

(1998) 10 MAD CK 0096

In the Madras High Court

Case No : W.A. No"s. 176 and 177 of 1992

Vijayan K. and Others

APPELLANT

Vs

Tamil Nadu Electricity Board and Others

RESPONDENT

Date of Decision : 15-10-1998

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (1999) 3 LLJ 1083 : (2000) WritLR 16

Hon'ble Judges : Shivraj Patil, J;M. Karpagavinayagam, J

Bench : Division Bench

Advocate : K. Chandru, for D. Hariparanthaman, for the Appellant; K.V. Venkatapathi, General for A.N. Sivaprakasam, for the Respondent

Judgement

M. Karpagavinayagam, J.—These writ appeals are directed against the common order passed in W.P. Nos. 718 and 1136 of 1990 by the learned single Judge dated January 6, 1992 dismissing those writ petitions.

2. The prayer made by the petitioners before the learned single Judge is as follows:

"It is prayed that this Hon"ble Court may be pleased to pass orders, issue directions and writs as may be deemed fit and in particular issue a writ in the nature of Certiorarified Mandamus after calling for the records from the 1st respondent-Tamil Nadu Electricity Board represented by its Chairman relating to B.P.Ms (CH) No. 66, Administrative Branch, dated February 1, 1986 and quash para 4 (iv) of the said B.P. and direct the respondents to promote the petitioners to the cadre of Foreman Grade-I from the seniority list of Assistant Commercial Inspectors in Memo No. AEM/II/F14/ 645-80-1, dated November 13, 1980 and render justice."

3. The short facts leading to the filing of these appeals which are relevant for the disposal could be summarised as follows:

"The appellants who joined as temporary casual labourers were periodically

promoted as helpers and Commercial Assistants. While they were working as Commercial Assistants, a settlement dated February 29, 1980 was entered into between the Tamil Nadu Electricity Workers Federation and the Tamil Nadu Electricity Board regarding the work allocation and staff pattern in respect of field workmen in operation and maintenance distribution system. Following the settlement, B.P. Ms. No. 123, dated March 1, 1980 was issued incorporating the terms of the settlement dated February 29, 1980. Prior to the said settlement dated February 29, 1980 and the B.P. 123, there was a common seniority for Wireman and Commercial Assistants, though the post of Wireman is a technical post, whereas the post of Commercial Assistant is a non-technical post. From the common seniority list of Wireman and the Commercial Assistant, promotion was given to the post of Lineman and from there to the post of Line Inspector and then to the post of Foreman Grade-I, prior to B.P. 123. As per the settlement dated February 29, 1980 and B.P. Ms. No. 123, dated March 1, 1980, a new category of Assistant Commercial Inspector was created. By this settlement, the Commercial Assistant would be promoted as Assistant Commercial Inspector and then Commercial Inspector. The posts of Commercial Assistant, Assistant Commercial Inspector and Commercial Inspector are non-technical posts.

Further, through the said B.P. the technical and non-technical posts were separated and the Commercial Assistants were asked to exercise their option either to opt to the line of promotion as Commercial Assistant to Assistant Commercial Inspector and Assistant Commercial Inspector to Commercial Inspector or to the Lineman, Line Inspector and Foreman. In pursuance to the said B.P. 123, dated March 1, 1980, all the Commercial Assistants including the appellants were promoted as Assistant Commercial Inspectors by Memo No. AEM II/A1/F14/645/SO-1, dated November 13, 1980. Since there is no indication for promotion chance to the post of Foreman through the Commercial Inspector, the appellants exercised their option to the promotional line of Lineman/Line Inspector/Foreman expecting that in course of time they would be promoted as Foreman Grade-I. Out of 22 Assistant Commercial Inspectors, 7 persons including the appellants alone had exercised their option to become Lineman. While all the appellants were working as Lineman expecting the promotional chance of Line Inspector, to their shock and surprise, the first respondent-Tamil Nadu Electricity Board issued the impugned proceedings in B.P.Ms. (CH) No. 66, Administrative Branch, dated February 1, 1986, varying the line of promotion in B.P. 123, dated March 1, 1980 by permitting various categories to become Foreman Grade-I including the category of Commercial Inspectors. Thereupon, by using the impugned B.P. the other Assistant Commercial Inspectors who were promoted along with the appellants by the Memo dated November 13, 1980, who are all juniors to the appellants, were promoted as Commercial Inspectors and then posted as Foreman Grade-I. Thus, by virtue of the impugned B.P. the Assistant Commercial Inspectors who opted for the line of promotion of Assistant Commercial Inspector to Commercial Inspector, who are juniors to the appellants have been promoted as Foreman and the Assistant Commercial Inspectors like

the appellants, who opted for the promotional line of Lineman, Line Inspector and Foreman have to work under them.

As a matter of fact, B.P. 123, dated March 1, 1980 and the terms of settlement dated February 29, 1980 did not indicate that the persons who opted for the line of promotion to the Commercial Inspectors also would be promoted as Foreman. If such an indication was there, the appellants would have opted to remain in the promotional line from Assistant Commercial Inspector to Commercial Inspector. Since there was no such provision, while the appellants were promoted as Assistant Commercial Inspectors by the Memo dated November 13, 1980, the impugned B. P. para 4 (iv) was challenged in the writ petitions on the ground that it is arbitrary, illegal, unjust and opposed to the Article 14 of the Constitution.

This contention was opposed by the respondents mainly on the ground that the Foreman Grade-I is the next category to Line Inspector/Commercial Inspector which deals with all the works in Section Office as well as technical and non-technical with greater responsibility, that the Board proceedings in B.P. Ms. No. 66, dated February 1, 1986 was issued to liberalise the promotion opportunities as well as to ensure promotion to the individuals who are having some minimum field experience in the type of work concerned and that since the appellants had opted for promotion as Lineman/Line Inspector, they have no right to claim promotion based on the seniority in the post of Assistant Commercial Inspectors held in the year 1980.

After hearing the parties, the learned single Judge upholding the submission made on behalf of the respondents dismissed the writ petitions holding that the appellants having opted to come over to the line of categories of Lineman/Line Inspector, have lost their rights to the post of Assistant Commercial Inspector with effect from April 1, 1980 and that just because the chance of promotion for the appellants got reduced comparatively to the Assistant Commercial Inspectors who have opted to the promotional line to the Commercial Inspectors cannot be taken as a ground as an alternative condition of service."

4. Mr. Chandru, the learned senior counsel for the appellants and Mr. K.V. Venkatapathi, the learned Advocate General appearing for the respondents would reiterate their respective pleas by making elaborate submission before this Court.

5. We have carefully considered the merits of the rival contentions and gone through the order of the learned single Judge and the impugned proceedings.

6. Admittedly, the appellants were promoted as Assistant Commercial Inspectors by virtue of the Memo No. AEM/II/A1/F14/645/80-1, dated November 13, 1980 pursuant to the B.P. 123, dated March 1, 1980 and the terms of settlement arrived at on February 29, 1980. A common seniority list for Wiremen and Commercial Assistants was maintained prior to February 29, 1980 on which date a settlement was entered into between the Tamil Nadu Electricity Workers' Federation and the Tamil Nadu Electricity Board. Prior to the said settlement, the

next promotional opportunity from Lineman is Line Inspector and then Foreman Grade-I. After the settlement, in B.P. No. 123, dated March 1, 1980 a new post was created as Assistant Commercial Inspector. In technical post the avenue of the promotion is Wireman, Lineman, Line Inspector and then Foreman Grade-I. The other line of promotion in the non-technical post is Commercial Assistant, Assistant Commercial Inspector and Commercial Inspector, The appellants were working as Linemen after they were promoted as Assistant Commercial Inspectors on November 13, 1980, since they opted for the line of promotion to the Line Inspector and then to Foreman.

7. The grievance expressed by the appellants is by virtue of the Board Proceedings in B.P. Ms. (CH) No. 66, dated February 1, 1986, the juniors of the appellants, namely, the other Assistant Commercial Inspectors, who opted for the line of promotion of Assistant Commercial Inspectors to Commercial Inspectors, have been now promoted as Foreman and in that process, the appellants have to work under them. The reading of B.P. 123, dated March 1, 1980 and the terms of settlement arrived at on February 29, 1980 would not indicate that there is a provision made for promotion to the cadre of Foreman on the basis of the seniority list of Assistant Commercial Inspectors dated November 13, 1980. That was the reason, according to the appellants, they have opted to the promotional line through Lineman. Now, by virtue of impugned proceedings, especially by para 4 (iv) of the impugned Board Proceedings, a new provision has been introduced by which the entire terms of settlement has been varied providing quick promotional chances to the juniors of the appellants to become Foreman Grade-I under whom the appellants have to work.

8. It is true that the appellants had exercised their option to come over to the line of categories of Lineman, Line Inspector and then to Foreman. It does not mean that they had given up their option for promotion as a Foreman in the promotional line through the Commercial Inspector. The very necessity of the issuance of the impugned proceedings by giving promotional chances for the Commercial Inspectors as Foreman by providing Clause 4(iv) of the Board Proceedings would itself indicate that there is no chance for promotion as Foreman, if non-technical promotional line was chosen.

9. In that view of the matter, the impugned proceedings would definitely affect the seniority list, since the appellants as well as the other Assistant Commercial Inspectors were appointed on the same day by Memo dated November 13, 1980. Therefore, there is no difficulty in coming to the conclusion that the appellants had genuine grievance, in view of the impugned Board Proceedings of the respondent Board issued in B.P. Ms. (CH) No. 66, Administrative Branch, dated February 1, 1986.

10. At the end of the arguments, the learned Advocate General has brought to our notice that a fresh Board Proceedings in B.P. No. 106, dated April 9, 1996 has been issued clubbing both the categories for promotion chances by which the grievance of the appellants has been redressed. The relevant portions in the said

proceedings are as follows:

"3. After careful consideration of the above demand of the unions and taking into account of the views expressed by them during negotiation, the Board hereby orders:

(i) on and from the date of issue of this order, the line of promotion among the R.W.E. categories in Distribution Circles will be Helper-Wireman (and/or equivalent categories)/Commercial Assistant-Lineman (and/or equivalent categories)-Line Inspector/Commercial Inspector-Foreman I Grade. Consequent on the re-introduction of single channel of promotion ordered, there will be no change in the existing condition/qualification prescribed in the Service Regulations for promotion to the higher post;

(ii) Clubbing the category of Commercial Assistant and Commercial Inspector in the existing seniority of Wireman/Line Inspector the inter se seniority among the categories of employees may be fixed on the basis of their seniority in the category of Wireman so as not to affect the chances of promotion of some of the Wiremen who are seniors to the Commercial Assistants while they were in the category of Wireman."

11. We are informed that now the petitioners are already promoted, and in view of the Board Proceedings in B.P. No. 106, dated April 9, 1996 there may not be any need to quash and the B.P. Ms. No. (CH) 66, Administrative Branch, dated February 1, 1986. The Board is now required to accord notional promotion to the petitioners from the date they were entitled, and the seniority is to be re-fixed. All the parties likely to be affected by re-fixation of seniority are not before this Court. We think it is appropriate to direct the Board to hear all the parties concerned, and fix the inter se seniority between the petitioners and the persons who are likely to be affected.

12. In the result, the writ appeals are ordered accordingly. No costs.