

SUPREME COURT OF INDIA

Panchraj Tiwari

Vs.

M. P. State Electricity Board

C.A.No.4371 of 2008

(H.L.Gokhale and Kurian Joseph)

04.03.2014

JUDGMENT

KURIAN, J.:

1. Whether on integration/merger/amalgamation, is it permissible to have complete denial of promotion forever in the integrated service, is the short question arising for consideration in this case.
2. Appellant a graduate started his career as junior engineer on 23.09.1986 in the Rural Electricity Cooperative Society, Rewa. During 1995, it appears a policy decision was taken by the State Government to dissolve all such societies and merge the same with Madhya Pradesh State Electricity Board (hereinafter referred to as 'MPSEB'). Accordingly, the Managing Committee of the Rural Electricity Cooperative Society, Rewa was superseded in May, 1995 and a Superintending Engineer of the MPSEB was appointed as Officer In-charge. However, it took a few years to complete the formalities of the merger. Finally the Rural Electricity Cooperative Society, Rewa was completely merged with the MPSEB w.e.f. 15.03.2002.
3. The principles of merger were clarified by the MPSEB after prolonged correspondence as per Annexure P-12 dated 15.06.2004. For the purpose of ready reference, we shall extract the contents:

“Please refer to this office order cited under reference. It is requested to issue necessary orders for absorption of employees of REC societies falling

under your area of jurisdiction on the same terms & conditions of the societies. The terms & conditions of the societies may be obtained from DE (STC), Jabalpur.

Further other terms & conditions of which employees can be absorbed:-

1. The regular employees of the above societies shall be taken over on the same terms & conditions as existing in the Society except that no deputation allowance shall be paid.
2. Their pay scale will be the same which they were getting before the absorption.
3. The above employees may not be transferred out of the circle concerned, so that no anomaly arises.
4. Their age of superannuation will be the same as applicable in the societies.
5. Pension/gratuity will be payable to the employees absorbed in the Board as per the rules/regulation of the concerned society.
6. Their designation will be maintained as it was in the society.”

(Emphasis supplied)

4. The principles of absorption as extracted above would clearly show that the employees of the society have been taken over and absorbed in the MPSEB. However, their pay-scale on the date of absorption was protected, their designation was maintained as it was in the society at the time of absorption and the age of superannuation, pension and gratuity of such employees were to be governed by the rules/bylaws of the society concerned.

5. Though it may appear that there are some conditions which are normally not found in the principles of integration, the fact remains that the employees of the erstwhile society which merged with the MPSEB, have been absorbed in the service of MPSEB.

6. Integration/merger of services means creation of a homogenous service by the merger of service personnel belonging to different services. Though it is difficult to have a perfect coalescence of the services on such merger, the principle of equivalence is to be followed while absorbing the employees, to the extent possible.

7. Though integration of services thus postulates equation of posts, it is not invariably necessary to prepare the seniority list on the basis of the pay drawn by the incumbent in the equated category. It is always open to the authority concerned to adopt a just and the equitable principle on fixation of seniority.

8. Once a service is merged with another service, the merged service gets its birth in the integrated service and loses its original identity. There cannot be a situation, where even after merger, absorption or integration, such services which were merged or absorbed, still retain their original status. If so, it is not an absorption or merger or integration, it will only be a working arrangement without any functional integration.

9. In the instant case, the undisputed factual and legal position is that there is absorption of the employees of the Rural Electricity Cooperative Society, Rewa with the MPSEB. The Society has been deregistered, there is only one service thereafter and thus there is functional integration. On the basis of the protection of the designation and pay-scale, the employees have to be posted in the equivalent category. Since it is not specifically provided as to the position of such employees in the integrated service, it is a settled equitable principle that such employees are placed as junior to the junior-most officer of the category concerned in the MPSEB on the date of absorption, viz., 15.03.2002.

10. It is provided in the conditions of service of the MPSEB as per Circular dated 15.11.1990 that a graduate Junior Engineer having satisfactory service of four years of regular service can be considered for promotion to the post of Assistant Engineer after appropriate training. The appellant started his career as a graduate engineer in the Rural Electricity Cooperative Society, Rewa in 1986. He also claimed promotion on the basis of such circular. The Board of Directors of the appellant's society passed a Resolution on 27.12.1994 for his promotion as Assistant Engineer. By that time the steps for dissolution of society, it appears had already started. The Board of Directors was dissolved in May, 1995 and a Superintending Engineer of the MPSEB was appointed as Officer In-charge of the

society. The said officer forwarded the proposal of promotion of the appellant as an Assistant Engineer to the MPSEB.

11. It appears, the Registrar of the Cooperative Societies as well as MPSEB have taken the stand that the appellant had not been duly selected for promotion as Assistant Engineer in terms of Rule 18 of the Society. The Rule reads as follows:

“18. SELECTION AND APPOINTMENT

The selection of suitable candidate for filling-up a post in the society as well as for making selection for promotion of eligible candidates shall be made by a selection committee to be constituted by the Board, consisting of the Chairman, a member of the Board to be elected by the Board, divisional Deputy Registrar of Cooperative Society, Divisional Engineer, M.P. Electricity Board and the Managing Director of the Society.

Dearness allowances to employees borne on regular establishment shall be admissible as applicable to the employees of M.P.E.B. from time to time with previous approved of the Registrar Cooperative societies M.P.

Dearness allowances to employees borne on regular estt. shall be admissible as sanctioned by the M.P.E.B. to the similar categories of employees.”

(Emphasis supplied)

12. It is the case of the appellant that since the Board of Governors had already been dissolved and since it had been decided to absorb the employees of the society in the Board, there was no point in following the process of selection in terms of the regulations of the society. Thus, the rejection was challenged before the High Court.

13. Learned Single Judge dismissed the writ petition on the ground that writ against a cooperative society was not maintainable. However, in appeal, it was admitted by the Board that the society had already merged with the Electricity Board and, hence, case was heard on merits before the Division Bench. It is the stand of the High Court in appeal that the principles of integration, as extracted above, cast no obligation on the Electricity Board to give promotion to the appellant. The obligation was only to absorb the appellant by protecting the designation and pay-scale and continue as such. In other words, since the appellant

was absorbed as a Junior Engineer, he should continue forever as Junior Engineer till his retirement. We are afraid that the stand cannot be justified.

14. As held by this Court in *R.S. Makashi and others v. I. M. Menon and others*[1], the courts will not interfere with the decision and principles of integration unless it is shown that they are arbitrary, unreasonable or unfair. No doubt, there is no vested right for an employee to have a particular position in the integrated or merged service. On equitable considerations, it is always open to the authorities concerned to lay down the principles with regard to the fixation of seniority as held by this Court in *S. S. Bola and others v. B.D. Sardana and others*[2] and *Prafulla Kumar Das and others v. State of Orissa and others*[3]. However, in the instant case, equivalence has been decided since designation and pay-scale was protected. What remains is only the seniority.

15. It is open to the authority concerned to lay down equitable principles with regard to fixation of seniority in the merged cadre. Once a service gets merged with another service, the employee concerned has a right to get positioned appropriately in the merged service. That is the plain meaning of 'absorption'. The MPSEB, having absorbed the appellant and other employees, cannot maintain a stand that even after absorption they will retain a distinct identity in the equated cadre without any promotion as enjoyed by their compeers in the parent service. That is a plain infraction of the equity clause guaranteed under Articles 14 and 16 of the Constitution of India.

16. Chances of promotion are not conditions of service, but negation of even the chance of promotion certainly amounts to variation in the conditions of service attracting infraction of Articles 14 and 16 of the Constitution of India. No employee has a right to particular position in the seniority list but all employees have a right to seniority since the same forms the basis of promotion.

17. An employee has always an interest to seniority and a right to be considered for promotion. If after integration, only the chances of promotion are affected, it would have been only a case of heartburn of an individual or a few individuals which is only to be ignored, as held by this Court in *Tamil Nadu Education Department Ministerial and General Subordinate Services Association and others v. State of Tamil Nadu and others*[4].

18. Instant is a case where there is complete denial of promotion forever which cannot be comprehended under the constitutional scheme of Articles 14 and 16 of

the Constitution of India. In this context, we shall refer to a beautiful discussion on this aspect in S. S. Bola case (supra) at paragraph 153. The relevant portion reads as follows:

“153. xxx xxx xxx xxx

AB. A distinction between right to be considered for promotion and an interest to be considered for promotion has always been maintained. Seniority is a facet of interest. The rules prescribe the method of recruitment/selection. Seniority is governed by the rules existing as on the date of consideration for promotion. Seniority is required to be worked out according to the existing rules. No one has a vested right to promotion or seniority. But an officer has an interest to seniority acquired by working out the rules. The seniority should be taken away only by operation of valid law. Right to be considered for promotion is a rule prescribed by conditions of service. A rule which affects chances of promotion of a person relates to conditions of service. The rule/provision in an Act merely affecting the chances of promotion would not be regarded as varying the conditions of service. The chances of promotion are not conditions of service. A rule which merely affects the chances of promotion does not amount to change in the conditions of service. However, once a declaration of law, on the basis of existing rules, is made by a constitutional court and a mandamus is issued or direction given for its enforcement by preparing the seniority list, operation of the declaration of law and the mandamus and directions issued by the Court is the result of the declaration of law but not the operation of the rules per se.” (Emphasis supplied)

19. In the above circumstances, we set aside the judgment in appeal. The absorbed employees of the Rural Electricity Cooperative Societies, having due regard to their date of appointment/promotion in each category in the respective societies, shall be placed with effect from the date of absorption, viz., 15.03.2002 as juniors to the junior-most employee of the Electricity Board in the respective category. Thereafter, they shall be considered for further promotions as per the rules/regulations of the MPSEB. All other principles/conditions of absorption shall remain as such. However, it is made clear that on such promotions, in the exigencies of service, the employee concerned would also be liable to be transferred out of the circle, if so required.

20. The appellant accordingly shall be entitled to retrospective promotions at par with and with effect from the dates on which the junior-most graduate engineer in the parent service on the date of absorption obtained such promotions. However, we make it clear that benefits till date need to be worked out only notionally.

21. The appeal is allowed as above. There is no order as to costs.

[1] (1982) 1 SCC 379

[2] (1997) 8 SCC 522

[3] (2003) 11 SCC 614

[4] (1980) 3 SCC 97