

(2007) 11 KL CK 0013

In the High Court Of Kerala

Case No : WA No's. 1297, 1580 and 2220 of 2007

The Kerala State Electricity Board

APPELLANT

Vs

Siniya Mol C.S. and Others

RESPONDENT

Date of Decision : 21-11-2007

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 16

Citation : (2007) 4 ILR (Ker) 853 : (2008) 1 KLT 30

Hon'ble Judges : T.R. Ramachandran Nair, J;K.S. Radhakrishnan, J;A.K. Basheer, J

Bench : Full Bench

Advocate : N.N. Sugunapalan, SC, for the Appellant; No Appearance, for the Respondent

Final Decision : Allowed

Judgement

K.S. Radhakrishnan, J.—WP(C). 18140 of 2006 was preferred by respondents 1 to 5 herein seeking a writ of certiorari to quash Exts.P2 and P3 by which the women candidates were prohibited from being considered for appointment to the post of Electricity Worker (Mazdoor) and also sought for a writ of mandamus directing the 2nd respondent, Kerala Public Service Commission to issue erratum notification providing opportunities to the women candidates who are desirous of getting appointment as Electricity Workers (Mazdoor). Challenge was made against the above mentioned orders on the ground that it violates the fundamental rights guaranteed by the Constitution as there is a hostile discrimination on the ground of sex. Learned single Judge made a theoretical exposition of law and general equality and held that the exclusion of women based on sex for being considered for the post of Electricity Worker would offend Articles 14, 15 and 16 of the Constitution of India. Learned single Judge held that Exts.P2 and P3 are unconstitutional to the extent they deny opportunities to female candidates from applying for the post of Electricity Worker under the direct recruitment quota. Aggrieved by the same the Kerala State Electricity

Board has filed WA. No. 2220 of 2007. W.A. No. 1297 of 2007 was preferred with leave by persons who have come out successful in the written examination conducted by the P.S.C. for the post of Electrical Worker. W.A. No. 1580 of 2007 was preferred by the Kerala Public Service Commission assailing the judgment of the learned single Judge contending that the exclusion of women are not illegally based on sex but on relevant criteria and consideration. We fully endorse the view of the learned single Judge that experience and history have proved that women are as competent and capable as men in a number of jobs and posts which were once upon a time considered to be the monopoly of men. Women were proved to be Judges, administrators, scientists, doctors, engineers lawyers, social activists, politicians etc. Women have established their mettle as pilots, truck drivers, archaeologists, effective team members in exploration ventures, voyages and space crafts. Considering all what we have said above it cannot be said that men and women are physically equal and are equal in all occupations and all situations. Biologically there is difference between men and women. Apex Court in Miss C.B. Muthamma, I.F.S. Vs. Union of India (UOI) and Others, has highlighted the possibility of differential treatment as follows:

We do not mean to universalise or dogmatise that men and women are equal in all occupations and all situations and do not exclude the need to pragmatise where the requirements of particular employment, the sensitivities of sex or the peculiarities of societal sectors or the handicaps of either sex may compel selectivity. But save where the differentiation is demonstrable, the rule of equality must govern.

2. A Division Bench of this Court in Rajamma v. State of Kerala 1983 KLT 457 while dealing with Special Rules for the Kerala Last Grade Service, 1966 which prescribes cycling qualification in the case of women for appointment to the post of peon held as follows:

This social change must necessarily have its impact upon traditional perspectives concerning women's role and that must call for change in our laws, particularly so in the light of the constitutional mandate of equality. Rules should not operate as a deterrent to such change, but promote it. A time must necessarily come when all posts excepting those which due to physical reasons a woman cannot take up must be available to them. The attempt should not be to perpetuate discrimination but to obliterate it. We are sorry to see that the list of excluded categories started with a small number, namely 12 but is growing rapidly in size as newer and newer categories of posts are added to the excluded categories in the Last Grade Service.

3. Apex Court in Secretary, Sree Ujjini, J.S.V.V. Sangha Vs. R.H.M. Channabasava Swamy, stated that Articles 15 and 16 do not prohibit special treatment of women. The constitutional mandate is infringed only where the females would have received same treatment with males but for their sex. We are of the view, on ultimate analysis, though we also advocate for general equality, as held by the Apex Court in Muthamma's case, the court cannot universalise or dogmatise

that men and women are equal in all occupations and all situations and do not exclude the need to pragmatise where the requirements of particular employment, the sensitivities of sex or the peculiarities of societal sectors or the handicaps of either sex may compel selectivity. Then we should judge whether the requirements of the post of electrical worker would demand selectivity. The duties and functions of the Electricity Worker in the Electrical wing of the Kerala State Electricity Board are as follows:

1. Wear prescribed uniform while on duty.
2. Assist 11 K.V./L.T. Line route survey.
3. Convey 11 K.V./L.T. line materials including all kinds of line support and all tools and accessories to the work site under supervision.
4. Load 11 K.V./L.T. line materials line supports. U.G. cables, transformers and allied equipments, meters, tools and accessories into Departmental/Private Vehicles from Stores/Section Officers/such other locations specified by the superiors and to unload and stacking them carefully and properly at the locations decided by the Superiors.
5. Do the complete works connected with the distribution and dismantling of 11 K.V./L.T. line including erection of transformer and accessories under supervision.
6. Return all the tools and balance materials from work site to the Section Office/Store of to any location specified by the superiors.
7. Carry out complete U.G. 11 K.V./L.T. Cable laying and allied works including excavation of cable trench, spreading of river sand, laying of bricks etc. and back filling including digging out old 11 K.V. cable when required, under supervision.
8. carry out the works of dismantling of service connections and conveying the materials back to section office under supervision.
9. Install street light at locations specified by the superiors under supervision.
10. cut and remove all the undergrowth and overhanging of trees, shrubs etc. not requiring the service of a wood cutter along/across 11 K.V./L.T. lines under supervision.
11. Scrape and paint transformers, structures, metal parts, number the posts and consumer's premises, number the trees proposed to be cut and removed plant traffic signals on line supports, paint line supports and all other similar works under supervision.
12. Assist in the repair and maintenance of 11 K.V./L.T. lines, transformers 11 K.V./L.T. structures, street lights, tools and plant and other accessories.
13. Clean the transformer/11 K.V. switch yard under supervision.
14. Assist in the work of effecting all sorts of W.P. and O.H. and H.T. service

connections.

15. Stack the materials neatly at the section store/circle store as per directions of superiors.

16. Report to the superiors regarding any fault in the L.T./11 K.V. line or any misuse/tampering of Board's property if noticed to the superiors promptly.

17. Attend telephone calls promptly and politely during emergency situation as per instruction.

18. Carry out any other work which are specifically entrusted.

4. We are of the view, looking at the job requirements and its nature and the peculiarities it cannot be said that women were discriminated merely on the ground of sex. If women in large number are appointed as Electricity Workers, it may affect the efficiency and function of the Board, taking into consideration peculiar and duties to be performed by the Electricity Workers. Work to be carried out by the Electricity Workers is hazardous nature and risk and requires considerable physical exertion which the women employee could not be met. Women workers are also entitled to maternity benefits and they cannot be engaged the work during the entire period of pregnancy, otherwise which would affect the total efficiency of the Board, it may also affect public interest. We are of the view, learned single Judge universalised or dogmatised that men and women are equal in occupations and all situations and mainly relied philosophical principles of discrimination of women which prevails in various countries and the dictum laid down in various decisions. We are of the view, looking at the nature of duties to be discharged by an electrical worker, differentiation between men and women is demonstrable taking into consideration the requirements of job in question. True certain women were promoted and appointed as electrical workers in the quota allotted to them and certain persons were also appointed on compassionate employment scheme. Since the number of those workers are comparatively low, there is no difficulty in carrying on the work. We therefore find no infirmity in Exts. P2 and P3 orders warranting interference by this court. We are not prepared to say that the notification issued by the Public Service Commission violates Articles 14, 15 and 16 of the Constitution of India. Under such circumstance we are inclined to allow all these appeals and set aside the judgment of the learned single Judge.