

KERALA STATE ELECTRICITY BOARD

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v.

N. SUKESEN AND ORS.

JULY 23, 1996

[S.C. AGRAWAL AND B.L. HANSARIA, JJ.]

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Service Law :

Electricity (Supply) Act, 1948 :

S.79(c) and (k)/Kerala State Electricity Board (Integration of Board Secretariat Establishment) Regulations, 1981 (as amended in 1985) :

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Kerala State Electricity Board—Integration of Secretariat Service into general service—Inter se seniority—Integration scheme provided for taking into consideration the length of service from the time of initial recruitment—Held, the scheme not hit by Article 14 of the Constitution—Constitution of India Article 14:

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Kerala Electricity Board, in 1964 brought into existence the Secretariat Service. The officials to this service were appointed from the existing common cadre, without conducting any test. In 1981 the Board decided to merge the Secretariat Service into general service by enacting Kerala State Electricity Board (Integration of Board Secretariat Establishment) Regulations, 1981. In 1985 the Regulations were amended providing for taking into account the length of service in fixing inter se seniority of employees from different categories brought under integration. The employees mainly belonging to erstwhile Secretariat Service challenged the revised seniority principle as violative of Article 14 of the Constitution. The High Court struck down the revised principle of seniority. Aggrieved, the Board and some of the employees belonging to general establishment filed the present appeals.

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Allowing the appeals this Court

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HELD : The principle of seniority as revised by 1985 Order is sustained. The order of 1985 requires the inter se seniority to be determined on the basis of the length of service in the cadre/category at the time of integration, and it does not take note of accelerated promotions earned in

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A the Secretariat Service. The record shows that while appointing persons to Secretariat Service from general service, no tests or interviews were conducted. Besides, the 1985 order only speaks about fixation of relative seniority and does not visualise any reduction in rank or reversion. It may be that the following of 1985 principles would make the Assistant Secretary of erstwhile Secretariat service junior to the Senior Superintendent in the general service, but that would not require the Assistant Secretary to be demoted to the post of Senior Superintendent. The judgment of the High Court is set aside, subject to these clarifications/observations.

[606-C-D; E-F; 807-A-C]

C *Om Parkash Sharma v. Union of India*, [1985] Supp. SCC 218, explained and applied.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3967 of 1990 Etc.

D From the Judgment and Order dated 5.10.89 of the Kerala High Court in W.A. No. 915 of 1987.

P.S. Poti, T.L. Viswantha Iyer, Ms. Malini Poduval, K.M.K. Nair, Vipin Nair and E.M.S. Anam for the appearing parties.

E The Judgment of the Court was delivered by

F **HANSARIA J.** Kerala State Electricity Board, hereinafter the 'Board', had one common establishment prior to 1964. A need having been felt to have a separate and distinct establishment, named as secretariat establishment, the same came to be formed with effect from 1.4.1964, vide order of the Board dated 31.3.1964. With a view to ensure smooth functioning of the Secretariat Service so formed, the Board, in exercise of power conferred by section 79(c) (k) of the Electricity (Supply) Act, made certain regulations which, *inter alia*, laid down the principle of *inter se* seniority in its clause VII reading as below :

G "VII. The *inter se* seniority of all categories of persons so appointed initially to the Secretariat will be determined and finalised with reference to the relative general seniority they held in the parent department and their services in the parent department will count for all purposes in the Secretariat Service also."

H 2. It was, however, felt that the separate service was not conducive

to the smooth and efficient discharge of the administrative functions of the Board; and so, by order dated 14.1.1981 the separate and independent status of the Secretariat Service was brought to an end by making regulations called the Kerala State Electricity Board (Integration of Board Secretariat Establishment and General Establishment) Regulations, 1981. In these regulations the principle of seniority was laid down as below in clause 5 (c) :

"5.(c). Subject to clause (f), relative seniority of persons drawn from the Secretariat Establishment and General Establishment including Accounts Wing and holding equated posts shall be determined on the basis of their length of service in the cadre/category concerned at the time of integration"

3. This principle was amended to read as below by order of 7.11.1985.

"(a) xxxxx xxxxx xxxxx

(b) the relative seniority of persons drawn from the secretariat establishment and the general establishment including the Accounts Wing shall be determined based on their ranking in the advice list of the Kerala Public Service Commission or the Board, as the case may be, at the time of initial recruitment by the Kerala Public Service Commission or the Board to the respective establishments under the Board subject to the application of rules regarding obligatory departmental tests."

This virtually required length of service to be taken note of for determining *inter-se* seniority.

4. The High Court of Kerala was approached mainly by officers of the erstwhile Secretariat Service challenging the revised principle of seniority as laid down in 1985. The High Court, by the impugned judgment, held that the principle was hit by Article 14 as unequals were treated as equals and has, therefore, quashed the same. These appeals are by the Board and by some persons of the General Establishment.

5. Shri Poti, learned senior counsel appearing for the Board, has urged that the High Court was not justified in setting aside the principle of 1985, as such a principle had indeed been found valid by this Court in

A *Om Prakash Sharma v. Union of India*, [1985] Supp. SCC 218, which was wrongly distinguished by the High Court. Shri Iyer, learned senior counsel appearing for the private respondents has, however, urged that *Om Prakash's* case was different on facts and High Court was right in not following the same to sustain the principle or *inter se* seniority as spelt out in 1985.

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6. In our opinion, the decision in *Om Prakash's* case has to be applied in the instant appeals as well, because there the accelerated promotion which some of the respondents got in the cadre of Head Clerks because of the trifurcation was not required to be given weight after the different services/departments were amalgamated again. Here too, the principle of *inter-se* seniority in the order of 1985 has basically sought to do so the same by requiring the *inter se* seniority to be determined on the basis of the length of service in the cadre/category at the time of integration, and not by taking note of promotions earned in the Secretariat Service.

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7. We have another reason to sustain the aforesaid principle and the same is that we are not quite satisfied if, while forming the Secretariat Service, the selection of the optees was really on the basis of merit, ability and suitability as was required to be. We have said so because the Chairman of the Board, who had played a pivotal role in the selection, had stated before the arbitrator, whose award was pressed into service by Shri Iyer and to which we shall advert later, thus: "No tests were conducted for these appointments nor interviews. The selection for this wing was made by me taking into consideration their fidelity, the confidence that I can have on them. Only persons known to me were selected". In view of this, the award of the arbitrator dated 14.3.1967 holding that there was no *mala fide* or victimisation while making actual selection is not much significant.

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8. Shri Iyer's main concern was that the aforesaid principle of *inter-se* seniority, if sustained, would result in reversion of the persons who had got accelerated promotion in the Secretariat Service. This was illustrated by the learned counsel by drawing our attention to equation of posts as finding place at page 66 of the Paper Book of C.A. No. 3974/90, wherein the post of Assistant Secretary of the Secretariat Establishment has been shown as equal to Assistant Accounts Officer - the next post below whom in the General Establishment being of Senior superintendent. Learned counsel contended that the aforesaid principle would require reversion of the

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Assistant Secretary of the Secretariat Service to Senior Superintendent of the General Establishment, as the latter may be senior to the former if the ranking at the time of the initial recruitment alone was to be taken into consideration. According to us, however, this is not the correct reading of the principle inasmuch as that only speaks about fixation of relative seniority, and does not visualise any reduction in rank or reversion. It may be that the following of 1985 principle would make the Assistant Secretary of the illustration junior to the Senior Superintendent, but that would not require the Assistant Secretary to be demoted to the post of Senior Superintendent.

9. In the aforesaid view of the matter, we set aside the impugned judgment of the High Court, subject to the clarification/ observation made above. In the facts and circumstances of the case, we leave the parties to bear their own costs.

R.P.

Appeals allowed.