

(2000) 11 KAR CK 0053
In the Karnataka High Court
Case No : Writ Appeal No. 6950 of 1999

Shivaraj Kudamble

APPELLANT

Vs

The Karnataka Electricity Board, Bangalore and Others

RESPONDENT

Date of Decision : 03-11-2000

Acts Referred:

Electricity (Supply) Act, 1948 — Section 79(C)
Karnataka Electricity Board (Recruitment and Promotion of Employees of the Board Service) Regulations, 1969 — Regulation 10
Karnataka High Court Act, 1961 — Section 4

Citation : (2000) 8 KarLJ 670

Hon'ble Judges : K. R. Prasad Rao, J;G. C. Bharuka, J

Judgement

1. The dispute herein relates to entitlement of priority based on apprenticeship training in appointment to the post of Junior Engineer (Electrical) in Gulbarga Circle of the Karnataka Electricity Board (in short, "the KEB").

2. Both appellant as well as the 3rd respondent-Sri Thimmaraya were among the candidates who had applied for the said post. Both had secured 58.9% of marks in the qualifying examination and were entitled to rural weightage of 10%. Both are diploma holders in electrical engineering. Both have undergone apprenticeship training but with the material difference that the appellant had the training at Bharat Heavy Electrical Limited from 31-8-1990 to 30-8-1991. Whereas, the contesting respondent had completed his apprenticeship training in KEB Industrial Training Centre between 16-6-1994 to 15-6-1995. Another material fact is that the appellant is older than the 3rd respondent inasmuch as his date of birth is 10-7-1970 and that of the contesting respondent is 1-5-1972.

3. The learned Single Judge has held that keeping in view the above facts, the objects of the Apprentices Act, 1961 (in short, the "Act") and the decision of the Supreme Court in the case of Uttar Pradesh State Road Transport Corporation v Uttar Pradesh Parivahan Nigam Shishukhs Berozgar Sangh, AIR 1995 SC 1115 and consequent resolution dated 13-3-1997 passed by the KEB, the contesting respondent is entitled to the benefit of preference over the appellant and

accordingly he has directed the respondent-KEB to consider him for appointment to the post in question.

4. Mr. Subba Rao, learned Counsel for the appellant, has sought to assail the order of the learned Single Judge on the ground that according to Regulation 10 of the KEB (Recruitment and Promotion of Employees of the Board Service) Regulations, 1969 (in short, "the Regulations") providing that in respect of candidates having secured equal percentage of marks, the order of merit has to be fixed on the basis of their age. i.e., person older in age has to be placed higher in order of merit, therefore, the appellant has better right to seek appointment for the post in question. His further submission is that resolution of the KEB referred to above being contrary to statutory Regulations has to be ignored while fixing the order of merit. His alternative submission is that since both the appellant and the contesting respondent have done their apprenticeship training and the appellant having completed the same earlier than the contesting respondent even according to the judgment of the Supreme Court in Transport Corporation's case, *supra*, he has better right for appointment to the post in question.

5. So far as the first proposition is concerned, admittedly Regulations of the Board are statutory in nature since the same has been framed under Section 79(c) of the Electricity (Supply) Act, 1948. Regulation 10 of the Regulations sets out the method of recruitment. It is reproduced hereunder:

10. Method of Recruitment.-Recruitment to the Board service shall be made by conducting written and or oral tests or by selection or by promotion.

Method of recruitment promotion, minimum qualifications, period of probation etc., for each Board service are set forth in the Rules and Recruitment vide Annexure.

Note.-(a) List of candidates for interview.-For purposes of selection of candidates for interview, the selecting authority shall prepare a list of candidates on the basis of the percentage of total marks secured in the qualifying examination in the order of merit and if two or more candidates have secured equal percentage of total marks in the qualifying examination, the order of merit in respect of such candidates shall be fixed on the basis of their age, the person or persons older in age being placed higher in the order of merit.

Explanation.-In this rule qualifying examination means, the minimum educational qualification that is prescribed for holding the post in the rules of recruitment applicable to the cadre or post.

(b) List of selected candidates.-The Selecting Authority shall on the basis of marks obtained at the interview and taking into consideration the orders in force relating to reservation of posts for Scheduled Castes, Scheduled Tribes and Other Backward Classes, prepare in the order of merit, a list of candidates eligible for appointment to the cadre or post. If two or more candidates have secured equal

number of marks at the interview the order of merit in respect of such candidate shall be determined in accordance with Note (a) above.

Explanation.-The Selecting Authority mentioned in (a) and (b) above means the Board or the Selection Committee or Appointing Authority, as the case may be, to make selection for recruitment to any cadre or post.

6. Keeping in view the judgment of the Supreme Court in Transport Corporation's case, *supra*, the method of recruitment has been supplemented by the KEB by the following order dated 13-3-1997.

Karnataka Electricity Board

I.M.C. (A) Resolution No. IMC(A)-129/1060, dated 3-3-1997 in the matter of providing preference in direct recruitment to the Apprentice Trained Candidates in KEB.

Board Order No. KEB/B16/B15/3164/96-97, Bangalore, dated 13-3-1997

Board is pleased to accord approval for the following in the matter of providing preference in direct recruitment to those Apprentice Trained Candidates in KEB.

- (1) Other things being equal, a trained Apprentice should be given preference;
- (2) An Apprentice Trainee need not be required to be sponsored by Employment Exchange.
- (3) Age relaxation should be provided to the extent of training period;
- (4) The concerned Training Institute shall maintain a list of persons trained year-wise for the purpose of seniority among themselves and preference shall be given based on such seniority.

7. According to Sri Subba Rao, learned Senior Advocate for the appellant, the above resolution taken by the KEB, in effect tantamounts to altering the provisions relating to the method of recruitment as set out in the Regulations since the regulations does not provide for giving any preference in direct recruitment to those candidates who have undergone apprenticeship training in KEB. According to him, it is not permissible for the KEB to modify the statutory regulations in any material manner by just passing the resolution. In support of his submission, he has placed reliance on the judgments of the Supreme Court in the cases of *B.N. Nagarajan v State of Mysore*, AIR 1966 SC 1942 and *State of Maharashtra v Jagannath Achyut Karandikar*, AIR 1989 SC 1133.

8. In *B.N. Nagarajan's* case, *supra*, the Supreme Court has held that:

"It is hardly necessary to mention that if there is a statutory rule or an act on the matter, the executive must abide by that act or rule and it cannot in exercise of the executive power under Article 162 of the Constitution ignore or act contrary to that rule or act".

9. In State of Maharashtra's case, supra, it has been held by the Supreme Court that.- "The circular is an executive instruction whereas the 1955 Rules are statutory since framed under the provision to Article 309 of the Constitution, the Government could not have restricted the operation of the statutory rules by issuing the executive instruction. The executive instructions may supplement but not supplant the statutory rules".

10. In our considered opinion, the resolution of the KEB, whether it amounts to supplementing or supplanting the statutory regulations, is clearly unassailable since the same has been issued in compliance with the criteria laid down by the Supreme Court in the case of Uttar Pradesh State Road Transport Corporation's case, supra. With regard to regular appointment of apprentices governed by the Act, once such a criteria/guidelines/law is laid down by the Supreme Court then it becomes binding on all authorities in the territory of India as mandated in Article 144 of the Constitution which says that all authorities. Civil or Judicial, in the territory of India shall act in aid of the Supreme Court.

11. In this view of the matter, the principles laid down by the Supreme Court in B.N. Nagarajan's case, supra, and State of Maharashtra's case, supra can hardly have any avail to the appellant. Therefore, the first plea raised by Subba Rao has to be rejected.

12. The next question to be considered is whether the appellant has better right of preference than the contesting respondent in seeking appointment to the post in question because he has completed apprenticeship training earlier to the contesting respondent though admittedly not in KEB but in another organisation namely BHEL. To put it more precisely, the question to be considered would be whether a person who had undergone apprenticeship training in an establishment other than the one in which he is seeking appointment, can at all claim a right of preference as per the decision of the Supreme Court in the case of Transport Corporation's case, supra?

13. As noticed by the Supreme Court, the objects behind the enactment of the Act was to ensure that training of apprentices is streamlined in the context of increasing demand for skilled craftsman in the wake of large scale industrial development in the country. Accordingly, provisions were made in the Act to provide for the regulation and control of training of apprentices. The amendment of the Act in 1973 by which training of graduate engineers and diploma holders was introduced was for "improving their employment potential" and to solve the immediate unemployment problem. The amendment in 1986 aimed to provide "on the job training" to the products of vocational streams so that adequate competence and skill required for various occupations are acquired leading to "suitable employment or self-employment opportunities" in organised industries etc.

14. After considering the objects with which the Act was made and the provisions contained therein, the Apex Court felt that the nation should get the benefit of

time, money and energy spent on the trainees which can only be availed if they are employed in preference to non-trained direct recruits. Accordingly, in para 12 of the report, the following directions were set out.

(1) Other things being equal, a trained apprentice should be given preference over direct recruits.

(2) For this, a trainee would not be required to get his name sponsored by any employment exchange. The decision of this Court in *Union of India v N. Hargopal*, AIR 1987 SC 1227, would permit this.

(3) If age bar would come in the way of the trainee, the same would be relaxed in accordance with what is stated in this regard, if any, in the concerned service rule. If the service rule be silent on this aspect, relaxation to the extent of the period for which the apprentice had undergone training would be given.

(4) The concerned training institute would maintain a list of the persons trained year wise. The persons trained earlier would be treated as senior to the persons trained later. In between the trained apprentices, preference shall be given to those who are senior.

15. The above judgment of the Supreme Court has again been noticed with approval and a little clarification in the case of *Uttar Pradesh Rajya Vidyut Parishad Apprentice Welfare Association v State of Uttar Pradesh*, AIR 2000 SC 2621. The clarification became necessary keeping in view the observations made by the Supreme Court in paragraph 13 in *Transport Corporation's* case, with which we are not concerned for the purposes of the present case.

16. The words and expressions "apprentice" and "apprenticeship training" have been defined under Section 2(aa) and 2(aaa) of the Act respectively. According to these definitions, "Apprentice" means a person who is undergoing apprenticeship training in pursuance of a contract of apprenticeship. "Apprenticeship training" has been defined to mean a course of training in any industry or establishment undergone in pursuance of a contract of apprenticeship and under prescribed terms and conditions which may be different for different categories of apprentices.

17. Section 4 of the Act makes it incumbent on the part of the employer to enter into a contract of apprenticeship before a person is engaged as apprentice to undergo apprenticeship training in a designated trade. Section 7 of the Act inter alia provides that the contract of apprenticeship shall terminate on the expiry of the period of apprenticeship training. But Section 22 of the Act makes it absolutely clear that on completion of the apprenticeship training neither it will be obligatory on the part of the employer to offer any employment to any apprentice in his establishment nor shall it be obligatory on the part of the apprentice to accept an employment under the employer.

18. Despite the above provisions, considering the object and purpose of the Act, the Supreme Court, as noticed above, has directed that the employer concerned

must give preference to the apprentices trained in his establishment in preference to the direct recruits as and when the vacancies arise and appointments are sought to be made on posts befitting qualifications and training given to the apprentices in the establishment.

19. One of the reasons which prevailed with the Supreme Court for giving the above direction in Transport Corporation's case, *supra*, was that.-

"Further, during the period of training, the apprentices are put under a discipline akin to that of regular employee inasmuch as Section 17 states that in all matters of conduct and discipline, the apprentice shall be governed by the rules and regulations applicable to employees of the corresponding category in the establishment in which the apprentice is undergoing training".

20. The intention of the Supreme Court for giving benefit of preference to the apprentice trainee of an establishment in only that establishment is also clear from clause (4) of para 12 of the judgment, which says that the concerned training institute would maintain a list of the persons trained year wise and the preference shall be given to those who are senior. It means that the seniority for the purpose of giving preference has to be worked out only institution-wise and the trainees of other institution cannot be considered for the purpose of giving preference.

21. Coming to the facts of the present case, the KEB as well has also rightly interpreted the directions of the Supreme Court in the above manner and has accordingly issued the order dated 13-3-1997 *inter alia* providing that:

"The Board is pleased to accord approval for the following in the matter of providing preference in direct recruitment to those apprentice trained candidates in KEB".

(emphasis supplied)

22. The validity of the above order of the Board has been approved by this Court in the case of *R. Jayashankar and Others v Karnataka Electricity Board and Others*, W.P. No. 82 of 1998, DD: 9-3-1998.

23. Keeping in view the foregoing discussions, we are of the opinion that the appellant has failed to make out any good ground to interfere with the impugned order of the learned Single Judge. The appeal is accordingly dismissed. The parties to bear their own costs.