
(2011) 03 AHC CK 0309

In the Allahabad High Court

Case No : Reserved Writ Petition No. 1879 (SB) of 2009

Shriniwas Ram

APPELLANT

Vs

U.P. Power Corporation Limited and Others

RESPONDENT

Date of Decision : 15-03-2011

Acts Referred:

Constitution of India, 1950 — Article 14
Electricity Act, 1910 — Section 6A

Citation : (2011) 3 ADJ 819

Hon'ble Judges : Uma Nath Singh, J;Devendra Kumar Arora, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Devendra Kumar Arora, J.—Heard Learned Counsel for parties.

2. Learned Counsel for Petitioner submitted that the Petitioner was appointed as a Junior Engineer in the establishment of Cooperative Electric Supply Society Limited on 05.04.1998, which was registered under the provisions of U. P. Cooperative Societies Act, 1965 and engaged itself in the work of distribution of electricity in the rural areas of six blocks comprised in district Lucknow and for that purpose, it was granted a licence by the State Government during the year 1970 in accordance with the provisions of Indian Electricity Act, 1910 and the Rules framed there under. It appears that licence period came to an end in 1997 and thus State Government issued an order dated 15.04.1997 directing that with effect from 28.03.1997, the entire work of distribution of electricity shall be carried out and undertaken by the U.P. State Electricity Board. Further, vide the provisions of Section 6A(g)(i) of the Indian Electricity Act, 1910, the services of the employees working in the society were given protection. The said provisions on reproduction reads as under:

6-A(g)(i). The following provisions shall govern the working in the undertaking immediately before the appointed day:

(I) Every person who has been immediately before the appointed day in the employment of the licensee shall become on and from the appointed day an employee of the Board on the same terms and conditions and with the same rights as to pension, gratuity and other matters as would have been admissible to him if the undertaking had not been transferred to and vested in the Board and continue to do so unless and until his employment under the Board is terminated or until his remuneration or other terms and conditions of employment are duly altered by the Board.

3. The submission of the learned Counsel for the Petitioner is that with effect from 28.3.1997, the employees of erstwhile CESS/Licensee became the employees of U.P. State Electricity Board (hereinafter referred to as the "Board") since then they became entitled to same terms and conditions of service which applied to the own employees of U.P. State Electricity Board. The U.P. State Electricity Board took a decision on 28.11.1996 to regularize the services of entire Mustor Roll/Daily wage employees engaged in its different Units, who were recruited prior to 4.5.1990 and were still working in the Board, but in a most arbitrary and discriminatory manner, the benefit of the aforesaid decision dated 28.11.1996 was not extended to all the daily wage employees of the CESS, who were recruited prior to 4.5.1990 and were still working in the Board after the revocation of the License granted to erstwhile CESS and transfer of its assets and liabilities in favour of the Board.

4. Feeling aggrieved by the aforesaid arbitrary and discriminatory action on the part of the Board as many as 34 employees of the erstwhile CESS preferred writ petition No. 4027 (S/S) of 1998, which was finally disposed of. The operative portion of the same reads as under:

.....

Once the work with regard to the supply of the electricity earlier being performed by the Co-operative Electric Supply Society has been taken over by the Cooperative Electric Supply Society and since the employees have also been taken over, it is the duty of the U.P. State Electricity Board to provide the same facility to the Petitioners which it is providing to its own daily wage employees. There seems to be no reasonable ground for discrimination between two sets of employees who are daily wagers, more particularly when they are performing the functions which they were earlier performing with the Cooperative Electric Supply Society. Hence, it is just and reasonable to issue a direction to the U.P. State Electricity Board to act in accordance with its decision contained in Annexure-5, within a period of four months.

5. The U.P. State Electricity Board challenged the aforesaid judgment before a Division Bench by means of Special Appeal No. 364 of 1999 (S/B), which was dismissed vide judgment and order dated 3.1.2000 with a direction to ensure compliance of the judgment of learned Single Judge within a period of one month. The Board challenged both the aforesaid judgments dated 21.9.1998 and

3.1.2000 by means of Special Leave to Appeal before the Hon''ble Supreme Court and the same was dismissed by order dated 9.10.2007. The operative portion of the aforesaid judgment reads as under:

....

19. In the present case many of the writ Petitioners have been working from 1985 i.e. they have put in about 22 years service and it will surely not be reasonable if their claim for regularization is denied even after such a long period of service. Hence apart from discrimination, Article 14 of the Constitution will also be violated on the ground of arbitrariness and unreasonableness if employees who have put in such a long service are denied the benefit of regularization and are made to face the same selection which fresh recruits have to face.

20. For the reasons aforementioned, we find no merit in this appeal. The appeal is accordingly dismissed. No costs.

6. The Board again approached the Hon''ble Apex Court by means of Review Petition, but ultimately the same was also dismissed. The Board was replaced by the U.P. Power Corporation Ltd., during the year 2000 and the Corporation after making all sorts of contest in the contempt proceedings, ultimately submitted an affidavit of compliance of the judgment enclosing the order dated 9.11.2009, in which it has been provided that in compliance of the order of contempt Judge dated 28.10.2009, the employees of the erstwhile CESS would be entitled to all other service benefits, which are admissible to the regular employees of U.P. Power Corporation Ltd. (hereinafter referred to as the "Corporation"). The learned Counsel for the Petitioner further submits that the dispute having been finally adjudicated by the Hon''ble Supreme Court is binding on the Corporation and in consequence of the same, entire service benefits given to regular employees of the Corporation have not only been given to 34 employees of the erstwhile CESS, who were party to the litigation, but such benefit has also been extended to all the employees of erstwhile CESS.

7. Learned Counsel for the Petitioner vehemently submitted that in view of the factual and legal aspects of the matter, the Petitioner who was the regular employee working on the post of Junior Engineer in the erstwhile CESS, also became of an employee of the Board after revocation of the License of CESS and transfer of its assets and liabilities in favour of the Board and now replaced by the U.P. Power Corporation Ltd. And Petitioner deemed to be a regular employee of the Corporation and the entire service rendered by him in the erstwhile CESS, has also to be counted for the purposes of determination of his length of service and seniority on the post in the Board. The Corporation vide order dated 29.6.2007 promoted the Scheduled Caste Junior engineers appointed in the erstwhile Board during the year 1996 on the post of Assistant Engineer, but the Petitioner who was recruited on the post of Junior Engineer as back as during the years 1988 was not considered for promotion against the back-log quota of

Scheduled Caste/Scheduled Tribes in the Board. It was also pointed out by the learned Counsel for the Petitioner that other employees of the erstwhile CESS working on different other posts, whose services were also transferred from Board, have been promoted on higher post from time to time.

8. The Petitioner approached the authorities by means of representation dated 1.12.2008 and the Chief Engineer sought a report from Superintending Engineer. The Superintending Engineer submitted his report dated 27.1.2009 to the Chief Engineer, LESA. Thereafter certain other queries were made by the Chief Engineer from the Superintending Engineer and the same was submitted by Superintending Engineer on 28.2.2009. In both the aforesaid reports, the Superintending Engineer recommended for the promotion of the Petitioner on the post of Assistant Engineer against the back-log quota of Scheduled Caste/Scheduled Tribes. The authorities are sitting tight over the matter and the Petitioner has been deprived of his legitimate right of promotion on the post of Assistant Engineer and is being compelled to work under the persons who are junior to the Petitioner.

9. The opposite parties while opposing the writ petition submitted that after 28.3.1997 the work of distribution of electricity of the society was carried out under the control of erstwhile U.P. State Electricity Board. The revocation of the existence of the society is under dispute. The license of the CESS is not in existence at present. The decision in respect of the CESS, either in respect of the revocation of the society or in respect of the final absorption of the employees of the CESS in the U.P. Power Corporation Ltd. is to be taken up by the higher authorities. In paragraph No. 9 of the counter affidavit it has been admitted that the daily wage employees of the CESS recruited prior to 4.5.1990 have been finally regularized with effect from 20.1.1999 and also given similar benefit available to the employees of the U.P. Power Corporation. In paragraph No. 15 of the counter affidavit, it has been mentioned that initially Petitioner appointed in the CESS and was governed by the service conditions of the CESS. There is a seniority list which is maintained in the Corporation and the candidates having place in the seniority list, have been considered for promotion from the post of Junior Engineer to the post of Assistant Engineer. As the Petitioner has not been finally absorbed in the cadre of Junior Engineer of the Corporation, the question of promotion of the Petitioner on the post of Assistant Engineer does not arise.

10. We have considered the arguments of the learned Counsel for the parties and gone through the record.

11. It is admitted position that the licence granted to the CESS came to an end on 27.3.1997 and therefore the State Government issued an order dated 15.4.1997, directing therein that with effect from 28.3.1997, the entire work of the distribution of electricity in six blocks of the Rural areas of district Lucknow entrusted to the Society would be carried and undertaken by the Board. In pursuance to Section 6-A(g)(i) of the Indian Electricity Act, 1990, every person who has been immediately before the appointed day in the employment of the

licensee has become on and from the appointed day an employee of the Board on the same terms and conditions with the same rights as to pension, gratuity and other matters as would have been admissible to him if the undertaking had not been transferred to and vested in the Board and continue to do so unless and until his employment under the Board is terminated or until his remuneration or other terms and conditions of employment are duly altered by the Board. Since employees of the CESS/Licensee became the employees of the Board with effect from 28.3.1997 as such they became entitled to same terms and conditions of service, which applied to the own employees of the Board. The issue of daily wage employees of the CESS was agitated before this Court by means of writ petition No. 4027 of 1998 (S/S) and it has been held in judgment and order dated 21.9.1998 that once the work with regard to the supply of the electricity earlier being performed by the Co-operative Electric Supply Society has been taken over by the Cooperative Electric Supply Society and since the employees have also been taken over, it is the duty of the Board to provide the same facility to them, which it is providing to its own daily wage employees and there seems to be no reasonable ground for discrimination between two sets of employees, more particularly when they are performing the functions which were earlier performed with the CESS. The appeal of the Board against the judgment of learned Single Judge was dismissed by the Division Bench and thereafter Hon"ble Apex Court also dismissed the SLP of the Board with the observation that the writ Petitioners have been working from 1985 i.e. they have put in about 22 years service and it will surely not be reasonable if their claim for regularization is denied even after such a long period of service. Hence apart from discrimination, Article 14 of the Constitution will also be violated on the ground of arbitrariness and unreasonableness, if employees who have put in such a long service are denied the benefit of regularization and are made to face the same selection which fresh recruits have to face.

12. It is admitted case of the opposite parties that finally services of the daily wage employees of the CESS have been regularized, who were appointed prior to 4.5.1990. It is very unfortunate that the Petitioner, who is the regular employee of the CESS is being discriminated and flimsy ground has been raised that the issue of absorption of the employees of the CESS in the Corporation is pending consideration before the higher authorities. We do not find any good reason to discriminate the Petitioner in the matter of promotion.

13. In view of the above, a writ of mandamus is issued thereby directing the competent authority of the Corporation to consider the candidature of the Petitioner for promotion on the post of Assistant Engineer from the date when Junior Engineers working in the erstwhile Board have been promoted on the post of Assistant Engineer.

14. With the aforesaid observations and directions, the writ petition is allowed.