
(1964) 07 KL CK 0016
In the High Court Of Kerala

Kerala State Electricity Board

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 21-07-1964

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 16, 226

Citation : (1966) 1 LLJ 488

Hon'ble Judges : M.S. Menon, C.J;M. Madhavan Nair, J

Bench : Division Bench

Judgement

M.S. Menon, C.J.—The Kerala State Electricity Board, respondent 1 in Original Petition No. 1949 of 1962, is the appellant before us. Respondents 2 to 6 in this appeal were the petitioners in that original petition. Respondent 2 in the original petition, the State of Kerala, is respondent 1 before us. There is also an intervenor. He was brought on record in pursuance of our order in Civil Miscellaneous Petition No. 1269 of 1964, dated 23 June 1964.

2. Respondents 2 to 6 and the intervenor are junior engineers in the service of the board. The junior engineers, both in the electrical wing and in the civil wing, consist of two categories of persons: those directly recruited; and those promoted from the grade of first-grade overseers.

3. Respondents 2 to 6 and the intervenor belong to the category of persons promoted from the grade of first-grade overseers, and they do not possess the higher qualifications prescribed for direct recruitment. The qualifications prescribed for direct recruitment, both in the electrical and civil wings, are higher; and we are assured that those who possess the higher qualifications are called by the board "graduate junior engineers," even though they may not possess a degree but only one of the other qualifications which the board has specified as equivalent to a degree. We shall employ the same phraseology in the judgment and style the junior engineers possessing the qualifications prescribed for direct recruitment as junior engineers as "graduate junior engineers "and those who do not, as "non-graduate junior engineers."

4. The orders impugned in the original petition are Ex. P. 1, dated 28 November 1961, and Ex. P. 2, dated 28 March 1962. Exhibit P. 1 says:

The Kerala State Electricity Board have been pleased to order that three advance increments will be granted to all graduate junior engineers now in the service of the board in the scale of Rs. 175-10-275. All graduate junior engineers recruited in future will be allowed to start on Rs. 205 per mensem in the above scale of pay. These orders will take effect from 31 July 1961.

and Ex. P. 2:

The board is pleased to order that the advance increments sanctioned to the junior engineers under the board order cited as first paper above (Ex. P. 1) will be given without prejudice to the normal increments. The normal increments will be allowed on the due dates.

5. The judgment under appeal has come to the conclusion that these two orders embody a discrimination which is violative of Article 16(1) of the Constitution which says that:

there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

6. The question as to whether the protection of Article 16(1) extends beyond the stage of initial appointment was left open by the Supreme Court in *All India Station Masters" and All India Station Masters" and Assistant Station Masters" Association, Delhi and Others Vs. General Manager, Central Railway and Others*, . It has, however, been dealt with by the Supreme Court since then in *The General Manager, Southern Railway Vs. Rangachari*, . In the latter case the Supreme Court extracted Article 16(1) of the Constitution and stated as follows:

In deciding the scope and ambit of the fundamental right of equality of opportunity guaranteed by this article it is necessary to bear in mind that in construing the relevant article a technical or pedantic approach must be avoided. We must have regard to the nature of the fundamental right guaranteed and we must seek to ascertain the intention of the Constitution by construing the material words in a broad and general way. If the words used in the article are wide in their import, they must be liberally construed in all their amplitude. Thus construed, it would be clear that matters relating to employment cannot be confined only to the initial matters prior to the act of employment. The narrow construction would confine the application of Article 16(1) to the initial employment and nothing else; but that clearly is one of the matters relating to employment. The other matters relating to employment would inevitably be the provision as to the salary and periodical increments therein, terms as to leave, as to gratuity, as to pension and as to the age of superannuation. These are all matters relating to employment and they are, and must be, deemed to be included in the expression " matters relating to employment" in Article 16(1). Similarly, appointment to any office which means appointment to an office like

that of the Attorney-General or Comptroller and Auditor-General must mean not only the initial appointment to such an office but all the terms and conditions of service pertaining to the said office. What Article 16(1) guarantees is equality of opportunity to all citizens in respect of all the matters relating to employment illustrated by us as well as to an appointment to any office as explained by us. (Paragraph 14.)

The Court went on to say:

If the narrow construction of the expression "matters relating to employment " is accepted, it would make the fundamental right guaranteed by Article 16(1) illusory. In that case it would be open to the State to comply with the formal requirements of Article 16(1) by affording equality of opportunity to all citizens in the matter of initial employment and then to defeat its very aim and object by introducing discriminatory provisions in respect of employees soon after their employment. Would it, for instance, be open to the State to prescribe different scales of salary for the same or similar posts, different terms of leave or superannuation for the same or similar posts. On the narrow construction of Article 16(1), even if such a discriminatory course is adopted by the State in respect of its employees, that would not be violative of the equality of opportunity guaranteed by Article 16(1). Such a result could not obviously have been intended by the Constitution. In this connexion it may be relevant to remember that Articles 16(1) and 16(2) really give effect to the equality before law guaranteed by Article 14 and to the prohibition of discrimination guaranteed by Article 15(1). The three provisions form part of the same constitutional code of guarantees and supplement each other. If that be so, there would be no difficulty in holding that the matters relating to employment must include all matters in relation to employment both prior, and subsequent, to the employment which are incidental to the employment and form part of the terms and conditions of such employment. (Paragraph 16.)

7. We do not understand the passages extracted above as supporting the contention that there is a discrimination violative of Article 16(1) of the Constitution in a case like the one before us. What has been done by the board, in effect, amounts only to the creation of two categories of junior engineers, graduate junior engineers and non-graduate junior engineers, the former being placed on a scale of Rs. 205-10-275; and the latter, on a scale of Rs. 175-10-275. This certainly is not a differential treatment amounting to discrimination which violates Article 16(1) of the Constitution.

8. No person has been affected adversely. And what has been done is but the logical corollary of the superior qualifications possessed by the graduate junior engineers, a superiority which is recognized not only by making them alone eligible for direct recruitment but also by giving them a definite weightage at the time of the promotion of junior engineers to the next higher grade of assistant engineers.

9. There is also another aspect of the case which we think we should mention before we conclude this judgment. The prayer in this petition is as follows:

For the reasons mentioned in the accompanying affidavit, it is humbly prayed that this Court may be pleased to call for the records and issue appropriate writ or direction to respondents 1 and 2 to give the benefit of Exs. P. 1 and P. 2, orders EB/7/2086/61-62, dated 28 November 1961, and B.O. A1-1595/60, dated 28 March 1962, to all the non-graduate junior engineers including the petitioners.

10. If Exs. P. 1 and P. 2 are discriminatory, the proper order under Article 226 of the Constitution-the article under which the original petition is filed-cannot possibly be a direction to eliminate the discrimination by extending the benefit of those orders to the non-graduate junior engineers as well. All that the Court can do in such a case is to strike down those orders on the ground that they offend the fundamental right guaranteed by Article 16(1) of the Constitution.

11. By striking down Exs. P. 1 and P. 2 the graduate junior engineers will certainly be affected to their detriment. None of them has been impleaded as a party in these proceedings.

12. Counsel for the board submitted that the board is an independent corporation, and service under it cannot be construed as employment under the State which alone comes within the ambit of Article 16(1) of the Constitution. In the light of our conclusion that Exs. P. 1 and P. 2 do not embody a discrimination which violates Article 16(1) of the Constitution, the submission does not arise for consideration and is not considered in this judgment.

13. In the light of what is stated above, the writ appeal has to be allowed and we do so; but in the circumstances of the case, without any order as to costs.