

Lakshmaiah Vs. Superintending Engineer (Elecl), Keb

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Court : Karnataka

Decided On : Jan-12-1995

Reported in : ILR1995KAR696

Judge : M.F. Saldanha, J.

Acts : [Constitution of India](#) - Articles 14 and 226

Appeal No. : W.P. Nos. 8564 of 1990 etc.

Appellant : Lakshmaiah

Respondent : Superintending Engineer (Elecl), Keb

Advocate for Def. : B.C. Prabhakar and ;M. Subba Rao, Advs. for KEB, ;Shashidhar, Adv., ;S. Karmadi, HCGP for State, ;X.M. Joseph and ;K.V. Sathayanarayana, Advs.

Advocate for Pet/Ap. : M.S. Nagaraj, ;Harikrishna S. Holla, ;M. Raviprakash, ;Vagdevi Associates, ; Shailendra, ;S.V. Subramanyam, ;K. Subba Rao, Advs.

Disposition : Petition succeed

Judgement :

ORDER

M.F. Saldanha, J.

1. This group of Petitions basically concerns one common point of grievance which has been canvassed by the various petitioners. Barring individual differences which are inevitable in view of the fact that the petitioners have joined service at different points of time, what is sought to be contended is that they all belong to one common cadre as employees of the Electricity Board and that they consist of meter readers, overseers and operators. It is undisputed that this cadre or category of employees is the one that is immediately below the next higher promotional category namely the post of Junior Engineers. It is from this particular class of employees or rather grade of employees, that promotion to 35% of the posts of Junior Engineers are made by the Board. It is necessary for me to record here that in leading to this common pool, we have two broad streams which have been categorised as technical and non-technical. As far as technical persons are concerned, they are direct recruits and the qualifications that are required of them are prescribed by the Rules but they are all basically having the minimum qualification of an I.T.I. Diploma. This requirement is absent as far as the second stream is concerned namely the non-technical persons who are promoted from the lower cadre of linesmen etc. There is no bar to this category of employees having higher qualifications but the fact remains that such qualifications are not a requirement to those lower posts from where the promotees ultimately come up and consequently the fact is that the majority of them barring very few exceptions, do not possess the higher qualification. I shall deal with the arguments that have been canvassed by the learned Counsel who represents the Board subsequently, but at this stage suffice it to say that it is these two streams which have merged into the common cadre with which we are concerned. The petitioners who ultimately belong to the technical wing have pointed out to the Court that under the Rules framed by the Board, from the year 1992 onwards a decision was taken to promote employees from this cadre to the higher post of Junior Engineers in the ratio of 1:1 namely one from the technical and one from the non-technical wing. In order to achieve this, the Board has been following the practice of drawing up separate seniority list as far as the technical and non-technical employees are concerned and it is this particular procedure followed by the Board which is undoubtedly sanctioned under the Rules framed in 1982, that has been challenged in the present Petitions. The petitioners who belong to the technical wing have

demonstrated in the Petitions that for a variety of reasons some of which arose under the various circumstances, that the number of employees in each of the wings differ and that in actual practice, a number of persons who are junior to the petitioners in terms of induction to the post they are now holding, have benefited by being promoted as Junior Engineers only because of the bifurcated seniority list and the mechanical application of the 1:1 formula. The corrective that the petitioners are demanding is that all the employees who form part and parcel of this particular cadre must be listed through a common seniority list so that when it comes to the question of promotion to the next higher cadre of Junior Engineers, that the rule of seniority will not be upset. It is pointed out by the petitioners that the injustice to them is manifest for a second reason also because the experience over the last few years has demonstrated that not only persons who are junior to the petitioners as far as this cadre is concerned received promotions but more importantly that persons with lesser and lower qualifications have moved up to the higher post whereas the petitioners who claim to be better suited and better qualified are still stagnate in the lower post. It is principally this anomaly that is sought to be corrected through the present group of Petitions. I do not propose to deal with any of the individual aspects of the matter because it is only the principle that this Court is called upon to decide.

2. In defence of its action the Board has put forward various pleas which I shall briefly summarise in the first instance, the Board submits that as far as the non-technical staff are concerned that it is very necessary for the Board to provide promotional avenues to them. It is pointed out that many of these persons though lesser qualified technically, have been working in the lower posts for a large number of years and that they have acquired sufficient experience and expertise that is considered in the opinion of the Board to be good enough or rather adequate substitute for higher technical qualifications and therefore, this category of employees should not be deprived of further promotions. Furthermore, it is submitted that as far as this class of employees are concerned that their promotional avenues virtually conclude at the level of Junior Engineers and that the Board was of the opinion that the Rule of Fairness did require that having regard to the experience gained by them over the years and the limited job functions of a Junior Engineer that it was safe and permissible to allow them to

come up to this level even though it would not be permissible to give them any higher promotion thereafter. The second basic defence that has been pleaded on behalf of the Board is that admittedly, the technical and non-technical staff cannot be equated in so far as one stream comes through direct recruitment, the second one through promotion, their experience and qualification are dissimilar and consequently even though they have merged in a common cadre that the Board felt that it was only fair to maintain segregation when it came to the seniority list. In sum and substance, the plea is one of reasonable and rational classification and it is contended that if the classification is validly done, then it does not offend the principle of equal treatment because the recipients of the transfers are unequals.

3. I have heard learned Counsel who represent various petitioners at some length. I have also heard Mr. Subba Rao who represents the Board, and on behalf of the promotees, I have heard the submissions canvassed by Mr. Joseph who represents some of the promotees. I shall briefly summarise the heads of contentions put forward by respective learned Counsel. In the first instance, on behalf of the petitioners it is contended that they are being discriminated against in so far as their right which flows from Article 14 of the Constitution namely, the right to receive equal treatment is infringed upon and conversely that the action of the Board constitutes discrimination. What is pointed out to me and about which there is no dispute is that regardless of the backgrounds of the various employees or the sources from which they have come into the common cadre that they all rank equal in that pool to the extent that their job functions are identical and so are their salaries. It is therefore submitted, that a sub-classification is impermissible because such sub-classification works to the detriment of the petitioners. Reliance is sought to be placed on the Decision reported in : (1967)ILLJ749SC Mervyn Continho and Ors. v. Collector of Customs, Bombay wherein the Supreme Court had occasion to deal with an identical situation relating to customs appraisers where the direct recruits and promotees were sought to be picked in the ratio of 1:1. The Supreme Court observed that this sub-distinction was not permissible while dealing with similarly situated employees. The principle with regard to equality of opportunity in relation to promotions to the next higher post was upheld by the Supreme Court and conversely, what was laid down was that it was not permissible to curtail this opportunity to the extent of half by making a sub-

classification in respect of another category.

4. This argument is sought to be reinforced on the basis of reference to the following three Decisions wherein the Supreme Court had occasion to reiterate the basic principle that if a sub-categorization is done between persons of the same cadre or similarly situated employees, the test is not the question as to whether the manner in which the sub-division has been worked out appears rational or reasonable, Even if that sub-categorization passes these tests, as long as it is demonstrated that as a result or effect thereof, that one category is adversely affected or that one category is unduly benefited at the expense of the corresponding other category, the Court had intervened to strike down such action because it affected the rights of the employees who would otherwise have been entitled to certain career benefits. : (1968)ILLJ576SC Roshan Lal Tandon v. Union of India, was a case in which the Supreme Court was concerned with train examiners. : (1972)ILLJ127SC S.M. Pandit & Ors. Vs The State of Gujarat & Ors., involved Mamalidars. A.I.R. 1987 SC 367 Punjab State Electricity Board, Patial & Anr. V Ravinder Kumar Sharma & Ors. was a situation very close to the present one wherein the Diploma and non-Diploma holder linesmen of the Punjab State Electricity Board had been segregated.

5. I need to amplify the process of reasoning that requires a Court to strike down such a sub-classification or distinction which, on the face of it may appear to be innocuous and which may in fact seem not only reasonable but beneficial. In the present situation, Mr. Subba Rao who represented the Board stated that the non-technical employees such as meter readers & overseers had all put in long years of service and that the experience and skills that had been acquired by them place them in a position which was in no way inferior to their colleagues in the technical wing who undoubtedly possessed higher academic qualifications. The Board demonstrated that it would appear manifestly unjust and unfair to virtually bring their careers to a full-stop and deprive them of further promotions which was why the fairest approach demanded that two separate lists be drawn up and that the promotions be done on a 1:1 basis. I do concede that the formula adopted by the Board was well intentioned but the only flaw in this arrangement was that the Board overlooked the fact that in being extra fair to the non-technical employees,

they were infringing on the principle of fairness vis-a-vis the corresponding category whose right of equal treatment was encroached upon. A Court has always to guard against situations of this type where a plea is put forward that the action was oriented towards avoiding discrimination but the direct fall out of that action results in reverse discrimination to the other set of similarly situated persons. The Supreme Court had occasion to consider this aspect of the matter in SHUJATH ALI's case : (1976)ILLJ115SC , where the Supreme Court struck down the action because the effect of the Rule gave rise to a situation whereby a junior employee was getting promotion in preference to a senior one only because of an artificial distinction having been made. In Shujath Ali's case referred to supra, even though a common seniority list was drawn up for both Diploma holders and non-Diploma holder linesmen, and the Board fixed a quota for promotion of both types, where it was demonstrated that the junior was getting promoted before the senior, the Court held that the action was arbitrary and in breach of the Constitutional guarantees. Learned Counsel has also referred to the Decision of the Supreme Court reported in : AIR 1989 SC1673 Sriniketan Co-Operative Group Housing Society Ltd. Vs Vikas Society Ltd. Etc, wherein the Supreme Court had occasion to deal with Article 14 of the Constitution in relation to Co-operative Societies. While allotting certain lands, the Government had followed the principle of first come first served and the action was struck down because it was demonstrated to the Court that in the process, the petitioners had been grossly discriminated against.

6. In sum and substance, the arguments advanced by the various Counsel who represent the petitioners have proceeded on the basis that the 1:1 formula that is embodied in the impugned Rule has been demonstrated to be arbitrary and illegal. It proceeds on the basis of the two separate seniority lists are improper and in the bargain, the non-technical employees have benefited at the expense of the technical employees.

7. I shall only briefly summarise some of the subsidiary arguments that were advanced by Counsel representing different petitioners. In the earlier Division Bench Decision of this Court 1986(1) K.L.J. 276 K.E.B. v. Y.V. Venkatakrishna and Ors., the Division Bench of this Court while dealing with certain anomalies in

relation to the pay structures of the officials had occasion to strike down the action of the Board whereby it was demonstrated that the persons who had not passed the Departmental Examinations and who were junior were getting the same benefits as those who had passed the Examinations and were senior to them and this inequality was held to be impermissible. Reliance was placed on the Decision reported in : (1974)ILLJ312SC The General Manager, South Central Railways, Secunderabad v.Siddhanti and Ors., wherein the Supreme Court observes that even where, three categories of employees emerged in the Grain Department of the South Central Railway and were integrated into a single cadre, no distinction could be drawn by segregating them as this constituted misclassification which created inequality among similarly circumstanced members of the same class or group.

7. I need to, only in passing refer to another aspect of the matter which is more within the domain of the administration because the learned Counsel refuted the defence put forward by the Board with regard to providing further promotional advancement to non-technical employees by pointing out that under the provisions of the Act read with the Rules the post of Junior Engineer is a technical post for which a Diploma/minimum qualification requirement is a must. Without undermining the effect of many years of experience, Mr. Jois and another Counsel representing the petitioners advanced the submission that at higher levels, such as that of the Junior Engineer, the responsibilities are more onerous for which, the absence of the requisite qualifications may prove dangerous and it is for this reason that they are prescribed as being essential. There is considerable substance in this submission which the Board will have to examine. The relief claimed however is not that the non-technical persons should not be promoted at all but that injustice is being done to the petitioners who belong to the technical category and therefore, I am not called upon to strictly adjudicate on the above issue. Another argument that was canvassed related to the numbers of employees in the two categories and on this basis, it was demonstrated to me that gross injustice has resulted because far less of the technical group qualify for promotion when the 1.1 formula is applied. The ground realities are something which the Board could not have overlooked because this is a subsidiary plea on the basis of which the challenge to the Rule on the ground of arbitrariness is based and I find

that the challenge is well founded.

8. Both on behalf of the promotees who are represented before me but more importantly on behalf of the Board, two submissions were canvassed the first being that there has been considerable delay in moving this Court and that consequently the Petition should be dismissed on this ground alone. Learned Counsel relied on the well crystalised maxim that is very much applicable to Writ Proceedings namely that a belated challenge, however good cannot be permitted and conversely, that if the challenge has come at a late stage even if the Court were to grant a relief, that it should only be prospective. In this regard, Mr. Joseph on behalf of the promotees drew my attention to a Division Bench Decision of this Court reported in 1994 LAB IC 278 S.D. Satyanarayana Murthy vs K.P.C.L., and in particular, he drew my attention to the fact that this Decision takes into account the principles enunciated in various proceedings starting from the year 1974 upto 1992 and lays down that in service matters, the Court has to take notice of the fact that a belated challenge particularly in cases of promotion creates a situation whereby rights have accrued in favour of the promotees with which a Court ought not to interfere after a considerable lapse of time. Effectively, particularly in cases relating to Service Law the position that emerges is that a Court will not affect the rights of persons who have already got the benefit prior to the dates of challenge, if the proceeding before the Court has been instituted many years later. Apart from the fact that it would be manifestly unfair to reverse the situation after the efflux of considerable time, what is more important is the administrative upheaval that such an order would cause. The Court therefore proceeds on the principle that since the action was either not challenged or allowed to pass, that on the basis of the presumption of legality, it must be held to be good and will not be interfered with if it has been accepted for a considerable period of time.

9. This however is not an inflexible Rule because a Writ Court will take note of the fact that filing a Petition before Court is virtually the last resort. When injustice takes place such as in relation to promotions, the matter is usually represented, the correspondence and decisions do take some time and it is usually at these levels particularly where employees are represented by Unions that a rectification is hoped for. It is only after all these stages, that the matter comes to Court.

Petitioners' Counsel have placed reliance on the following two Decisions in support of their contention that while enforcing Fundamental Rights, a Court will not be rigorous with regard to the time factor and dismiss a Petition - AIR 1974 SC 259 and 1976 LAB IC 644.

9A. In the ultimate analysis, the consensus of Judicial opinion supports the view that the dismissal of a Petition in these circumstances would only be where the delay is abnormal and where it is totally unjustified. This is not the case before me and hence, the delay factor cannot be a ground for refusal of reliefs. However, the reliefs will have to be moulded and restricted and to this extent the submissions canvassed on behalf of the respondents and interveners are well justified. Normally, where a Court strikes down a Rule or an order those who have been beneficiaries would necessarily have to be relegated to their old position provided however, that the challenge has come at the earliest point of time. Where there is some delay, the relief would only be prospective.

10. I have already had occasion to deal with the basic defence put forward on behalf of the Board which principally proceeds on the footing that the wholesale banning of the non-technical staff from further promotion would be manifestly unfair to them. This argument needs to be repelled because that is strictly not the issue before me in so far as it is the effect of considering them for promotion separately from the technical staff that has been called into question. If the Board considers that some promotional avenues need to be provided for the non-technical staff, nothing stops them from doing so but this cannot be at the expense of their colleagues and certainly not when it infringes upon what the law permits. The petitioners' Counsel have in the course of their arguments referred to Rule 4B r/w.a-XIV(3) and Rule 2A(a) of Indian Electricity Rules, 1956 whereby they point out that for want of the requisite academic qualifications, that the non-technical respondents cannot be considered for appointment to the post of Junior Engineers. This is an aspect which obviously the Board has overlooked.

11. It was further submitted by Mr. Joseph that viewed at from any angle the order of 1992 requires to be treated as the cut off point because the meeting with the Union took place on 9.4.91. The challenge after three years according to him

would disqualify the petitioners from the grant of any reliefs. Arguing on behalf of the non-technical promotees, Mr. Joseph also submitted that all those who have already been promoted should not be disturbed. As far as this last submission is concerned, I am in agreement with the plea canvassed by the learned Counsel because those particular employees have been discharging their duties in the higher post for some time and the Rule of Fairness would require that they should not now be relegated. Administratively, it would create a tremendous upheaval which is also not in the interest of anybody.

12. Mr. Joseph who appears on behalf of the non-technical operators stated that it is incorrect to allege that none of them are Diploma holders as there do exist some employees who possess the requisite qualification. As indicated by me earlier, this group of Petitions does not concern individuals but only the principles involved and therefore, if some of the Operators do possess the requisite qualifications, the Board will take this factor into account. Mr. Joseph also submitted that the employees of the Board are distinguishable from regular office employees and that if the Court for valid reasons has formulated a 1:1 promotion policy, that this Court ought not to disturb that arrangement because the Cases relied upon by the petitioners' learned Advocates were of general employees and not persons carrying out specialised functions. In this regard, he relied heavily on the Decision of the Supreme Court reported in 1991 LAB. I.C. 290 Union of India and Ors. v. S.L. Dutta and Anr. That case pertained to a special category of persons relating to the Air Force and the Supreme Court held that having regard to the fact that there was considerable material to support the policy which was of a highly technical and scientific nature, that interference by the Court was not called for. Similarly, Mr. Joseph relied on a Decision of the Kerala High Court reported in 1992 LAB I.C. 1993 M.P. Ravindran v. State of Kerala and Anr., wherein, the Rules provided for a similarly 1:1 ratio between Diploma holders and Certificate holders for promotion to a superior post and the Court upheld the Rule on the ground that it was not arbitrary or discriminatory. I need to point out that the two Cases in question related to specialised fields whereas the present set of Petitions do not come within that category and therefore will not qualify for any unusual consideration. Mr. Joseph thereafter drew my attention to a Decision reported in : (1976)ILLJ115SC , wherein the Court held that a categorisation splitting the

employees into different classes were permissible provided the reasons justified them. I have already had occasion to refer to this particular Decision earlier but learned Counsel placed reliance in this instance on the observations of the Supreme Court in support of his argument but what needs to be noted is that the Department concerned in that case had been wound up and therefore special provision had to be made which is not the position as far as the present group of Petitions are concerned. In sum and substance, the learned Advocate sought to defend the action on the part of the Board laying particular emphasis on the defence of the Board that there was no malafides involved, the purpose sought to be achieved was fair and above all that the 1:1 ratio was absolutely reasonable. I have had occasion to deal with these aspects of the case earlier and in my considered view, the essence of the principle of equality requires that there should be no impediments or artificial barriers created between employees of similar status howsoever laudable the purpose may be, as this would offend the basic guarantee embodied in the Constitution. Similarly, while construing a charge of discrimination, a Court would have to test the material placed before it not so much from the angle of hostility which is an apparent factor in many cases but more importantly from the aspect of a subtle situation that is created when a Rule or a procedure confers unfair advantage to one party or a manifest and unjust disadvantage to the affected one.

13. The material placed before the Court unmistakably indicates that the petitioners have made out a case for interference. The drawing up of a separate seniority list as far as the technical and non-technical employees are concerned is bad in law and will have to be discontinued forthwith. Having regard to the fact that the Board has carried out this procedure for more than three years now, resulting in manifest disadvantage to the petitioners and others similarly situated, the Board is directed to compile and finalise a fresh common seniority list which exercise must be completed within an outer limit of three months from today. It would be expedient for the Board to complete this exercise on a war-footing as no further promotions to the post of Junior Engineer shall be made until then. It is clarified, that all promotions made upto the date of this order shall not be interfered with and shall be treated as valid ones. Once the seniority list has been finalised, the system of promotions on the basis of 1:1 shall necessarily be discontinued as that

procedure does not pass the test of legal scrutiny. The Board shall hereinafter make all promotions to the post of Junior Engineer strictly on the basis of the common seniority list.

14. The Petitions accordingly succeed. Rule is made absolute to this extent. In the circumstances of the Cases there shall be no order as to costs.

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