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Karnataka Electricity Board Employees Union Vs. Karnataka Electricity Board

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Court : Karnataka

Decided On : Jul-29-1994

Reported in : ILR1994KAR2771; (1995)IILLJ399Kant

Judge : Tirath Singh Thakur, J.

Acts : Karnataka Electricity Board Recruitment and Promotion Regulations; ;
[Constitution of India](#) - Article 14 and 16

Appeal No. : W.P. Nos. 6724, 8151 and 9092 of 1986

Appellant : Karnataka Electricity Board Employees Union

Respondent : Karnataka Electricity Board

Advocate for Def. : S.G. Sundaraswamy, ;Ramdas and ;Anand, Advs. and ;Kesvy & Co.

Advocate for Pet/Ap. : K. Subba Rao and ;N.B. Bhat

Disposition : Writ petition dismissed

Judgement :

ORDER

Tirath Singh Thakur, J

1. These three Petitions involve near identical questions of law and fact and are therefore being disposed of by this common Judgment.

2. A few facts necessary for the disposal of these cases may be stated first:

The Chief Engineer (General) of the respondent Board by his order dated 15th of May, 1985 submitted a proposal to the Board that Three hundred and forty four posts of Assistant Engineers (Electrical) be Up-graded as Assistant Executive Engineers. This proposal was made in pursuance of a representation received by Board from the K.E.B. Engineers Association, suggesting such an Up-gradation, to remove stagnation faced by Assistant Engineers (Electrical) who had been working as such for 10 years or more. It was pointed out by the Chief Engineer that the proposed Up-gradation will not involve any additional financial burden for the Board because, all those incumbents of the posts recommended for Up-gradation had been given the next higher grade (in time scale scheme) which was otherwise admissible to the Assistant Executive-Engineers. The Chief Engineer however detailed certain complications which he anticipated in the proposed up-gradation of these 344 posts. One of these complications was that the upgraded posts will in the absence of a corresponding provision in the Recruitment and Promotion Regulations of the Board have to be offered even to the non-graduates in the ratio in which they are entitled to share vacancies in the cadre of Assistant Executive Engineers. In order to overcome this and the other difficulties anticipated by the Chief Engineer it was proposed by him in his letter dated 19-2-1986, that the upgraded posts both in the cadre of Assistant Executive Engineers and the Assistant Engineer be kept separate from the pool of posts available for general promotions which attracted the application of the quota for intake from different sources. And to achieve that purpose he proposed the addition of Clauses 7(d) and 10(f) to Chapter V of the Recruitment and Promotion Regulation of the Board. The proposal when examined in detail was approved by the Board only to the extent of up-gradation of 109 posts of Assistant Engineers (Elect) to that Assistant Executive Engineers and the addition of Clauses 7(d) & 10(1) to Chapter-V as already indicated above. Consequently, by Notification dated 27-3-1986 the Recruitment and Promotion Regulations were amended to add Clauses 9(d) & 10(f) to Chapter-V thereof. By a separate order issued on the same date

109 posts of Assistant Engineers (Elecl) were up-graded as Assistant Executive Engineers.

3. Before anything further could be done by the Board the General Secretary of the petitioner Union in W.P.No. 9092/86, addressed a letter dated 23-4-86, to the Board, pointing out that the non-graduate Assistant Engineers are also entitled to be promoted against the up-graded posts and interpreting the newly added Clause 7(d) of Chapter-V to be a provision to ensure that the upgraded posts are shared by the Graduate and the non-Graduate in the prescribed ratio. The Board however informed the petitioner-Union that the interpretation placed by it upon Clause 7(d) & 10(f) was not sound and also that the ratio of vacancy allocation was not applicable to the posts available on account of upgradation. It was also pointed out by the Board that the existing up-graded vacancies were being filled up only to the extent of 3/5 due to an Order issued by this Court, in a certain Writ Petition filed by some aggrieved person. By an order dated 2-6-1986, the Board placed 70 senior most Graduate Assistant Engineers (Elecl) in independent charge of the posts of Executive Engineer (Elecl) apparently as a step in aid of their eventual promotions on regular basis against the said posts in due course.

4. Aggrieved these three Petitions came to be filed one after the other, by three different representative bodies of the employees of the respondent Board all espousing the cause of the non-Graduate Assistant Engineers (Elecl). The fact that the petitioner Associations are registered and recognised bodies entitled to maintain these Petitions, for the benefit of their non-Graduate members, working as Assistant Engineers in the employment of the Board has not been disputed before me.

5. In the Writ Petitions the petitioners question the validity of letter dated 2nd June 1986 sent by the Board in so far as it refutes the correctness of the interpretation placed by them upon Clause 7(d) of the Regulations and reiterates that the upgraded vacancies shall be open only to the Graduate Engineers to the exclusion of the non-Graduates. They also question the validity of the Official Memorandum dated 2-6-1986, placing the Graduate Assistant Engineers in independent charge of the posts of Assistant Executive Engineers. In the alternative the petitioners

challenge the validity of the newly added Clause 7(d) of the Regulations and pray for a Writ of Mandamus striking down the said provision.

6. I have heard the learned Counsel for the parties at length.

7. Shri Subba Rao, learned Counsel appearing for the petitioner in W.P.No. 9092 of 1986, and Shri Bhat appearing in the other two Writ Petitions contended that Clause 7(d) of the Recruitment and Promotion Regulations was on a plain reading of the language employed in the same, capable of only one interpretation; namely that the vacancies available in the next higher cadre of Assistant Executive Engineers should be filled up both by the graduate and non-graduate Assistant Engineers (Elect) in the prescribed ratio. They urged that the provisions in question did not admit of any other interpretation and therefore the stand taken by the Board in its letter dated 2-6-1986 and in the statement of objections filed in this Court is palpably erroneous and legally untenable. In order to correctly appreciate this submission it is necessary to refer to Clause 7 and 10 along with the newly added provisions of Sub-clause (d) and (f) to the same to the extent the same is relevant for our purposes:

Sl. No.

Category of post

State-wide Method of Recruitment

Minimum Qualification

Appointing Authority

1

2

3

4

5

6

7.

Assistant Executive Engineers (Elect).

State wise cadre) 25% of vacancies shall be filled up by direct recruitment(both from open market and in-service candidates) by interview, selection being made by a Committee constituted by the Board from time to time.

b) 45% of vacancies shall be filled up by promotion of Assistant Engineer (EI) (Graduates) on the basis of Seniority -cum-merit.

Candidates for direct recruitment: i) Should be first class Graduate in Electrical Engineering or passed A.M. I.E., (Sections- A& B, Electrical Examination with not less than 60% of marks in the aggregate or possess Post-Graduate qualification in Electrical Engineering or equivalent qualification of a recognized University/ Institution. Candidates for promotion: i) Should have completed four years of service in the Board, ii) Should have passed Executive Higher Examination and Kannada Language Test or obtained exemption from passing Kannada Language test as per rules, iii) They should maintain good conduct, punctuality in attendance and aptitude for learning the job, these should be assessed and reported by their official superiors through reports.

CEE(G1) shall make appointments from the Selection list approved by the Board.
CEE(G1)

c) 30% of posts shall be filled up by promotion of Assistant Engineers (EI) (Non-graduates) on the basis of seniority- cum-merit.

d) posts up-graded from the cadre of Assistant Engineer., (EI) to that of Assistant Executive Engineer (EI) shall be filled by Graduate Assistant Engineer (EI) and non-Graduate Assistant Engineer (EI) in the same Ratio as they would be applicable under the R & P Regulations had the posts have not been up-graded.

Candidates for CEE (G1) promotion:

i) Should have completed aggregate service of 10 yrs. as Junior Engineer and Assistant Engineer if they are Diploma Holders in Engineering. OR Should have completed aggregate service of twenty years as Junior Engineer'(EI) and Assistant Engineer (EI) if they are Certificate Holders.

ii) Should have passed Executive Higher Examination and Kannada Language Test or obtained exemption from passing Kannada Language test as per rules.

iii) They should maintain good conduct, punctuality in attendance and aptitude for learning job; these should be assessed and reported by their official superiors through reports.

10.

Assistant Engineer (EI).

State wise.

By direct recruitment & by departmental promotion as detailed below:

Functions: Allocation of posts for Direct recruitment Promotion.

a) JTAs in all O & M Sub-Dvns. of B'lore Circle & in the Sub-Dns. of City Category.
75% 25%

e) All posts of Asst. Engineers not covered by (a) to (d) supra 100% f) All upgraded posts from the cadre of Junior Engineer (EI) to that of Assistant Engineer (EI) shall be filled up by non-Graduates only.

A) Candidates for Direct recruitment:

i) Should have a degree in Electrical Engineering or any recognised University or equivalent qualification or Pass in AMIE Sections A&B; (Ele). ii) Should be on probation for one year.

CEE (G)

B) Candidates for Promotion:

i) Should have a Diploma in Electrical Engineering or Mechanical Engineering of a Polytechnic of the State of Karnataka or equivalent qualification or Diploma or Certificate in Elecl. or Mechanical Engineering Of the Erstwhile School of Engineering, Bangalore.'

CEE (G)

Now so far as the provisions of 10(f) supra, are concerned, there is no difficulty whatsoever, in appreciating or interpreting its language and meaning. It very clearly provides that all posts of Assistant Engineers (EI) available on account of up-gradation of the posts of Junior Engineers (Elecl) shall be filled up by the non-graduates only. In other words, the ratio of intake between Direct recruits and promotee non-Graduates would have no application to the filling up of the vacancies, available on account of upgradation of the posts of Junior Engineers to that of Assistant Engineers; and all such vacancies will go only to the non-Graduates no matter in the ordinary course and in the general pool of vacancies, the said posts would have been shared by the Direct recruits and the promotees in the prescribed ratio. Significantly the provisions of Clause 10(f) which make, a departure from the quota Rule prescribed by Clause 10(a) to (e) has not been challenged by the petitioners; and rightly so, because, the addition to Clause 10(f) is meant to benefit the non-graduates by allocating all the posts of Assistant Engineers' available on account of up-gradation of the lower Cadre posts of Junior Engineers; to the non-Graduates. What has come under attack is a similar provision made in respect of the up-graded posts of Assistant Engineers, where only the Graduates have been made the beneficiaries of the upgradation.

8. The petitioners contend that the language employed in Clause 7(d) of the Regulations does not bring about the same result, qua the posts of Assistant Executive Engineers, as is brought about by Clause 10(f) qua the posts of Assistant Engineers upgraded from that of Junior Engineers. The argument does appear attractive on the face of it but does not survive a closer look. Before advertent to the provision it is necessary to keep in mind two significant features of the case which bear great relevance to the true meaning and import of the provision. These features are : (i) The object behind the incorporation of Clause

7(d) and (ii) The superfluity of the addition made, if the same was to serve no purpose other than reiterating what was already self evident. I may first dilate on these two aspects before proceeding any further.

9. The genesis of the proposal to upgrade the posts of Assistant Engineers has already been indicated in the earlier part of this Judgment. It was to provide an upward opening to such of the Engineers, as had put in more than 10 years as Assistant Engineers and had been given the next higher grade in time scale which was otherwise equivalent to the grade enjoyed by the post of Assistant Executive Engineers. The fact that no additional financial burden would be attracted for any such upgradation while at the same time giving the old hands a well deserved relief from stagnation appeared to be the motivating force behind the proposal that found a smooth passage through the Board: with only one modification in the proposal of the Chief Engineer - namely reduction in the number of posts to be upgraded from 344 as suggested by the Chief Engineer to 109. The agenda, note submitted for the consideration of the Board, a copy whereof was filed in these proceedings by Mr. Sundaraswamy learned Senior Counsel appearing for the Board, clearly shows that the number of posts to be upgraded got reduced from 344 to 109 on account of the choice of posts selected for upgradation. The posts chosen as correctly submitted by Mr. Sundaraswamy were those which were occupied by only Graduate Assistant Engineers (Elecl) in terms of Clause 10(e) of the Regulations.

10. It further appears that the scheme underlying the incorporation of Clause 7(d) was to keep the upgraded posts as a separate entity distinctly different from the general pool of posts available for promotion; and to fill up such posts from out of Graduate or non-Graduate Assistant Engineers depending upon whether the upgraded posts was out of the share of the Graduate or the non-Graduate Assistant Engineers. This is apparent from the following passage of the agenda note based on which the decision to upgrade the posts and the addition of Clauses 7(d) & 10(f) was taken by the respondent-Board.

'The Chief Engineer, Electricity (Gl.) in his recommendation has recommended for upgrading of 344 posts. A review at the Secretariat level indicates that there is a

scope to bring down this number. It is felt upgradation of a large number of posts as proposed is not in the long term interest of the Board. These posts require experienced staff so that their services could be better utilised in getting the scheme prepared and monitored. The following post numbering 109 is proposed for upgradation and details of such posts are furnished hereunder:

1. TCD Office Assistants .. 42. System Improvement .. 53. Industrial Training Centre .. 264. CEE (MM&P;) Office .. 185. CEE (R.E.Zone) Office .. 126. Major Works Circle Office .. 67. Major Works Divn. Office .. 108. O & M Circle, Bangalore .. 39. O & M Circle, Mysore .. 310. O & M Circle, Shimoga .. 211. O & M Circle, Tumkur .. 212. O & M Circle, Belgaum .. 213. O & M Circle, Hubli .. 214. O & M Circle, Munirabad .. 215. O & M Circle, Gulbarga .. 216. O/O CEE, B'lore Zone .. 317. O/O CEE, M'lore Zone .. 218. O/O CEE, Hubli Zone .. 319. O/O CEE, Gulbarga Zone .. 2

TOTAL 109 Nos. The posts of the above Assistant Engineers are presently held by the Graduate Assistant Engineers only as per R & P Regulations. In normal course, the posts of the Assistant Executive Engineers have to be filled up by both the Graduate and Non-graduate Engineers in the ratio of 7:3. If this rationale is applied, 30% of Graduate Assistant Engineers who are now holding these posts become surplus. Since the existing posts are being upgraded and the equal number of posts of Assistant Engineers (Graduates) are being abolished, the Chief Engineer (GI) has proposed to segregate and keep the upgraded posts both in respect of Assistant Executive Engineers, El., (upgraded) as a separate and distinct entity from the pool of the posts available for promotion while keeping these posts separate and out of the promotional pool, these posts will stand earmarked for promotion to be filled up by the Graduate Assistant Executive Engineers or Non-Graduate Assistant Executive Engineers, depending upon the post upgraded in respect of Assistant Engineers, El., posts. This will need the insertion of the following additional Clause to R & P Regulations vide Clause (d) under Chapter-V, as hereunder;-

'Posts upgraded from the cadre of Assistant Engineers shall be filled by Graduate Assistant Engineers and non-Graduate Assistant Engineers in the same ratio as they would be applicable if they had not been upgraded'. Similarly, under Clause 10(f) in the Chapter-V insertion is required as hereunder: 'All upgraded posts from

the cadre of Junior Engineers shall be filled up by Non-graduates only.'

11. It is therefore apparent that the entire object behind the addition of Clause 7(d) was to restrict the promotions against the upgraded posts of Assistant Executive Engineers to Graduate Assistant Engineers; or non-graduate Assistant Engineers depending upon whether the posts upgraded were meant exclusively for the Graduates or the Graduates and non-Graduates both. It is at this stage important to note that Clause 10 of the Recruitment & Promotion Regulations makes a very peculiar provision for the method of recruitment to be adopted. Unlike most other cases for recruitment to various services, the ratio of intake for the posts in the cadre of Assistant Engineers, is not a simple apportionment between the direct recruits and the promotees. On the contrary ratio for intake in the cadre has been fixed by reference to the function which the incumbent holding the posts are required to discharge. A perusal of Clause 10 of the Regulations reproduced earlier would show that in the case of Assistant Engineers (Elect) working as Junior Technical Assistants (JTAs in all O & M) Sub-Divisions of Bangalore Circle and in the Sub-divisions of City category, the quota meant for direct recruits is 75% as against 25% reserved for the promotees. Similar is the case with the Assistant Engineers working as Section Officers in O & M Sections in Bangalore City. As against this Assistant Engineers working as JTAs in O & M Sub-division other than City Category, will be taken in the ratio of 50:50 between the direct recruits and the promotees. This is so even in the case of Section Officers of Urban Semi-Urban (O & M) Sections and City O & M Sections other than Bangalore City, where too the ratio between direct recruits and the promotees is fixed at 50:50. In terms of Clause 10(e) of the Regulations however, all such posts of Assistant Engineers which do not fall in categories (a) to (d) of Clause-10, the method of appointment is by direct recruitment only. In other words, posts of Assistant Engineers even though all constituting a common cadre, have different ratio fixed for appointment, depending upon the functions which are assigned to the posts. In case however, of post which do not fall in Clauses-(a) to (d) of Clause-10, only graduates are entitled to appointment in terms of Clause-10(e).

12. Mr. Sundaraswamy, learned Senior Counsel appearing for the Board contented and in my opinion rightly so that in accordance with the scheme of

Clause-10 of the Regulations, there are posts against which both Graduates and non-Graduates, Assistant Engineers can be appointed and posted, while there are others against which only the Graduates can be appointed or posted. He further submitted that the decision of the Board and the subsequent order, issued by it under No. KEB/B5/2521/85-86 dated 27-3-86 upgraded only 109 posts of Assistant Engineers Elecl all of which fell in the Category provided for by Clause 10(e) and all of which were held and could be legally held only by the Graduate Engineers. He therefore submitted that the appointment of only Graduate Assistant Electrical Engineers was, envisaged by the Board, against these posts, as non-Graduates were not entitled to hold the same. To make this position clear the addition of Sub-clause (d) to Clause 7 of the Vth Chapter of the Recruitment and Promotion Regulations was considered necessary which addition was according to him validly made by the Notification impugned in these Petitions. .

13. I find considerable merit in the submission of the learned Counsel. From the scheme of the Regulations as also the background in which Clauses-7 (d) and 10(f) came to be added to Chapter-V thereof it is apparent that the intention behind the up-gradation was to provide relief only to the Graduate Engineers who were holding posts meant only for Graduates in terms of Clause 10(e). The petitioners have not disputed the fact that none of the posts of Assistant Engineers which has been upgraded under the order of the Board dated 27-3-1986, could have been claimed by the non-Graduates, as all those posts of Assistant Engineers are other than the ones falling under Sub-clause (a) to (d) of Clause-10 of the Regulations. These 109 posts of Assistant Engineers, were therefore meant only for the Graduates and could have been legally held only by them. Mr. Subba Rao, learned Counsel for the petitioners however relied upon the arguments made by the respondent-Board in its additional Statement of Objections filed on 23-6-1994, to point out that the posts chosen for up-gradation had been at times held even by the non-Graduates. This may be true, but the very fact that in the exigencies of service, certain non-Graduates are also posted against posts to which they cannot be appointed and which they may not have been legally entitled to hold does not make any material difference. The fact remains, that the posts which have been upgraded, are posts falling in the residuary Clause 10(e) of Chapter-V of the Recruitment and Promotion Regulations and could therefore

have been held only by the Graduates.

14. I must before turning to the provisions of Clause 7(d) for its true and correct interpretation, advert to the 2nd feature of the backdrop in which the provision will have to be examined and interpreted. This pertains to the well settled principle of interpretation of statutes that no provision in a statute is a surplusage; and that the Legislature does not waste words. These principles are applicable even to delegated legislation like the one with which we are dealing in the case at hand. The argument advanced on behalf of the petitioners that the provisions of Clause 7(d) were introduced, only to reiterate what was otherwise self evident, if accepted would render, the said provision superfluous, a result which has to be avoided. It is very rarely that provisions are introduced to remove doubts, but whenever they are so introduced, the purpose is more often than not mentioned by the Legislature or the Rule Making Authority. The addition of Clause 7(d) of the Recruitment and Promotion Regulations must, therefore serve a purpose more meaningful than simply reiterating what was much too clear to require any repetition or reiteration. In other words any interpretation of Clause 7(d) which renders it otiose must be avoided and one which gives it a more purposeful meaning preferred.

15. Let us now examine the provisions of Clause 7(d) of the Regulations. This provision I must say at the outset is not very happily worded, which fact was not disputed even by Mr. Sundaraswamy, learned Counsel appearing for the Board. It appears the Chief Engineer of the respondent-Board tried his hands at drafting a statutory Rule something which he ought to have left to some one better qualified than him to do. Even so certain matters which can be deduced from the newly made addition are that the same pertains to the upgraded posts in the Cadre of Assistant Executive Engineer. That the upgraded posts would be open to the Graduates and even non-Graduates, in the same ratio in which these were available to them if they were not upgraded meaning thereby if the posts had continued to remain posts of Assistant Engineers appointment to which is regulated by Clause 10 of the Regulations. In other words, what Clause 7(d) purports to achieve is to borrow the ratio applicable to the appointments to the cadre of Assistant Engineers, for appointments against posts of Assistant Executive Engineers available by reasons of upgradation. Consequently if ten

posts of Assistant Engineers, in positions provided for by Clause 10(a) are upgraded Clause 7(d) provides that those ten vacancies of Assistant Executive Engineers would go to the Graduates and non-Graduates, in the same ratio in which the posts of Assistant Engineers of that category would have gone. In that sense, Clause 7(d) is a provision not only meant to serve the immediate purpose which the Board had in its mind but also a future situation in which some other posts of Assistant Engineers may be upgraded, in which event again the question as to what would be the ratio in which those posts would be shared would certainly arise, as between the Graduates and the non-Graduates.

16. I find considerable merit in the submission of Mr. Sundaraswamy that the provisions of Clause 7(d) of the Regulations have achieved the purpose of keeping apart the up-graded posts from the posts in the general pool where all the vacancies are to be shared by the Direct recruits, the Graduates and the non-Graduates in the prescribed ratio. Not only does Clause 7(d) take the upgraded posts out of the general pool, but it further provides that the ratio of appointment against those posts would be the same as would be applicable if the posts were not upgraded namely if the posts had continued as post of Assistant Engineer.

17. When seen in the above background, the Board was correct in its interpretation of Clause 7(d) as conveyed to the petitioners by its letter dated 2-6-86. The Board was also justified in asserting that under Clause 7(d) of the Regulations, only the Graduates were entitled to be appointed as Assistant Executive Engineers, against the 109 posts of Assistant Engineers, upgraded by it, for the reason that all those 109 posts were posts which fell under Clause 10(e) of the Regulations and therefore only the Graduates were entitled to be appointed against the same to the exclusion of the non-Graduates.

18. There is yet another aspect which needs to be noticed at this stage. The posts of Assistant Engineers which have been upgraded all fall in the residuary category of Clause 10(e) of the Regulations. These posts could not be claimed by the petitioners as the same are open only to Graduates holding a Degree in Electrical Engineering. To this extent there has not been and could not be any serious controversy. The question then is if these posts are upgraded (by reduction of a

corresponding number of posts which would have otherwise gone to the Graduates) should non-Graduates who were not eligible while the posts were still posts of Assistant Engineers, become eligible, when they are upgraded. The answer in my opinion is clearly in the negative. The up-gradation of a post, ordered by the Board because, either of the qualifications required the duties attached to the posts or such other consideration, cannot, make an ineligible person eligible for appointment against the same. On the contrary, it is possible, that an eligible person against the lower posts may become ineligible if the post is upgraded by reason of some additional qualification or requirement for appointment against the same. Acceptance of the submission advanced on behalf of the petitioners would therefore give rise to an anomalous situation where the petitioners would not be eligible against the posts of Assistant Engineers but would become eligible if the post is Upgraded. An interpretation which can result in such an anomaly has to be avoided.

19. Mr. Subba Rao, then contended that the interpretation placed by the Board upon the Regulations, if upheld, would give rise to a situation where, there will be two classes of Assistant Executive Engineers - namely those out of the general pool of posts and others who are appointed against posts available by reason of upgradation from the lower cadre. This would be an anomalous situation contended the learned Counsel besides being impermissible in law. I find no merit even in this submission of Mr. Rao. The very fact that the method of appointment against any post available by reason of upgradation, is regulated by a specific provision made by the Rules, does not amount to bringing into existence a different class of Assistant Executive Engineers. All that it would mean is that a certain number of posts available on account of up-gradation would be filled up in the manner and on the basis of qualifications prescribed by the Regulations. The Board or for that matter any other employer - is entitled to provide for the method of recruitment or appointment to a given class of posts, and so long as the method so prescribed is non-discriminatory the same cannot be found fault with. Vacancies available to the Board on account of up-gradation of the posts of Assistant Engineers as Assistant Executive Engineers by a corresponding abolition of the posts of Assistant Engineers, were a distinct class by themselves appointments against which could be separately provided for as has been done by

the Board by introducing Clauses 7(d) and 10(f) to the Regulations. The introduction of these provisions for regulating appointments against these posts could not be said to be per se bad if the method adopted was otherwise non-discriminatory,

20. The next question then is whether the provision contained in Clause 7(d) making only Graduates Assistant Engineers eligible for appointment against the 109 upgraded posts is discriminatory or violative of Articles 14 and 16 of the [Constitution of India](#). An answer to this question is not difficult to find, in view of the Judgment of the Supreme Court in the State of JAMMU & KASHMIR v. TRILOKI NATH KHOSA AND ORS. : (1974)ILLJ121SC . The Supreme Court was in that case dealing with the validity of a classification made by the Jammu and Kashmir Engineering Gazetted Service Recruitment Rule 1970, by which only Graduates Assistant Engineers were eligible for promotion to the next higher post of Executive-Engineers. The non-Graduates questioned this classification contending that once Graduates and non-Graduates had joined a common stream, in the cadre of Assistant Engineers, the Graduates could not be beneficially classified for further promotion, denying a similar opportunity to the non-Graduates. Repelling the argument, the Supreme Court held that a classification based on higher and better qualification and aimed at achieving administrative efficiency was legally permissible. The Court observed thus:-

'Unless the classification is unjust on the face of it, the burden is on the petitioners to set out facts necessary to sustain the plea of discrimination and to adduce cogent and convincing evidence to prove those facts, for there is a presumption that every factor which is relevant or material has been taken into account in formulating the classification. Thus, it is no part of the respondents' (State's) burden to justify the classification or to establish its constitutionality. Formal education may not always produce excellence but a classification founded on variant educational qualifications is, for purposes of promotion to the post of an Executive Engineer, to say the least, not unjust on the face of it and the onus therefore cannot shift from where it originally lay.'

21. The above position in law was reiterated by the Supreme Court in P. MURUGESAN AND ORS. v. STATE OF TAMIL NADU : (1993)ILLJ944SC where the Court observed thus:

'Since the decision of the Constitution Bench in Triloki Nath Khosa the Supreme Court has been holding uniformly that even where direct recruits and promotees are intergrated into a common class, they could for purpose of promotion to the higher cadre be classified on the basis of educational qualifications. When the rules can be framed barring altogether the diploma holders from promotion, the rule making authority cannot be precluded from restricting the promotion. The rule making authority may be of the opinion, having regard to the efficiency of the administration and other relevant circumstances that while it is not necessary to bar the diploma holders from promotion altogether, their chances of promotion should be restricted.'

22. Classification made on the basis of higher educational qualifications, for purpose of promotion to the next higher post cannot therefore be treated to be discriminatory or unfair so as to be violative of Articles 14 and 16 of the Constitution; nor can the provisions of Clause 7(d) be interfered with on that basis.

23. That takes me to the next ground so strenuously urged by Mr. Subba Rao. The validity of Clause 7(d) of the Recruitment and Promotion Regulations is being questioned by the petitioners on the ground that the same is in violation of the Settlement arrived at between the petitioner - employees and the Board. A copy of the Settlement dated 30-9-1974 placed on record by the petitioners shows that the Management and the Employees had both accepted and agreed to abide by the report and recommendations made by the Work Load Committee appointed in terms of an earlier Settlement between the parties dated 30-9-1971.

24. The relevant portion of the Settlement executed between the parties on 30th September, 1974 read thus:-

'It has been agreed by the parties that the recommendations of the workload Committees (Ministerial) and (Executive) shall be binding on all employees and the Management of Karnataka Electricity Board for a period of 3 (three) years from

the date of signing this Settlement.'

25. Mr. Subba Rao, learned Counsel for petitioner submitted that even when the Settlement aforesaid was valid for a period of three years from the date it was signed, yet the terms thereof would remain valid and binding on the parties till such time a new Settlement is arrived at between them. He further submitted that the benefit available to the employees of the Board under the aforesaid Settlement could not be taken away by the Management in the garb of making a statutory provision in the Recruitment and Promotion Regulations. The provisions of Clause 7(d) of Regulations, contended the learned Counsel, were violative of the Settlement and therefore liable to be struck down. In order to show that the Settlement was in conflict with the provisions of Clause 7(d), the learned Counsel urged that the Recruitment and Promotions Rules of the Board prescribing a quota of 30% of the total posts available in the cadre of Assistant Executive Engineer for non-Graduates, was a provision made on the basis of the Work Load Committee's Report, which had been accepted by the Management and the Employees under the Settlement in question. A quota of 30% vacancies in the said cadre was, therefore, a part of the Settlement which the Management could not have nullified by making a provision in the form of Clause 7(d), as it has actually done. He relied upon the Judgment of the Supreme Court in THE LIFE INSURANCE CORPORATION OF INDIA v. D.J. BAHADUR AND ORS. : (1981)ILLJ1SC , in support of his submission that Industrial Disputes Act was a special Statute and any settlement made in terms of the said Act, or recognised by it, could not be set at naught by invoking the provisions of a general enactment or a general Rule making power. In as much as the newly added provisions of Clause 7(d) purported to do so, the same was illegal and liable to be struck down.

26. Mr. Sundaraswamy, learned Senior Counsel appearing for the Respondent-Board on the other hand submitted that the execution of the Settlement between the board and the Management on the 30th September, 1974 was not in dispute. He also did not dispute the abstract principles of law that a Settlement would continue to hold good even after the expiry of the period for which it was initially made. The fact that a provision made under a general enactment, would not override the Settlement arrived at under I.D. Act was also not in dispute. Learned

Counsel however contended that in order, that the principle laid down by the Supreme Court in the Life Insurance Corporation case (supra) should apply, it was necessary to point out that there was a conflict between the terms contained in the Settlement and the Service Rules and Regulations framed by the employer in exercise of its powers under the General Act. There was according to him no such conflict between the Settlement in question and the provisions of Clause 7(d), with the result that the question of the said provision violating any such Settlement did not arise.

27. In Life Insurance Corporation of India v. D.J. Bahadur and Ors., a settlement was made between the employees of the LIC., and the Management in the year 1974. This settlement pertained to the payment of Bonus to the employees. The benefit flowing from the settlement was however sought to be terminated by the promulgation of the Bonus Ordinance 1975 later replaced by the Payment of Bonus Amending Act 1976 which was brought into force to extinguish the effect of the settlements arrived at between the Management and the employees and to defeat the claims for payment of bonus put forward by the employees under the same.

28. The Constitutional validity of this Amending Act was successfully challenged by the employees of the LIC in the Supreme Court. The Supreme Court while allowing the said Petition directed the Corporation to pay its class-III and class-IV employees bonus for the years 1-4-1975 to 31-3-1977. It was after this Judgment that the Corporation issued to its workmen certain notices under Section 9(a) and 19(2) of the I.D. Act. Simultaneously, Central Government issued a notification under Section 49 LIC Act substituting a new Regulation for the old Regulation 58. The threatened stoppage of Bonus was successfully challenged by the employees before the Allahabad High Court. In the Appeal before the Supreme Court primarily two Questions arose for Consideration viz -

1) WHETHER a settlement under the Industrial Disputes Act, suffers death because of a notice issued under Section 19(2)? and

2) WHETHER the Industrial Disputes Act was a special Statute which would take precedence over the provisions of the Life Insurance Corporation Act?

29. The Supreme Court after a review of the entire case law on the subject came to the conclusion that a settlement arrived at between the employees and the Management did not terminate upon service of the notice under Section 19(2). It was further held that all that a notice issued under the said provision did was to intimate the intention of the party giving the notice to terminate the Award between the parties would continue to govern their relationship until they were replaced by a fresh award or settlement. On the second question, the Court held that the Industrial Disputes Act was a special Statute and therefore any settlement arrived at between the parties under the said Act, could not be set at naught by exercise of any Rule making power available under a general Statute like Life Insurance Corporation Act.

30. The principles laid down by the Apex Court in the aforesaid Judgment are not and cannot be disputed before me because the view taken by the Apex Court is binding upon me under Article 141 of the [Constitution of India](#). In order however that the ratio of the said Judgment should apply to the instant case it must be proved that the subject on which the Management has brought a change by introduction of Clauses 7(d) and 10(f) of the Recruitment and Promotion is covered by any other Provision of the said Regulations.

31. I find considerable merit in the submission made by Mr. Sundaraswamy that the Workload Committee's Report, the Settlement arrived at between the parties accepting the said Report as also the Recruitment and Promotion Regulations of the Board do not make any provision as to the method of appointment to be adopted by the Board in respect of vacancies that may be available by reason of upgradation of a particular number, class or category of posts. The quota of 30% vacancies being reserved for Assistant Electrical Engineers non-Graduates does not necessarily suggest that the said quota would be available even in regard to the posts that may become available on account of up-gradation. The provisions of the said Clause 7(c) fixing 30% of the vacancies for Assistant Engineers non-graduates, can only mean that the said percentage of vacancies will be available to non-graduates out of the general pool of posts. A decision as to the upgradation of the posts of Assistant Engineers (Ele) as Assistant Executive Engineers is not within the comprehension of the Rules. Such a decision is relateable only to the

general power vested in the Management to order such an upgradation given regard to the necessity for doing so in the peculiar facts and circumstances of the case.

32. Suffice it to say that what should happen to the vacancies that may be available by reason of the upgradation of a particular number or class of posts is not indicated either by the Work Load Committee's Report or by the Settlement nor even the Statutory Regulations. It was therefore an area which was uncovered by any existing Regulation, thereby entitling the Management to make a suitable provision to cover the same. Having done so, by introducing Clauses-7(d) and 10(f) to Chapter-V, no part of the Settlement the Regulations or the Work Load Committee's Report, appears to have been offended. There is therefore no merit in the submission of Mr. Subba Rao that the provisions of Clause 7(d) of the Regulations is in contravention of the Settlement arrived at between the parties.

33. All the grounds of challenge urged by M/s. Subba Rao & Bhat, learned Counsel appearing for the petitioners therefore fail.

34. In the result, the Writ Petitions are dismissed but in the circumstances of the case without any order as to costs. Interim orders of stay passed by this Court shall continue for a period of 4 weeks from today to enable the petitioners to file an Appeal against this Judgment if so advised and to seek from the Appellate Court such directions for the grant of interim relief as may be legally open to them.

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