

SYRYA NARAIN YADAV & ORS.

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v.

BIHAR STATE ELECTRICITY BOARD & ORS.

May 8, 1985

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[S. MURTAZA FAZAL ALI. A. VARADARAJAN AND RANGANATH
MISRA, JJ.]

Service Law—Right to absorption in service on the basis of representations made—Applicability of the equitable doctrine of promissory estoppel to State employees who, relying on representations and promises made by the public body have altered their position to their prejudice and detriment—Seniority Assignment of, clarified.

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Pursuant to the Respondent Board's advertisement for selection of electrical engineers under the "Employment Promotion Programme", the appellants and many others joined as Apprentice Engineers with effect from April 1, 1977. Though in March 1977 i.e. before their appointments, the Board had indicated that the training of six months did not guarantee employment under the Board, in view of its resolution in August 1977 to fill on the basis of chain system 200 vacant posts of Junior Engineers the appellants were asked to continue as Junior Engineers/Assistant Engineers as the case may be on existing stipends and were posted to Thermal Power Stations. Since no regular appointments were made representations were made to the Board to implement the August 1977 resolution without loss of time since some of them would become overaged for employment under Government. On March 8, 1979 at a high level meeting it was decided that (i) After completion of one year's training (which is October 1979) they will be appointed in the post of Assistant Electrical Engineers/Junior Engineers on provisional regular basis; (ii) that they will remain on probation for two years and (iii) that during the period of probation, if their conduct is found satisfactory and on availability of permanent posts and on the basis of *inter se* seniority in the Cadre they shall be confirmed. The aforesaid decision was published on March 13, 1979 pointing out further that those trainees who had left training should also join at the places of their respective postings latest by March 18, 1979 failing which they would not be considered for regular appointments.

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In the meantime, some unemployed Engineers approached the High Court at Patna challenging the continuity of the trainee Engineers in the employment of the Board. The Board took the stand before the High Court that the trainee engineers belonged to a separate class and held *ex cadre* appointments as Assistant Engineers and Junior Engineers. The High Court took the view that their continuity on *ex cadre* basis was not open to challenge on the ground of non-compliance of Rules. In May 1980, these writ petitions were dismissed. Emboldened by the acceptance of their stand by the High

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A Court, the Board started exhibiting a negative approach in its treatment towards the trainee engineers. Ultimately, the appellants moved the High Court for a direction to the Board to encadre them but failed. Hence the appeals by special leave against the decision of the High Court.

Allowing the appeals, the Court

B HELD : 1.1 The Bihar State Electricity Board is a statutory authority and is 'State' within the meaning of Article 12 of the Constitution. [612 E]

C 2.1 The principle of promissory estoppel has full application to the facts of the case. The Board has tried to seek shelter under a set of rules framed by it in exercise of the powers vested under section 79 of the Electricity (Supply) Act of 1949. The defence of the Board that the trainee Engineers continue to serve as Assistant Engineers/Junior Engineers on *ex cadre* basis without seniority and stability of service is ill placed and cannot hold as a shield against the application of the equitable doctrine of promissory estoppel. The records clearly show; (i) the Board did represent to the trainee engineers from time to time that after their training was completed, they would be absorbed in regular employment of the Board; (2) when some of the engineers were getting age-barred for Government employment and had left the Board, they were told to come back under the temptation of getting permanently employed under the Board; (3) when the Board was reeling a strike of its employees, these trainee engineers had stood by the Board to keep up the generation and distribution of electricity and had been assured of absorption; and (4) the Board had decided to absorb them on permanent basis but initially on a probation of two years without conducting any further examination.[612 E-F; 609 E-C]

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Union of India v. Indo-Afghan Agencies [1968] 2 SCR 366; *Collector of Bombay v. Municipal Corporation*, [1952] SCR 43; *Century Spinning & Manufacturing Co. Ltd. v. The Ulhasnagar Municipal Council & Anr.* [1970] 3 SCR 854; *Motilal Padampat Sugar Mill Co. Ltd. v. State of Uttar Pradesh & Ors.* [1979] 2 SCR 409 followed.

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[The Court directed that the appellants being already in employment of the Board much prior to 1983 on being taken into regular appointment of the Board have to rank above the recruits of 1983 and in the years thereafter; and rank below the permanent and temporary recruits to regular posts of engineers held under the Board prior to 1983.] [613E-F]

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CIVIL APPELLATS JURISDTCTION : Civil Appeal Nos.268 & 269-273 of 1984.

H From the Judgment and Order dated 1.9.1983 of the Patna High Court in C.W.J.C. Nos. 4472/82, 2562/83, 2558/83, 4472/82 and 3558/83 respectively.

Raju Ramachandran and *Mrs. S. Ramachandran* for the Appellants in C.A. No. 268/84, 271/84 and 272/84 and *B.B. Singh* for the Appellants in C.A. No. 269/84. A

A, Sharan, Suleman, Khursid and *Gopal Singh* for the Appellants in C.A.No. 270/84 and 273/84.

B.P. Singh and *Ranjit Kumar* for the Intervener. B

Parmod Sawup for the Respondents in C.A. Nos. 268/84, 269 270, 271 and 272 of 1984.

B.P. Singh and *Ranjit Singh* for the Respondents in C.A. No. 273 to 1984. C

The Judgment of the Court was delivered by

RANGANATH MISRA, J. These appeals are by special leave and two of these are by Junior Engineers while the other four are by Assistant Engineers working under the respondent—Bihar State Electricity Board. In September, 1975, the Board advertised in local newspapers that selection of Electrical Engineers would be made under an "Employment Promotion Programme" and Engineers with 50 per cent marks in the degree examination would be eligible for consideration. In due course, such selection was made and a group of Apprentice Engineers also called Trainee Engineers came to serve under the Board. These selected engineers had already completed their training for the purpose of obtaining the degree in engineering. The graduate trainees were called upon to report for a period of six months' training with effect from April 1, 1977. In March 1977, the Board had indicated that the training does not guarantee employment under the Board but in August, 1977, the Board resolved that 200 vacant posts of Junior Engineers would be filled on the basis of chain system and the existing trainees would be contained as trainees on existing stipends. As time elapsed and no appointment were made as represented by the Board, representation was made by some of the trainee engineers pointing out that unless the Board's decision of August, 1977, was implemented without loss of time, some of them would become overaged for appointment under Government. Soon after the said representation, the Board extended deputation of the trainee engineers and indicated that the deputation to Thermal Power Stations under the Board would be of permanent nature. The Board D
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A published a notice on March 13, 1979, to the effect that a decision regarding regular employment of degree and diploma trainee engineers of the Board for the post of Assistant Electrical Engineers and Junior Electrical Engineers has been taken by the State Government and on completion of their training in October, 1979, regular appointment would be made. It was further pointed out therein that those trainees who had left training should join at the places of their respective posting latest by March 18, 1979, failing which they would not be considered for regular appointments. As the Board did not give effect to its representations and decisions, the graduate engineers employed as Assistant Engineers or Junior Engineers started agitating for implementation of the Board's decisions from time to time. Ultimately, on March 8, 1979, at a high level meeting where the Speaker of the Legislative Assembly presided, the Chief Minister was present and among others participating in the meeting were the Commissioner of Irrigation and Electricity, the Chairman of the Board and the Secretary of Irrigation and Electricity, it was decided :

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“After completion of one years’ training (which is October 1979) as decided by the Board they will be appointed in the post of Assistant Electrical Engineer and Junior Electrical Engineer on ‘provisional regular basis’. After appointment they will remain on probation for two years. During probation the period if their conduct is found satisfactory and on the availability of permanent posts and on the basis of *inter se* seniority in the cadre they shall be confirmed.”

“They will be appointed on regular basis after the completion of training period and examination as proposed vide office order No. 1548 dated 26.10.78 will not be taken.”

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The Board communicated the aforesaid decision to the Project Managers and Thermal Power Stations of the Board, yet the decision was not implemented and the apprentice engineers continued to serve as Assistant Engineers and Junior Engineers on *ex cadre* basis, without security and stability of service. Some unemployed Engineers approached the High Court at Patna challenging the continuity of the trainee Engineers in the employment of the Board. The Board took the stand before the High Court that the trainee engineers

belonged to a separate class and held *ex cadre* appointments as Assistant Engineers and Junior Engineers. The High Court took the view that their continuity on *ex cadre* basis was not open to challenge on the ground of non-compliance of Rules. In May, 1980, these writ petitions were dismissed. Emboldened by the acceptance of their stand by the High Court, the Board started exhibiting a negative approach in its treatment towards the trainee engineers. Ultimately the appellants moved the High Court for a direction to the Board to encadre them but failed. These appeals directed against the decision of the High Court.

A few important aspects emerge from the record—(1) the Board did represent to the trainee engineers from time to time after their training was completed, they would be absorbed in regular employment of the Board; (2) when some of the engineers were getting age-barred for Government employment and had left the Board, they were told to come back under the temptation of getting permanently employed under the Board; (3) when the Board was reeling under a strike of its employees, these trainee engineers had stood by the Board to keep up the generation and distribution of electricity and had been assured of absorption; and (4) the Board had decided to absorb them on permanent basis but initially on a probation of two years without conducting any further examination.

On March 13, 1979, a notice was issued by the Board to the following effect :

“A decision regarding regular employment of degree and diploma trainees of Bihar State Electricity Board in the posts of Assistant Electrical Engineer and Junior Electrical Engineer has been taken by the State Government. On completion of their training in October, 1979, their regular appointments will be made. Therefore, those trainees who have left their training are informed to join at the places of their respective postings latest by 18.3.1979. Those trainees who will not present themselves by the said date will be neither considered for being taken in training nor their regular appointments will be considered.”

On April 26, 1979, the Board approved the proposal contained in the proceedings of a meeting relating to absorption of the appellant

A engineers in which the Speaker of the Legislative Assembly presided and the Chief Minister, the Commissioner of Irrigation and Electricity, the Chairman of the Board and the Secretary of Irrigation and Electricity participated. The proceeding, *inter alia*, stated :

B “(1) It was decided that after completion of one year’s training (which is October, 1979) as decided by the Board, they will be appointed in the posts of Assistant Electrical Engineers and Junior Electrical Engineers on provisional basis. After appointment, they will remain on probation for two years. During probaiton period of their conduct is found satisfactory and the availability of permanent posts and on the basis of inter se seniority in the cadre, their appointments will be confirmed.

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D (2) They will be appointed on regular basis after the completion of the training period and the examination proposed vide office order No. 1548 dated 26.10.1978 will not be taken.

... ..

E (9) It is also decided that the benefit of regular appointment is being given to the trainees under special circumstances which will not be an example for the future and when either under the Apprenticeship Act or under any other scheme anyone is taken as apprentice, he will be discontinued after the period of apprenticeship. In any circumstance, neither period of apprenticeship will be extended nor will they have any claim for appointment under the Board.”

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G We have referred to these two documents out of several of them available on the record to show that the Board was aware of the position that these trainee engineers formed a special class and very peculiar circumstances warranted a definitely special treatment in regard to them. Yet it is unfortunate that a statutory body like the Board has failed to stand up to its representations made from time to time to a group of engineers who had spent years of their valuable life for qualifying themselves as engineers and who believing the representation of the Board and acting upon the same continued to remain in the employment of the Board as trainee

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engineers foregoing opportunities available to seek other employ-
ments and in the process have become age-barred for any public
employment. This Court almost a score of years back in clear
language indicated in *Union of India v. Indo-Afghan Agencies*⁽¹⁾ :

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Under our jurisprudence, the Government is not
exempt from liability to carry out the representation
made by it as to its future conduct and it cannot some
undefiend and undisclosed ground of necessity or expe-
diency fail to carry out the promise solemnly made by it,
nor claim to be the judge of its own obligation to the
citizen on an *ex parte* appraisalment of the circumstances
in which the obligation has arisen."

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Shah, J. as the learned Judge then was, quoted with approval
what Chandrasekhar Aiyar, J. had in *Collector of Bombay v.
Municipal Corporation*⁽²⁾ :

"Whether it is the equity recognised in *Ransden's*
case, or it is some other form of equity, is not of much
importance. Courts must do justice by the promotion
of honesty and good faith, as far as it lies in their power."

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The legal position was reiterated by this Court in *Century Spinning
& Manufacturing Co. Ltd. v. The Ulhasnagar Municipal Council &
Anr.*⁽³⁾, where it was said :

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"Public bodies are as much bound as private indivi-
duals to carry out representations of facts and promises
made by them, relying on which other persons have
altered their position to their prejudice. The obligation
arising against an individual out of his representation
amounting to a promise may be enforced *ex contractu* by
a person who acts upon the promise; when the law requi-
res that contract enforceable at law against a public body
shall be in certain form or be executed in the manner
prescribed by statute, the obligation may be, if the con-
tract to be not in that form, enforced against it in appro-
priate cases in equity..."

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(1) [1968] 2 S.C.R. 366.

(2) [1952] S.C.R. 43.

(3) [1970] 3 S.C.R. 854.

This Court added a pithy observation :

“If our nascent democracy is to thrive different standards of conduct for the people and the public bodies cannot be permitted. A public body is, in our judgment, not exempt from liability to carry out its obligations arising out of representations made by it relying upon which a citizen has altered his position to his prejudice.”

In *Motial Padampat Sugar Mill Co. Ltd. v. State of Uttar Pradesh & Ors.* ⁽¹⁾ this Court went ahead to state that the doctrine of promissory estoppel is not really based on the principle of estoppel, but it is a doctrine evolved by equity in order to prevent injustice and it can be the basis of cause of action.

In our view, the principle relied upon in these cases has full application to the facts before us. The Board is a statutory authority and is ‘State’ within the meaning of Article 12 of the Constitution. The Board has tried to seek shelter under a set of rules framed by it in exercise of the powers vested under section 79 of the Electricity (Supply) Act of 1948. In the peculiar facts of the case we are of the view that the defence is ill-placed and cannot hold as a shield against the application of the equitable doctrine. Admittedly, the trainee engineers before us formed a specific class and from time to time the Board treated them as members of class and in its resolution of April 26, 1979, recognised this fact and swore to the position that such treatment should never be repeated even if apprentice engineers were appointed.

Learned counsel appearing for the Board indicated to us that the Board was prepared to regularise the employment of the appellants belonging to the category of the Assistant Engineers or Junior Engineers subject to their qualifying in the examination and being formally recruited as required under the rules. They further emphasised that the appellants would not be entitled to seniority above those who have already been regularly employed under the Board.

So far as the first aspect is concerned, we have sufficiently pointed out already that the Board had waived the requirement of examination and had, while taking advantage of the services of the

(1) [1979] 2 S.C.R. 409.

appellants when it was in need, delayed the implementation of its representations. But it appears that several engineers have also been recruited either on permanent or temporary basis against regular vacancies and they are not parties to these appeals. The appellants, therefore, cannot have seniority above those people and we would not be justified in making any direction which would prejudice their seniority behind their back. It appears that there have been requirements even during the pendency of these appeals. While granting leave and while disposing of miscellaneous petitions for directions, this Court has already made it clear that appointments *pendente lite* would be subject to the result of the appeals. Therefore, the recruits of 1983 are bound to be subject to our directions. We are inclined to take the view that the appellants being already in employment of the Board much prior to 1983 on being taken into regular appointment of the Board have to rank above the recruits of 1983 and in the years thereafter.

The Board in our view is, therefore, bound to regularise the appointments of the appellants who had been taken as trainee engineers initially and have continued to be in the employment of the Board. In this view of the matter after the hearing was over we issued a mandamus to the Board to offer regular appointment to the appellants within three months from that day, i.e. May 3, 1985, in the appropriate cadre of Assistant Engineer or Junior Engineer, as the case may be, and such appointments were to be on probation for a period of two years as required under the rules. In regard to seniority the appellants have to rank below permanent and temporary recruits to regular posts of engineers held under the Board prior to 1983 and they shall be assigned seniority above such recruits *pendente lite*. We have now indicated the reasons by our judgment. The appeals are allowed and the judgment of the High Court is reversed and the Board is directed to give effect to the directions indicated above within the specified time.

We hope and trust that the Board will not conduct itself in such an embarrassing way in future and land itself in difficulty again.

The appellants shall have their costs throughout. One set of hearing fee assessed at Rs. 5,000 shall be admissible in this Court.