

**The Executive Engineer Vs. Nameinath Devappa**

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**Court :** Karnataka

**Decided On :** Aug-26-1997

**Reported in :** ILR1998KAR1055

**Judge :** T.N. Vallinayagam, J.

**Acts :** Karnataka Electricity Supply Undertaking (Acquisition Act 1974 - Sections 4(1); Industrial Employment (Standing orders) Act, 1946 Sections 5

**Appeal No. :** R.S.A. No. 689/1988

**Appellant :** The Executive Engineer

**Respondent :** Nameinath Devappa

**Disposition :** Appeal allowed

**Judgement :**

**T.N. Vallinayagam, J.**

1. The defendants are the appellants. The suit by an employee of the defendants Electricity Board for injunction restraining the Electricity Board from retiring the plaintiff employee before 30.4.1985 when he would complete 60 years was decreed by the Trial Court. The appellate Court confirmed the finding on appeal by the Electricity Board and for the second time the defendants-Electricity Board are before this Court.

2. The claim of the plaintiff was that he was originally employed by the amalgamated Electricity Company on the electrical side to maintain the electricity supply in Belgaum. The Electricity supply undertaking was taken over by the Government under the provisions of the Karnataka Electricity Supply undertaking (Acquisition) Act, 1974 on 18.12.1974. Under the standing orders of the Amalgamated Electricity Company, the age of superannuation for the clerical staff was 60, while under the employees service regulations of Karnataka Electricity Board, the age of superannuation is 55. Claiming the benefit under the earlier undertaking standing orders the plaintiff sought an injunction when he was about to be retired on 30.4.80. The suit was resisted by the defendants-Electricity Board on the ground that Section 4(1) of the Act, the said undertaking stood transferred to an vested in the Government. Under the rules and conditions of the service framed by the Board under Section 79(c) of the Electricity Supply Act, the retirement of an employee of the Board is 55 years. Consequently, the Electricity Board prayed for dismissal of the suit. The courts below have concurrently come to the conclusion that the plaintiff had right under the standing order of the earlier undertaking and consequently he shall not be retired before he attains the age of 60. Even before the dismissal of the appeal though the period of 60 years has expired the appeal is still fought so that the benefit of the entitlement of 5 years made available to the employee, in case the second appeal of the Electricity Board is dismissed.

3. The contention of the Electricity Board before this Court was that on the undertaking being taken over by the Government/ Electricity Board, the employees are given option regarding their services being governed by the regulations of either the electricity board or the previous undertaking. In such case, the option was exercised and the respondent was consequently retired from the duties in the Electricity Board on his attain of 55 years. The fact is that the Act in question was challenged in the High Court and the matter was pending in the Supreme Court at the time when the appeal was filed. The appellants also relied upon an unreported decision of the Supreme Court in S.S. GANDHA v. KARNATAKA ELECTRICITY BOARD AND ORS. wherein it has been held;

'Having joined the Karnataka Electricity Board on a clear understanding that he would be bound by the rules and regulations of the Board, he could not under the law claim any privileged treatment. The appellant had no legal right to insist upon being promoted contrary to the regulation which required the passing of the examination for being promoted to the higher post of Accounts Superintendent.'

Relying upon such judgment it was contended that the plaintiff cannot have a better right than the one declared by the Supreme Court. Various other authorities were also cited before me. In case of U.P. STATE ELECTRICITY BOARD AND ANR. v. HARI SHANKER JAIN AND ORS. it has been held that;

'We, therefore, hold that the industrial Employment (Standing Orders) Act is a special law in regard to the matters enumerated in the schedule and the regulations made by the Electricity Board with respect to any of those matters are of no effect unless such regulations are either notified or the Government under Section 13-B or certified by the Certifying Officer under Section 5 of the Industrial Employment (Standing Orders) Act. In regard to matters in respect of which regulations made by the Governor or in respect of which no regulations have been made by the Board, the Industrial Employment (Standing Orders) Act shall continue to apply.'

In the present case the regulations made by the Board with regard to the age of superannuation having been duly notified by the Government such regulations shall have to prevail. The Division Bench of this Court in an unreported batch of cases Writ Appeal Nos.884/1983 c/w 1353/83 and c/w 574/84 dated 16th July 1987 had an occasion to consider whether after retirement under the Standing orders of the newly constituted Electricity Board an employee will be entitled to pensionary benefits or not. The Division Bench held that the option to adopt the regulations of either the earlier undertaking or the new Board is with the employee and such option cannot be presumed. But in a case where option is exercised then the dictum in S.S. GANGHA v. KARNATAKA ELECTRICITY BOARD AND ORS. to the following effect is applicable. In the above case reference has been made to a case in KARNATAKA ELECTRICITY BOARD v. GULAM MOHIUDDIN wherein, the dictum laid down was that on being offered an option, the employee having

opted to serve under the Karnataka Electricity Board is bound by the rules and regulations framed by such Board. He cannot fall back upon the rules and regulations and claim any benefit. A Similar question was raised regarding continuance of an employee beyond the age of 55 years before this court in W.P.No.28804/92 disposed of on 8.6.85. Relying upon the option exercised by the employee this Court held that the continuance of the petitioner in service beyond 55 years is not permissible. It is not the case of the plaintiff in the plaint that he has not opted to serve under the Karnataka Electricity Board. In the absence of any denial, it must be taken that he has opted to serve under the Electricity Board and it is the only possible way of interpretation as, the employee himself had no other option but to continue his service under the Karnataka Electricity Board. The previous undertaking has been taken over by the new Electricity Board. In fact, the Trial Court in paragraph-9 observes that;

'There is no dispute that the service conditions of the plaintiff, as employee of the erstwhile company were governed by the standing orders framed under Section 5 of the Industrial Employment (Standing orders) Act, 1946 for the employees of the Amalgamated Company Ltd., Belguam branch and that the 396 of the retirement provided under these standing orders was 60 years for the employees like the plaintiff.'

Even before the appellate Court it was not disputed that the plaintiff has exercised the option to serve under the Electricity Board as an employee of such Board. Once it is found that the option has been duly exercised by the plaintiff, the principles laid down in the aforesaid decisions has to come into play and applying these it has to be held that the judgment and decree of the Courts below are wrong and they are against the settled principles of law as enunciated in the aforesaid decision.

4. In this view, the second appeal is allowed and the judgment and decree of the Courts below are set aside. The suit of the plaintiff is dismissed.