

(1994) 11 KAR CK 0054

In the Karnataka High Court

Case No : Writ Petition No's. 9223, 9224 and 20753 of 1989

Diploma Engineers Working in Karnataka Power Corporation	APPELLANT
Vs	
Karnataka Power Corporation	RESPONDENT

Date of Decision : 25-11-1994

Acts Referred:

Citation : (1995) ILR (Kar) 416 : (1994) 5 KarLJ 283

Hon'ble Judges : M.F. Saldanha, J

Bench : Single Bench

Advocate : K. Subba Rao, for the Appellant; S.N. Murthy and P. Ramachandra Rao for R1, Shashidhar S. Koramadi, HCGP for R2, for the Respondent

Judgement

Saldanha, J.—These two Petitions are presented by the Karnataka Power Corporation Diploma Engineers' Association, Briefly stated, they have projected the grievance that, they belong to a class of employees of the Corporation who have Engineering qualifications namely, Diploma in Engineering and that they are categorised in the corporate cadre as Junior Engineers. They have further stated that, there is a more or less similar category of employees who possess the Graduate engineering qualification and who are designated as Assistant Engineers. The present dispute is confined to the Junior Engineers and Assistant Engineers categories which I shall briefly refer to as JEs and AEs respectively.

2. The grievance projected in the two Petitions may be conveniently summarised under two heads; the first of them concerns, the payment by the Corporation of a component that is, the special pay which admittedly is admissible to the AEs and not to the JEs, If one may look at the hierarchy set up of the Corporation, as emerges from the statements produced by the respondents, starting from the bottom, the Junior Engineers who rank at Serial No. 12 and all categories of employees higher than them get this component of special pay. In this particular instance, the petitioners contend that, the academic qualification alone cannot distinguish them from the Assistant Engineers because, according to them they must be regarded as similarly situated employees or officers, and therefore, if

the special pay is admissible to the Assistant Engineers, then it must also be paid to the Junior Engineers. The principal basis on which this argument is founded by Mr. Subba Rao who represents the petitioners is that, the Corporation itself has done a broad classification of its employees, and under Regulation 3.2, it has categorised the Junior Engineers, Assistant Engineers, Accounts Officers etc., as belonging to the corporate services-Group-B. Mr. Subba Rao therefore, submits that it is this classification that the respondents are bound by and consequently dissimilar treatment meted out to the Junior Engineers as against the Assistant Engineers "would constitute discrimination and would call for corrective action.

3. The respondents have justified the broad distinction that has been made on a variety of grounds as are set out in the statement of objections and they do admit that, they have drawn the line at Category-12 and that all employees above that demarcation get the special pay and that those who are below it, do not get the same. Both in the written objection as also in the oral submissions, many heads of justifications have been put forward for this and Mr. Murthy on behalf of the Corporation has sought to contend that, this is basically a management function and as long as the classification is reasonable and not arbitrary, that this Court in exercise of its Writ jurisdiction cannot interfere with the basis on which such distinction has been made.

4. The dispute before me, as I have earlier indicated, cannot be extended to encompass the cases of other categories of employees with whom we are concerned. It is only confined in these Petitions to the Junior Engineers and the Assistant Engineers and the argument advanced is that, there is no justification as long as both of them belong to Class-B in the corporate set up, in drawing a distinction. Mr. Subba Rao sought to illustrate his point by pointing out to me that one category of employees namely Assistant Accounts Officers also qualified for special pay that they also come within the B categorisation and that therefore, The exclusion of the present petitioners as a class is an act of hostile discrimination. As far as this argument is concerned, the fallacy in it is that, a Court in exercise of its Writ jurisdiction cannot seek to compare the job functions, qualifications, experience etc., of a class of officers belonging to the Accounts Department and a class of Officers belonging to the cadre of Engineers. That argument therefore, to my mind will not avail the petitioners. It is absolutely necessary for the petitioners since they have based their case on the ground of discrimination, to demonstrate that the persons who according to them have qualified for favoured treatment, are identically situated to the Petitioners and that they belong to virtually the similar and same class. It is an admitted position, both in the pleadings and in the arguments, that the Junior Engineers and the Assistant Engineers are two different cadres. Apart from the fact that the qualifications differ between these two classes of employees, it is also an admitted position that, their designations are not the same and in keeping with the fact that the Assistant Engineers do possess higher academic qualifications, it is pointed out to me that their work responsibilities and job functions are slightly of a higher order than those of the Junior Engineers. This Court cannot, beyond a

generalised evaluation, go into a deeper examination of inter se differences but I am satisfied from the material placed before me that these two class of employees are dissimilar. The moment this factor is established, it is impossible for the Junior Engineers to contend that some benefits whatever they may be that another cadre receives must automatically and ipso-facto be made available to them. I do not require to deal with the elaborate Case Law on the point because, the essence of an argument where discrimination is alleged must be founded on the principle of equation. It cannot be founded on a more or less loose evaluation whereby a party contends that, he or she or it is more or less similar or that the comparisons are very close. If an infringement of a right is alleged, the party alleging infringement must demonstrate to the full satisfaction of the Court that the first requirement namely, the principle of absolute equation exists and that from the material on record, the differential treatment meted out between two equals amounts to discrimination. After hearing learned Counsel and on an evaluation of the material before me, I am unable to hold that these two categories of employees can be equated nor for that matter was it the real submission advanced by learned Counsel on both sides. If this is the position, then the prayer based on the ground of discrimination as far as the special pay is concerned will necessarily have to be rejected. This Court cannot embark on a omnibus investigation as to why the line has been drawn at category-12 because there appear to be several reasons put forward by the Corporation in support of this.

5. As far as the main challenge is concerned, Mr. Subba Rao on behalf of the petitioners has demonstrated to me that at all stages, a disparity did exist between the pay scales of the two categories. He further demonstrates to me that apart from the question of special pay, that even at every stage when the revisions have been done, that the gap between the total emoluments received by the Junior Engineers and the Assistant Engineers has been widening. In support of this argument, he has relied on the tabulations and he has demonstrated how between the period 1.4.1976 and 1.1.1994, the difference between the emoluments which was as little as Rs. 15/- in 1976, has increased to almost Rs. 500/- in the year 1994. It is submitted by Mr. Subba Rao, that the only difference between these two classes of Engineers is with regard to the fact that his clients who are Diploma holders possess a three year qualification and that the Graduate engineers possess a five year Degree, but as far as the work functions are concerned, that there is hardly any real distinction that can be made. He does admit that because of the slightly lower qualification that a distinction can be made but it is his grievance that the difference that originally existed, cannot be accelerated merely because the Corporation has for a variety of reasons been considering the case of the Assistant Engineers and has been making several pay revisions under that head.

6. The grievance projected as far as this aspect of the case is concerned once again boils down to the question of discrimination. I have broadly dealt with the heads of argument advanced on the question of special pay and i have held that,

admittedly the two categories of Officers cannot be equated. Under these circumstances, it would not be possible for this Court to straight away hold that, even if the two categories can be placed in parallel positions, that these lines must run parallel at all times because there may be reasons why the divergence has taken place. Learned Counsel on both sides relied on a number of Decisions both of this Court and of the Supreme Court where cases of this type have come up for consideration and it was essentially on the basis of the data before the Court that a decision had been taken. Mr. Murthy has produced before me among other things a report of the Expert Committee that was set up and he has also indicated the reasons why this Committee was set up. He states that it was on the basis of the Expert Committee report that the salary structure of the Assistant Engineers underwent some degree of revision. The Expert Committee had examined various heads and had put up its recommendations, but, I do find from that report that the category of Junior Engineers who even though they do not rank on absolute parity with the Assistant Engineers has not been examined from the aspect of inter se placement with the Assistant Engineers. This has undoubtedly given cause for a considerable amount of rightful resentment as far as this category of employees is concerned. Admittedly, the petitioners belong to the class of Junior Engineers and they basically rely on the principle of fairness which is one of the aspects which not only a management but also a Court has got to examine while considering whether the action complained of is arbitrary or otherwise. The fact that the cases of the Junior Engineers have not been considered by the Expert Committee does to my mind give them some cause for legitimate grievance. It is an essential principle that has now been embodied by the Courts in numerous Decisions that a public authority owes a duty to act fairly and a duty to act fairly is extended also to management functions. To that extent therefore, it would be necessary that the respondents must scientifically and thoroughly evaluate and fix the inter se placements between the categories of Assistant Engineers and Junior Engineers. To my mind, a total job evaluation of these two categories is very essential because it is on that basis that the emoluments and all other aspects of the matter depend. In one of the earlier Decisions of this Court which has been relied on by the petitioner's learned Counsel that was precisely the direction given.

7. The learned Counsel appearing on behalf of the petitioners has demonstrated to me that, the grievance has been continuing and dates back right to the year 1976. It is therefore advisable and very necessary that the process of a scientific evaluation and corrective action if necessary, should not be delayed. The respondent-Corporation is therefore directed to undertake an evaluation, through an expert body if necessary, by setting up a full fledged job evaluation committee where experts from different fields including the legal field may be associated and to fix the inter se placements of the two categories that are before me namely, Assistant Engineers and Junior Engineers. While doing this evaluation it would be advisable for notice to be issued to both the Associations representing these two classes of Officers and to give them an opportunity to put forward their

say in the matter. It is also necessary that this exercise be completed on a time bound basis. For this purpose therefore, the body to do the evaluation shall be designated within a period of two months from today and the job of evaluation committee shall be directed to complete its evaluation and put forward its recommendations within a period of four months from the date on which it commences its operations,

With these directions, both the Petitions to stand disposed of.