
(1995) 02 BOM CK 0024
In the Bombay High Court
Case No : Writ Petition No. 860 of 1988

Maharashtra State Electricity Board

APPELLANT

Vs

Lamachand Baliram Chaudhari and Others

RESPONDENT

Date of Decision : 08-02-1995

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (1998) 3 LLJ 380

Hon'ble Judges : B.N. Srikrishna, J

Bench : Single Bench

Judgement

B. N. Srikrishna, J.—This writ petition under Article 227 of the Constitution of India challenges an order of the Industrial Court dated 5.10.1987 made in Complaint (ULP) No. 129 of 1984 under the provisions of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as "the Act").

2. The petitioner is a statutory Electricity Board. The First Respondent is an employee of the said Board. The First Respondent joined the service of the Petitioner on 18.5.1979 as Chargeman Grade II on work-charge establishment at Chandrapur. Despite breaks in his service from 18.11.1979 to 25.11.1979 and from 26.5.1980 to 1.6.1980, he continued in service. On 23rd August, 1980, the First Respondent was appointed as a temporary employee on the establishment of the Nasik Thermal Power Station. In 1982, he was selected by the Selection Board as a permanent employee and placed on the rolls of the Permanent Employees of the Board. On 12.4.1983, the seniority list of employees was published and in that list the First Respondent's name was shown at Serial No. 447. According to the First Respondent, he should have been at Serial No. 222. On 6.10.1983 the First Respondent made a representation to the Board that his seniority had been wrongly fixed and that he was entitled to have his seniority refixed in accordance with the recommendations of the Special Selection Committee and the recommendations of the Bhingare Committee, both of which

had been accepted by the Petitioner - Board. He contended that, if his seniority is refixed, he would be placed at Serial No. 222. This contention was refuted by the reply of the Petitioner-Board dated 14.11.1983 in which it was pointed out that the first Respondent's seniority has been properly fixed.

3. The First Respondent filed Complaint (ULP) No. 129 of 1984 before the Industrial Court at Nasik and invoked items 5,6, and 9 of Schedule IV of the Act. Initially, the grievance of the First Respondent was that the breaks which had been given to him were mala fide and, despite the notional breaks given in his service, he had actually carried out work even during the so-called breaks on oral instructions of the superiors and that in fact his service was continuous from 18.5.1979. The first Respondent, therefore, claimed that he was entitled to be made a permanent employee and given consequential benefit of refixation of his seniority, at Serial No. 222 instead of 447, as on 12.4.1983. This contention resisted by the Petitioner-Board which maintained that the seniority of the First Respondent had been fixed by the competent Selection Committee in 1982 depending upon his performance, that in 1983 a seniority list of all employees in the First Respondent's cadre was prepared in which the First Respondent had been rightly placed at Serial No. 447. The First Respondent contended that by virtue of Regulation No. 6 of the Maharashtra State Electricity Board Employees' Seniority Regulations, 1961, the seniority of directly recruited employees had to be maintained as per the order in the select list, notwithstanding the fact that the employee might have been already an employee of the Board in some other capacity. The First Respondent also pleaded Employees' Service Regulation No. 100 which provided that an employee borne on work-charged establishment, when appointed to a post as a regular employee, shall be treated as new entrant for all purposes. It was also pleaded that Employees' service Regulation No. 9(11) defines "Employee" as meaning a person in the service of the Board, but does not include a person borne on work-charged establishment or on nominal muster roll or a daily wage earner.

4. By an order passed on 17th March, 1986, the Industrial Court allowed the complaint and directed the Petitioner-Board to refix the seniority of the First Respondent and give him consequential benefits of promotion. That order was challenged by the Petitioner-Board in Writ Petition No. 3426 of 1986 before this Court. The petition was allowed by this Court and the complaint was remanded for retrial with liberty to the parties to make necessary amendments to their pleadings. After the complaint was remanded, the First Respondent impleaded the necessary parties to the complaint and also elaborated on his contention that there was an unfair labour practice under Item 9 of Schedule IV of the Act. He further alleged that the Petitioner-Board had not complied with the recommendations of the Special Committee while fixing the seniority of the First Respondent and, therefore, it amounted to an unfair labour practice under Item 9 of Schedule IV of the Act. The parties led evidence in support of their cases and by the impugned order, the Industrial Court once again allowed the complaint and declared that the Petitioner-Board had committed an unfair labour

practice under Items 5 and 9 of Schedule IV of the Act. Consequently, directions were given to the Petitioner-Board to stop and desist from the said unfair labour practice with immediate effect and to refix the seniority of the First Respondent in the seniority of the First Respondent in the seniority list of Chargeman Grade II in Generation Cadre. It is this order which is impugned in the present writ petition.

5. After having perused the order under challenge and heard the learned Advocates on both sides, it appears to me that the order results from misapprehension of facts. It was specifically pleaded in the written statement of the Petitioner-Board, before the Industrial Court, and it has been reiterated here, that the principles regarding the fixation of seniority indicated in Bhingare Committee Report were applicable only to employees belonging to the Generation Cadre appointed during the period 1.4.1972 to 31.3.1978. It was further pointed out that the First Respondent was not in the employment of the Petitioner-Board during that period and, therefore, the question of applicability of Bhingare Committee Report to the First Respondent did not arise. It was contended that the recommendations of the Special Committee were applicable to Sub-Engineers and Junior Engineers working in Transmission and Distribution and Civil Cadres only. Since at all points of time the First Respondent had worked only in the Generation Cadre, and was only a Chargeman, the Petitioner-Board contended, in my view rightly, that the Special Committee's recommendations were wholly inapplicable. The minutes of the meeting of the Special Committee make it clear that what had been considered was the manner of deciding the seniority of Sub-Engineers and Junior Engineers working in Transmission and Distribution and Civil Cadres and that the said Committee had nothing whatsoever to do with the subject of seniority of Chargeman working in the Generation Cadre.

6. Turning to the other contention, which appealed to the learned Judge of the Industrial Court, that the Petitioner-Board has ignored the guidelines laid down by the Bhingare Committee Report and had thereby erroneously fixed the seniority of the First Respondent, it appears to me that the contention itself was misconceived. Bhingare Committee came to be constituted pursuant to a decision taken 30th November, 1977, to "study the various anomalies and disputes relating to the Generation Cadre Personnel". Incidentally, it is called Bhingare Committee, because G. J. Bhingare, Chief Engineer (Gen. O & M), Nagpur, was the Chairman of the Committee. One of the serious difficulties faced by the petitioner at the material time was that there was no method by which the seniority of the different cadres, viz., Generation Cadre and Transmission and Distribution Cadre, could be equated. In some of the establishments purely sectional seniority was taken into consideration, while in others seniority was reckoned by cadre. This gave rise to heart-burning and led to appointment of the Bhingare Committee. The terms of reference of the Bhingare Committee were :

"a) to examine the feasibility of amalgamating the Hydro and Thermal

Generation Cadres into one single Generation cadre :

- b) to prescribe common categories on the Hydro and Thermal generation sides for facilitating inter-changeability of all Hydro and Thermal personnel;
- c) to prescribe the categories of posts to which the staff from Hydro side could be transferred without training and to suggest the mode of training in respect of other categories wherever it is considered necessary. Likewise, to recommend the deployment of thermal personnel to Hydro Power Stations;
- d) to review the criteria for fixation of seniority for all categories in the Generation cadre;
- e) to review the specific anomalies in respect of pay scales of Head Foreman and Chargeman Grade I;
- f) to suggest channels of promotion for non-cadre posts such as Boiler Operators, H. P. Welders, Assistant Coal Yard Foreman etc."

It is not disputed that the recommendations of Bhingare Committee came to be accepted and implemented by the Petitioner-Board. For our purpose only the recommendations in paragraphs 4.4.1 and 4.4.2 are relevant. The report of the Committee points out in paragraph 4.4.1, the causes for the anomalies and the reasons why the Committee had to be constituted to cure the anomalies. The Committee then recommends that the seniority in respect of Chargeman Grade I and Chargeman Grade II be prepared afresh and that there should be a State wise seniority of a combined list of Chargeman Grade II by adopting a similar list prepared by the Head Office in 1974 (as on 31st March, 1972) after calling for objections and examining the cases. A further recommendation made by the Bhingare Committee in paragraph 4.4.2 was that, in respect of the employees in service, while adjusting the inter - State Seniority, it would be necessary to consider the claims of such employees who had put in more than six months temporary service at the time of preparation of the seniority list for that year. After indicating the manner in which the seniority list of the existing employees was to be refixed in a combined cadre, the recommendation was that benefit of promotion be granted consequent upon refixation of seniority, but, that no arrears of wages should be paid and the benefit of fixation of pay would be admissible only from 1.4.1978. The recommendation make it clear that the seniority list of the Thermal Cadre Personnel upto 31.3.1978 would be amalgamated with the Hydro Generation Personnel in the categories of Chargeman Grade I and Assistant Shift Engineer and the position of the incumbents in the seniority list in the entire Generation Cadre would be fixed in the common seniority based on length of service in that category. Curiously, in paragraph 9 of the impugned order at page 26 of the writ petition, the learned Judge of the Industrial Court has laid down some principles for refixation of seniority as-having been recommended by the Bhingare Committee and adopted by the Board. Since a prima facie reading of the Bhingare Committee Report does not indicate the position to be as understood by the learned Judge of the

Industrial Court, I called upon Mr. Pai to point out to me where such recommendations were made. After reading the said Report he fairly conceded that there were to such recommendations in the Bhingare Committee report. A careful perusal of the minutes of meeting held on 8.10.1982 by the Special Committee to discuss the issues and refixation of seniority of Subordinate Engineers in the Transmission and Distribution and Civil Cadre, indicates those guidelines. It is unfortunate that the learned Judge of the Industrial Court confused between the two reports and misdirected himself in assuming that the Petitioner-Board had improperly fixed the seniority of the First Respondent. It cannot be forgotten that the Bhingare Committee was appointed only for the purpose of reviewing certain anomalies which were noticed on account of Seniority List section-wise in the Generation Cadre as well as Distribution Cadre. The exercise was an exercise of amalgamation of the existing cadre and forming a common seniority list and, consequently, Mrs. Baxi, learned Advocate for the Petitioner - Board, is right in her contention that the Bhingare Committee was only concerned with the employees who were in service between 1.4.1972 to 31.3.1978 and not with laying down guidelines for future employees.

7. As far as the First Respondent is concerned, it is not in dispute that he was employed from 18.5.1979. His case was not the subject matter for consideration before the Bhingare Committee. The First Respondent's case was really governed by the Maharashtra State Electricity Board Employees' Seniority Regulations, 1961. Chapter VIII, Regulations 96 to 102, pertain to work charged staff and casual workers. Regulation 100 in terms provides that an employee borne on work-charged establishment, when appointed to a posts as a regular employee, shall be treated as new entrant for all purposes, except for the purpose of carrying forward unavailed of leave earned during the period he worked as a work-charged employee provided there is no break in service. Regulation No. 27 of the Classification and Recruitment Regulations, 1961, provides that the seniority of persons selected for appointments shall be fixed in accordance with the Board's Seniority Regulations, 1961, as amended from time to time. Regulations No. 11 of the Maharashtra State Electricity Board Employees' Service Regulations, 1961, provides that the service of an employee in a purely temporary vacancy or as a trainee or apprentice or as understudy shall not count as service for seniority provided that if a person holding a temporary post without break is eventually confirmed in that post, the temporary service shall so count, except in the cases covered by Regulation 10. A conjoint reading of these regulations would show that the First Respondent was entitled to be placed in the seniority list only on the basis that he was working in the service of the Petitioner-Board from the year 1982 as a permanent employee. This has been correctly done by the Petitioner and, upon doing so, the First Respondent ranked at Serial No. 447 in the seniority list. I see no error therein, much less any impropriety, in doing so. I find it difficult to agree with the order of the Industrial Court that there was an unfair labour practice within Item 5 or Item 9 of Schedule IV of the Act committed by the Petitioner-Board by denying

due seniority to the First Respondent. The First Respondent's case was entirely misconceived and was accepted by the Labour Court by relying on inapplicable recommendations.

8. In my view, the complaint of the First Respondent has no merit. The impugned order of the Industrial Court is erroneous and is liable to be quashed and set aside. The Petitioner-Board is entitled to succeed. The Petition is allowed, rule is made absolute and the order of the Industrial Court is quashed and set side. Complaint (ULP) No. 129 of 1984 is dismissed. No order as to costs.