
(1998) 07 AP CK 0092

In the Andhra Pradesh High Court

Case No : Writ Petition No. 33987 of 1997 and WP No. 4123 of 1998 and Batch

A.G. Satyanarayana and others

APPELLANT

Vs

A.P. State Electricity Board and others

RESPONDENT

Date of Decision : 09-07-1998

Acts Referred:

Andhra Pradesh Electricity Department Operation Subordinate Service Rules — Rule 5
Andhra Pradesh State Electricity Board Service Regulations — Regulation 24, 24(1)

Citation : (1998) 5 ALD 95 : (1998) 5 ALT 140

Hon'ble Judges : B.S. Raikote, J

Bench : Single Bench

Advocate : Mr. R. Subhash Reddy, for the Appellant; Mr. R. Ramanujam, SC for APSEB, for the Respondent

Judgement

1. All these writ petitions are between the Andhra Pradesh State Electricity Board and its employees. Since the nature of controversy in all these writ petitions is in relation to the proceedings of the Board vide B.PO(P&G-Per.) RT No.137, dated 5-8-1997 and further clarification vide proceedings dated 16-3-1998 in Memo No.BP(Estt)DM(P)/O&M-II/332/94-3, issued to this proceedings, I think it appropriate to dispose of all these writ petitions by this common order.

2. The petitioners in all these writ petitions were appointed as "Helpers", redesignated as Assistant Linemen. It is not in dispute that the petitioners in all these writ petitions belong to one category by name "Operation and Maintenance" (O and M). It is also not in dispute that so far as this category is concerned, there are no statutory rules. It is further stated that the Board framed certain rules called "Andhra Pradesh Electricity Department Operation Subordinate Service Rules" (hereinafter referred to as "draft rules") stating that these rules shall be deemed to have come into force from 01-01-1948. These draft rules were submitted to the Government vide letter No.Adm/Roc.46/N1/50, dated 1-4-1961, but so far the Government has not accorded any approval. It is submitted by the Counsel appearing for the Board that the Board has been

following these rules so far as the employees under Operation and Management are concerned. These draft rules prescribed the qualification for the recruitment as well as for promotion regarding different categories in Operation and Management category. It is submitted that these draft rules were framed since the general rules applicable to all the employees called "Andhra Pradesh State Electricity Board Service Regulations" (herein after referred to as "Service Regulations") are silent regarding Operation and Management category of posts. The Counsel appearing for Board contends that since there are no rules regarding other service conditions, the Board has been applying service regulations regarding other matters, other than qualification etc., which are prescribed by the draft rules. It is also brought to my notice by the Counsel appearing for the Board that vide proceedings No.BP(P&G per) Ms. No.413, dated 23-1-1995, the Board passed the resolution, which reads as under:

"Andhra Pradesh State Electricity Board Abstract

Regulations - A.P.S.E.B. service Regulations, Part-I and II application to employees coming under O&M and Construction Establishments - Orders - Issued.

BP(P&Gper)MsNo.413 Dated 23-1-1995

Proceedings:

The Andhra Pradesh State Electricity Board has decided in principles to apply A.P.S.E.B. Service Regulations, Part-I and II to the employees coming under O&M and Construction establishments the said regulations will be applied to the employees coming under the O&M and construction establishments after making suitable amendments.

By order and in the name of A.P.S.E.B. Board

B.S. Brahma Member Secretary."

From the above proceedings it is clear that the Board decided to apply the service regulations parts I and II to the employees coming under O and M and Construction Establishments, with certain modifications. But it appears that there is no specific resolution of the Board actually adopting service regulations Parts I and II regarding O and M and Construction Establishments. However, the Counsel for the Board submitted that in practice, service regulations Parts I and II are being applied to the employees coming under O and M and Construction establishments. Having regard to these submissions, few facts emerge as admitted facts and they are : (1), that so far as the employees coming under O and M and Construction Establishments are concerned, there are no statutory rules, either for fixing the qualification or regulating other service conditions; (2) so far as prescription of the qualifications for the purpose of recruitment and promotion is concerned, the Board has been following draft rules. So far as other conditions are concerned, it has been applying service regulations Parts I and II for the employees coming under O and M and Construction Establishments; (3) Rule 5 of the draft rules prescribes qualification for appointment and proviso to

sub-clause (b) of Rule 5 enables the Chief Engineer to relax these qualifications in individual cases for special reasons. The relevant portion of Rule 5 of draft rules is extracted hereunder for immediate reference:

"5. Qualifications :--(a) No person shall be eligible for appointment to any category or grade, if he has completed 25 years of age on the date of appointment.

Note:-(1) This age limit referred to in this rule shall be relaxed to the extent of the period served, if any, in work charged establishment or on daily wages as the case may be.

Note:-(2) In case of direct recruits belonging to Scheduled Castes and Scheduled Tribes, Backward Classes and the aboriginal tribes in the agency areas, the age limit of 25 years prescribed above, shall be enhanced to 30 years.

(b) No person shall be eligible for appointment in any post unless he possesses the educational and technical qualifications prescribed in Annexure-II to these rules.

Provided that these qualifications shall be relaxed by the Chief Engineer, Electy. in individual cases for special reasons."

3. It is also not in dispute that on the representation made by the Employees Union, the Board issued proceedings No.BPO.(P&G-Per) Rt. No.137, dated 5-8-1997. Since the arguments of both sides centre round the interpretation of these Board proceedings, I think it appropriate to extract the relevant portion of these proceedings as under:

"Andhra Pradesh State Electricity Board ABSTRACT

Estt. - O&M - Filling Up of Existing Vacancies - Promotion to Unqualified O&M Staff on One Time Basis by Conducting Job Oriented Tests - Orders -Issued.

BPO(P&G-Per.)RT No.137 Dated 5-8-1997

Proceedings:

It has been represented by the Employees Unions that several posts in higher categories under - O&M establishment in various units are lying vacant for want of candidates having requisite educational qualifications in the feeder categories.

2. After careful consideration, approval is hereby accorded for filling up of the existing vacant posts by promotion of unqualified O&M Staff in all the units of Andhra Pradesh State Electricity Board including T.B.H.E.S. and Machkund H.E.S. to the extent of A.P.S.E. Board employees by conducting job oriented tests on one time basis where no qualified candidates available.

3. A committee consisting of the following members shall conduct the relevant Job oriented Tests and select the candidates among the unqualified O&M Staff in all the units of the Board for promotion to the extent of existing vacancies."

It is also not in dispute that the next promotional post to the post of Helper/ Assistant Lineman is the post of "Linemen".

4. Relying on these Board proceedings dated 5-8-1997, the petitioners in WP Nos.8372, 4123, 4994 and 9946 of 1998 contend that the petitioners were entitled to be promoted to the next promotional category of "Linemen" from their present category of "Assistant Linemen". It is their further case that they were not qualified as on the date of issuance of the Proceedings Rt. No.137, dated 5-8-1997, but they are entitled to be promoted in terms of this proceeding. The learned Counsel for the petitioners in all these writ petitions Sri O.Manohar Reddy contended that by the proceedings dated 5-8-1997, a concession was given to all the Assistant Linemen working in the Electricity Department for more than 25 years, for promotion as Linemen by relaxing the qualification required, provided they pass "Job Oriented Test" to be conducted. He submitted that this promotion is only one time basis and the Board passed this resolution only to fill up the backlog vacancies on the representation of the employees unions. According to these proceedings, the employees in the category of O and M and Construction Establishments were entitled to be promoted as the Linemen, even though they do not possess the requisite qualification. In other words, the Board has relaxed the qualifications for the purpose of this one time promotion. He further submitted that admittedly the petitioners are the seniors as against the petitioners in WP No.33987/ 1997, who are appointed only in the year 1996 or so, on probation. He further submitted that this concession for promotion is in regard to the posts that existed as on 5-8-1997, and therefore, the petitioners are entitled to be promoted in terms of the said proceedings. He further submitted that vide proceedings dated 5-11-1997, the Member Secretary of the Board further clarified that the Job Oriented Test as one time basis may be conducted regarding the candidates who are not qualified, if no qualified candidates are available. On the basis of these two proceedings, he submitted that the posts in question are the posts that fell vacant as on 5-8-1997 and if the eligible candidates were not available as on 5-8-1997, in terms of the proceedings Rt. No. 137, dated 5-8-1997, the petitioners and the other persons similarly situated, who are not qualified are entitled to be promoted to the next cadre. In order to appreciate this argument, I think it appropriate even to extract the relevant proceedings dated 5-11-1997 as under:

"Job oriented tests have to be conducted as decided by the Committee constituted in BP(P&G-Per.) Rt. No. 137, dated 5-8-1997 for filling up of vacant posts in all categories existing as on 5-8-1997 under O&M Estt. by promotion on one time basis where no qualified candidates are available."

However, the Counsel appearing for the Board and also the Counsel appearing for the petitioners in WP No.33957 of 1997 contended that in view of the subsequent clarification dated 16-3-1998 issued by the Member Secretary of the Board, the persons who are qualified as on the date of the proceedings of the

Departmental Promotion Committee (DPC), are entitled to be promoted. They further contended that DPC conducted the proceedings for Job Oriented Tests on 23-12-1997 and as on that date, the petitioners in WP No.33987/1997 were eligible, since they have acquired qualification for promotion. They further contended that as against the petitioners in WP No.33987/1997, who are qualified as on that date i.e, 23-12-1997, the petitioners in other writ petitions are not eligible for promotion. I also think it appropriate to extract the relevant portion of the proceedings in Memo No. BP(Estt)DM(P)/ O&M-II/332/94-3 dated 16-3-1998, as under:

"2. After careful consideration, it is hereby clarified that the candidates who are fully qualified in all the aspects as on the date of conducting of DPC have to be considered for promotion as per the rules in vogue against the vacancies existing as on that date. If qualified candidates are not available as on the date of DPC then only the unqualified candidates have to be considered in terms of the orders issued in BP(P&G-Per) Rt. No. 137, dated 5-8-1997 read with Memo. No.DS(Estt)/DM(P)/ O&M-II/1541/97-1 dated 25-11-1997.

5. Relying on the proceedings Rt. No.137, dated 5-8-1997, as I have already noted above, the Job Oriented Test was conducted to the persons who are not qualified for the purpose of promotion to the category of Linemen on 23-12-1997. It is submitted that on that date, the petitioners in WP Nos.4123, 4994, 8372 and 9946 of 1998 were successful, since they had completed the required Job Oriented Test and their names were included in the list for the purpose of promotion to the next cadre. It is further stated that this list consisted in all 27 persons, on the basis of the seniority in the category of Assistant Linemen (Feeding Category) and those persons who did not pass the test, their names were not included. It is further submitted by the Counsel appearing for the Board that from amongst mis list of 27 persons, some persons were promoted to the next category of Linemen and they are the petitioners in WP Nos.4123 and 4994 of 1998. But by virtue of the interim order passed by this Court dated 22-12-1997, the petitioners in these two writ petitions were reverted back. Accordingly in these two writ petitions, i.e., WP Nos.4123 and 4994 of 1998, reversion order is challenged. In WP No.9946/1998, the memo dated 16-3-1998 vide proceedings in Memo No.BP(Estt)DM(P)/O&M-II/332/94-3, is challenged on the ground that the Member Secretary has no power, jurisdiction and authority to clarify the Board proceedings No. Rt. 137, dated 5-8-1997. In writ petition No.33987/1997 the inaction on the part of the Board in not promoting the petitioners therein, even though they were qualified as on the date i.e., 23-12-1997, when the DPC met, is challenged. From the grievances ventilated in all these writ petitions it is clear that the writ petitions are in all of two categories viz., (1)WP Nos.4123, 4994, 8372 and 9946 of 1998 belong to one category, in which the petitioners though not qualified claimed to be promoted to the next cadre on the basis of the Board Proceedings Rt. No. 137, dated 5-8-1997 and (2) WP No.33987/1997 belong to the second category, in which the petitioners" grievance is that they are entitled to be promoted being

qualified, as on the date of meeting of the DPC i.e., 23-12-1997 in terms of proceedings Rt. No.137, dated 5-8-1997, since the qualified candidates are available, the persons who are not qualified cannot be promoted. Therefore, the petitioners in this writ petition are entitled to be promoted as against the unqualified persons who are petitioners in the category No. 1.

6. From the nature of controversy raised by the petitioners in category Nos. 1 and 2, the point that requires to be considered by me would be (1) whether the petitioners in category No.1 are entitled to be promoted to the next category, even though they were not qualified and (2) whether the petitioners in category No.2 who are qualified as on 23-12-1997, on which date DPC met to conduct the Job Oriented Test are entitled to be promoted in terms of the Proceedings Rt. No.137, dated 5-8-1997.

7. The Board has admitted in unequivocal terms that as on the date of issuing Board Proceedings RT No.137 dated 5-8-1997, there were in all 27 vacancies. The petitioners in category No.1 were not eligible for promotion in terms of the draft rules, and the relevant rules for promotion to the category of Linemen are extracted hereunder for ready reference:

Category Name of the post Time scale of pay Qualification and experience

8. Linemen 50-2-70

LEE or equivalent qualification approved by the Chief Engineer (Electricity)

or Pass in IVth form with . practical experience in Electrical Operation with Maintenance and/ or pass in IVth form with five years practical " experience in the type of work concerned, qualified electrician or fitter with 3 years practical experience may be promoted.

Sri O.Manohar Reddy, Counsel appearing for the petitioners in category No. 1 contended that these petitioners were appointed prior to 1977 and at that time, for appointment to the post of "Helper/Assistant Linemen", the required qualification was only reading and writing, which the petitioners possessed. They were not promoted as Linemen, since they did not possess the required qualification in terms of the draft rules. However, they had the practical experience of more than 25 years in the field of Operation and Maintenance. On the representation of the employees Unions, the Board issued proceedings Rt. No.137, dated 5-8-1997, as one time promotion. The petitioners are entitled to be promoted in terms of proceedings Rt. No.137, dated 5-8-1997, since they had passed the Job Oriented Test. He further submitted that the Board is the final authority for relaxing the qualifications in appropriate cases and the qualification is relaxed in the case of the petitioners and the petitioners also passed the Job Oriented Test and, therefore, they are entitled to be promoted. He further submitted that the eligibility or otherwise of the persons as on 5-8-1997 has to be considered, since proceedings Rt. No. 137, dated 5-8-1997 are intended to extend the benefit to the employees in existence, who are not eligible as on that

date i.e. 5-8-1997. He further submitted that there cannot be any other date of eligibility for the purpose of proceedings Rt. No.137, dated 5-8-1997. Whereas, the Counsel appearing for the petitioners in the category No.2 contended that the eligibility has got to be looked into as on the date DPC met for consideration of their cases for promotion and the DPC met on 23-12-1997 for conducting Job Oriented Test for the purpose of promotion to the next category and as on that date, the petitioners under category No.2 were eligible. The fact that the petitioners in category No.2 being appointed in the year 1996-97, had completed their probation period of one year as on 23-12-1997, and accordingly they were eligible for next promotion also is not disputed. But the dispute is regarding the actual date of eligibility that is to be considered for the purpose of giving effect to proceedings Rt. No.137, dated 5-8-1997. The learned Counsel for the petitioners in category No. 1 relying upon the judgment of the learned single Judge of this Court (rendered by me) reported in K. Eswara Dutt Vs. Chairman, Food Corporation of India, New Delhi and Others, and contended that the date on the basis of which the consideration for the promotion in terms of the Board proceedings Rt. No. 137, dated 5-8-1997, would be 5-8-1997, but not the date 23-12-1997, on which date, the petitioners in category No.2 became eligible after completing their probation period. There is substance in the argument of the learned Counsel for the petitioners in category No.1. The power of the Board in issuing proceedings Rt. No.137, dated 5-8-1997 is not disputed by either side. In fact they are relying on these proceedings only. The proceedings Rt. No.137, dated 5-8-1997 after careful consideration accorded approval for filling up of existing vacancies by promotion from unqualified employees in "Operation and Management" category by conducting Job Oriented Test, as one time promotion. The said proceedings further clarified that this concession is available to the unqualified persons, provided no qualified candidates are available. Admittedly, petitioners in category No. 1 were not eligible and the petitioners in category No.2 were also not eligible as on 5-8-1997. Paragraph No.3 of the proceedings Rt. No.137, dated 5-8-1997 further provides that a Committee consisting of members appointed by it shall conduct the relevant Job Oriented Tests and select the candidates among the unqualified employees in "Operation and Management" staff for promotion to the extent of existing vacancies. From this it follows that the intendment of proceedings of the Board Rt. No.137, dated 5-8-1997 is only to regulate certain promotions regarding "existing vacancies" as on that date i.e., 5-08-1997. If that is so, that date i.e., 5-8-1997 would be cut-off date and in relation to that date only it has to be determined as to who are the persons eligible to be promoted to the next cadre, even though not qualified. In fact, the Member Secretary of the Board vide proceedings dated 5-11-1997 clarified, and rightly so, that Job Oriented Tests have to be conducted as decided by the Committee constituted vide proceedings Rt. No.137, dated 5-8-1997, regarding the posts that existed as on 5-8-1997, provided no qualified candidates are available as on that date. It is not in dispute that as on that date (i. e., 5-8-1997) there were no qualified candidates. Even the petitioners in category No.2 were also not eligible. Since they had not completed their one

year probation period for the purpose of promotion to the next cadre, in terms of Regulation No.24 of Service Regulations. The said Regulation 24(1)(a) states that no employee shall be eligible for promotion to a higher post unless he is an approved probationer, in the category, from which a promotion to the higher post is admissible. The petitioners in category No.2 were still under probation and their probation was not yet declared as on 5-8-1997. In these circumstances, it is clear that the petitioners in category Nos.1 and 2 belong to one class of persons, who are not qualified as on 5-8-1997 for the purpose of promotion to the next category of Linemen. In such circumstances, if there were to be promotions in terms of proceedings of Board Rt. No.137, dated 5-8-1997 from amongst the unqualified persons, such promotions shall be made according to the seniority of the persons in the Feeder Category of Assistant Linemen. The petitioners in category No.1 were all the persons appointed about 25 years back and admittedly they were seniors to the petitioners in category No.2, who were appointed only in the year 1996 or so. If that is so, the petitioners in category No.1 would be entitled to be promoted as against the petitioners in category No.2.

8. But the learned Counsel appearing for petitioners in category No.2 i.e., petitioners in WP No.33987 of 1997, strenuously relied upon further clarification issued by the Member Secretary dated 16-3-1998 contending that Member Secretary has clarified that the candidates who are fully qualified as on the date of meeting of DPC have to be considered, for promotion, as per the rules in vogue, against the vacancies existing as on that date. But in my opinion this Member Secretary has no power or authority to modify the proceedings of the Board Rt. No. 137, dated 5-8-1997. If the Board intended to fix the date as 5-8-1997, by identifying the existing vacancies as on that date, the Member Secretary could not have said that the qualifications and existing vacancies have got to be considered as on the date of conducting DPC. The first meeting of the DPC was admittedly conducted on 23-12-1997, but that is not the relevant date for the purpose of giving effect to the Board Proceedings Rt. No. 137, dated 5-8-1997. As I have already noted above, the Board classified the vacancies existing as on 5-8-1997, thinking that persons who were not qualified could be promoted to the next cadre, provided qualified candidates were not available. Any other interpretation to the proceedings Rt. No.137, dated 5-8-1997 would lead to anomaly. If for the purpose of promotion to the existing vacancies, if the date of DPC conducting its meeting, is taken into consideration, men in order to accommodate or include some persons, who are not otherwise eligible, the DPC may postpone its meeting, so that by the next date of its meeting, those persons may become eligible for promotion or if some persons have got to be excluded, then the meeting of the DPC may be preponed, so that those persons may not become eligible and this kind of situation would definitely lead to arbitrary exercise of power. In these circumstances, it is not possible to accept the interpretation laid by the Counsel appearing for the petitioners in category No.2. The Hon"ble Supreme Court in *Y.V.Rangaiah v. J.Srinivas Rao*, 1983 (3) SCC 264,

held that the rules as on the date the vacancy occurred or existed would be relevant and not the later amended rules. The Hon"ble Supreme Court also laid down the law that the date of issuing notification for the appointment would be relevant to determine the eligibility of a candidate, unless a retrospective operation is given to a law made later. Following the principle laid down in the decision ((1983) 3 SCC 264) cited supra and other judgments, the learned single Judge of this Court in the decision reported in E.Eswara Dutt v. Chairman, Food Corporation of India, New Delhi, (supra) held as under:

"From this law declared by the Hon"ble Supreme Court it is clear that the vacancies which occurred prior to the amended rules were governed by the rules that existed as on the date vacancies arose and not by the amended rules which came into force later. Similar is the situation in this case. The post was advertised on 28-9-1976 and as on that date 1971 regulations were in force and according to which 50% of the posts were meant for the direct recruits. Even though, the formal order was given later, but in view of the law declared by the Supreme Court, above, it is only 1971 regulations that apply to the case of the petitioner."

In view of these principles of law, I am of the opinion that the eligibility of the persons for the purpose of promotion to the next cadre has to be determined on the basis of the "existing vacancies as on 5-8-1997". On that date, the petitioners in category No.1 being seniors to the petitioners in category No.2 were entitled to be promoted, as I have already stated above. It is submitted that the DPC which met on 23-12-1997 for conducting Job Oriented Tests, selected the persons for the purpose of promotion to next cadre from amongst the persons according to the seniority list and also on the basis of passing in Job Oriented Test. It is further submitted that it is on that basis only the petitioners in WP Nos.4123 and 4994 of 1998 were promoted. If such promotion is based on the seniority and the criteria of passing the Job Oriented Test, the same cannot be found fault with in view of the proceedings Rt. No.137, dated 5-8-1997 of the Board. But it is submitted by the Board that these persons were reverted only because of the interim order granted by this Court in WP No.33987/1997. In fact from reading of the said interim order, it is clear, that this Court specifically directed to adhere to the guidelines contained in Memo No.D3(Estt) DM (Pen)/C&M-II/1541/97, dated 5-11-1997 issued by the Board and the posts of Linemen be filled up by unqualified candidates only when no qualified candidates were available. As I have already noted above, the proceedings dated 5-11-1997 only clarified the original proceedings Rt. No.137, dated 5-8-1997 stating that for filling up the vacant posts in terms of proceedings Rt. No. 137, dated 5-8-1997, the Job Oriented Tests have got to be conducted regarding the category of the posts that existed as on 5-8-1997, provided no qualified candidates were available. As I have already stated above, as on 5-8-1997, no qualified candidates were available and promotion was required to be made from amongst the persons who were not qualified by conducting Job Oriented Tests. If that is so, the reversion of the petitioners in WP Nos.4123 and 4994 of 1998 on the

basis of the interim order of this Court dated 22-12-1997 was uncalled for. The interim order of this Court did not direct for any kind of reversion. If the persons who are considered and promoted in terms of the proceedings dated 5-11-1997, read with proceedings Rt. No.137, dated 5-8-1997, their reversion is illegal and the same has got to be set aside. So far as the petitioners in WP No.33987 of 1997 are concerned, they had not acquired the required qualification as on the date on which the vacancies existed i.e., as on 5-8-1997. Their acquiring qualification as on the DPC meeting on 23-12-1997 would absolutely has no consequence. In this view of the matter, I do not find any merit in WP No.33987/1997. Acquiring qualification subsequent to the issuance of the proceedings Rt. No.137, dated 5-8-1997 would not confer any rights on the petitioners in this writ petition, since they were not eligible to be promoted as on 5-8-1997. In this view of the matter, this writ petition has to fail.

9. In Writ Petition Nos.8372 and 9946 of 1998, the petitioners have challenged the inaction on the part of the Board in not promoting the petitioners in view of subsequent memo dated 16-3-1998, issued by the Member Secretary. As I have already stated above, the Member Secretary has no power or authority to clarify the Board proceedings by shifting the date of eligibility from 5-8-1997 to 23-12-1997, i.e., the date on which DPC actually met. Hence, these proceedings of the Member Secretary dated 16-3-1998 are one without jurisdiction. These proceedings are specifically challenged in WP No.9946/1998. In this view of the matter, WP No.9946/1998 is allowed, quashing the memo of the Member Secretary dated 16-3-1998. The petitioners in WP No.8372/1998 though not eligible, yet they are eligible for being promoted to the next cadre for having successfully passed the Job Oriented Test. In these circumstances, they are entitled for mandamus directing the respondents to promote them to the next cadre.

10. For the above reasons, I pass the order as under:

WP Nos. 4123, 4994, 8372 and 9946 of 1998 are hereby allowed and WP No.33987 of 1997 is hereby dismissed. But in the circumstances, the parties shall bear their own costs.