

PETITIONER:
ASSAM STATE ELECTRICITY BOARD & ORS.

Vs.

RESPONDENT:
GAJENDRA NATH PATHAK & ORS.

DATE OF JUDGMENT: 03/09/1997

BENCH:
SUJATA V. MANOHAR, D. P. WADHWA

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

D.P. Wadhwa, J.

Assam State Electricity Board (for short the Board) is aggrieved by the judgment dated April 21, 1988 of the Division Bench of the Gauhati High Court giving directions to the Board to take necessary steps to consider the cases on the petitioners (now the respondents) for promotion to the higher post. This would be done within a period of two months of the receipt of this order by them. Subsequently also, the petitioners (now the respondents) would be treated alike the junior Engineers for further promotion." There are four respondents who were petitioners in the writ petition before the Gauhati High Court in which the aforesaid direction was issued.

The Board is constituted under the Electricity (Supply) Act, 1948 (for short 'the Act'). In the exercise of powers conferred upon it under Section 79(c) of the Act it has framed Regulation called "the Assam State Electricity Board Engineering Service Regulations, 1973 (for short 'the Regulation').

The respondents are either matriculate or non-matriculate and are holding certificates and were appointed by the Board during the period from 1957 to 1963 to the Subordinate Engineer Grade II. Prior to the Regulation, there existed a cadre of Subordinate Engineer Grade I which was composed of

- (i) Direct Recruitment of not less than 85% of the cadre I, who have passed the H.S.S.L.C examination (now it is H.S.S.L.C. (10+2) and possess 3/4 years diploma in Electrical/Mechanical Civil Engineering from any engineering institute recognised by the Government; and
- (ii) Such promotees from the rank of Subordinate Engineer Grade II and other rank subject to 15% of the post of Subordinate Engineer Grade I.

A direct recruit to subordinate Engineer grade it must have passed the H.S.L.C. Examination and possessed a 2 year National Trade Certificate or equivalent from an institute recognised by the State Government. After the Regulation came into force candidates who were diploma holders in the Subordinate Engineer Grade I were designated as Junior Engineer. Under clause (vii) of Regulation 2 of the Regulation "Junior Engineer" means a Subordinate Engineer Grade I who is at least a matriculate and who possesses a 3 or 4 years diploma in Civil/Mechanical/Electrical Engineering from a recognised Institute and who has been designated appointed as such. Under clause (xii) "Subordinate Engineer Grade-I" means Overseers Grade-I, computers, Draftsman Grade-I, Foreman Grade-I (Electrical/Mechanical and Civil) and holders of such other posts as may be specified by the Board from time to time. The Regulation also prescribed promotional avenues for Junior Engineers who were earlier in Subordinate Engineer Grade-I and were diploma holders. The respondents who were not diploma holders were left out and they who were recruited in Subordinate Engineer Grade II would be promoted to Subordinate Engineer Grade I and then to Foreman. Junior Engineers could go up even to become Executive Engineers. During the course of arguments we were told that after 1968 no certificate holder has been appointed in the service of the Board and there has not also been any direct recruitment to Subordinate Engineer Grade II from May 3, 1971. By the impugned judgment the High Court has equated the certificate holders to diploma holders and directed that they be promoted alike the Junior Engineers to go up to the rank of executive engineer. This the High Court could not do in the face of the statutory rules the validity of which was never under challenge. As a matter of fact it was not the prayer of the respondents in the writ petition. What they sought was for cancelling, recalling or otherwise forbearing the Board to give effect to the Memos dated 19.1.73, 20.8.82, 27.3.82, 24.5.82 and 11.8.82.

In the first memo dated January 19, 1973 it was mentioned that the Board had decided to introduce a new cadre of posts with the designation of Junior Engineer with effect from January 1, 1973 and prescribing scale of pay for this cadre. it was mentioned that the scale would be admissible to those incumbents who were at least matriculate and who possessed three or four years diploma in civil, electrical, mechanical engineering or having higher qualification. The existing subordinate engineers Grade-I possessing the above qualification were automatically to be fitted in the scale mentioned in the memo and designated as Junior Engineer with effect from January 1, 1973 unless any one of them opted to retain his existing pay scale. In the second memo dated August 20, 1980 again issued by the Board certain channel of promotion was introduced for "blind alley" posts and to improve the existing channel of promotion where promotional avenues were not many. In the third Memo dated March 27, 1982 the Board accepted the principle of fitting in the promotee Assistant Engineers/SDOs possessing minimum qualifications matriculate with 3/4 years diploma in electrical/mechanical/civil engineering in the rank of Assistant Engineer with a pay-scale higher than that prescribed for Assistant Engineers. 4th memo dated May 24, 1982 is a letter from personnel Manager of the Board to the Chief Engineer(E) of the Board informing him that the cadres of subordinate Engineers Grade-I (Subordinate Engineer Grades II and III) could not be equated with Subordinate Engineer Grade-I was a diploma

holder and that in the Board such Subordinate Engineers who held diploma of a 3 years were redesignated as Junior Engineers in 1973. It was pointed out that after 1973 a subordinate Engineer Grade I in the Board did not possess diploma while in the corresponding Grade in the State of Subordinate Engineers grade I an employee did possess diploma qualification. 5th memo is also a letter dated August 11, 1982 from the office of the Chief Engineer (Electrical) of the Board to its Executive Engineer referring to the letter dated May 24, 1982 pay of the first respondent be refixed in Subordinate Engineer Grade I with effect from January 1, 1973 and excess amount already paid to him due to irregular fixation of his pay be recovered. It will be noticed that the first respondent though matriculate was a certificate holder and joined as Subordinate Engineer Grade-II and promoted to Grade-I.

It will be thus seen that the relief granted by the High Court went beyond the prayer made by the respondents in their petition. Be that as it may a classification on the basis of qualification that is between diploma holders and non diploma holders or between diploma holders and graduate engineers is a valid classification and the High Court could not have wiped out the distinction among the employees possessing different qualifications. We do not think it was right for the High Court to observe that since it was not informed of the benefit of knowing as to why a distinction had sought to be made by the Regulation between the persons undergoing the certificate course in ITI and those who had obtained diplomas by undergoing 3/4 years course and thus a mere nomenclature of diploma holder and non-diploma holder would make any difference.

The law is quite well settled by the various decisions of this court that classification on the basis of qualification is valid and in fact this was not disputed by the respondents.

The appeal is accordingly allowed, the impugned judgment of the High Court is set aside and the writ petition filed by the respondents is dismissed. There will be no order as to costs.