

(2006) 06 KAR CK 0062

In the Karnataka High Court

Case No : Writ Appeal No's. 1953 and 2595 of 1994 and Writ Petition No. 29573 of 1996

The Karnataka Electricity Board Employees" Union (Now called the Karnataka Power Transmission Corporation Employees" Union)

APPELLANT

Vs

The Karnataka Electricity Board and Others
 The Karnataka Electricity Board Diploma Engineers Association Vs The Karnataka Electricity Board and Others
 The Karnataka Electricity Board Diploma Engineers" Association Vs The Karnataka Electricity Board, The Karnataka Electricity Board Engineers Association and The Karnataka Power Transmission Corporation Limited

RESPONDENT

Date of Decision : 16-06-2006

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2006) ILR (Kar) 2691 : (2007) 4 KarLJ 235

Hon'ble Judges : Cyriac Joseph, C.J.;N. Kumar, J

Bench : Division Bench

Advocate : K. Subba Rao and G.S. Visweswara, in IA III in W.A No. 1953 of 1994, Vagdevi Associates in W.A. No. 2595 of 1994 and K. Subba Rao, in W.P. No. 29573 of 1996, for the Appellant; Siddartha and Pradeep Sawkar for Respondent Nos. 1 and 2 in W.A No. 1953 of 1994, Siddartha and Pradeep Sawkar for Respondent No. 1 and Kesvy and Company for Respondent Nos. 2 to 6 in W.A. No. 2595 of 1994 and B.C. Prabhakar, for Respondent Nos. 1 and 2 and K. Raghavendra Rao, in W.P. No. 29573 of 1996, for the Respondent

Final Decision : Dismissed

Judgement

N. Kumar, J.—Writ Appeal Nos. 1953/1994 and 2595/1994 are against the common order passed in Writ Petition Nos. 6724/1986, 8151/1986 and 9092/1986. As the decision in the said appeals would have a direct bearing and could be disposed of in similar terms, the W.P. 29573/1996 was ordered to be posted along with the aforesaid Writ Appeals. That is how all these matters are

before us for final hearing.

2. In W.P.No. 6724/1986 KEB Diploma Engineers Association (Registered) and another sought for striking down Clause 7(d) of Chapter V of Karnataka Electricity Board Recruitment and Promotions Regulations (hereinafter for short called as "the regulations"). In W.P.No. 8151/1986 the notification as per Annexure-C was sought to be declared as unconstitutional. In W.P.No. 9092/1986 quashing of Annexure-D, the explanation offered by the Karnataka Electricity Board dated 2.6.1986 and the settlement dated 30.9.1974 entered into between the parties was sought. In W.P.No. 29573/1996 the petitioners have challenged Annexure-C dated 27.9.1996 to the Writ Petition where the Board upgraded another 248 posts of Assistant Engineers (Electrical) (Graduates) to that of the Assistant Executive Engineers (Electrical) and accordingly to the aforesaid upgraded posts only Graduate Assistant Engineers were promoted.

3. The facts leading to this appeal are as under:

The post of Assistant Engineer (Electrical) in the Karnataka Electricity Board (for short hereinafter referred to as "the Board") is to be filled up by direct recruitment and by departmental promotion in the ratio and to the post as detailed in Clause 10 of Chapter V of the regulations. In so far as direct recruitment is concerned the qualification prescribed is, they should have a degree in Electrical Engineering of any recognized University or any other equivalent qualification. In so far as promotees are concerned they should have a Diploma in Electrical Engineering or Mechanical Engineering of a Polytechnic of the State of Karnataka or an equivalent qualification. The graduate engineers working in the Board have formed a Union known as KEB Engineers Association. These direct recruits to the post of Assistant Engineer (Electrical) [for short hereinafter referred as "AE (Electrical)"] were stagnating in the said post for more than 10 to 15 years. Their association made a representation to the Board to remove the stagnation faced by them. The Chief Engineer (General) of the Board by a letter dated 15.5.1985 submitted a proposal to the Board that 344 posts of AE (Electrical) be upgraded as Assistant Executive Engineers (for short hereinafter referred to as "AEE"). It was pointed out by the Chief Engineer that the proposed upgradation will not involve any additional financial burden for the Board, because, all those incumbents of the posts recommended for upgradation had been given the next higher grade (in time scale scheme) which was otherwise admissible to the AEE. The Chief Engineer also pointed out that in the absence of a corresponding provision in the regulations the aforesaid upgraded posts have to be offered even to the non-graduates in the ratio in which they are entitled to share vacancies in the cadre of AEE. In order to overcome this and the other difficulties anticipated, he proposed in the letter dated 19.2.1986 that the upgraded posts both in the cadre of AE and AEE be kept separate from the pool of posts available for general promotions, which attracted the application of the quota for intake from different sources and to achieve that purpose he proposed the addition of Clauses 7(d) and 10(f) to Chapter V of the Regulations. The Board

on consideration of the said proposal initially approved the upgradation of 109 posts of AE (Electrical) to that of AEE and also addition of Clause 7(d) and 10(f) to Chapter V. Consequently by notification dated 27.3.1986 regulations were amended to add the aforesaid two clauses. By a separate order issued on the same date 109 posts of AE (Electrical) were upgraded as AEE.

4. The aforesaid amendments to the regulations were challenged in W.P.No. 6724/1986 and this Court passed an interim order directing the Board to fill up upgraded posts to the extent of 3/5 only pending disposal of the Writ Petition on merits. The General Secretary of the appellant union addressed a letter dated 23.4.1986 to the Board pointing out that on a correct interpretation of Clause 7(d) the non-graduate Assistant Engineers are also entitled to be promoted against the upgraded posts and the interpretation sought to be placed by the Board on the aforesaid provision to deny such promotion is not correct. The Board however did not accept the interpretation placed by the Association and they issued an endorsement dated 2.6.1986 pointing out that as all the upgraded posts were held by Graduate AE (Electrical), only they would be entitled to the said upgraded post and non-graduate Assistant Engineers are not eligible to be promoted to the said upgraded post. Aggrieved by the said order dated 2.6.1986 as aforesaid W.P.No. 9092/1986 was preferred by the Association. After service of notice the Board has entered appearance and they filed a detailed counter traversing all the allegations made by the petitioners and contended that the interpretation placed by the appellants is not correct. They contended originally the lowest cadre of officers was called Junior Engineers. This designation was changed as Assistant Engineers. Correspondingly the post previously designated as Assistant Engineers are now redesignated as Assistant Executive Engineers. But this has not made any difference to the proportion of graduate and non-graduate posts in the redesignated cadres of Assistant Executive Engineers. No upgradation of a post is contemplated in the recommendations of the Workload Committee which was constituted in terms of the settlement entered into between the parties nor there is any provision in the binding settlement entered into between the parties regarding the mode of filling up of these upgraded posts as contended by the union. They contend as all the upgraded posts before upgradation was meant and held by graduate engineers, non-graduate engineers are not entitled to hold the said post and consequently they are not entitled to promotion to the said post in terms of the regulations or in terms of the binding settlement entered into between the parties.

5. After hearing the parties the learned single Judge held that the entire object behind the addition of Clause 7(d) is to restrict the promotions against the upgraded posts of AEE to graduate Assistant Engineers; or non-graduate Assistant Engineers depending upon whether the posts upgraded were meant exclusively for the graduates or the graduates and non-graduates both. As is clear from, Clause 10(e) of the Regulations all such posts of Assistant Engineers which do not fall in categories (a) to (d) of Clause 10, the method of appointment is by direct recruitment only. In other words posts of Assistant

Engineers even though all constituting a common cadre, have different ratio fixed for appointment, depending upon the functions which are assigned to the posts. In respect of posts which do not fall in Clauses (a) to (d) of Clause 10, only graduates are entitled to appointment in terms of Clause 10(e). The upgraded posts numbering 109 fell in the category providing for by Clause 10(e) and all of which held and could be legally held only by the graduate engineers. Therefore, the intention behind the upgradation was to provide relief only to the graduate engineers who were holding posts meant only for graduates in terms of Clause 10(e). Therefore, the interpretation placed on Clause 7(d) by the Board is appropriate and the contrary interpretation placed by the appellant is not correct. In so far as the contention that, if the aforesaid interpretation is accepted, it would result in discrimination and violation of Articles 14 and 16 of the Constitution, it was held relying on the law laid down by the Supreme Court that, classification made on the basis of higher educational qualifications, for purposes of promotion to the next higher post cannot therefore be treated to be discriminatory or unfair so as to be violative of Articles 14 and 16 of the Constitution. It was held that Graduate Assistant Engineers and Non-Graduate Assistant Engineers would constitute a separate class and, therefore, there is no violation of Articles 14 and 16 of the Constitution. The learned single Judge also held that though the settlement arrived at between the parties is binding and promotion has to be granted in terms of settlement, the settlement did not provide for the filling up of vacancies by virtue of upgradation of a post. These upgraded posts have to be filled up in accordance with the said regulations. Therefore, the said promotions are in no way vitiated. Thus, the Writ Petitions came to be dismissed upholding not only Clause 7(d) but also interpretation placed by the Board. Aggrieved by the said common order, these appeals have been filed.

6. Sri K. Subba Rao, the learned senior counsel appearing for the appellant submitted as under:

(i) A correct interpretation of Clause 7(d) of Chapter V of the regulations would enable the non-graduate Assistant Engineers to get promotion to the extent of 30% of the upgraded posts and, therefore, the interpretation placed by the Board is contrary to the true letter and spirit of the said regulations.

(ii) If the interpretation placed by the Board is held to be correct it results in discrimination among the engineers belonging to the same cadre which is not permissible in law. Therefore, he submitted the impugned order of the learned single Judge negating their contention is liable to be quashed and the Writ Petitions are to be allowed.

7. Per contra, the learned Counsel appearing for the Board supported the order of the learned single Judge.

8. In the light of the aforesaid facts and the rival contentions, the questions that arise for consideration in these appeals are as under:

(i) Whether Clause 7(d) of Chapter V of the Regulations provide for promotion to non-graduate Assistant Engineers to the upgraded post of Assistant Executive Engineers to the extent of 30%? If not,

(ii) Whether Clause (d) is violative of Articles 14 and 16 of the Constitution of India.

9. Point No. (i):- In order to answer this point it is necessary to refer to Clauses 7 and 10 respectively and the newly added provisions of Sub-clauses (d) and (f).

Sl. Category Statewide Method of Recruitment Minimum Qualification No. of Post
7 Assistant Ex. Statewise a) 25% of vacancies Candidates for Engineers cadre shall be filled up by direct (Elec). direct recruitment recruitment: (both from open market and in-service i) Should be candidates) by first class interview, selection graduates in being made by a Electrical Engg. Committee constituted or passed by the Board from A.M.I.E. time to time. (Sections A & B Electrical)
b) 45% of vacancies Examination with shall be filled up by not less than 60% promotion of of Marks in the Assistant Engineers aggregate or (EI) (Graduates) on possess post the basis of Graduate seniority-cum-merit. qualification in Electrical c) 30% of posts shall Engineering or be filled up by equivalent promotion of qualification of Assistant Engineers a recognised (EI) (Non-graduate) University/ on the basis of Institution. Xxx seniority-cum-merit xxx xx
d) Posts upgraded Candidates for from the cadre of promotion; i) Assistant Engineer Should have (EI) to that of completed four

Assistant Executive years of service Engineer (EI) shall in the Board. be filled by Graduate Assistant Engineers ii) Should have (EI) and non-graduate passed Executive Assistant Engineers Higher (EI) in the same Examination and ratio as they should Kannada language be applicable under Test or obtained the R&P Regulation exemption from had the posts have passing Kannada not been upgraded. Language test as per rules.

iii) They should maintain good conduct, punctuality in attendance and aptitude for learning the job, these should be assessed and reported by their official superiors through reports.

Candidates for promotion:

(i) Should have completed aggregate service of 10 years as Junior Engineer and Assistant Engineer if they are Diploma Holders in Engineering.

OR

Should have completed aggregate service of twenty years ad Junior Engineer (El.) and Asst. Engineer (El.) if they are Certificate Holders.

(ii) Should have passed Executive Higher Examination and Kannada Language Test or obtained exemption from passing Kannada Language test as per rules.

(iii) They should maintain good conduct, punctuality in attendance and aptitude for learning job; these should be assessed and reported by their official superiors through reports.

10 Asst. Engineer Statewise A) Candidate for (Elecl.) Direct By direct recruitment recruitment & by departmental promotion as detailed below:

Functions Allocation (i) Should have a of Posts for Direct degree in Promot Recruiting Electrical Ment. Engineering or any recognised a) JTAs in all O & M University or Sub Dvns. Of B"lore equivalent Circle & In the sub qualification or Dns. of City Category Pass in AMIE 73% 23% Sections A&B (Ele.)

(e) All posts of Asst (ii) Should be on Engrs. Not Covered by probation for one (a) To (d) supra 100% year.

(f) All up-graded B) Candidate for posts From the cadre promotion: of Junior Engineer (EI) to that of Asst. i) Should have Engineer (EI) shall Be filled by a Diploma in non-Graduates only Electrical Engg. or Mechanical Engg. of a Polytechnic of the State of Karnataka or equivalent qualification or Diploma or Certificate in Elecl or Mechanical Engg. of the Erstwhile School of Engg., Bangalore

10. A perusal of Clause 10 would show that the recruitment to the post of AE (Electrical) is State wise and is by direct recruitment and by departmental promotion as set out in the said provision. The ratio of direct recruitment and promotion to the said post is dependent on the nature of functions they are expected to perform and assigned to the post Clause (e) categorically provides all posts of AE (Electrical) not covered by (a) to (d) are to be filled up by direct recruitment. In other words a non-graduate junior engineer is not eligible to be appointed to the said post Clause (7) provides the mode of promotion to the post of AEE (Electrical). It provides 25% of the said post is to be filled by direct recruitment; 45% of the vacancies shall be filled up by promotion of AE (EI) (Graduates) on the basis of seniority-cum-merit and 30% of the vacancies shall be filled up by promotion of AE (EI) (Non Graduate). In terms of Clause 7(a)(b) (c) if promotion is to be granted to these upgraded posts, then AE (Electrical) non-graduates would be entitled to 30% of the posts. But that was not the intention of the Board. The intention was to provide an upward opening to such of the Graduate engineers, who had put in more than 10 years as AE and had been given the next higher grade in time scale which was otherwise equivalent to the grade enjoyed by the post of AEE. The fact that no additional financial burden would be attracted for any such upgradation, while at the same time giving the old hands a well deserved relief from stagnation appeared to be the motivating force behind the proposal. In order to achieve this object Clause 7(d) was introduced. Clause 7(d) made it clear that posts upgraded from the cadre of AE (EI) shall be filled by Graduate Assistant Engineer (EI) and non-graduate Asst. Engineers (EI) in the same ratio as they would be applicable if they had not been up-graded. In other words it means the said posts have to be filled up in the

manner provided under the regulations to fill up the post of AE and not AEE. If that be so a non-graduate would not be entitled to be appointed or to hold the post covered under Clause 7(e) whereas in respect of posts covered under Clause (a) to (d) they are entitled to in the ratio set out therein.

11. All the 109 posts which were upgraded for the purpose of granting promotion to graduate AEE (Electrical) were posts to which recruitment was made under 10(e) of the regulations. None of the non-graduate AE (Electrical) were entitled to be appointed to such post. Therefore, when those posts were upgraded as AEE posts, they have to be filled up by graduate AE (Electrical). The non-graduate AE (Electrical) did not have the requisite qualification or eligibility for being promoted to the said post. The object behind this upgradation of posts and promotion to the said post only graduate AE (Electrical) is, those AEs were stagnating in the entry cadre without any promotion for more than 10 to 15 years whereas non-graduate AEE occupied the said post by way of promotion. It is to give a promotional opportunity to those persons who were stagnating at the entry cadre, this rule was introduced. It is just, reasonable and fair. This object is achieved by Clause 7(d). Therefore, in granting promotion to these upgraded posts, the criteria to be followed is firstly by a legal fiction, treat this post as the cadre of AE only and then grant promotion as per Clause 10(a) to (e) depending upon the nature of the post and functions attached to the said post. In the event the upgraded posts fall within Sub-clause (a) to (d) of Clause 10, then even a non-graduate AE (Electrical) would be entitled to promotion in the ratio fixed in the said clause. But, if the upgraded post would fall under Clause 10(e), as the said posts are not available for a non-graduate AE (Electrical) and they have to be filled up by direct recruitment among the graduate possessing a degree in B.E those posts have to be filled up only by a graduate AE (Electrical). Therefore, the interpretation on Clause 7(d) placed by the Board as affirmed by the learned single Judge cannot be found fault with. The said clause achieves the object sought to be achieved by amending the regulations.

12. Point No. (ii):- The appellants contend if the interpretation suggested by the Board is to be accepted it results in discrimination and thus violates Articles 14 and 16 of the Constitution of India. It is contended that, when direct recruits and promotees are integrated into a common cadre, thereafter in granting further promotion, they cannot discriminate between persons coming from two different streams on the ground of want of requisite educational qualification, as both of them would be competent to handle the higher responsibility attached to the higher or upgraded post.

13. A Constitution Bench of the Supreme Court in the case of *The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others*, in answering a similar question, whether the persons drawn from different sources when integrated into one class, can they be classified for purposes of promotion on the basis of their educational qualifications, held as under:

Though persons appointed directly and by promotion were integrated into a

common class of Assistant Engineers, they could, for purposes of promotion to the cadre of Executive Engineers, be classified on the basis of educational qualifications. The rule providing that graduates shall be eligible for such promotion to the exclusion of diploma-holders does not violate Articles 14 and 16 of the Constitution.

Since the constitutional code of equality and equal opportunity is a charter for equals, equality of opportunity in matters of promotion means an equal promotional opportunity for persons who fall, substantially, within the same class. A classification of employees can therefore be made for first identifying and then distinguishing members of one class from those of another.

The classification of Assistant Engineers into Degree-holders and Diploma-holders could not be held to rest on any unreal or unreasonable basis. The classification was made with a view to achieving administrative efficiency in the Engineering services. If this be the object, the classification is clearly correlated to it for higher educational qualifications are at least presumptive evidence of a higher mental equipment.

Classification on the basis of educational qualifications made with a view to achieving administrative efficiency cannot be said to rest on any fortuitous circumstances and one has always to bear in mind the facts and circumstances of the case in order to judge the validity of a classification.

Unless the classification is unjust on the face of it, the burden is on the petitioners to set out facts necessary to sustain the plea of discrimination and to adduce cogent and convincing evidence to prove those facts, for there is a presumption that every factor which is relevant or material has been taken into account in formulating the classification. Thus, it is no part of the respondents' (State's) burden to justify the classification or to establish its constitutionality. Formal education may not always produce excellence but a classification founded on variant educational qualifications is, for purposes of promotion to the post of an Executive Engineer, To say the least, not unjust on the fact of it and the onus therefore cannot shift from where it originally lay.

Classification is primarily for the legislature or for the statutory authority charged with the duty of framing the terms and conditions of service; and if, looked at from the standpoint of the authority making it, the classification is found to rest on a reasonable basis, it has to be upheld.

In order to establish that the protection of the equal opportunity clause has been denied to them, it is not enough for the petitioners to say that they have been treated differently from others, not even enough that a differential treatment has been accorded to them in comparison with others similarly circumstanced. Discrimination is the essence of classification and does violence to the constitutional guarantee of equality only if it rests on an unreasonable basis. It was therefore incumbent on the petitioners to plead and show that the classification of Assistant Engineers into those who hold diplomas and those who

hold degrees is unreasonable and bears no rational nexus with its purported object.

Classification must be truly founded on substantial differences which distinguish persons grouped together from those left out of the group and such differential attributes must bear a just and rational relation to the object sought to be achieved.

Judicial scrutiny can therefore extend only to the consideration whether the classification rests on a reasonable basis and whether it bears nexus with the object in view. It cannot extend to embarking upon a nice or mathematical evaluation of the basis of classification, for were such an inquiry permissible it would be open to the courts to substitute their own judgment for that of the legislature or the rule-making authority on the need to classify or the desirability of achieving a particular object.

14. Another Constitution Bench of the Supreme Court in the case of S.G. Jaisinghani Vs. Union of India (UOI) and Others, has held that:

Under Article 16 of the Constitution, there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State or to promotion from one office to a higher office thereunder. Article 16 of the Constitution is only an incident of the application of the concept of equality enshrined in Article 14 thereof. It gives effect to the doctrine of equality in the matter of appointment and promotion. It follows that there can be a reasonable classification of the employees for the purpose of appointment or promotion. The concept of equality in the matter of promotion can be predicated only when the promotees are drawn from the same source. If the preferential treatment of one source in relation to the other is based on the differences between the said two sources, and the said differences have a reasonable relation to the nature of the office or offices to which recruitment is made, the said recruitment can legitimately be sustained on the basis of a valid classification.

15. Yet another Constitution Bench of the Supreme Court in the case of The Direct Recruit Class-II Engineering Officers' Association and others Vs. State of Maharashtra and others, held as under:

Where appointments are made from more than one source, it is permissible to fix the ratio for recruitment from the different sources, and if rules are framed in this regard they must ordinarily be followed strictly. But if it becomes impossible to adhere to the existing quota rule, it should be substituted by an appropriate rule to meet the needs of the situation. In case, however, the quota rule is not followed continuously for a number of years because it was impossible to do so the inference is irresistible that the quota rule had broken down. Where the quota rule has broken down and the appointments are made from one source in excess of the quota, but are made after following the procedure prescribed by the rules for the appointment, the appointees should not be pushed down below the appointees from the other source inducted in the service at a later date.

16. The Supreme Court in the case of P. Murugesan and Others Vs. State of Tamil Nadu and Others, following the judgment in Triloki Nath Khosa held as under :

Where direct recruits and promotees are integrated into a common class, they could for purposes of promotion to the higher cadre be classified on the basis of educational qualifications. When the rules can be framed barring altogether the diploma holders from promotion, the rule making authority cannot be precluded from restricting the promotion. The rulemaking authority may be of the opinion, having regard to the efficiency of the administration and other relevant circumstances that while it is not necessary to bar the diploma holders from promotion altogether, their chances of promotion should be restricted.

17. Therefore, the law on the point is well settled. Where direct recruits and promotees are integrated into a common cadre, they could for the purposes of promotion to the next higher cadre, be classified on the basis of educational qualifications. The classification is clearly correlated to the higher educational qualifications. At least it has a presumptive evidence of a higher mental equipment. Formal education may not always produce excellence, but a classification founded on valiant educational qualifications is, for purposes of promotion is not unjust. Discrimination is the essence of classification and does violence to the constitutional guarantee of equality, only, if it rests on an unreasonable basis. Classification must be truly founded on substantial differences which distinguish persons grouped together from those left out of the group and such differential attributes must bear a Just and rational relation to the object sought to be achieved. Article 16 gives effect to the doctrine of equality in the matter of appointment and promotion. It follows that there can be a reasonable classification of the employees for the purpose of appointment or promotion. The concept of equality in the matter of promotion can be predicated only when the promotees are drawn from the same source. If the preferential treatment of one source in relation to the other is based on the differences between the said two sources, and the said differences have a reasonable relation to the nature of the office or offices to which recruitment is made, the said recruitment can legitimately be sustained on the basis of a valid classification. Therefore, the promotions based on the higher qualification among the persons from a common class is not arbitrary and suffers from the vice of discrimination under Articles 14 and 16 of the Constitution of India,

18. In view of the aforesaid legal position the action of the respondents cannot be found fault with. Though persons appointed directly and by promotion were integrated into common class of AE (Electrical), they could for the purposes of promotion to the cadre of AEE be classified on the basis of educational qualification subject to a rule providing for such differentiation. Clause 7(d) was enacted for the said purpose. Such a rule do not violate Articles 14 and 16 of the Constitution. The promotion to the upgraded posts are made on the basis of Clause 10 which rule has not been challenged at all.

19. For the aforesaid reasons we do not find any merit in these appeals as well

as in W.P.No. 29573/1996. Accordingly they are dismissed.
Parties to bear their own costs.