

(1993) 08 SC CK 0019

In the Supreme Court Of India

Case No : Civil Appeals No's. 989-90 with 249-50 of 1980

G. Gangarasniah

APPELLANT

Vs

A. Narayanaswamy and others
S. Ramamurthy Vs
Karnataka Electricity Board and others

RESPONDENT

Date of Decision : 17-08-1993

Acts Referred:

Citation : AIR 1994 SC 838 : (1994) LabIC 674 : (1994) 1 LLJ 1026 : (1994) 2 SCC 669 Supp

Hon'ble Judges : R. M. Sahai, J;P. B. Sawant, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The question that falls for consideration in these appeals is whether the seniority of the respondent direct recruit employees is to be determined with reference to the date of their appointment or from the date of their confirmation after their probation period was over, as against the appellants who were admittedly regularised in service after the initial appointment of the respondents but before their confirmation. For the sake of convenience the facts may be taken from C.A. Nos. 989-90 of 1980.

2. The appellant was initially appointed in 1961 admittedly not according to rules, although the Recruitment Rules were in existence since 1960. For the first time, pursuant to the award of the Industrial Tribunal dated 17th October, 1967, the appellant along with other similarly situated employees, was directed to be absorbed against the vacancies then existing and arising thereafter. The absorption was to be made in phases over a period of 1-1/2 years. There is no dispute that accordingly the appellant was so absorbed on 26th May, 1968. The respondent-direct recruits were appointed according to the rules w.e.f. 7th November, 1967 with the usual condition of their putting in satisfactory probation period of service of two years. They completed their probation period of service in November, 1969 and by the order dated 29th July, 1970, their services were

"regularised" from various dates in November, 1969.

3. On this factual matrix, the controversy raised in the writ petitions before learned single Judge of the High Court was that since the appellant was regularised w.e.f. 26th May, 1968 as against the respondent-direct recruits who were also 'regularised' but since November 1969, the appellant ought to have been shown senior to the respondents and the lower seniority given to him in the seniority list was against law. The learned single Judge accepted the said contention and allowed the writ petition. However, in appeal, the Division Bench reversed the said decision and held that the seniority of the respondent-direct recruits would have to be counted from the date of their initial appointment notwithstanding the fact that they were 'regularised' in 1969 after completion of the probation period. It is this decision which is challenged in the present appeals, the decision being common to both the appeals.

4. Mr. Jitendra Sharma and Mr. K.R. Nagaraja, learned Counsel, contended that the Board itself had used the expressions "confirmation" and "regularisation" synonymously. When, therefore, the appellant was absorbed in pursuance of the award of the Industrial Tribunal and the Board regularised the services of the appellant w.e.f. 26th May, 1968, it had in terms given up the condition of the probation period and had in effect confirmed the appellant against a regular vacancy with effect from the said date. As against this, the order dated 29th July, 1970 "regularised" the respondent-direct recruits from the dates mentioned against them in the order, showing that they were for the first time absorbed against the regular vacancies from the respective dates. It is, therefore, submitted that both cases are either of regularisation or confirmation and since the appellant was regularised earlier to the respondents, the decision of the learned single Judge was proper and the Division Bench had erred in reversing the same.

5. We are not impressed by this contention. On the undisputed facts, viz., that the appointment of the appellant was not according to the Rules and that he was regularised for the first time pursuant to the award of the Industrial Court, it will have to be held that his regular service against the substantive vacancy began for the first time from the date he was so absorbed or regularised. Although, the direct recruits were appointed on 7th November, 1967 and were confirmed in 1969 (and not regularised, the expression being wrongly used by the Board in its order of 29th July, 1970), the confirmation would not postpone their date of initial appointment against the substantive vacancies, to the later date. On the basis of the normal rule of calculating the seniority, viz., from the date of the regular initial appointment, it will have to be held that the direct recruits had started their regular services w.e.f. 7th November, 1967 when they were initially appointed. Their seniority will, therefore, have to be counted from the said date and not from the date of their confirmation after the probation period was over.

6. In this view of the matter, we are satisfied that the view taken by the Division Bench is both just and proper. There is, therefore, no merit in these appeals. The

appeals are dismissed with no order as to costs.