

(1979) 02 SC CK 0006

In the Supreme Court Of India

Case No : Civil Appeal No. 384 of 1974

Kerala State Electricity Board, Trivandrum

APPELLANT

Vs

S. Harisubramaniam and Others

RESPONDENT

Date of Decision : 20-02-1979

Acts Referred:

Kerala State and Subordinate Services Rules, 1958 — Rule 28

Citation : AIR 1979 SC 1413 : (1979) 1 LLJ 362 : (1979) 4 SCC 593 : (1979) 11 UJ 373

Hon'ble Judges : R. S. Sarkaria, J;O. Chinnappa Reddy, J

Bench : Division Bench

Final Decision : dismissed

Judgement

R.S. Sarkaria, J.—The appellant was a former employee of the West Coast Electric Supply Corporation, Cannanore. He joined the service of that Corporation as a Typist and store-keeper on September 23, 1943 and was promoted as a Chief Clerk from April 15, 1945.

2. The said Corporation was engaged in the business of supply of electricity on license under the Electricity Act, 1910, and the Electricity Supply Act, 1948. The Corporation was running three units in Cannanore, Tellicherry and Calicut. The classification of ministerial and executive staff, rules of pro motion, designation of posts, salary and other emoluments etc., were the same in all the three Units. The Units at Cannanore and Tellicherry were taken over by the Government in exercise of its power under the Madras Electricity Undertakings (Acquisition) Act, 1954, and these Units were transferred to the newly formed Kerala State Electricity Board with effect from April 1, 1957, on condition that the Board shall retain the former employees of the Corporation pending final decision by the Government on the question of retention or other wise of the persons in the staff of the Company.

3. On September 16, 1958, the Board issued a memo to the appellant, stating that he was absorbed in the service of the Board as Upper Division Clerk with

effect from April 1, 1957, and that he would be paid salary in the scale of Rs. 80-5-120-EB-6-150. That memo (Ex. P-1) contained so many conditions which were not finally accepted by the appellant.

4. At the time of absorption in the service of the Board, the respondent S. Harisubramaniam, was working as Chief Clerk in the Corporation. His contention was that he should have been absorbed in the supervisory cadre as a Senior Clerk which was subsequently upgraded as Junior Superintendent post.

5. There, a dispute between the Electricity Board and the employees of the ex-licensee arose. The dispute was ultimately referred for adjudication to the Industrial, Tribunal, Alleppey in 1966. During the pendency of the proceedings, the parties came to a settlement in relation to the principles of absorption of the staff and the fitness of the respective members in the service of the Board. The Tribunal pressed an award in terms of the settlement. While implementing the award of the Tribunal, several persons junior to the respondent in that cadre were promoted to the Higher supervisory cadre.

6. Shri V.S Parameswaran and T.A. Venkiteswaran of Calicut exlicensses joined the service only on April 25, 1949 and August 5, 1949, respectively. They were working as Chief Clerks only from June 1, 1953 and April 1, 1963 respectively. These persons, were however, elevated to Senior Superintendant's post and Junior Superintendant's cadre from August 1, 1963 onwards after the Calicut Unit had also been taken over by the Board. The respondent, S. Harisubramaniam, was however, absorbed only as Upper Division Clerk.

7. Respondent 1, S, Harisubramaniam, filed a writ petition in the High Court of Kerala, challenging his supersession in the matter of promotion to supervisory cadre. He prayed for a direction that the Board should promote him to the supervisory cadre assigning him his due seniority and for other consequential reliefs. The Board opposed this writ petition and contended that the writ petitioner had no right to promotion, especially in view of Board's Order No. BSI-85/58 dated February 25, 1959 (Ex. R-3), wherein it is specifically mentioned that the relaxation of test qualification in the case of employees mentioned therein, relates only to the post to which they are absorbed on the vesting date.

8. The writ petition was heard by a learned Single Judge of the High Court who allowed it and directed the Board to consider the claim of the petitioner for promotion under Rule 28(b)(ii) of the Kerala State and Subordinate Services Rules, 1958, with the observation that the exemption already granted will entire for the benefit of promotion to the Higher category as well.

9. The Board filed a Special Appeal against the decision of the learned Single Judge in the High Court. The appeal was dismissed by the Appellate Bench by a judgment dated February 13, 1973, following the Full Bench decision of the High Court in P. V. Parameswaran v. State of Kerala 1972 KLT 849

10. Hence this appeal by the Electricity Board.

11. It is not disputed that the Kerala State Subordinate Services Rules apply in the case of S. Harisubramaniam, respondent, also. In the matter of promotion, also, he is governed by Rule 28(b)(ii) of the aforesaid Rules. The entire reasoning with which we have dismissed the State Appeal (C.A. No. 2036 of 1969) apply mutatis mutandis to the case of this respondent also.

12. Accordingly, we affirm the judgment of the High Court and dismiss this appeal with costs.