

(2009) 02 MAD CK 0007

In the Madras High Court

Case No : Writ Petition No's. 17026 of 2006 and 7321 of 2007 and W.A.M.P. No. 1780 of 2006

M. Gopal and Others

APPELLANT

Vs

Tamil Nadu Electricity Board and Others
Central
Organisation of Tamil Nadu Electricity Employees Vs Tamil
Nadu Electricity Board

RESPONDENT

Date of Decision : 09-02-2009

Acts Referred:

Constitution of India, 1950 — Article 14
Industrial Disputes Act, 1947 — Section 12(3), 9A

Citation : (2009) 02 MAD CK 0007

Hon'ble Judges : S. Tamilvanan, J; Elipe Dharma Rao, J

Bench : Division Bench

Advocate : N.G.R. Prasad, for Row and Reddy in W.P. 17026/06 and M. Muthupandian, for R. Yashod Vardhan, in WP. 7321/207, for the Appellant; M. Vaidyanathan, for R.R. 1 and 2, D. Hari Paranthaman, for R.R. 3 - 5 in W.P. No. 17026 of 2006, Balan Haridoss, for R.R. 10 and 11 in W.P. No. 17026 of 2006 and Hema Sampath, for R. 12 in W.P. No. 17026 of 2006, for the Respondent

Judgement

Elipe Dharma Rao, J.—These writ petitions have been filed seeking for quashing the proceedings of the Board passed in Per. BP (Ch) No.

256 (Administrative Branch) dated 12.12.2005 and to further direct the respondents to fix the seniority and promote workmen based on Helper

seniority in accordance with the Settlement dated 15.10.2005 arrived at u/s 12(3) of the Industrial Disputes Act, 1947.

2. The petitioners in W.P. No. 17026 of 2006, who are members of the Central Organisation of Tamil Nadu Electricity Employees [for short,

"COTEE"], petitioner in W.P. No. 7321 of 2007, joined the Tamil Nadu Electricity Board [for short, "Board"] as Regular Work Charge

Establishment in the year 1987 - 1988. Later on, when they became Helpers, they were given the option of line of promotion, viz., Wireman line

and Commercial Assistant line and the option will be final. The petitioners exercised their option to go in the Commercial Assistant Line, which

would be in the nature of office and allied work, with that line of promotion. It is stated that the avenue of promotion from a Helper is to the post of

Commercial Assistant and then to Commercial Inspector is very limited because it is far less compared to the number of posts of Wireman and

Line Inspector and there is only one of post of Commercial Assistant and Commercial Inspector for a section, whereas for Wireman, there are 8

and above posts. Further, the Helpers, who opted for Wireman line, will get promotion faster than the Commercial Assistant channel.

3. It is stated by the COTEE that pursuant to a settlement dated 29.02.1980 by the Board with the Trade Unions and the consequential B.P.M.S.

No. 123, Secretariat Branch dated 01.3.1980, Double Channel Promotion was introduced and a new post, viz., Assistant Commercial Inspector,

equivalent to Lineman, was created. The further case of the petitioners is that the posts of Assistant Commercial Inspector and Lineman were

abolished with effect from 01.12.1992 and they were upgraded as Commercial Inspector and Line Inspector respectively. Since all the unions

demand restoration of single channel promotion, the Board, by Per. BP (Ch) No. 106 (SB) dated 09.4.1996, introduced a single channel

system of promotion by which the Helpers, who opted for Wireman channel, became Wireman earlier and got promotion as Commercial

Inspectors earlier as compared to Commercial Assistants. It is further stated that the TN Vaniga Paniyalar Sangam challenged the single channel

system of promotion in W.P. No. 15168 of 1996 and obtained an order of stay of B.P. No. 106 as a result of which there was no promotion

based on the single channel from 1996 to 2000. But, in the year 2002, 9 Wiremen, who would not have otherwise got promotion as Commercial

Inspector in the double channel, got promoted as Commercial Inspectors because of the single channel system. Subsequently, the double channel

system was introduced by way of settlement dated 15.10.2005 arrived at u/s 12(3) of the Industrial Disputes Act [for short, "I.D. Act"].

4. It is the further case of the petitioner in W.P. No. 7321 of 2007 that the Board issued proceedings in Per. BP (Ch) No. 256 (Administrative

Branch) dated 12.12.2005 wherein, in para 2(iv), it is stated that the entry into the promoted post of Wireman or Commercial Assistant is the

basis for fixing seniority and, by virtue of the same, the existing wiremen were given one more opportunity to exercise option to go in the Wiremen

Line or Commercial Assistants Line. This, according to the petitioner, is in violation of the terms of the settlement entered into u/s 12(3) of the I.D.

Act. The grievance of the petitioners is that the Helpers, who got promoted as Wiremen earlier in their line, would now take advantage of the

option and prefer the Commercial Assistant line to become Commercial Inspectors earlier and that the respondent Board is in the process of

preparing provisional seniority list of Commercial Assistants, based on which 15 out of 21 Wiremen, who had opted for the Commercial line, will

get promotion. Hence, the writ petitions.

5. The petitioners have also filed an additional affidavit stating that they are not the members of the TNEB Thozhilalar Aykkia Sangam which

signed the 12(3) Settlement and the COTEE is not a signatory to the 12 (3) Settlement. As per the Settlement, the employees, who were

promoted by applying the single channel promotion under B.P. 27 dated 22.6.1999, are alone entitled to one more opportunity and there is no

provision in the settlement as to the second option to the existing employees. It is further stated that inspite of the interim order dated 12.7.2006

passed by this Court in W.P.M.P. No. 16051 of 2006, the respondent Board has called for option from the employees by an order dated

01.12.2006 , that if the BP is implemented, it would be contrary to the Settlement and Service Regulations.

6. The respondent Board filed a counter affidavit stating that Double Channel was reintroduced only at the request of the Unions since it was felt

that there was stagnation in the category of wireman and many were unable to reach the post of Foreman and by virtue of the same, the existing

employees were given one more opportunity to choose their line of promotion and that those who are facing departmental proceedings or who had

suffered punishment will not be considered. It is also stated that the seniority of the individual concerned in the post of Wireman or Commercial

Assistant, as the case may be, would be fixed based on Helper seniority. It is further stated that there are number of systems / circles in the

Electricity Board and in some systems / circles, Wireman would get earlier promotions, if the Double Channel is adopted, and Commercial

Assistants also would be entitled to speedier promotions in some circles. According to them, if the writ petitions are allowed, it will result in undue

promotions causing labour unrest and affecting the morale of the majority RWE employees of the Board, which may alter the seniority of almost all

the RWE employees of the Board across Tamil Nadu and prayed for dismissal of the writ petitions.

7. Heard the learned Counsel appearing for the parties and perused the records.

8. The arguments advanced on the part of the respondents is that when major number of the employees have accepted the change being

introduced in the system for the welfare and benefit of the employees, these petitioners who are in minority, are challenging the system without any

legal cause and only with a sole view of stagnating the system. But, on the part of the petitioners, it has been strenuously submitted that the 12(3)

Settlement, whereupon much reliance has been placed on the part of the respondents, has been signed by the other Unions and not by them and

thus, when neither the petitioners nor their Association are parties to the 12(3) Settlement, which has been entered into by the Management,

clandestinely with the Associations, who are having hand in glove relationship with the Management, does not in any way either bind or prevent

them from initiating these proceedings. Per and contra, many judgments of the Hon"ble Apex Court have been relied on, which would be

discussed later.

9. Learned Counsel appearing for the petitioners has contended that altering the terms of 12(3) settlement by the impugned B.P. without notice is

illegal and in violation of Section 9A of the I.D. Act and Article 14 of the Constitution. It is further contended that because of the impugned B.P.,

the seniors in Helper category would become juniors and further their promotional prospects would be affected.

10. Before going into the questions raised by either side, it would be profitable to notice the stage of promotion of the employees in both the

categories and the background of the case. Helper is the entry stage for both the categories. At the stage of promotion from the post of helper,

option is called for to choose either the line of Wireman or Commercial line. If

the Wireman line is opted, the next stage of promotion from wireman is Lineman and then the Line Inspector and thereafter the Foreman Grade I. If the employee opts for Commercial Assistant, the next stage of promotion is Assistant Commercial Inspector and then the Commercial Inspector and thereafter the Foreman Grade I. It is the case of the petitioners that as per the B.P. dated 9.4.1996 a single channel of promotion was introduced by which the Wiremen channel got promotion quicker than the Commercial Inspectors and subsequently such B.P. dated 9.4.1996 was successfully challenged in W.P. No. 15168 of 1996 by T.N. Vaniga Paniyalar Sangam. Thereafter, the Board by the impugned settlement dated 15.10.2005 has introduced double channel of promotion, by which the existing wiremen have been given one more opportunity to opt to chose either the Wiremen Line or the Commercial Assistants Line. In the above background of facts, the main grievance of the petitioners is that the promotional avenue in the category of Commercial Assistant would be less than the employees belonging to the Wireman category and the second option to be exercised by the Wireman category contemplated in the impugned B.P. is against the earlier settlement and Article 14 of the Constitution.

11. The petitioners would submit that Clause 2(iv) of the impugned B.P.(Ch) No. 256, dated 12.12.2005 is working much against their interest.

For the sake of convenience, Clause (iv) of the impugned B.P.(Ch) No. 256, dated 12.12.2005 is extracted hereunder:

(iv) Consequent on the separation of categories of Commercial Assistant/ Commercial Inspector and Wireman/Line Inspector from the existing

Common seniority, the seniority of Wireman, Commercial Assistant, Commercial Inspector and Line Inspector have to be refixed in the present

category based on their seniority in the post of Helper, among the persons in the same panel in which the individual was originally promoted.

However, it should be ensured that consequent on the revision of seniority, the already overlooked persons do not get any unintended benefits;

12. There is no doubt that by the above said clause, the interests of the persons who stand on the same footing of the petitioners, get much affected

since the basis for fixing seniority has been taken as the entry into the promoted post of Wireman or Commercial Assistant and the existing

Wiremen are given one more opportunity to exercise option to go in the Wiremen Line or Commercial Assistants Line. The specific contention of

the respondents is that the impugned settlement has been arrived at by vast majority of workers and because of refusal by small number of

workers; the settlement does not cease to be just and fair. In support of the aforesaid contention, the learned Counsel has placed reliance on

several decisions of the Supreme Court as well as this Court including the decisions reported in Tata Engineering and Locomotive Company

Limited Vs. Their Workmen, ; Ram Pukar Singh and Others Vs. Heavy Engineering Corporation and Others, ; 1999 W.L.R. 16 [K. Vijayan and

2 Ors. v. Tamil Nadu Electricity Board and Ors.] and Chairman and Managing Director, Metal Box India Ltd. and Metal Box Company

Workers" Union Vs. Metal Box Company Workers Union and Others, .

13. Though the aforesaid contention of the respondents appears to be attractive, it cannot be accepted for the reasons stated below. Admittedly,

even though a minority, the petitioners and their Union are not parties to the 12(3) Settlement arrived at by the Management with other

Associations. When the petitioners" association is a recognised union of the Management, a legal duty is cast upon the Management to take into

consideration the views and objections of all the unions concerned while arriving at such settlements. Having left over the petitioners" Union,

without being taken into consideration while arriving at 12(3) Settlement, the Management is pitting the same against the petitioners as if they

should not and could not raise that objection at this stage.

14. It is the specific contention of the petitioners that by virtue of the fresh option to opt Commercial Assistant line, they can become Commercial

Inspectors earlier than the petitioners, though they are senior to them. In support of the aforesaid contention, the learned Counsel for the petitioners

has given few examples in para 6 of the W.P. No. 17026 of 2006.

15. In the counter filed by the Department, though it is stated in general terms that seniority of the other category would not be affected due to the

impugned B.P., it has failed to refute the specific averments made in paragraph 6. Moreover, the Board has failed to produce the records to

controvert the details furnished by the petitioners. Once they were given the choice to exercise their double option and they have exercised their

option, now they cannot again exercise the option once again. The objection is that more seniors are there and unless this list is exhausted, they will

not get promotion. Therefore, the submission of the learned Counsels for the petitioners that their promotional avenue would be affected because

of the impugned B.P. cannot be brushed aside.

16. It is also the contention of the respondents that since the settlement was arrived at by the majority of workers, settlement should be treated as

valid. For the aforesaid purpose, the learned Counsel has particularly relied on the decision of the Supreme Court in Tata Engineering and

Locomotive Company Limited Vs. Their Workmen, to the effect if the settlement had been arrived at between the management and the union of

the workers by a vast majority with open eyes and was also accepted by them in its totality, it must be presumed to be just and fair and not liable

to be ignored merely because a smaller number of workers were not parties to it or refused to accept it.

17. The aforesaid decision would not be applicable to the facts of the present case because the settlement arrived at in the said case has dealt with

the wages and practically the number of workers representing the Union were very minimal and moreover the period specified in the settlement

was over and further talks were going on for a further settlement.

18. For the aforesaid reasons, we are unable to accept the submission made on the part of the Management that promotional avenue of the

petitioners would not be affected by the impugned B.P. dated 12.12.2005.

19. The facts in the case on hand are similar to the one before the Honourable Apex Court in S.B. Sarkar and Others Vs. Union of India (UOI)

and Others, . In the said case, separate cadres of ASMs and SMs were prevailing before 1983 in South Eastern Railway and the promotional

channel bifurcated into ASM to ASM and ASM to SM both in the same pay scale before becoming one common source of promotion and the

ASMs required to opt either the channel of ASM to ASM or ASM to SM and the said option was irrevocable in nature called for at the stage of

appointment on the pain of disciplinary action irrespective of availability of vacancy. As a result of the option, some became SMs with supervisory

control and administrative responsibility, but their further promotion delayed due to lesser number of posts available while others though remained

ASMs, got promotion in spite of being juniors and after abolition of the option, cadres of ASM and SM became combined. In these

circumstances, the Honourable Apex Court has held that those SMs who had exercised options before 1983 must be granted promotional benefit

in the same manner as it would have been if option had not been abolished in accordance with the earlier procedure, provided they fulfilled the other requirements.

20. In the case on hand also, because of the impugned promotion system and in view of the admitted fact that the number of posts of wiremen are

more than the number of posts of Commercial Assistant and the Helpers, who got promoted as wiremen earlier in their opted line, would now

enjoy more advantage of the option and prefer the Commercial Assistant line to become Commercial Inspectors earlier, the above judgment of the

Honourable Apex Court would squarely apply to the facts of the case on hand.

The petitioners have established and proved before us that Clause (iv) of the impugned B.P.(Ch) No. 256 (Administrative Branch) dated

12.12.2005, extracted above, is working much against their interest. Therefore, following the dictum laid down by the Honourable Apex Court in

the above judgment, instead of quashing the impugned B.P.(Ch)No.256 (Administrative Branch), dated 12.12.2005, we order that the impugned

promotion system should not be given effect to until the list of the petitioners is exhausted. With this direction, these writ petitions are disposed of.

Consequently, all the connected Miscellaneous Petitions are closed. No costs.