Single Judge of the said Court in O.P. No.26092/1999 allowing the petition filed by the respondent No.1 herein.

2. Kerala State Electricity Board since its inception in the year 1957 was having two categories of services; (i) Ministerial Service and (ii) Executive Service.

3. On or about 1.4.1964, however, a separate services known as 'Board Secretariat Service' was constituted in terms whereof those employees who had been working were given a right of option with a lien to the parent wing to opt therefor. Indisputably, whereas the respondent No.1 was appointed as a Lower Division Clerk on 11.5.1962, L.Radhadevi was appointed on 28.1.1963 and S. G.Rajappan was appointed on 11.3.1968. It is not in controversy that whereas the said L.Radhadevi , S.G. Rajjappan opted for the Board Secretariat services, the first respondent continued to work in the general establishment.

4. It is also not in dispute that by reason of their postings in the Board Secretariat Service the said S.G.Rajappan and L.Radhadevi were promoted as Senior Superintendent on or about 31.7.1979 and 17.3.1977 respectively, whereas the first respondent was promoted to the post of Junior Superintendent on 9.11.1979; in the post of Superintendent on 1.8.1986 and on the post of Senior Superintendent on 14.7.1987.

5. It is also not in dispute that in the Board Secretariat Service,there was no post of Senior Superintendent. Whereas S.G.Rajappan was promoted to the post of Assistant Accounts Officer on 21.1.1984 and L.Radhadevi was promoted to the post of Assistant Accounts

Officer on 3.3.1983, the first respondent was promoted as Assistant Accounts Officer on 23.12.1992 only. We may also notice that S.G.Rajappan was appointed to the post of Accounts Officer on 1.9.1990 and L.Radhadevi was appointed to the said post on 1.9.1990, where as S.G.Rajappan was appointed as Senior Accounts Officer on 4.8.1993, L. Radhadevi was appointed in the said post on 17.12.1992 on the other hand the first respondent was promoted to the post of Accounts Officer on 19.1.1995 and superannuated from service on 31.5.1996, L.Radhadevi and S.G.Rajappan superannuated with effect from 31.7.1993 and 31.5.1996 respectively.

6. Indisputably, the employees of the Board were governed by the Rules known as Kerala State Electricity Board(integration of Board Secretariat Establishment and General Establishment) Regulations, 1981 framed under Section 79-C of the *Electricity (Supply) Act, 1948*. Regulation 5(c) as it stood in the year 1981 reads thus:

" 5(c) Subject of 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."

7. However, the same caused heart burning amongst a section of the employees. Representations were filed in regard thereto and ultimately the Board took a decision to amend the aforesaid clause(c). On or about 7.11.1985, an amendment was carried into effect as a result whereof the said amended regulation read as under:

" 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 establishment under the Board subject to the application of rules regarding obligatory departmental tests".

8. Validity of the said amendment was questioned before the High Court of Kerala. It was held to be invalid.

9. The matter, however, was carried to this Court and by a judgment dated 23.7.1996 in C.A.No.3967/1990, this Court allowed the appeal preferred by the Kerala State Electricity Board holding as under:

" 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 page 66 of the paper book of C.A.No.3974/90, wherein the post of Assistant Secretary of the Secretariat Establishment has been shown as equal to Assistant Accounts Officers- 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 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 visualize 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."

10. It is again not in dispute that a review petition was filed thereagainst which was dismissed by an order dated 3.2.1998. In the meanwhile, the Board sought to implement the judgment of this Court on or about 7.6.1997 by reverting eight officers.

11. The contention of the Board is that had the said S.G.Rajappan and L.Radhadevi not retired on 31.5.1996 and 31.7.1993 respectively, they would have also met the same fate but no action could be taken in this behalf.

12. The seniority of the first respondent vis-a-vis the others in terms of the this Court's judgment dated 23.7.1996 was revised by an order dated 26.10.1998. In the revised seniority list three separate lists were prepared. First Respondent's name found place at Serial No.131 of List-B thereof.

13. He filed a representation before the Chairman, Kerala State Electricity Board praying for his promotion with retrospective effect,inter-alia , contending that as S.G. Rajappan and L. Radhadevi had been promoted before him, he should have been promoted to the post of Senior Superintendent on the date on which his juniors were promoted stating:

" Knowingly or unknowingly the Board has erred in issuing the B.O. dated 26.10.1998 ref. 3rd cited. The Board has not either understood the full implication of the decision in C.A.No.3434/1984(*Om Prakash Sharma Vs. Union of India*¹) the nature and aspects of which case the honourable Supreme Court of India found analogous to that of my case (C.A.s 3974 & 3968/1990) or, is trying to hoodwing me.

My case is that, (as has been brought to the Board's notice many times prior to this through my representations - ref.4) I being senior to Mr.S.G. Rajappan and Smt. L. Radhadevi, should get all promotions which were given to them on the same dates (at least on which they were promoted (to the respective higher ranks).

To conclude, I request that all promotions to me right from the rank of Senior Assistant to Senior Accounts Officer, be ordered with retrospective effect from such dates as when Smt.L. Radhadevi and/or Mr.S.G. Rajappan was promoted (to each rank), my pay and allowances and pension revised and all arrears right from 14.1.1981 be disbursed within one month from the date of receipt of this."

15. The said representation of the first respondent was rejected by appellant by an order dated 8.3.1999 stating that the promotion of said S.G.Rajappan and L.Radhadevi being illegal as they were promoted out of turn, he could not be given the same benefit.

16. First Respondent filed a writ petition aggrieved by and dissatisfied therewith which was allowed by the learned Single Judge holding:

" 8. In view of the above proposition of law and the interpretation given to Regulation 5 of the Regulations, the petitioner staked his claim that he be given his due benefits by treating him as senior to L.Radhadevi and S.G. Rajappan and that his pay and pension have to be moulded accordingly after giving him the promotions which were given to them on account of the application of the substituted Regulation No.5.

9. The impact of the substituted Regulation No.5 is that the crucial date of integration shall be 14.1.1981 and that the relative seniority of persons shall be determined based on their ranking in the advice list of the public service commission or the Board, at the time of initial recruitment by the Public Service commission or the Board, as the case may be, subject to the application of rules regarding obligatory departmental tests.

10. It is not under challenge that the petitioner is the admitted senior of S.G. Rajappan and L.Radhadevi referred to above.

11. However, the impugned Ext.P 7 has been issued by the Secretary of the 2nd respondent Board on the premise that the petitioner had retired at a point of time when the judgment delivered by this Court in W.A. No.915/1987 and connected cases was taken up in appeal. This is wholly unjustified since it is the admitted position that the said judgment has been reversed by the apex Court as per Ext.P.3 and statutory regulation No.5 as substituted as evidenced by Ext.P.2 stands. Therefore, the very basis of the impugned decision contained in Ext. P7 is illegal"

17. As noticed hereinbefore, the Division Bench of the High Court in an intra Court appeal filed by the appellant herein modified the said judgment to the extent that first respondent would not be entitled to arrears of salary for the period he had not worked in the promoted post but would be entitled to the fixation of salary on the basis of such retrospective promotion.

18. Mr.George, learned counsel appearing on behalf of the appellant would submit that keeping in view the fact that the first respondent had only claimed parity with two of his juniors, he could not be granted promotion with retrospective effect as they had been promoted out of turn and having retired, no action as regards their reversion to their original post could be taken.

19. Mr.K.Rajeev, learned counsel appearing on behalf of the first respondent, on the other hand, urged that as admittedly the said S.G. Rajappan and L. Radhadevi were junior to the first respondent, the High Court judgment warrants no interference.

20. It is now a well settled principle of law that only because by reason of 'fortuitous' circumstances an employee who is junior to another obtains some benefit to which he is ultimately not found to be entitled to, the same by itself may not be a ground to confer the same benefit upon the senior employee.

“We have noticed hereinbefore that a separate service known as 'Board Secretariat Service' was formed on 1.4.1964. The said S.G. Rajappan and L.Radhadevi joined the said services. A separate seniority list was being maintained in respect of the said wing which was different and distinct from the wing of the Ministerial Service. The said S.G.Rajappan and L. Radhadevi were promoted on the basis of clause 5(c) of the Rules which was amended with effect from 7.1.1985. The validity of said Rule came to be questioned which was determined by this Court by reason of judgment dated 23.7.1996 in C.A.No. 3967/1990.”

21. In implementation of the same, although, the first respondent would rank as senior to them but, in our opinion, the same would not mean that he would be entitled to promotion with retrospective effect.

22. We agree with the contention of Mr. George, learned counsel appearing on behalf of the appellant that the said S.G. Rajappan and L. Radhadevi obtained out of turn promotion and if the length of service was to be treated as the basis on which the inter-se seniority of the employees were to be reckoned, first respondent indisputably would have been senior but as noticed hereinbefore they obtained out of turn promotion which ultimately was found to be illegal.It is not the case of first respondent that he was unjustly denied promotion. It is also not his case that he had suffered any pecuniary loss or any other prejudice. The High Court, therefore, in our opinion was not correct in holding that the first respondent was entitled to the relief of promotion with retrospective effect and/or to get any monetary benefit therefor.

22. Article 14 as is well known is a positive concept. Provisions of Article 14 cannot be invoked only because some illegality has been committed by an employer as a result whereof some employee has obtained benefit. The Constitutional Scheme of equality clause would apply only in a case where the parties are similarly situated. No equity can be claimed on the basis of an illegality.

23. For the reasons aforementioned, the impugned judgment cannot be sustained. It is set aside accordingly. The appeal is allowed. There shall, however be no order as to costs.

¹1985 (Supp) SCC 218