

(2010) 10 SC CK 0120

In the Supreme Court Of India

Case No : Civil Appeal No. 9487 of 2010 (Arising out of SLP (C) No. 1178 of 2008) and Civil Appeal No. 9488 of 2010 (Arising out of SLP (C) No. 3448 of 2008)

Ajmer Vidyut Vitran Nigam and Others

APPELLANT

Vs

Navin Kumar Saini
Rajasthan State Electricity Board
Now, Ajmer Vidyut Vitran Nigam and Others Vs Shyam Lal

RESPONDENT

Date of Decision : 29-10-2010

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2011) 1 AWC 867 Supp : (2010) 127 FLR 819 : (2010) 11 JT 427 : (2010) 4 LLJ 853 : (2011) LLR 6 : (2010) 11 SCALE 549 : (2010) 6 SLR 324

Hon'ble Judges : H. S. Bedi, J; Chandramauli Kumar Prasad, J

Bench : Division Bench

Advocate : Sushil Kumar Jain, Puneet Jain and Atra Bhawan, for the Appellant; M.R. Calla Rishi Matoliya, Pratiksha Sharma and Charu Mathur, for the Respondent

Final Decision : Partly Allowed

Judgement

Chandramauli Kr. Prasad, J.—Petitioners, aggrieved by the orders dated 9th July, 2007 passed by the Rajasthan High Court in D.B. Civil Special Appeal (Writ) No. 623 of 2007 and D.B. Civil Special Appeal (Writ) No. 421 of 2007 affirming the order dated 18th September, 2006 passed by a learned Single Judge of that Court in S.B. Civil Writ Petition No. 2331 of 2002, have preferred these petitions for grant of leave.

2. Leave granted.

3. These appeals arise in the following circumstances:

Naveen Kumar Saini and Shyam Lal, respondents herein along with other persons were appointed as Helpers in work-charge establishment on 28th November, 1979 at a consolidated salary of Rs. 150/- per month for a period of three months. However, the respondents were allowed to continue in service

after the expiry of the aforesaid period of three months. Later on a limited competitive examination was held by the Rajasthan State Electricity Board (hereinafter referred to as the "Board") for appointment to the post of Junior Clerk, in which the respondents and other candidates participated and on merit altogether 81 persons including the respondents were appointed by Order dated 26th June, 1984 in the regular pay scale of the Junior Clerks. It is relevant here to state that the Board took a decision to consider regularisation of such work charge employees who had completed two years of service upto 31st March 1983 and for that purpose directed such employees to appear before the Selection Committee on 27th August, 1987. Respondents appeared before the Selection Committee, when they were informed that since they had already been appointed as Lower Division Clerks, there is no necessity to regularise them. Between the period from 17th September, 1987 to 13th October, 1987, altogether 27 persons, who joined as work charge employees like the respondents, became regular employees with effect from 1st April, 1982 and given regular pay scale of the post of Lower Division Clerk. Accordingly, respondents raised a grievance that they be given the pay scale of the post of Junior Clerk with effect from 1st December, 1979 and regular pay scale of the post of Clerk from 1st April, 1982 to 26th June, 1984. Respondents claimed the scale of pay of Junior Clerk from 1st December, 1979 on the plea that though they were engaged as helpers but they performed the work of Junior Clerk. The regular pay scale of post of Junior Clerk from 1st April, 1982 to 26th June, 1984 was sought on the ground that persons junior to them were given the said scale of pay with effect from 1st April, 1982. The aforesaid grievance of the respondents was considered by the Board but finding no merit in the same, it was rejected. Respondents then filed writ petitions before the Rajasthan High Court which by its order dated 25th April, 1997 passed in S.B. Civil Writ Petition No. 3321 of 1991 and S.B. Civil Writ Petition No. 3683 of 1991 declined to interfere on its finding that respondents had alternative efficacious remedy before the Industrial Tribunal.

4. Ultimately, the State Government by its letter dated 17th October, 1997 referred for adjudication to the Industrial Tribunal as to whether the action of the appellants in not giving the respondents the scale of Junior Clerk with effect from 1st October, 1979 and for the period from 1st April, 1982 to 26th June, 1984, is valid and proper.

5. The Industrial Tribunal by its award dated 29th January, 2002 did not find any fault with the Board in not regularising the services of the respondents on the post of Junior Clerk with effect from 1st December, 1979 but directed that respondents shall be entitled to the wages of the Junior Clerk from the said date. Relevant portion of the award of the Industrial Tribunal in respect of respondent Naveen Kumar Saini reads as follows:

Hence, in the context of State (Appropriation of Appointments in Public Services and Staff Systematisation) Act 1999 not regularising Applicant Naveen Kumar

Saini on the post of Junior Clerk with effect from 1.12.79 by the Secretary, Rajasthan State Electricity Board, Vidyut Bhawan, Vidyut Marg, Jaipur, Superintending Engineer (Udaipur Circle) RSEB Udaipur (3) Assistant Engineer (O&M), RSEB Debari Head Office, Udaipur is proper and lawful. But the opposite party Board has been continuously taking work of Junior Clerk from the Applicant from 1.12.79 the date of his selection on the post of Junior Clerk till the date of assuming charge, therefore, in accordance with the principle of equal wages for same work the Applicant is entitled to get from the Opposite Party Board salary and other perquisites prevailing at the relevant time. The Opposite Party Ajmer Vidyut Vitaran Nigam Ltd., Ajmer to pass order as per rules in this regard in one month and make payment of the arrear amount payable to the Applicant.

6. Identical award was given in respect of respondent Shyam Lal.

7. Aggrieved by the aforesaid awards, the Board preferred S.B. Civil Writ Petition No. 2331 of 2002 before the Rajasthan High Court and the learned Single Judge by order dated 18th September, 2006 partly allowed the writ petition and directed the Board to notionally grant the benefit of the pay of the post of Lower Division Clerk with effect from 1st December, 1979 with a rider that the respondents shall not be entitled to receive actual arrears of the said period. Relevant portion of the order of the learned Single Judge reads as follows:

In view of the fact that the learned Tribunal has recorded a finding that number of labourers who were earlier junior to the respondent-workman were regularized on the post of LDC earlier and were in receipt of higher scale of pay than him, ends of justice would be met by directing the respondent to only notionally grant the benefit of pay on the post of LDC to the respondent-workman w.e.f. 1st December, 1979 although the respondent shall not be entitled to receive actual arrears for such period.

8. Ajmer Vidyut Vitran Nigam Limited, the appellant herein being the successor of the Rajasthan State Electricity Board and its officers aggrieved by the order of the learned Single Judge preferred separate appeals, which have been dismissed by the impugned orders.

9. Appellants are, therefore, before us with the leave of the Court.

10. Mr. Sushil Kumar Jain, learned Counsel appearing on behalf of the appellant submits that the respondents (hereinafter referred to as the "workmen") were employed as the work charge helpers and they did not discharge their duty as Junior Clerks by any order passed by any competent authority and hence they are not entitled to be given the pay scale of Junior Clerk on the principle of equal pay for equal work. He emphasises that for invoking the principle of equal pay for equal work the volume of work is not decisive but the degree of responsibility and liability are also to be looked into.

11. Mr. M.R. Calla, learned Senior Counsel appearing on behalf of the respondents, however, contends that workmen having been asked to perform the

function of the Junior Clerk, they are entitled to be given the regular scale of pay of the Clerk.

12. We have bestowed our consideration to the rival submissions and we find substance in the submission of Mr. Jain. Nothing has been brought on record by the workmen to show that they were asked to perform the function of a Junior Clerk by any competent authority. The plea of equal pay for equal work is founded on Article 14 of the Constitution, hence it was incumbent upon workmen to establish that they were performing the work of the Junior Clerk under orders of a competitive authority. Further, workmen were admittedly engaged as helpers in work charge establishment and in that view of the matter for applying the principle of equal pay for equal work, mere the volume of work, shall not be relevant, there being qualitative difference as regards the liability and responsibility. We are of the opinion that workmen were not entitled for the scale of pay of the Junior Clerk even on notional basis from the date of their engagement as helpers.

13. Next question which falls for consideration is as to whether workman shall be entitled for scale of Junior Clerk from 1st April, 1982? It is relevant here to State that workmen were appointed as Junior Clerks on the basis of limited competitive examination by order dated 26th June, 1984. It is further relevant here to state that the employer considered the cases of such work charge employees who had completed two years of service as work charge employees. Respondents appeared before the Selection Committee constituted for this purpose on 27th August, 1987 but their cases were not considered on the ground that they have already been appointed as Lower Division Clerks. However, a large number of workmen like the workmen herein were regularised as Junior Clerks with effect from 1st April, 1982 and given the regular scale of pay. It is the plea of the workmen that at least they are entitled to be given the regular scale of pay from the date, their juniors were given.

14. Mr. Jain, however, submits that the workmen cannot claim regularisation on completion of two years service and they utmost may be entitled to be considered for regularization to the post of Junior Clerk with effect from 1st April, 1982 and the pay scale thereof when, persons junior to them were given the said scale of pay. In this connection he referred to a decision of this Court in the case of Jodhpur Vidyut Vitran Nigam Ltd. and Anr. v. Nanu Ram and Ors. 2006 (12) SCC 494, and our attention has been drawn to the following passage of the aforesaid judgment:

9. Applying the above test to the facts of the present case, the Screening Committee was required to examine the question as to how many workmen could be regularised, keeping in mind the budget provisions, availability of the posts, the number of muster roll workers engaged in the construction work without their being in existence vacant sanctioned posts, the manner in which these muster roll workers were initially recruited with or without the approval of the management and, thereafter, on the basis of eligibility the Screening

Committee had to recommend their absorption in regular service. These aspects were required to be examined by the Screening Committee. Mere completion of two years was not the only criterion. Even in the award dated 31-5-1978 read with award dated 15-6-1979 the fixation in the regular pay scale was only for those employees who were recruited with the approval of the management and in accordance with law. Even under the awards, as they then stood, the Screening Committee had to examine the performance of the workmen before granting them the regular pay scale. Granting of pay scale simpliciter is different from grant of permanency. While granting permanency, the State has to consider the number of posts falling vacant, those posts should exist as and by way of regular vacancy, the financial burden of granting permanency and, therefore, in our view, the High Court has failed to keep in mind the difference between the concept of grant of pay scale as distinct from grant of permanency. The State was not under an obligation to constitute Screening Committee at the end of each year. Constitution of the Screening Committee was within the discretion of the State Government dependent upon the above factors. Therefore, there was no question of comparing the case of the present respondents with the case of the workmen who got regularised prior to 31-3-1982. Each exercise by the Screening Committee has to be seen in the light of the above factors. In a given exercise, the State may have sufficient number of vacant posts to accommodate certain number of workers. However, that may not be the case in the subsequent years. Therefore, there is no question of any discrimination in the matter of regularisation or in the matter of grant of permanency.

15. Mr. Calla submits that when persons junior to the workmen having been given the regular pay scale with effect from 1st April, 1982 and the workmen cases were not considered, the appellants cannot deprive the workmen of the regular scale of pay with effect from 1st April, 1982 as given to the employees junior to them.

16. We are of the opinion that the case of the workmen ought to have been considered for regularisation as Lower Division Clerk when the case of other persons similarly situated were considered by the Selection Committee. Persons junior to the workmen have been given the regular pay scale of the post of Junior Clerk with effect from 1st April, 1982 whereas the workmen herein were appointed as Junior Clerks by order dated 26th June, 1984. They cannot be allowed to suffer only because they qualified in written examination and appointed as Junior Clerks by order dated 26th June, 1984.

17. In the facts and circumstances of the case, we deem it expedient to direct the appellants to consider the cases of respondents for regularization as Junior Clerks with effect from 1st April, 1982 and in case they are found fit for regularization, grant them the pay-scale thereof from the said date. As the respondents were found fit for appointment as Junior Clerks on the basis of the limited written examination, there does not seem any valid reason to suggest that they shall not be fit to be regularised as Junior Clerks when persons junior

to them were regularised and given the regular scale of pay with effect from 1st April, 1982.

18. In the result, the appeals are partly allowed with the direction aforesaid. No costs.