

CASE NO.:
Appeal (civil) 2409 of 2007

PETITIONER:
Sohan Singh Sodhi

RESPONDENT:
Punjab State Electricity Board, Patiala

DATE OF JUDGMENT: 09/05/2007

BENCH:
S.B. Sinha & Markandey Katju

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NO. 2409 2007
[Arising out of S.L.P. (C) No. 21020 of 2006]

S.B. SINHA, J.

1. Leave granted.

2. This Appeal is directed against the judgment and Order dated 31.3.2006 passed by the High Court of Punjab and Haryana at Chandigarh in R.S.A. No. 4871/2003 dismissing an appeal arising from a judgment and order dated 24.4.2003 of the learned A.D.J., Patiala setting aside the judgment and order of the trial judge dated 7.2.2001.

3. The basic facts of the case are not in dispute. Appellant was appointed as a lineman on 8.8.1964. He was promoted to the post of Junior Engineer on 15.3.1974. He was not a diploma holder. Respondent Board which is constituted in terms of Section 15 of the The Electricity (Supply) Act, 1948 and incorporated under Section 12 thereof provided for scale of pay on the basis of the qualifications held by the incumbents. One Ravinder Kumar who was a non-diploma holder filed a suit questioning the purported discrimination in promotion of Lineman to Line Superintendent between diploma holder linemen vis.-'-vis. non diploma holder linemen.

4. The matter came up before this Court in Civil Appeal Nos. 3341 and 3342 of 1983, Punjab State Electricity Board, Patiala & Anr. etc. v Ravinder Kumar Sharma and Ors. reported in AIR 1987 SC 367 wherein this Court held:-

"8. The only issue raised in this appeal is whether defendant 1, that is, the Punjab State Electricity Board, is competent to discriminate between diploma holders and non-diploma holders Line Men forming the common cadre of Line Men having a common seniority list in promoting these line men on the basis of quota fixed by the order of the State Electricity Board even though the requisite qualification for promotion for Line Man to the post of Line Superintendent is either the holding of diploma or certificate for electrical engineering from a recognised institute or the non-diploma holders having passed one and half year's course in the trade of Electrician/Line Man/ Wire Man from recognised Industrial Training Institute and are matriculates and have worked for four years as Line Man continuously and immediately before promotion, as has been provided by the office order No. 97/ENG/BET/G-33 dated 22-10-1968."

5. The only issue which was raised before this Court was as to whether, the Punjab State Electricity Board could make any discrimination for the purpose of promotion between diploma holder and non-diploma holders on the basis of quota fixed by the Order of the State Electricity Board even though the requisite qualification for promotion from line man to the line superintendent is either the holding of the Diploma or Certificate of Electrical Engineering from a recognized institute or having passed 1= year course in Electrical Trades of Electrician/Lineman/Wireman.

6. The claim of Ravinder Kumar was based on a circular letter issued by the respondent Board which was considered by this Court in the said decision in the following terms:-

"11. This observation applies with full force to the present case, and it has been rightly held by the High Court of Punjab and Haryana that the promotion of defendants 3 to 7 who are junior to the plaintiff-respondent from Line Man to the post of Line Superintendent is wholly bad and discriminatory and directed that the petitioner be deemed to have been promoted to the post of Line Superintendent from the date the said defendants 3 to 7 had been promoted from Line Man to Line Superintendent. In our considered opinion there is no infirmity in the judgment of the High Court affirming the judgment and decree of the Courts below and we agree with the reasonings and conclusions arrived at by the Courts below. The two appeals on special leave are, therefore, dismissed with costs quantified at Rs. 5000/- to be paid by the appellant of C.A. No. 3341 of 1983 to respondent 1."

7. We may, however, notice that the matter came up before a three judges Bench of this Court in *P. Murugesan & Ors. v State of Tamil Nadu & Ors.* [(1993) 2 SCC 340] wherein Ravinder Kumar (*supra*) was specially overruled relying inter alia on a decision of a Constitution Bench of this Court in *State of Jammu and Kashmir v Triloki Nath Khosa and Ors.* [1974 (1) SCC 19].

8. It was categorically held therein:-

"19. The learned counsel for the respondents relied upon the decision in *Punjab State Electricity Board v. Ravinder Kumar Sharma*, a decision rendered by a Bench comprising A.P. Sen and B.C. Ray, JJ. The category of linemen in the service of the Punjab State Electricity Board comprised both diplomaholders and others who may be referred to as non-diplomaholders. They constituted one single category having a common seniority list. By means of the rules issued under the proviso to Article 309, a quota was prescribed for diplomaholders, the result of which was that diplomaholders who were far junior to the non-diplomaholders were promoted ignoring the non-diplomaholders. The rule was held to be bad by the learned Subordinate Judge, Patiala. On appeal, the Additional District Judge, Patiala affirmed the judgment. It was affirmed by the High Court as well. The matter was brought to this Court. This Court affirmed the judgment of the High Court. A perusal of the judgment shows that the attention of the Bench was not drawn either to T.N. Khosa or to other decisions. Reference was made only to the observations in *Shujat Ali* quoted hereinbefore and it

was held that the distinction made between the diplomaholders and non-diplomaholders was discriminatory and bad. Apart from the distinction on facts between that case and the case before us, it is evident that non-consideration of T.N. Khosa and other decisions relevant under the subject has led to the laying down of a proposition which seems to run counter to T.N. Khosa. With great respect to the learned Judges who decided that case, we are unable to accept the broad proposition flowing from the case."

9. The learned Trial Judge relied on the decision of Ravinder Kumar (supra) in holding that as both the plaintiff-appellant and Ravinder Kumar are non-diploma holders and belong to the same cadre, the appellant could not have been discriminated against. The First Appellate Court, however, relied on the decision of three Judges Bench of this Court in P. Murugesan (supra).

10. Mr. Gurnam Singh, learned counsel appearing on behalf of the appellant would inter alia contend that as the said Ravinder Kumar Sharma is junior to the appellant, the action on the part of the respondent which is a State within the meaning of Article 12 of the Constitution of India not to grant the same scale of pay is violative of Article 14 of the Constitution of India.

11. The power of State Electricity Board to issue circulars in exercise of its powers under Section 79(c) of the The Electricity (Supply) Act, 1948 is not in dispute. It has the power to frame regulations. If it can frame regulations, in absence of any regulations, issuance of executive orders is permissible in law. The power of framing regulations prescribing conditions of service of its employees appointed by the Board in terms of Section 15 of the Act cannot be disputed. Thus, in absence of any rules or regulations governing the service conditions of its employees, issuance of administrative order is permissible in law vide Meghalaya State Electricity Board and Another v Jagadindra Arjun [(2001) 6 SCC 446].

12. The circular issued by the Board provided for parity in the scale of pay in the induction post and not on a higher post. The said circular, therefore, has no application in this case. The jurisdiction of the Board to lay down different scales of pay for the employees on the basis of educational qualification per se is not discriminated. {See Triloki Nath Khosa (supra), See also State of Punjab and Another v Kuldeep Singh and Another [(2002) 5 SCC 756] }.

13. In P. Murugesan (supra), it was clearly held:-
"005. Looked at from this broad angle, it may appear there is some force in what the respondents contend viz., that once the graduate engineers and diplomaholder engineers constitute one class, perform same duties and discharge same responsibilities, placing a restriction on the diplomaholders alone (limiting their chances of promotion to one out of four promotions, as has been done by the impugned Amendment) is not justified but this may be a too simplistic way of looking at the issue. We cannot fail to take note of the fact that right from 1974 i.e., since the decision of the Constitution Bench in Triloki Nath Khosa 1 this Court has been holding uniformly that even 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 . "

14. No doubt Ravinder Kumar was junior to the appellant but his case has become final due to the decision in Ravinder Kumar (supra). However, that

decision has been overruled by a larger bench of this Court, and hence the appellant before us can get no benefit from the fact that his junior has been promoted. Article 14 will have no application in such a case.

15. In *Government of W.B. v Tarun K. Roy & Others* [(2004) 1 SCC 347], a three judges Bench of this Court, noticing several other decisions opined that parity in the pay cannot be claimed when the educational qualification is different.

16. There is no merit in this appeal, which is dismissed accordingly.

JUDIS