

(2009) 06 KL CK 0120

High Court Of Kerala

Case No: WA. No. 540 of 2008

Sreekala B. Nair, Assistant
Engineer and Others

APPELLANT

Vs

State of Kerala, Kerala State
Electricity Board, Chief Engineer
(HRM) and P. Ramachandran,
Assistant Executive

RESPONDENT

Date of Decision: June 2, 2009

Acts Referred:

- Constitution of India, 1950 - Article 14, 16

Hon'ble Judges: K. Balakrishnan Nair, J; C.T. Ravi Kumar, J

Bench: Division Bench

Advocate: Millu Dandapani, for the Appellant; Asok M. Cheriyan, SC, for the Respondent

Final Decision: Dismissed

Judgement

K. Balakrishnan Nair, J.

W.A. No. 540/2008:

1. The writ petitioners are the appellants. They are Assistant Engineers, working under the Kerala State Electricity Board. They are graduates in Engineering. Their next promotion post is Assistant Executive Engineer. The qualifications and method of appointment for filling up the post of Assistant Executive Engineer are prescribed by Ext.P1 Board Order dated 30.3.1962. The Electricity Board, in fact, adopted Ext.P2 Government Order issued by the Government, prescribing the qualifications and method of appointment for the corresponding post in the Public Works Department. Degree holders and Diploma holders are eligible for promotion to the post of Assistant Executive Engineer. In Ext.P2 the post is described as Assistant Engineer and the feeder post as Junior Engineer. Now, those posts have been re-designated as Assistant Executive Engineer and Assistant Engineer respectively. Ext.P1 Board

Order prescribes a ratio of 3 : 1 between Engineering Graduates and Diploma holders, for promotion to the post of Assistant Executive Engineer from the post of Assistant Engineer.

2. The grievance of the appellants is that by operation of that ratio, the junior Diploma holders in the cadre of Assistant Engineer are superseding them and getting promotion to the post of Assistant Executive Engineer. To get over this anomaly, the Government have issued Ext.P4 Government order, to govern the promotions to the post of Assistant Executive Engineer in the P.W.D. But, the K.S.E.B has chosen not to adopt that Government order. The result is that the anomaly, that is, a junior with inferior qualifications superseding a senior with superior qualifications, is continuing. The appellants point out that the 4th respondent herein is a junior Diploma holder, who got promotion, superseding them. In the above background, the appellants seek appropriate reliefs against their supersession by junior Diploma holders. The learned Single Judge dismissed the Writ Petition, relying on two unreported decisions of this Court. Hence this appeal.

3. The appellants would submit that Assistant Engineers form a homogeneous class. Therefore, for further promotion, the prescription of a ratio is unwarranted. But, of course, the law permits prescription of a ratio between the Degree holders and the Diploma holders. The same is meant to give a chance to the Diploma holders with longer years of service in the feeder category. But, such a prescription should not be allowed to work injustice to senior Degree holders. Therefore, the appellants submit that the learned Single Judge should have allowed the Writ Petition.

4. We heard the learned Counsel appearing in the connected Writ Appeals also. They reiterated the aforementioned submissions.

5. We heard the learned standing Counsel for the K.S.E.B and also the learned Counsel appearing for the contesting party respondents. According to the learned standing Counsel for the K.S.E.B., the point raised by the appellants is covered against them by the decision of the Full Bench of this Court in Sugathan v. Shahul Hameed 2006(4) KLT 54 (FB). Special reference was made to para 15 of that judgment.

6. Initially, the prescription of a ratio between the Degree holders and the Diploma holders for appointment to the next higher post, as done in this case, was frowned upon by the Apex Court in several decisions. But, later, the Apex Court upheld the prescription of the ratio between the Degree holders and the Diploma holders, which was heavily biased in favour of the Degree holders. The reason was that majority of the promotees to the higher post should be from the Degree stream, so that efficiency of the service is maintained. But, the prescription of a small percentage of posts for the Diploma holders was tolerated, so that the morale of the Diploma holders also is maintained. But, such a prescription of ratio in this case is causing serious prejudice to the Degree holders. Persons with inferior qualifications

and lesser service are getting promoted to higher posts and acting as superiors of their erstwhile colleagues, who were seniors in the feeder category and who were having superior qualifications also. Normally, such a prescription will offend Articles 14 and 16 of the Constitution of India, for treating unequals as equals. But, in this case, we find that the point raised by the appellants is covered against them by the decision of the Full Bench of this Court in *Sugathan v. Shahul Hameed* (supra). The relevant portion of the said judgment reads as follows:

15. The position now as presented before us, is exactly the converse of the position obtaining in *Chandran's* case (supra). When the Excise Guards who do not have SSLC qualification were held to be disentitled to complain when converse situation arises, the Excise Guards possessing SSLC qualification cannot also complain when the same logic goes against them. As we have already indicated, the change of seniority is an incidence of service when promotion is prescribed from two channels as in this case, namely, from Excise Guards holding SSLC qualification and those who do not. In fact this was exactly what has been decided in *Gibson's* case supra. When change of seniority is a necessary consequence of the ratio rule that cannot also be offset by bringing in a Government Order in the guise of a clarification to remedy an alleged anomaly in the matter of a senior SSLC qualified Excise Guard being overtaken by a junior Excise Guard without SSLC qualification. The very prescription of ratio envisages the by-passing of the seniority rule, which is the normal rule for effecting promotion. Of course, members of both category can complain if juniors in their own category are promoted in preference to them. But they cannot complain when their juniors in the other category is promoted ahead of them, to satisfy the rule regarding ratio between the two categories, since that is an unavoidable consequence of the ratio rule prescribed by the Special Rules. Further, loss of seniority on implementation of ratio rule is not unique to the Excise and Subordinate Service, since such ratio prevails in very many other services also under the Kerala Government itself.

In view of the above authoritative pronouncement, which binds us, the Writ Appeal is bound to fail. In the result, the Writ Appeal is dismissed.

W.A. Nos. 2936 & 2960/2007:

7. In view of the judgment in W.A. No. 540/2008, these Writ Appeals are also dismissed.