
(2009) 02 RAJ CK 0166
In the Rajasthan High Court

G.S. Sabla

APPELLANT

Vs

Rajasthan State Electricity Board and Others

RESPONDENT

Date of Decision : 19-02-2009

Acts Referred:

Rajasthan Private Electricity Supply Undertaking (Acquisition) Act, 1975 — Section 11(1)

Citation : (2010) 1 RLW 585

Hon'ble Judges : H.R. Panwar, J

Bench : Single Bench

Judgement

H.R. Panwar, J.—All these writ petitions involve common question of law and facts and therefore, with consent of learned Counsel for the parties, are heard and decided together taking the facts of SBCW No. 800/1986 as a leading case.

2. In the two writ petitions filed by G.B. Sabla and Nemi Chand, the petitioners seek a direction to assign seniority by taking their entire services rendered by them with the Erstwhile Maharana Bhupal Electric Supply Company Private Limited, Udaipur (for short the Company" hereinafter) and consider their case for promotion to the post of Executive Engineer.

3. In the writ petition filed by RSEB being Writ Petition No. 3016/2000, the order Annex. 3 dated 10.11.1998 passed by Industrial Dispute Tribunal and Labour Court , Udaipur (for short "the Labour Court" hereinafter) has been challenged.

4. The facts and circumstances giving rise to these writ petitions are that the writ petitioners G.S. Sabla and Nemi Chand and various respondent mentioned in Writ Petition No. 800/86 were employee of the Company. The Rajasthan Private Electricity Supply Undertaking (Acquisition) Act, 1975 (for short "the Act of 1975" hereinafter) came into force w.e.f. 21.4.1975. On coming into force of the Act of 1975, the Company was taken over by the State Govt. on 22.4.1975 and from next day on 23.4.1975 it was transferred to Rajasthan State Electricity Board (for short "RSEB" hereinafter). The employees of the Company under the provisions of vesting were taken over by the Govt. and on transfer by RSEB. The

petitioners claim to count their entire services which they had rendered with the Company prior to taking over by Govt. and they by RSEB for the purpose of seniority, promotion etc. The relevant provision dealing with the terms and conditions of the service of such employees who were employees of the Company and were taken over by the State Govt. and thereafter transferred to RSEB under the provisions of the Act of 1975, is Section 11. Section 11 of the Act of 1975 reads as under:

11. Provisions for existing staff of licensee.-(1) Every person who was genuinely employed in connection with the affairs of an undertaking as its employee immediately before the vesting date shall become on the vesting date an employee of the Government and thereafter an employee of the Board on the date of transfer of the undertaking to the Board u/s 5 and shall hold his service on the same terms and conditions and with the same rights to pension gratuity and other matters as would have been admissible to him if the undertaking had not been transferred to and vested in the Government or the Board as the case may be and continue to do so unless and until his employment under the Government or the Board as the case may be is terminated or until his remuneration terms or conditions are duly altered by the Government or the Board as the case may be.

(2) If the licensee fails to pay such an employee his dues as immediately before the vesting date the Government or the Board as the case may be may pay him those dues and the amount so paid shall be deducted from the amount payable by the Government to the licensee.

(3) In case the Government or the Board as the case may be retrench any such employee within a period of one year from the vesting date the amount payable to such an employee on retrenchment shall be deducted from the amount payable by the Govt. to the licensee.

(4) For the person who immediately before the vesting date were the trustees for any pension, provident fund or gratuity or other like fund constituted for the employees of the licensee, there may be substituted as trustees such persons as the Government may, be general or special order, specify.

(5) Notwithstanding anything contained in the Industrial Disputes Act, 1947 (Central Act 14 of 1947) or in any other law for the time being in force the transfer of the services of any employee from the licensee to the Government or from the government to the Board shall not entitle such employee to any compensation under this Act or any other law for the time being in force and no such claim shall be entertained by any court, tribunal or other authority.

(6) If any question arises as to whether or not any person was genuinely employed in connection with the affairs of the undertaking as its employee immediately before the vesting date or whether or not the services of any person have transferred to the Government or the Board under this Act it shall be decided by an officer authorised for this purpose by the Government and an

appeal shall lie again this decision to the Government whose decision shall be final.

5. Akhil Rajasthan Vidhyut Mandal Karamchari Parishad, Udaipur raised an industrial dispute and moved to the State Government for referring the industrial dispute to the Labour Court. By notification dated 18.10.1978, the State Govt. referred the industrial dispute to the Labour Court, Udaipur. The Labour Court by Annex. 3 in Writ Petition No. 3016/2000 answered the reference and held that seniority of the workmen of Akhil Rajasthan Vidhyut Mandal Karamchari Parishad, Udaipur is to be counted from the date they served with the Company and not from the date when their services came to be transferred to RSEB and that award has been challenged by the petitioner RSEB in the Writ Petition No. 3016/2000 and the two petitioners have directly filed writ petitions before this Court claiming such seniority.

6. It is contended by learned Counsel for the writ petitioners that Section 4 of the Act of 1975 provides Vesting of the Undertakings, Section 5 of the Act of 1975 provides Transfer of Undertaking to Board and Section 7 of the Act of 1975 provides Vesting of Undertakings and so far as terms and conditions of the services of employees of Erstwhile Company is concerned, they are governed by Section 11 of the Act of 1975.

7. Section 4, 5, 7 of the Act of 1975 reads as under:

Section-4. Vesting of the Undertakings.-(1) All the undertakings shall be deemed to be transferred to, and shall vest in the Government on the 23rd day of April, 1975.

(2) The government shall, by force of vesting in it of the undertakings under sub-section (1) be deemed to have entered into possession of all the properties, movable and immovable, fixed assets, rights, powers authorities and privileges of the Undertakings as from the vesting date.

Section 5. Transfer of Undertakings to Board.-(1) Immediately upon the vesting of Undertakings in the Government u/s 4, the Undertakings shall stand transferred to the Board and all the assets, liabilities, rights and obligations, which by virtue of this Act have devolved on the Government, shall thereupon vest and devolve on the Board, on the condition, that the net amount payable to the licensee under this Act by the Government shall be recoverable from the board. (2) Upon the transfer of the Undertakings to the Board under Sub-section (1) it shall be lawful for any officer of the Board to take physical possessions of all the property movable and immovable including fixed assets of the Undertakings and in doing so, to use such force to remove obstruction, if any, as he may deem necessary for the purpose.

Section 7. Vesting of Undertakings.-(1) The property, rights, liabilities and obligations specified below in respect of the Undertakings shall vest in the Government on the vesting date:

(i) all the fixed assets of the licensee and all the documents relating to the Undertaking;

(ii) all the rights liabilities and obligations of the licensee under hire-purchase agreement if any for the supply of materials or equipment made bonafide before the vesting date:

(iii) all the rights liabilities and obligations of the licensee under any other contract entered into bonafide upto the vesting date not being a contract relating to the borrowing or lending of money or to the employment of staff tariff for supply of electricity:

Provided that the arrears due from the consumers on account of supply of electricity upon the vesting date shall be recoverable by the licensee from the consumers even after the said date.

(2) All the assets specified in Sub-section (1)(i) shall vest in the Government free from any debts mortgages or similar obligations of the licensee or attaching to the Undertaking:

(3) In the case of an Undertaking which vests in the Government under this Act the licence granted to it under part II of the Electricity Act shall be deemed to have been terminated on the vesting date and all the rights liabilities and obligations of the licensee under any agreement except those relating to the supply of electricity entered into before that date shall devolve or shall be deemed to have devolved on the Government:

Provided that on and from the vesting date the consumers will be governed by the Tariff for supply of Electricity and the General Conditions of Supply of the Board.

(4) In respect of any Undertaking to which Section 4 applies it shall be lawful for the Government or their authorised representative on and after the vesting date, after removing any obstruction that may be or might have been offered to take possession of the entire Undertaking or as the case may be the fixed assets and of all documents relating to the Undertaking which the Government may require for carrying it on.

(5) All the liabilities and obligations other than those vesting in the Government under Sub-section (1) and (3) shall continue to be liabilities and obligations of the licensee after the vesting date.

Explanation.-All liabilities and obligations in respect of staff taxes provident fund employees State Insurance industrial disputes and all other matters, upto and including the vesting date shall continue to be the liabilities and obligations of the licensee after the vesting date.

8. The matter came up before this Court on 6.9.2005 and the counsel for the parties submitted that the controversy identical to that of involved in these writ petitions is pending decision before Division Bench of this Court in special appeal

bearing No. 1058/99. That special appeal came to be dismissed by the Division Bench of this Court by order dated 5.12.2007. Though before the Division Bench, the provisions of Section 7 of the Act of 1975 came to be considered, however, in these appeals, in my view, the relevant provision is Section 11 of the Act of 1975. According to learned Counsel for the petitioners, the petitioners have been working with the Erstwhile Company as its employee immediately before vesting date and therefore, they became on the vesting date, the employees of the Government and thereafter the employees of the Board from the date of transfer of the Undertaking to the Board u/s 5 of the Act of 1975.

9. In the instant case, the relevant vesting date is 22.4.1975 and thereafter the transfer of employees to respondent RSEB is 23.4.1975. According to learned Counsel for the petitioners, u/s 5 of the Act of 1975 the Board shall hold such employee's services on the same terms and conditions and with the same rights to pension, gratuity and other matters as would have been admissible to such employees if the Undertaking had not been transferred to and vested in Government or the Board as the case may be and continue to do so unless and until, his employment under the Govt. or the Board as the case may be is terminated or until his remuneration terms or conditions are duly altered by the Government or the Board as the case may be.

10. From the plain reading of Section 11 of the Act of 1975 it is clear that the services of the employees of the Erstwhile Company on having been vested with the Govt. and thereafter transferred to RSEB, were required to be on the same terms and conditions and with the same rights to pension, gratuity and other matters as would have been admissible to them if the Company had not been transferred to and vested in Government. However, Section 11 further provides that until his remuneration terms or conditions are duly altered by the Government or the Board as the case may be. Thus, the Government or the RSEB were empowered to alter remuneration, terms or conditions of the service. In the instant case, in exercise of the last para of Section 11(1) of the Act of 1975, the terms and conditions of the services have been altered by the State. The respondent RSEB in Writ Petition No. 3016/2000 has placed on record, notification Annex. 5 dated 22.4.1975 wherein it has been made clear that from the mid night of 22.4.1975, Maharana Bhupal Electric Supply Co. Ltd., Udaipur has been taken over by the State Government and the Govt./Board bonafidely grant an opportunity of fresh appointment to all those employees who have completed at least one year continuous service in the Company. It further clarifies in Annex. 5 that services from 23.4.1975 in the Govt./Board Administration, will be like a new appointment and no benefit will be given of the services rendered in the Company. It was further categorically mentioned therein that after selection by Screening Committee, the selected employee's seniority will be considered from the date of his entering into Govt./Board service. Thus, in exercise of power under last para of Section 11(1) of the Act of 1975, the services of the employees of Erstwhile company were not counted for any purpose but such employees were given a fresh appointment and the employees

accepted such fresh appointment. There are instances shown by respondent RSEB whereby various employees of the Erstwhile Company on having been taken over on vesting by the Govt. and transfer to RSEB opted for fresh appointment and gave their fresh joining. Thus, fresh appointment orders have been issued by the RSEB and in pursuance thereof, the employees who have been taken over on vesting by the Govt. and thereafter transferred to RSEB, have given joining with the respondent RSEB. This fact has not been disputed even by the writ petitioners in the writ petitions filed by the employees. So far as the writ petition filed by G.S. Sabla is concerned, by Annex. R/3 dated 22.4.1975 duly signed by him, he accepted his fresh appointment given by RSEB. An affidavit has been filed by the Assistant Secretary of the RSEB along with which Annex. R/3 has been placed on record and the writ petitioner failed to controvert the same. Thus, it is clear that the respondent State Govt. and the RSEB were empowered to alter remuneration, terms or conditions of service which they did vide Annex. 5. It is clear from the record that both the writ petitioners and the respondents in writ petition No. 3016/2000 accepted a fresh appointment with effect from 23.4.1975 on the employees having been transferred by the State Govt. to the RSEB after having vested with the State Govt.

11. In view of the aforesaid discussion, the writ petitioners as well as the respondents in Writ Petition No. 3016/2000 are not entitled to count the period of services rendered by them with the Erstwhile Company for the purpose of seniority and promotion.

12. Consequently, S.B. Civil Writ Petition No. 800/86 and 2794/86 filed by the petitioners G.S. Sabla and Nemi Chand are dismissed being devoid of any merit. The Writ Petition No. 3016/2000 filed by RSEB is allowed and the order impugned Annex. 3 dated 10.11.1998 is set aside and quashed. There shall be no order as to costs.