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**(1992) 03 AP CK 0008**  
**In the Andhra Pradesh High Court**  
**Case No : Writ Appeal No. 65 of 1987**

M. Sriramulu

APPELLANT

Vs

The Andhra Pradesh State Electricity Board and Others

RESPONDENT

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**Date of Decision :** 09-03-1992

**Acts Referred:**

Andhra Pradesh State Electricity Board Service Regulations — Regulation 41  
Electricity (Supply) Act, 1948 — Section 79

**Citation :** (1992) 3 ALT 183

**Hon'ble Judges :** Reddeppa Reddy, J; Mohd. Sardar Ali Khan, J

**Bench :** Division Bench

**Advocate :** M. Jagannatha Sarma and K. Chinna Babu, for the Appellant; C.V. Mohan Reddy, Standing Counsel and R. Ramanujam, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Mohd. Sardar Ali Khan, J.—This Writ Appeal is directed against the judgment of a learned single Judge passed in W.P. No. 7283 of 1986, dated 341-1986.

2. The controversy arising in the writ petition, which was dismissed by the learned single judge, is about the legality of B.P.Ms. No. 247 dated 17-3-1986 by virtue of which relaxation has been given in favour of respondents 2 to 31, who are non-graduates, in matters of promotion to the next higher posts.

3. The back-ground to the present controversy coming to the fore is that prior to the formation of Personnel and General Services Cells, the personnel functions at Head-quarters of the A.P. State Electricity Board were being dealt with by different agencies, i.e., Board Secretariat, Chief Engineer Electricity Generation, Chief Engineer (Civil), Financial Adviser and Chief Controller of Accounts. It was felt that this was resulting in duplication of work and causing delay in matters which require urgent attention. Therefore, the matter was considered at a high level in consultation with the Administrative Staff College of India, Hyderabad and B.P. Ms. No. 61 dated 21-1-1976 was issued stating that the Personnel Management, functioning at Headquarters, shall be integrated into single unit,

headed by Manager, Personnel Services, which is now known as Director Personnel. In B.P.Ms. No. 233 dated 24-3-1976 it was directed that the General Services, functioning at Headquarters, shall be integrated into a single unit, headed by Manager (General Services), but the channel of promotions, that existed prior to the formation of the personnel and general services cells, was continued even after the formation of the above cells. A writ petition, viz., W.P. No. 4022 of 1978 was filed challenging the above said arrangement and it was disposed of with a direction that the Board may take a final decision on the question whether to continue the present reorganised cell i.e., Personal Services and General Services Cells or to restore status quo or to adopt any other reorganised method, which is deemed fit and proper. In 1983 some of the employees of the Chief Engineer's Office represented that the personnel brought in from Chief Engineer's Office are being treated differently and filed W.P. No. 10282 of 1983 in the High Court of Andhra Pradesh requesting for a direction to frame uniform set of regulations applicable to both groups, i.e., Board Secretariat Personnel and Chief Engineer's Office Personnel and for preparation of integrated seniority lists on the basis of which promotions may be effected. The High Court, in its judgment dated 23-2-1984, directed that the Board shall take immediate steps for equation of posts and preparation of common seniority list of several categories working in the new unit which would result in removal of disparities in the matters of pay scales, other conditions of service including channel of promotion. Consequently, the A.P. State Electricity Board passed orders in B.P.Ms. No. 636 dated 29-6-1984 and B.P.Ms. No. 637 dated 29-6-1984 equating the posts of both the units into a single integrated unit duly amending the A.P. State Electricity Board Services Regulations. Prior to the issue of B.P. Ms. No. 637 dated 29-6-1984 according to the Board's service Regulations, the L.D. Clerk/ U.D. Clerk of Chief Engineer's Office and Junior Assistant and Assistants of Board Secretariat were required to furnish the following qualifications/tests for promotion to the next higher post, viz.,

Board Secretariat Chief Engineer's Office Junior Assistant to Assistant L.D. Clerk to U.D. Clerk Assistant to Section Officer U.D.Clerk to Superintendent. Degree Qualification (i) Pass in Accounts Test for Subordinate Officers Part-I and (ii) Book-keeping Lower Grade.

A reading of B.P.Ms. No. 637 dated 29-6-1984 reveals that graduate qualification and pass in Accounts Test was prescribed for promotion to certain categories of posts like Assistants, Personnel Officers and Deputy Managers etc. The minimum qualification for appointment to the post of Junior Assistant in the Board Secretariat is graduation from the very beginning i.e., 1-4-1959 and the same qualification is continued even under A.P.S.E. Board Service Regulations with effect from 4-3-1970. For the cadre of L.D.Clerk under the Administrative Service of Chief Engineer also graduation qualification was prescribed in the year 1974. It may be noted that there are graduates as well as non-graduates in both the units. Some of the staff pertaining to Administrative Service of Chief Engineer's Office at Headquarters and the Board Secretariat, who are nongraduates,

represented for exemption from the said graduate qualification for promotion to next higher post as they did not possess graduate qualification. More over, the stipulation of graduate qualification for the purpose of promotion was not there in the earlier regulations, i.e., prior to the formation of Personnel and General Services Wings. On the basis of such representation being made, 1st respondent-A.P.S.E.Board issued B.P.Ms. No. 247 dated 17-3-1986 stating, inter alia, that the graduate qualification prescribed for promotion to the next higher post in B.P.Ms. No. 637 dated 29-6-1984 shall be relaxed in respect of the personnel who were in service prior to 1-10-1973 i.e., prior to the transfer of services of the Government employees to the Board service and who are now working in Personnel and General Services Wings.

4. The main contention of the petitioner is that the Board does not have the power to issue a whole-sale order like the one in B.P.Ms. No. 247 dated 17-3-1986. The Board had earlier framed regulations governing the personnel working in personnel and general services wings. The graduate qualification prescribed in the new regulations framed for promotions to the Assistants, Personal Officers, Deputy Managers, was not there in the regulations governing the service conditions of both the groups of employees for promotion. On a representation being made by the Employees' Association as well as some of the individuals who did not possess graduate qualification, the Board issued orders in B.P.Ms. No. 247 dated 17-4-1986 and the graduate qualification prescribed for promotion to the next higher post has been relaxed in respect of personnel who were in service prior to 1-10-1973 i.e., prior to the transfer of services of the employees to the Board who are now working in the Personnel and General Services Wings. The relaxation so ordered is to be applicable to individual cases only as and when cases of promotion arise. Further more, such relaxation is applicable only once during the balance period of their service.

5. The A.P. State Electricity Board is empowered u/s 79(c) of the Electricity (Supply) Act, 1948 to make regulations prescribing the duties of officers and other employees of the Board and their salaries, allowances and other conditions of service without obtaining any prior approval of the State Government in that behalf. B.P.Ms.Nos. 636 and 637 dated 29-6-1984 were issued by the Board under the powers vested in it u/s 79(c). Under Regulation 41 of the A.P. State Electricity Board Service Regulations (Part II) the Board is empowered to relax any of the regulations made under sub-section (c) of Section 79 of the Electricity (Supply) Act, 1948, while dealing with the case of any person or a class of personnel serving in the Board in such manner as may appear to it to be just and equitable. The relaxation granted in B.P.Ms. No. 247 dated 17-3-1986 was made under Regulation No. 41. The validity of Regulation No. 41 is not challenged in the writ petition. It is evident that the question of relaxation arises only when a certain qualification is prescribed for a particular post. In other words, prescription of qualifications and the rule of relaxation are inter-linked with each other. We cannot imagine of a rule of relaxation without a rule of qualification under which a person may be entitled to promotion to a higher cadre of post.

Therefore, there is no substance in the argument that while prescribing qualifications the same cannot be watered down by applying the rule of relaxation to a particular case or a class of personnel.

6. Mr. M. Jagannatha Sarma, learned counsel appearing for the appellant in this case has relied upon a decision reported in *Lakshman v. A.P. State Electricity Board* (1984) 1 An.W.R. 282 in which it was held that as a general rule promotions of persons serving under the Board are governed by the Regulations, and in exceptional cases exemptions can be granted by the Board and such relaxation under Regulation 41 should be in furtherance of justice and equity. It does not empower the Board to give general exemption from compliance with the Regulation, regardless of justice and equity, to enable unqualified persons eligible for promotion. Such general exemption is bound to impair the efficiency of the functioning of the Board itself. In that case B.P.Ms. No. 664 dated 5th August/1981 was issued ... directing that Lower Division Clerks, Typists, Steno-Typists and Upper Division Clerks, who had good record of service for 15 years in the same post, should be exempted from passing the tests prescribed in the Andhra Pradesh State Electricity Board Service Regulations Part-III as a pre-condition for promotion to the next higher posts of U.D. Clerk and Accountant-Supreintendent respectively. The Court held that by the said exemption, the power conferred by Regulation 41 has been invoked to eliminate all eligible persons and enable ineligible persons for promotion. It was held that there was no rational basis for granting such general exemptions to those who have put in 15 years of service and have good record of service of qualifying themselves for promotion. It is not a commendable drive which can be regarded as just and equitable. Moreover, it was held that a preferential treatment is given to the unmerited, which is a clear breach of Article 14 of the Constitution. It may be noticed that the above case has no application to the facts of the instant case on hand. In the above case the Board has passed an order exempting all employees of the Board from possessing the requisite qualification for promotion to the next higher post. In the instant case the Board had reiterated its right to exempt particular individuals from possessing the requisite qualification. More over, in B.P.Ms. No. 247 dated 17-3-1986 the Board has restricted itself stating that the power conferred under Regulation 41 will be exercised only once. It seems that each individual case has been examined and exemption granted under Regulation 41. In any case, B.P.Ms. No. 247, dated 17-3-1986 cannot be construed as a general order.

7. Rule 47 of the Andhra Pradesh State and Subordinate Service Rules investing the Governor to relax the rigour of the general rules in such manner as may appear to him to be just and equitable is in pan materia with Regulation 41 of the Andhra Pradesh State Electricity Board Regulations. Dealing with the scope of the rule of relaxation enunciated under Rule 47 of the A.P. State and Subordinate Service Rules, the Supreme Court held in *Government of Andhra Pradesh and Others Vs. Sri D. Janardhana Rao and Another*, that the power under Rule 47 is to be exercised in the interests of justice and equity. It was held by the Supreme

Court that it is not difficult to visualise that the occasion for acting under Rule 47 may arise even after the attention of the Government is drawn to a case where there has been a failure of justice. In such cases justice can be done only by exercising the power under Rule 47 with retrospective effect, otherwise the object and purpose of the rule will be largely frustrated. It is thus evident that a fairly wide scope has been given for exercise of the power of relaxation in cases where it is just and equitable to do so. The question as to what would be just and equitable in a particular set of circumstances is a question of fact which will have to be viewed in the general spectrum of administrative exigencies. It would be for the concerned authorities to determine what is required under a particular set of circumstances to tone up the administration of the institution and on that basis, to exercise the power of relaxation in a just and equitable manner. Therefore, the contention that the Board has no power to issue an order like B.P.Ms,Mo. 247 dated 17-3-1986 does not appear to be correct. More over, in the judgment in W.P. No. 10282/83 dated 23-2-1984 a direction was given to integrate the services of the employees of the F.A. & CCA. Office dealing with personnel matters, prior to formation of personnel services. The vacancies of personnel officer/Assistant in the personnel services could not be filled during 23-7-1984 to 21-3-1986 due to stay order granted by this court in W.P. No. 10282/83. After the stay was vacated the Board was free to fill up the vacancies of Personnel Officers/Assistants etc. The contention of the petitioner that for the vacancies of Personnel Officer existing prior to 17-3-1986 the candidates qualified prior to 17-3-1986 only are to be considered is not tenable. In Jit Singh and Others Vs. State of Punjab and Others, . Rule 7 of the Punjab Police Service Rules, 1959 empowering the Government of India to relax any of the provisions of the rules in respect of any class or category of persons came up for consideration. The Supreme Court upheld the power of relaxation in unmistakable terms holding that the rule is a rule of general application and can be applied wherever it appears just and equitable to do. It is evident that in the impugned proceedings it is stated that the individual cases will be considered for granting relaxation of the rule in favour of such person. If in any individual case the power of relaxation is exercised in an arbitrary or illegal manner, it will be open for the person concerned to challenge the same in appropriate proceedings,

8. Considering all the facts and circumstances of the case, we do not see any merit in the Writ Appeal which is accordingly dismissed. No costs.