
(1989) 04 KAR CK 0006

In the Karnataka High Court

Case No : Writ Petition No's. 3363 to 3369, 4649, 4650, 5689 and 5690 of 1989

K.L. Madhusudhan

APPELLANT

Vs

Secretary, KEB.

RESPONDENT

Date of Decision : 10-04-1989

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Karnataka Electricity Board Employees Service Regulations — Regulation 47B, 47D

Citation : (1990) ILR (Kar) 1182 : (1989) 3 KarLJ 537

Hon'ble Judges : K.A. Swami, J

Bench : Single Bench

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

Final Decision : Allowed

Judgement

K.A. Swami, J.—As these petitions can be disposed of on a short point, Rule is issued and they are heard for final disposal.

2. In these petitions under Articles 226 and 227 of the Constitution, the petitioners who are the employees of the Karnataka Electricity Board (Hereinafter referred to as the "KEB") have sought for issue of a Writ in the nature of Mandamus directing the KEB to sanction to them 4 increments in advance from the date they entered service on the ground that they had acquired the qualification of graduation before they entered the service.

3. The service particulars of each of the petitioners and the dates of passing the degree examination are as follows:

Sl. No.

Petitioner in

Pay Scale

Date of reporting for duty

Date of passing the degree

Rs.

1.

W.P.4649/89

755-1720

14-7-87

Prior to entry into service

2.

W.P.4650/89

755-1720

8-5-86

-do-

3.

W.P.3363/89

-do-

9-7-86

-do-

4.

W.P.3364/89

415-930

20-11-85

January 1981

5.

W.P.3365/89

-do-

25-9-90

Prior to entry into service

6.

W.P.3366/89

385-780

24-9-80

1977

7.

W.P.3367/89

415-980

22-9-80

May 1980

8.

W.P.3368/89

470-980

10-9-77

Prior to entry into service

9.

W.P.3369/89

385-780

6-10-77

-do-

10.

W.P.5689/89

385-780

25-8-78

-do-

11.

W.P.5690/89

-do-

25-9-77

-do-

4. In support of the plea that the petitioners are entitled to 4 increments in advance, they have placed reliance on Regulation 47-B of the Karnataka Electricity Board Employees Service Regulations (hereinafter referred to as the "KEB Service Regulations") as inserted by the Board Order No. KEB, WLIC

18/74-75 dated 5-9-1975 (Annexure-A). They have also placed reliance on a Division Bench decision of this Court in K.E.B. v. B.L. RAMAMURTHY AND ORS., W.As.Nos. 1216 & 1453/1985 DD 11-8-1988.

5. On the contrary, it is contended on behalf of the K.E.B. that as the petitioners have entered the service subsequent to 1-4-1976; that as on 1-4-1976 Regulation 47-B stood modified by reason of another Board Order No. KEB. B.14/3591/77-78 dated 26th October 1977 inserting Regulation No.47-D into the K.E.B. Service Regulations with effect from 1-4-1976 which was not the subject matter of W.A.Nos. 1216 and 1453/851 Hence the petitioners are only entitled to grant of two advance increments that too from the date they entered service but not earlier to that. A Division of Bench of this Court in W.A.No. 1216 and 1453/85 has not decided that such of those persons who have completed their graduation before they entered service under the K.E.B. are also entitled to advance increments under Regulation 47-E of the K.E.B. Service Regulations. It is also contended that the petitioners are guilty of laches in as much as they joined the service on the various dates more than 8 years prior to the filing of the Writ Petitions but they have approached this Court only in the month of March 1989 and as such they are not entitled to any relief in these petitions.

6. Having regard to the rival contentions urged by both the parties, the points that arise for consideration in these petitions are as follows:

1) Whether the petitioners are entitled to two advance increments or four advance increments?

2) If the answer to the first point is in the affirmative, from what date they are entitled to?

3) Whether the petitioners are guilty of laches and if so, whether the reliefs as prayed for in these petitions are liable to be refused?

POINT NO. 1

7. It is relevant to notice that a Division Bench of this Court in W.A.No. 1216 and 1453/85 considered only the effect of Regulation 47(b) of the K.E.B. Service Regulations inserted by the Board Order dated 5-9-1975. Their Lordships of the Division Bench were not called upon to consider the effect of the subsequent Board Order dated 26-10-1977 which introduced Regulation 47-D with effect from 1-4-1976. Further, the petitioners in those cases had entered the service prior to 1-4-1976. Consequently, the interpretation placed by the Division Bench on Regulation 47(b) of the K.E.B. Service Regulations will not be a deciding factor in these Writ Petitions for two reasons: (1) that the petitioners herein have entered service subsequent to 1-4-1976; (2) that with effect from 1-4-1976, Regulation 47(b) of the K.E.B. Service Regulations stood modified in terms of Regulation 47-D which was introduced by the Board Order dated 26-10-1977 with effect from 1-4-1976.

8. Regulation 47(b) as interpreted by the Division Bench enabled all those

employees of the K.E.B. whether they acquired the qualification of graduation either before entering the service or after entering the service, to seek 4 advance increments. The relevant portion of the decision of the Division Bench in this regard is as follows:

"On giving our thoughtful consideration to the entire matter, in the circumstances of the case, we find ourselves unable to agree with the submission of the learned Counsel for the appellant. We have reproduced in extenso the order of the Board dated 5-9-1975 along with its Annexure in which in the portion underlined by us it is stated that a candidate recruited as Junior Assistant/Typist on minimum of the time-scale, who has acquired the qualification prescribed in column-3 of the annexure, before the date of his appointment, is entitled to four increments from the date of his joining the appointment. This note clearly indicates the intention of the Board that the concession was also to be made applicable to the employees who were graduates before entering the service of the Board; otherwise, this note has no meaning. In the wake of this note, we find that the employees who were graduates at the time of their appointment were also entitled to the increments were also entitled to the increments which were granted under the said order to the in-service employees who had acquired higher qualifications. We agree with the view of the learned Single Judge, though for different reasons, that the Board was not justified in refusing to grant the increments under the Board's order dated 5-9-1975 to the Writ Petitioners."

9. As already pointed out, the Division Bench was not concerned with the subsequent order dated 26-10- 1977 which introduced 47-D into the K.E.B. Service Regulations. For the purpose of comparison and proper understanding of both the orders, it is necessary to reproduce both Regulations 47(b) and 47-D simultaneously. They read thus:

Regulation 47(b)

Regulation 47-D

The following category of employees shall be entitled to the grant of 4 advance increments on acquiring additional/higher qualifications as detailed herein without prejudice to the conditions stipulated herein. (Order No. WLIC 18/74-75 Dt. 5-9-1975)

The grant of increments to employees on acquiring on higher qualifications shall be regulated strictly as follows with effect from 1-4-1976 and cases of grant of such increments already made, if and, shall be reviewed.

2. Employees who have qualified prior to 1-10-74 for advance increments are not entitled to the benefits under this order.

SI. No.

Designation

Qualification for which advance increments are granted

No. of Advance Increments

1.

Junior Assistant/Typist

A degree in Commerce or Arts or Science of a recognised University

Two increments

2 to 5

xx

xx

xx

3. The benefit of Advance Increments shall be admissible only once during the entire service for the same or equivalent qualification.

4. An employee under any of the categories mentioned in column 2 of the annexure shall not be eligible to postpone the increments due to him under this order from the date on which the results of the qualifying examination are announced and the increment shall be allowed only at the stage the candidate is drawing his salary on the day of announcement of such results.

5. The employees will not be allowed to draw pay beyond the maximum of the time scale applicable to the post held by him by virtue of the benefits conferred under this order.

The grant of the above increments from 1-4-1976 shall be further subject to the following conditions:

a) The grant of advance increments shall be without prejudice to the normal increments;

b) The benefit of advance increments shall be admissible only once during the entire service.

6. This order is effective from 1-10-1974.

c) Advance increments shall not be granted beyond the maximum of the time scale applicable to the post held by the workmen at the time of grant of the above advance increments;

d) Advance increments shall not be granted during the period of probation.

e) The advance increments will be granted from the date of announcement of the results or date of satisfactory completion of probation, whichever is later.

(B.O.Ko.KEB/B14/3589/77-78 dated 25-10-1977)

Sl.No.

Category of employees and grade

Higher/ Additional qualifications acquired

1

2

3

1.

Jr. Assistant/ Typist (110-8-150-10-250)

A degree in Commerce or Arts or Science of a recognised University.

Sl. Nos. 2 to 7

xx

xx

Col. No. 4

Col. No. 5

No. of increments admissible in the grade

Remarks

Four increments.

A candidate recruited as Junior Assistant/Typist on minimum of the time scale who has acquired the qualification prescribed in Column 3 before the date of his appointment is entitled to four advance increments from the date of his joining the appointment. A Junior Assistant/Typist acquiring such qualification subsequent to his appointment is similarly entitled to Four Advance increments from the date of announcement of the results of the examination concerned.

10 A comparative reading of both the Regulations makes it clear that both cannot stand together because they cover the same subject. From the date Regulation; 47-D came to be introduced, Regulation 47(b) stood modified to that effect. The value and effect of Regulation 47(b) after Regulation 47-D came to be introduced with effect from 1-4-1976 is only to govern such of those employees who joined service prior to 1-4-1976 and on and from 1-4-1976 granting of 4 advance increments on the ground of acquiring higher qualification of graduation stood modified and the number of increments came to be reduced to two.

11. It is contended that as Regulation 47-D used the words "employees on acquiring higher qualifications" it only means that after a person becomes an employee and acquires the qualification of graduation. It is too narrow a construction to be accepted, and acceptance of such a construction will lead to discrimination. As long as the K.E.B. Service Regulations provide for granting

advance increments on acquiring higher qualifications, whether the higher qualification was acquired at the time one entered the service or it is acquired after the entry into service should not and does not make any difference. The only thing can be said is that the date of acquisition of the qualification will be the date of eligibility for obtaining two additional increments in the case of in-service persons acquiring the higher qualification of graduation, and they will be entitled to two additional increments from the date of passing the degree examination and those who had completed their graduation before they entered the service, they will be entitled to two advance increments from the date they enter the service. Therefore, the contention placed on behalf of the K.E.B. that Regulation 47-D is attracted only when an employee acquires higher qualification of graduation during his service, and not otherwise, cannot be accepted. No doubt, a Division Bench of this Court has laid stress on the Explanation contained in the remarks column to Regulation 47(b) of the Regulations. Even then the Division Bench was of the view that it was applicable to all those who had acquired the qualification before entering the service or after entering the service and the Explanation contained in the remarks column only made the point more clear. In the instant case, as already pointed out, the petitioners have entered the service, after the introduction of Regulation 47-D. Therefore, they are not entitled to 4 advance increments. They were graduates on the date they entered service. Therefore, they are entitled to only two advance increments and not four advance increments. As to from what date they are entitled to, will be considered while considering point Nos. 2 and 3. Point No. 1 is answered accordingly.

POINT NOS . 2 AND 3

12. As pointed out while dealing with point No. 1, the petitioners are entitled to two increments. The contention of the KEB is that though, they are entitled to two advance increments from the date they entered service but they are not entitled to arrears because they are guilty of laches as they have approached this Court more than 7 years after they entered service. It is also contended that the claim is barred by time. Therefore, it is submitted on behalf of the K.E.B. that the petitioners are not entitled to arrears of two advance increments.

13. There is no doubt that the petitioners are guilty of laches. There was no reason for the petitioners to keep quiet for over a period of 3 years. They should have immediately approached this Court if they were not able to get the relief at the hands of the K.E.B. But the delay on their part should not lead to complete denial of arrears because even under the ordinary law, as on the date of filing the petition, they were entitled to arrears falling within three years anterior to the date of filing of the Writ Petition. Therefore, I am of the view that the petitioners are not entitled to arrears from the date advance increments became due to them i.e., from the date they joined service but they are entitled to arrears only to the extent they fall within a period of three years anterior to the date of filing of the Writ Petitions. Accordingly, point Nos. 2 and 3 are answered.

14. For the reasons stated above, these Writ Petitions are allowed in the

following terms:

- i) The petitioners were entitled to two advance increments from the date they joined the service under the K.E.B.
- ii) The advance increments payable to them be worked out but they are not entitled to arrears as from the date they joined the service but they are entitled to arrears which fall within a period of three years anterior to the date of filing of the Writ Petition.
- iii) Compliance in three months.