

(1993) 07 KAR CK 0013
In the Karnataka High Court
Case No : W.A. No's. 1656 and 1657 of 1991

Karnataka Electricity Board

APPELLANT

Vs

S. Bhaskar

RESPONDENT

Date of Decision : 09-07-1993

Acts Referred:

Constitution of India, 1950 — Article 14, 16 (1)
Karnataka Electricity Board Supply Regulations, 1988 — Regulation 47D

Citation : (1993) ILR (Kar) 2102 : (1993) 3 KarLJ 227

Hon'ble Judges : S.B. Majmudar, C.J.; N.D.V. Bhat, J

Bench : Division Bench

Advocate : B.C. Prabhakar, for the Appellant; M. Raghavendrachar, for the Respondent

Final Decision : Dismissed

Judgement

Majmudar, C.J.—In these two Writ Appeals the Karnataka Electricity Board ("the Board" for short) has prayed for setting aside of the Order passed by the learned Single Judge. In order to appreciate the grievance of the Board against the said Order a few relevant facts are required to be noted.

2. The respondents are the employees of the Board. They were appointed as Assistant Engineers (Electrical) in the services of the Board. At the time when they were appointed they were holding M.E. degree qualification. They joined the service of the Board on 7.9.77 and 31.8.77 respectively. They had acquired M.E. qualification in September 1975 and January 1976 respectively. By an office order dated 26th June, 1979 the Board had decided to grant two advance increments to the Assistant Engineers (Electrical) who after joining the services of the Board had acquired Master Degrees or Doctorate in Electrical Engineering. The order was to be effective from the date of issue. The contention of the respondents-Writ Petitioners was that the benefit of the said office order should have been made available to the respondents also as they were in service of the Board on the date of issuance of the said office order. The said benefit, according

to the respondents, could not be denied to them just because they had completed their post-graduation even before joining the services of the Board. The learned Single Judge took the view that the controversies raised in the Writ Petitions were fully covered by Judgment of this Court in W.P. 17011/1986 A. Raj Kumar v. K.E.B. & Ors. disposed of on 16.1.1989 and as confirmed in W.A.788/89 K.E.B. v. A. Raj Kumar The learned Single Judge accordingly allowed the Writ Petitions in terms of the order in W.P. 17011/86. The aforesaid Common Order of the learned Single Judge is now brought in challenge in these Appeals.

3. Learned Counsel for the appellant/Board raised the following contentions in support of the Appeal:

(1) The office order is dated 26th June, 1979 while the present respondents moved the Writ Petition in the year 1990 almost after 11 years. Therefore, the petitions are liable to be dismissed on the ground of delay and laches. (2) Even on merits the petitions should have been dismissed as the Division Bench Decision relied on by the learned Single Judge had no application to the facts of the present proceedings since it covered an entirely different class of employees of the Board viz., Typists and Junior Assistants. There was a note appended to the office order issued concerning the Typists and Junior Assistants and there was no such note appended to the office order dated 26th June, 1979 covering the cases of Assistant Engineers. Therefore the Decision of Division Bench in W.A. 788/89 could not have been applied to the facts of the present proceedings. (3) The office order in question refers to granting of two advance increments to only those Assistant Engineers who acquire post-graduate Degrees or Doctorates after joining the services of the Board and an order in such clear terms cannot be re-written by Court so as to cover the cases of the present respondents who had acquired post-graduate Degrees even prior to joining the services of the Board.

4. In reply, learned Counsel for the respondents submitted that even though W.A. 788/89 can be said to not apply to the facts of the present proceedings since the order therein concerns a totally different category of employees, there is one another Decision by Justice K.A. Swami (as he then was) in W.P.Nos. 4649 and 4650/89 K.L. Madhusudhan v. K.E.B. and connected matters decided on 10th April, 1989 wherein it is held that even in the absence of the explanation in the office order dated 26th June, 1979 as in the case of the Junior Assistants and Typists, Regulation 47D could be interpreted to include even those who had completed their post-graduation or Doctorate in Electrical Engineering even prior to their joining the services of the Board. He, therefore, submitted that there is nothing wrong in the direction issued by the learned Single Judge directing the Board to extend similar treatment to the respondents as meted out to the Junior Assistants and Typists. However, he very fairly conceded that while directing grant of two advance increments, the pay of the respondents can be fixed only notionally in the running time scale with effect from 26th June, 1979 but the actual arrears could be made available to the respondents for a period of three years immediately prior to the filing of the Petitions by respondents.

5. Having given our anxious consideration to the rival contentions we have reached a conclusion that the appellant/Board has no case. So far as the first contention urged by the learned Counsel for the Board touching the question of delay and laches on the part of the respondents in preferring the Writ Petition after some 11 years from the date of the office order is concerned this Court in W.A. 788/89 has brushed aside the very contention that the Writ Petitions preferred after such long lapse of time should have been rejected, by holding that the actual arrears payable to the petitioners in those cases having been limited to three years prior to the filing of the Writ Petitions by them, the question of delay and laches pales into insignificance. It has to be kept in view that when an employee contends that he has been consistently discriminated against by being paid a lower salary than his junior, it is a case of recurring cause of action especially in the light of Articles 14 and 16(1) of the Constitution. It has to be also kept in view that by delaying the filing of the Petitions the position of the Board has not been adversely affected. Nor has this delay deprived the appellant the opportunity of putting forward any defence to meet the case of the respondents. If at all, it only benefited the appellant/Board since it would not be required to pay the arrears for the whole period during which the office orders had not been given effect to. It is obvious that if Petitioners had come earlier, they would have got arrears for a larger period. Therefore on the facts of this case it cannot be said that the delay on the part of the respondents/Writ petitioners is in any way fatal to the consideration of their case on merits. The first contention is, therefore, rejected.

6. The second contention urged by learned Counsel for the appellant is touching the non-applicability of the office order to those Assistant Engineers who had acquired the qualification prior to joining the Board. It is no doubt true this Court cannot re-write the relevant Regulation to include even those who had acquired post-graduate Degrees or Doctorates even prior to joining the service of the Board. However one salient aspect stares in the face. The Board is bound by Article 14 of the Constitution of India. It cannot be permitted to mete out any arbitrary treatment to its employees who are similarly situate. All the Assistant Engineers are doing the same type of work, discharging similar duties and undertaking similar responsibilities. It is also not in dispute that Assistant Engineers can be either direct recruits or can be promotees from the lower categories. If one is promoted as Assistant Engineer from the lower rank and subsequently acquires post-graduate Degree he would be entitled to two advance increments whereas a direct recruit though, when he joins the Board, has the post-graduate Degree would not be entitled to the advance increments which, on the face of it, is irrational. To say the least, this would be highly arbitrary. The basis or the need to make out such a distinction is non-existent. If the whole idea of advancing additional increments is to encourage the employees already employed in the Board to become more efficient by acquiring additional qualification so that their better services could be utilised by the Board for a more efficient running of its business, one fails to understand as to why such a

benefit should be denied to new entrants with the required higher qualifications. Consequently, even accepting the contention of learned Counsel for the Board that we cannot re-write the Regulation to suit the respondents, we can still say that the Board should give equal treatment to those equally placed. This direction flows from the operation of Article 14 read with Article 16(1) of the Constitution of India and it becomes necessary because of the truncated effect given by the Board to its order dated 26th June, 1979. The learned Counsel for the appellant submitted that the respondents have not prayed for quashing of the office order dated 26th June, 1979. It is obvious that their right for advance increments emanates from the office order dated 26th June, 1979. Their grievance is that the benefit accruing under the office order dated 26th June, 1979 has not been extended to them by the Board on a mistaken notion that the respondents are not eligible to such benefit. Thus the existence of the office order is a condition precedent to lay a claim to the benefit now sought for by the respondents. That being so, there would be no occasion for them to ask for quashing of the order which would be akin to killing the goose that lays golden eggs. Consequently no fault can be found in the direction issued by the learned Single Judge.

7. It is, however, made clear that while granting two additional increments to the respondents the Board shall fix notionally the respondents' pay-scale in the running time scale of Asst. Engineers with effect from 26th June, 1979, the date of the office order, while limiting the actual arrears to be paid to three years immediately prior to the date of filing of the Writ Petitions.

8. The Writ Appeals will stand dismissed subject to the aforesaid clarifications. It is also made clear that the respondents-Writ petitioners and the appellant/Board will work out the benefits flowing from the order in the light of the respective bio-data of the concerned respondents and if the respondents have got the benefit of any of the two advance increments, already, that will be adjusted towards the present claim arising from this Order.