

HYDRO-ELECTRIC EMPLOYEES UNION, U.P. AND ORS.

v.

SUDHIR KUMAR SHARMA AND ORS. ETC.

AUGUST 25, 1998

[SUJATA V. MANOHAR AND G.B. PATTANAIK, JJ.]

*U.P. Electricity Supply Act, 1948 Section 79 (c)—U.P. State Electricity Board Operational Employees Category Service Regulation, 1955—Regulation 4, 38(2)—Amalgamation of posts of three categories in one cadre—Posts carrying similar functions—Held, amalgamation is proper.*

*Formation of unified cadre—Amalgamation posts—Whether specific provision for interchangeability essential—Held, no—When there is a unified cadre there is no requirement of specific order of interchangeability.*

*Constitution of India—Article 14—Amalgamation of posts—Validity of—Posts carrying similar responsibilities—Past practice of interchangeability between the categories—Held, no violation of equality clause—Provision upheld.*

*Industrial Disputes Act—Section 4 (i) Proviso II—Whether regulation of amalgamation of posts requires prior notice—Held, no—The regulations since notified in official gazette, no prior notice is required.*

**The appellants—Meter Readers in U.P. State Electricity Board challenged the amalgamation of post of Meter Readers, Sub-Station Operators and Switch Board Attendants under the Board and the validity and constitutionality of the regulation framed by the Board under Section 79(c) of the Electricity Supply Act, 1948. The Board had initially taken a decision in 1963 for a combined cadre of the above categories of employees so that their services would be interchangeable. The aforesaid decision was modified in 1977 by which two other posts were included in the combined cadre. When it was challenged before the High Court in 1975 it was clearly stated that it was within the authority of the Board to create a combined cadre of service consisting of all the posts and that there has been no contravention of any law in combining the aforesaid posts into one cadre. Thereafter in another batch of writ petition filed in 1977 it was held that as a matter of policy it is open for the employer to integrate various cadres**

A into one and there is no fetter on the power of the Board to integrate such cadres. The interchangeability order was kept in abeyance for some time and in 1994 the Board took a resolution to again resort to the proposal of interchangeability among the Meter Readers, Sub-Station Operation and Switch Board Attendants and issued an order to that effect.

B The appellants - Meter Readers filed writ petitions in the High Court challenging the order which was dismissed by the Single Judge. The Single Judge of the High Court held that the SSOs/SBAs and Meter Readers had been working in integrated manner, that the decision has been taken as early as in 1963 and no notice was required to be given to the employees  
C while lifting the abeyance order in 1994, that the policy decision to integrate three categories of employees into one cadre was taken by the Board after due deliberation and on obtaining necessary technical advice, and that there is no error of law/jurisdiction or patent illegality in passing the order by the Board. Allowing the appeals by the employees the Division  
D Bench held that the Board had not taken any decision of amalgamating the three categories of officers into one cadre and the decision of the Board has only directed interchangeability of the meter readers, SSOs and SBAs by way of transfer to each other's cadres that the policy of amalgamation amounts to change of service conditions and therefore notice is required to be given to the employees under section 4 (i) of the Industrial Disputes  
E Act.

The appellants also challenged the regulation under Section 79 (c) of the Electricity Supply Act, 1948 whereby different posts were brought under one cadre. The High Court upheld the validity and held that there  
F is no infirmity in the regulation so as to be interfered with.

On appeal before this Court the appellants-Board contended that the findings of the High Court is based on total misreading of the resolutions of the Board passed from time to time and; that since 1963 all the categories having been merged into one combined cadre no grievance can  
G be made in 1994; that once the cadre is formed consisting of different category of officers, under service jurisprudence they are liable to be transferred from one post to other within the cadre and there cannot be any fetter on the powers of the employer in effecting such transfer. The Board, defending the order of the High Court upholding the constitutional  
H ity of the regulation, contended that formation of the cadre is a

policy decision; that after entering into service an employee gets a status which can be altered by the employer in exercise of its power to frame rules; that Section 4(i) of the Industrial Disputes Act has no application in view of proviso 2 of Section 4 (i), and that it is not necessary to specifically provide for interchangeability in the regulation as once the posts are constituted into one cadre it is implied and under regulation 38 various posts of one cadre can be interchanged. The Respondents-Meter Readers contended that they have been continuing as Meter Readers right from the inception of their service and their job requirement is such that they cannot perform duties assigned to other two categories of employees and therefore the decision of the Board is illegal; that though the Board had ample power to frame regulation governing the conditions of service of the employees under Section 79(c) of the Electricity Supply Act, yet by virtue of grouping widely dissimilar posts the decision has to be struck down by Court as violative of Article 14 of the Constitution; that the clubbing of other posts with Meter Readers is arbitrary; that by the process of amalgamation of these posts the employer has brought several unequals as equals and the said grouping is discriminatory; that the regulation does not provide for interchangeability; that the Board has not applied the principle of functional similarity and co-equal responsibility of different posts before intergrating them, that no notice under Section 4(i) of the U.P. Industrial Dispute Act was given to the employees; that there are several employees of the ex-licensee who were continuing under the Board and their service conditions have been unilaterally altered by framing of regulation to their disadvantage without taking the option and therefore the regulation must be struck down.

Allowing the appeals by the Board and dismissing the appeals by the Meter - Readers, the Court

**HELD :** 1. Three categories of posts namely Meter Readers, Sub-Station Operators and Switch Board Officers have been amalgamated into one cadre by the U.P. State Electricity Board's resolution dated 29.5.1963 and further the Board has also taken a conscious decision that these three categories of employees will be interchangeable. Though for some administrative reasons the decision of interchangeability had been kept in abeyance but all the posts continued to be included in one cadre and the Board reiterated its earlier decision in 1994 and directed the enforcement of interchangeability of posts. The conclusion of the Division Bench that

A the decision of the Board was merely to post Meter Readers as SSOs/SBOs on deputation and vice-versa and that there had not been any unified cadre of all these officers, is erroneous. [114-G; 115-G]

B 2. The finding of the Division Bench that the decision in 1994 was only of the Director and not that of the Board, is erroneous. The conclusion is based on a thorough misreading of the resolutions of the Board issued from time to time. The resolution unequivocally indicates that the interchangeability should be enforced forthwith and the resolution of the Board was communicated to all the Chief Engineers of the Board. The letter in question no doubt had been communicated by the Director but the decision had been taken by the Board itself. The High Court's order striking down the Board's decision dated 9.5.1994 on the ground that it was not the decision of the Board is erroneous. [115-D-E]

D 3. Under the service jurisprudence if a unified cadre is formed by the employer consisting of different categories of persons then there would be no bar for the employer to make transfers within the cadre and for such transfers a specific order of interchangeability is not required under law.

[115-H]

E 4. The Meter Readers are called upon to discharge their duty on the meters fixed for the domestic consumers, the Switch Board Attendants and Sub-Station Operators are required to perform similar duties either at the sub-station or at the switch board, as the case may be. The qualification required in entering into such posts is also similar. In fact they have been discharging similar functions. It is difficult to hold that the Board had grouped dissimilar posts into a unified cadre. [121-E]

F 5. There is no legal infirmity with the regulation framed by the Board in exercise of powers under Section 79 (c) of the Act of 1948 in bringing the posts into one unified cadre and the conclusion of the High Court on this score remains unassailable. In the case in hand the impugned regulation constituting the posts of Meter Readers, Switch Board Operators and Sub-Station Operators into one cadre does not violate the equality class and cannot be said to be hit by the provisions of Article 14 of the Constitution.

[122-B; F]

*In re-Reserve Bank of India* [1976] 4 SCC 838, referred to.

H 6. The question of issuing notice to the employees under Section 4 (i) of the U.P. Industrial Disputes Act before issuance of the order dated

9.5.1994 does not arise. The contention that in the absence of any provision for interchangeability of the posts in the regulation the Meter Readers cannot be transferred and posted as Switch Board Officers or Sub-Station Officers is devoid of any substance as regulation 38 (2) is a specific provision for transfer and lays down the conditions for such transfer. Prior to enforcement of the service regulations the Board was fully competent to interchange the incumbents occupying the post of Meter Readers, Sub-Station Officer and Operators and Switch Board Officers in view of the administrative orders issued by the Board and no such order can be held to be infirm in any manner. [115-F; 122-G; 123-D]

7. There is no substance if the contention that the regulation is invalid on account of non-compliance of Section 4(1) of the U.P. Industrial Disputes Act. Proviso 2 to the aforesaid provision makes the provisions of the Act inapplicable, in the facts and circumstances of the present case, inasmuch as the conditions of services of the employees of the Board are regulated by set of regulations framed under Section 79 (c) of the Supply Act which regulation has been duly notified in the official gazette. There is no direction or observation contained in any of the earlier judgments requiring issuance of notice to the employees before framing the regulation under Section 79 (c) of the Supply Act. [122-H; 123-A]

8. The provisions of U.P. State Electricity Board Operational Employees Category Service Regulation, 1955 is a valid piece of Regulation governing the service conditions of the employees of the Board and there is no infirmity with the said regulation. [123-F]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3462 of 1996 Etc.

From the Judgment and Order dated 22.8.95 of the Allahabad High Court in S.A. No. 776 of 1994.

Rakesh Dwivedi, D.A. Dave, J.P. Goyal, Sunil Gupta P.D. Tyagi, (Manoj Swarup, Ms. Lalitha Kohli, Ms. Maulina Swarup), for M/s. Manoj Swarup & Co., R.U. Upadhyay, D.K. Garg, Ms. S. Janani, Ms. Mridula Ray Bhardwaj, Pramod Swarup, Ms. Rani Chhabra, Ms. Richa Goyal, R.K. Bhatt, Pradeep Misra, T. Mahipal, R.P. Saxena, R.P. Goyal, K.K. Gupta and Bharat Sangal for the appearing parties.

A The Judgment of the Court was delivered by

PATTANAIK, J. Leave granted in all the Special Leave Petitions.

B This batch of cases are directed against two sets of judgments of Allahabad High Court dealing with the question of amalgamation of the posts of Meter Readers, Sub Station Operators and Switch Board Attendants under the U.P. State Electricity Board. One batch of cases deal with the judgments delivered by the Division Bench of Allahabad High Court dated 22.8.95, setting aside the judgment of the learned Single Judge dated 29.9.1994 and allowing the Writ Petitions filed by some of the Meter  
C Readers. At that point of time no Regulation had been framed by the Board under Section 79(c) of the Electricity Supply Act (hereinafter referred to as "the Supply Act") and the service conditions of the employees of the Board was being determined by issuance of administrative instructions from time to time.

D The second batch of cases deal with the constitutionality of the Regulation framed by the Board under Section 79(c) of the Supply Act and the High Court by the impugned judgment dated 11.7.1997 holds the Act to be *intra vires*. Some of the SLPs have been filed by the employees who were not parties before the High Court but have been permitted to file the  
E Special Leave Petitions by this Court and as such are before us.

From the pleadings of the parties before the High Court and the documents available on record it transpires that the Board has taken the decision as early as in May 1963 that there will be a combined cadre of Meter Readers, Sub Station Operators and Switch Board Attendants and the services of these three categories of employee will be interchangeable.  
F The aforesaid decision of the Board was modified by Board's decision dated 24.3.1997 whereunder the posts of Junior Meter Testers/Junior Meter Tester and Repairer were also included in the said combined cadre and it was stipulated therein that the services of these categories of  
G employees shall be interchangeable. Some of the employees being aggrieved by the aforesaid combined categorisation of the posts moved the High Court of Allahabad by filing Civil Misc. Writ Petition No. 2462 of 1975 and batch, which matter was dismissed by the High Court by judgment and order dated 28th September, 1977. It was clearly stated in the aforesaid  
H judgment of the High Court that it is open to the Board to create a combined cadre of service consisting of all those posts which may be in the

same grade and qualification as well as status are similar and the Board had indicated that the qualification for the three category of posts of Meter Readers, Sub Station Operators and Switch Board Attendants are almost the same and as a matter of policy the Board decided to have a combined cadre of these categories of posts. The High Court held that there has been no contravention of any law in combining the aforesaid posts into one cadre. When the Board issued its Memorandum dated 24.3.1997 including one more category of posts of Junior Meter Tester in the combined cadre, another batch of Writ Petitions came to be filed being Writ Petition No. 1348 of 1977 and batch which were disposed of by judgment and order dated 12.3.1979. It was held in this case that as a matter of policy it is open for the employer to integrate various cadre into one and there is no fetter on the power of the Board to integrate such cadres. The High Court also looked into the factual position and found that the transfer from one class of posts to another in the four categories does not involve any risk of life as contended by the petitioner. Ultimately the Writ Petitions filed stood dismissed. Though the posts, as aforesaid, were grouped together and formed one cadre and the holders of the posts could be interchanged, but on account of certain pressure from some of the employees the Board issued a direction on 20th October, 1982 that the inter-changeability of incumbents should not be resorted to until further orders. By yet another order issued by the Board on 19th October, 1985 the earlier ban on inter-changeability of the incumbents to the posts of the Meter Readers and others was reiterated. The question of inter-changeability of the posts which had been kept under abeyance was re-examined and it was decided that the policy of changeability should be enforced strictly. The Board's Resolution in this respect is manifest from its decision dated 2.3.1994.

The aforesaid resolution of the Board is extracted hereinbelow in extenso :

"Detailed discussion took place in respect of inter- changeability of posts amongst MRs, SSOs and SBOs. The Board granted approval on the aforesaid proposal of inter- changeability of posts"

Pursuance to the aforesaid Resolution of the Board the Director [Personnel] by his letter dated 9th of May, 1994 intimated all the Chief Engineers of UP State Electricity Board as under :

"In supersession of the Order No. 899/NG [ii]/S.E.B. Fourth - 154 N.G/83 dated 24.3.77, No. 4447 - Anineth [R]/NEV-82-154 NG/72

A dated 20.10.82 and No. 4837/K. Nineth [a]/S.E.B./85-154 NG-73  
dated 19.10.85. I am directed to say that in accordance with the  
terms of the Board's Order No. 3573/S.E.B. - 207/1963 dated  
29.5.63 declaring combined cadre of Meter Readers, S.S.Os. and  
S.B. As [at present S.B.Os], mutual inter-changeability be made in  
B respect of mutual duties of employees having these three designa-  
tions."

The Meter Readers who had been thwarting the decision of inter-  
changeability by exercising pressure through their union then moved the  
Allahabad High Court by filing writ petitions and those batch of writ  
C petitions (Civil Misc. Writ Petition No. 21844/84 and batch) were disposed  
of by a learned Single Judge of the High Court by judgment dated 29th of  
September, 1994. The learned Single Judge on consideration of the rival  
submission at the Bar and the materials produced before him by the  
D respective parties came to hold that the SSOs/SBAs and Meter Readers  
had been working in integrated manner and no complaint had been made  
on being transferred from one post to another and further when a com-  
plaint was made by filing a writ petition the said writ petition was dismissed  
and the amalgamation of cadres was held to be valid. It was further held  
that amalgamation of three posts into one cadre was made as early as in  
E 1963 and the policy of inter-changeability had merely been kept in  
abeyance and that abeyance order was lifted by issuance of order dated  
9.5.1994 and as such no notice was required to be given to the employees.  
Repelling the contention of the counsel appearing for the Meter Readers  
that the work of SSOs/SBAs is too technical which cannot be performed  
by Meter Readers the learned Judge held that in fact the SSOs/SBAs are  
F not required to touch the live machine except to move the handle for  
putting it on or off, and therefore, the grievance/apprehension of the Meter  
Readers is Misconceived. The learned Judge further came to the con-  
clusion that the policy decision to integrate three categories of officers into  
one cadre was taken by the Board after due deliberation and on obtaining  
the necessary technical advice and such a policy decision is not open to be  
G challenged in a petition under Article 226 of the Constitution. The conten-  
tion of the Meter Readers to the effect that the decision was not the  
decision of the Board was negated after perusing the original record of  
the Board produced before the Court and the learned Judge held that the  
decision is that of the Board. The learned Judge also came to the con-  
H clusion that ex-employees of the licensee who have been working under the



Board after company has been taken over have actually been found to have worked as SSOs/SBAs even before the order of the Board dated 9.5.1994 and as such it is not open for them to contend that their service conditions have been changed. The learned Judge also considered the contention that there has been no due deliberation on alteration of the conditions of service and held that the detailed consideration of the duties of the three categories of Meter Readers, SSOs and SBAs itself states that they are required to perform the job of SSOs/SBAs and as such there is no infirmity in the same. With the aforesaid conclusions the learned Single Judge ultimately held that there is no error of law/jurisdiction, patent illegality in passing the impugned order dated 9.5.1994 by the Board and consequential order of inter-changeability, and therefore, the writ petitions do not call for any interference. All the writ petitions were accordingly dismissed.

Being aggrieved by the aforesaid judgment and order of the learned Single Judge the Meter Readers moved the Division Bench in appeal in a batch of appeals, namely, Special Appeal No. 755 of 1994 and the said appeal and the connected special appeals were disposed of by the impugned judgment dated 22.8.1995. Division Bench on consideration of order dated 9.5.1994 as well as the earlier resolutions of the Board came to hold that Board had not taken any decision of amalgamating the three categories of officers into one cadre and the decision of the Board has only directed inter-changeability of the Meter Readers, Sub Station Operators and Switch Board Attendants by way of transfer each other's cadre on deputation, and therefore, the order dated 9.5.1994 issued by the Director [Personnel] cannot be said to be an order of the Board and is not in conformity with the resolution of the Board and as such the said order cannot be sustained. Division Bench of the High Court further came to the conclusion that the policy of amalgamation does amount to change of service conditions of the employees, and therefore, under Section 4(i) of the UP Industrial Disputes Act notice is required to be given to the employee concerned and since no notice has in fact been given, the impugned order affecting the service conditions of the employees is vitiated. So far as the two earlier judgments of the Court are concerned the Division Bench is of the conclusion that since the impugned order dated 9.5.1994 is not the decision of the Board the earlier judgments would not stand as a bar in granting the relief to the writ petitioners. With these conclusions the judgment of the learned Single Judge was set aside and the writ petitions were allowed and the order dated

A 9.5.1994 was struck down.

B Mr. Gupta, the learned counsel who lead the argument in the batch of appeals challenging the aforesaid Division Bench judgment of Allahabad High Court contended that the conclusions arrived at by the High Court are not only manifestly erroneous but also is based upon total misreading of the resolutions of the Board passed from time to time and as such the impugned order of the Division Bench cannot be sustained. The learned counsel further contended that right from 1963 the three category of officers having been merged into one combined cadre no grievance can be made in 1994 to the aforesaid merger of category of officers and formation of one cadre. According to the learned counsel, the Board no doubt for some period had not enforced the inter- changeability but it does not debar the employer to enforce the same. According to Mr. Gupta once the cadre is formed consisting of different category of officers under service jurisprudence they are liable to be transferred from one post to other within the cadre and there cannot be any fetter on the powers of the employer in effecting such transfer.

E The learned counsel appearing for the respondents - Meter Readers on the other hand contended that they have been continuing as Meter Readers right from the inception of their service and their job requirement is such that they cannot perform duties assigned to other two categories of employees, and therefore, the impugned decision of the Board dated 9.5.1994 is wholly illegal. The learned counsel also support the judgment of the Division Bench and contend that there is no infirmity in the said judgment.

F We have carefully considered the rival submissions of the counsel for the parties and we found considerable force in the submissions made by Mr. Gupta appearing for the appellants in C.A. No. 3462/96. On scrutiny of the documents available on record we find that three category of officers, namely, Meter Readers, Sub Station Officers and Switch Board Officers have been amalgamated into one cadre by Board's Resolution dated 29.5.1963 and further the Board had also taken a conscious decision that these three categories of employees will be inter-changeable. By subsequent resolution of the Board dated 24th of March, 1977 the post of Junior Meter Testers/Junior Meter Tester & Repairers was added to the earlier three categories of posts and all of them constituted a combined

cadre and it was the decision of the Board that the people should normally rotate on the posts in every 2 to 3 years as may be required from the administrative point of view. We further find that though for some administrative reasons the decision of inter-changeability had been kept in abeyance but all the posts continued to be included in one cadre and later on in the year 1994 the entire matter having been re-examined the Board reiterated its earlier decision and directed the enforcement of inter-changeability of posts amongst the Meter Readers, Sub Station Operators and Switch Board Officers. The Division Bench of the High Court committed serious error in coming to its conclusion that the decision of the Board was merely to post Meter Readers as Sub Station Officers/Switch Board Officers on deputation and vice versa and that there had not been any unified cadre of all these officers. The Division Bench also committed further error in recording the finding that the decision dated 9.5.1994 was only of the Director [Personnel] and not that of the Board. The aforesaid conclusion in our considered opinion is based on a thorough misreading of the resolutions of the Board issued from time to time as already discussed. The resolution of the Board dated 2.3.1994 which has been extracted in the earlier part of this judgment unequivocally indicates that the inter-changeability of the posts amongst Meter Readers, Sub Station Officers and Switch Board Officers should be enforced forthwith and the resolution of the Board was communicated to all the Chief Engineers of the Board by letter dated 9.5.1994. The letter in question no doubt had been communicated by the Director [Personnel] but all the same, decision had been taken by the Board itself and the Director [Personnel] had merely communicated the same to the different Chief Engineers for being enforced. The Division Bench of the High Court, therefore, was wholly in error in striking down the order dated 9.5.1994 on the ground that it was not the decision of the board. In view of our conclusion that the Board had amalgamated the three category of officers into one cadre as early as on 29.5.1963 the question of issuing notice to the employees under Section 4(i) of the UP Industrial Disputes Act before issuance of order dated 9.5.1994 does not arise. That apart as has been stated by the learned Single Judge even prior to the issuance of order dated 9.5.1994 several employees who had been initially appointed as Meter Readers were working as Switch Board Officers and vice-versa. It may be stated here that under the service jurisprudence if a unified cadre is formed by the employer consisting of different categories of persons then there would be no bar for the employer to make transfers

A within the cadre and for such transfers a specific order of inter- changeability is not required under law. As we have stated earlier that these three category of officers were constituted into one cadre by the employer - Board in the year 1963, the Board will be within its power to transfer them from one post to the other within the cadre itself. In the aforesaid premises, the impugned judgment of the Division Bench of Allahabad High Court dated 22.8.1995 is wholly unsustainable in law and we accordingly set aside the same and we affirm the judgment of the learned Single Judge dated 29.9.94 and writ petitions filed by the Meter Readers stand dismissed.

C We would now examine the second batch of cases dealing with the constitutionality of the Regulation framed under Section 79(c) of the Electricity Supply Act, 1948.

D It may be stated at this stage that the U.P. State Electricity Board framed a set of Regulation laying down service conditions of the operational employees of the Board in exercise of powers conferred under Section 79(c) of the Supply Act which was duly notified in the Official Gazette dated 16th December, 1995, called 'the U.P. State Electricity Board Operational Employees Category Service Regulation 1995 (hereinafter referred to as 'the Regulation')'. Regulation 4 of the Regulation provided for a cadre and it stipulates that the service strength of members and the number of each category thereon shall be such as may be determined by the Board from time to time. On the basis of the scale of pay attached to different posts as well as the respective qualification for the post the Board categorised and grouped together different posts and in the case in hand we are concerned with category P4 containing posts carrying the scale of Rs. 1200 to Rs. 1800 . Under the category P4 (Ka) as many as five posts have been grouped together at serial no. 23, the said post being (a) Sub Station Operators, Switch Board Operators (b) Meter Readers (c) Junior Electrician; Junior Electrician Grade I, Electrician Grade I & II (d) Centrifugal Mistry (e) Meter Tester and Repairer, Meter Mechanic. Vidyut Mazdoor Sangh filed a Writ Petition challenging the constitutionality of the aforesaid Regulation which was numbered as Civil Writ Petition No. 15034 of 1996. A learned Single Judge passed an interim order in the aforesaid Writ Petition on 1.5.1996 staying the operation of the Regulation. The aforesaid interim order of the learned Single Judge was challenged by Vidyut Mazdoor Sangathan, Lucknow in Special Appeal

No. 414 of 1996, and by U.P. State Electricity Board in Special Appeal No. 578 of 1996. In course of hearing of the said Special Appeals on Concession of the counsel appearing for the parties the original Writ Petition out of which the Special Appeals arose as well as all concerned bunch of Writ Petitions were heard by the Division Bench and were disposed of by the impugned judgment dated 11th July, 1997. Several contentions were raised before the Division Bench challenging the constitutionality of Regulation and the Division Bench formulated as many as 16 questions which were said to be the controversies to be determined in the proceedings. By a well reasoned judgment giving detailed grounds the Division Bench repelled all the contentions raised by the writ petitioners and held that there is no infirmity in the Regulation so as to be interfered within a writ petition under Article 226 of the Constitution. The learned judges held the Regulation to be *intra vires* and dismissed all the writ petitions filed before the High Court.

Mr. Rakesh Dwivedi, the learned senior counsel who lead arguments on behalf of those employees who had challenged the constitutionality of the Regulation contended that even though the Board had ample power to frame Regulation governing the conditions of service of the employees as provided under Section 79(c) of the Supply Act and in exercise of such power under the Regulation different posts can be clubbed together constituting a cadre, yet by virtue of such grouping if widely dissimilar post judged from the yardstick of the qualification and duty attached to the post are put into one category or cadre then such a decision has to be struck down by court being contrary to the provisions of Article 14 of the Constitution. In elaborating his submissions Mr. Dwivedi, the learned senior counsel also urged that the posts of Junior Electrician, Centrifugal Mistry and Meter Testers and Meter Repairers are all highly technical posts and the job requirements for these posts are such that it would not be possible for a Meter Reader to discharge the duties attached to those posts and, therefore, clubbing them together with the Meter Reader is *prima facie* arbitrary and should not be permitted. He also contended that even the post of Switch Board Operators and Sub Station Operators should not have been grouped together with Meter Readers as they discharge completely different duties and the qualification necessary for such posts are totally different and by the process of amalgamation of these posts the employer has brought several unequals as equals and consequently said

- A grouping must be held to be discriminatory and must be struck down. Mr. Dwivedi, the learned senior counsel also contended that in the Regulation there is no provision of inter- changeability which was earlier existing under the administrative orders and, therefore, notwithstanding the posts being under one group it would not be permissible for the employer to transfer Meter Readers as Switch Board Operator or Sub Station Operator. According to Mr. Dwivedi the Board has not applied the principle of functional similarity and co-equal responsibility of different posts before integrating them into one cadre and, therefore, the Court would be justified in interfering with such integration of service. Ms. Janani, the learned counsel and other learned counsel who supported the leading arguments of Mr. Dwivedi further urged that the Regulation is invalid as under the Regulation though service conditions of the employees have been changed yet no notice under Section 4(1) of the U.P. Industrial Disputes Act had been given. The learned counsel also urged that the High Court itself while dealing with the Administrative Order under which three categories of posts had been brought into one, had observed that the Board may frame Regulation under Section 79(c) of the Supply Act after giving notice to the employees concerned and absence of such notice invalidates the Regulation. It was also urged that there are several employees of the ex- licensee who were continuing under the Board and their service conditions have been unilaterally altered by framing of Regulation to their disadvantage without taking the option and, therefore, the Regulation must be struck down. The learned counsel reiterated the submission of Mr. Dwivedi that the existing Meter Readers who have been discharging such functions and duties as Meter Reader from the inception of their career are totally non-technical person and have no expertise or qualification to go near any live wire and, therefore, they could not have been put together with the other category of officers, as already indicated, and such clubbing together indicates total non-application of mind of the employer.
- Mr. Dave, the learned senior counsel appearing for the Board on the other hand contended that the formation of a cadre by bringing together different posts is a policy decision of the employer and such policy decision has been formulated by framing of the Regulation in exercise of powers under Section 79(c) and (k) of the Supply Act and before bringing different category of posts into one cadre there has been due deliberation by the officers of the Board as is apparent from different Resolutions, and there-

fore, there is infirmity with the Regulation in bringing the different category of posts into one cadre. Mr. Dave, learned senior counsel also submitted that after entering into service which is initially one of contract an employee gets a status and such status can be altered by the employer in exercise of its power to frame Rules governing conditions of service and until and unless such Rule is found to be violative of any provisions of the Constitution the same cannot be struck down. Mr. Dave learned senior counsel also submitted that Section 4(i) of the U.P. Industrial Disputes Act has no application and no notice is required before framing of the Regulation in question in view of proviso (ii) to Section 4(i) of U.P. Industrial Disputes Act. Mr. Dave, learned senior counsel further contended that the High Court in the impugned judgment has gone into the duties of different category of posts and has come to the conclusion that the duties of the Meter Readers, Switch Board Operators and the Sub Station Operators are comparable and, therefore, it cannot be said that unequals have been brought as equals by putting them in one cadre. On the question of absence of any provision for inter-changeability in the Regulation Mr. Dave, learned senior counsel submitted that it is not necessary to specifically provide for the same once the post are constituted into one cadre and further the provisions of Regulation 38 could govern such transfer within the cadre.

Before examining the correctness of the rival submissions it would be appropriate for us to notice the conclusion of the Division Bench of the High Court on different issues formulated by it for answering the points raised. The said conclusions are summarised hereunder:

- (i) It is difficult to trace any kind of repugnancy between the Regulation framed under Section 79(c) of the Supply Act and any other Industrial Act.
- (ii) The power given to the Board to frame Regulation under Section 79(c) cannot be said to be uncontrolled and unguided.
- (iii) With reference to clause of the second proviso to Section 79 of the Act, it is difficult to trace any kind of repugnancy.
- (iv) In view of the provisions contained in clause (iii) of the second proviso to Section 79 of the Act, the Regulations framed by the Board shall have an effect notwithstanding anything contained in Section 13-B of the Industrial Employment (Stand-

- A ing Orders) Act, 1946 or Section 9A of the Industrial Disputes Act and Section 4(i) of the U.P. Industrial Disputes Act.
- (v) No notice was required to be given before framing of the Regulation in question as contended by the writ petitioners.
- B (vi) The services of the employees under the erstwhile licensees stood absorbed under the Board under Section 6(a) of the Indian Electricity Act, 1910 and there would be no bar for the Board to lay down the conditions of service of such employees.
- C (vii) The Board's authority to frame Regulation so as to change the service conditions and bringing various groups of employees under one cadre cannot be questioned.
- (viii) It is not disputed that the majority of Meter Readers were initially appointed as Sub Station Operators and Switch Board Operators and were subsequently transferred as Meter Readers and after being transferred as Meter Readers their effort has been to stick to the said job.
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- (ix) The Meter Readers and Sub Station Operators and Switch Board Attendants are being paid from the beginning the same scale of pay.
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- (x) The provisions contained in Regulation 22 for determining seniority are based on well known principles and we do not see any illegality in them.
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With these conclusions the High Court in the impugned judgment has upheld the validity of the Regulation and dismissed the writ petitions.

- From the rival submissions made before us we find that the only contention which may require little consideration is that of Mr. Dwivedi, the learned senior counsel, that whether in clubbing together different posts under the Regulation the Board has in fact borne in mind the principle of functional similarity and co-equal responsibility. The power of the Board as employer to constitute a cadre by amalgamating different posts under the Board is undoubtedly very wide. But in exercise of such power if it is established that the Board has not applied its mind to the
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relevant criterias and thereby grossly dissimilar posts have been brought together and constituted into one cadre it may be possible for a court to interfere with such amalgamation of a unified cadre. But the question for consideration is whether really there exists any such illegality in the case in hand? Our examination in this connection should be in respect of three category of posts, namely, the Meter Readers, the Switch Board Attendants and the Sub Station Operators as before the High Court challenge has been made essentially in respect of these three categories. The very history of the employees of the aforesaid categories, as reflected through different earlier judgments noticed earlier in this judgment, makes it clear that right from the inception these three category of people have often inter- changed among themselves and as has been observed by the High Court many of the Meter Readers were initially appointed either for doing the job in the Sub Station or at the Switch Board. To satisfy ourselves as to really whether there exists any differentiation so far as their respective duties are concerned, we have also scrutinised the relevant materials indicating the duties of these three categories of employees and we find that in fact there is not much of dissimilarity. The Meter Readers while are called upon to discharge their duty on the Meters fixed for the domestic consumers, the Switch Board Attendants and Sub Station Operators are required to perform similar duties either at the Sub Station or at the Switch Board, as the case may be. The qualification required in entering into such posts is also similar. The pay scale attached to the posts is similar. In fact they have been discharging similar functions. In this view of the matter it is difficult for us to hold that the Board had grouped dissimilar posts into a unified cadre. We are in fact not examining the other category of posts which have been brought under the Regulation into one cadre since no factual matrix have been brought on record and in fact no contest has been made on that score. Mr. Dwivedi's contention that the post of Junior Electrician, Junior Centrifugal Mistry and Meter Testers and Meter Repairers are posts which are highly skilled posts and should not have been clubbed with Meter Readers, Sub Station Operators and Switch Board Operators may be of some substance on the anvil of dissimilarity of their respective job requirements but we are not examining the same in the proceeding as such grievances, if any, is taken care of by sub-regulation (2) of Regulation 38. Under the said Sub-regulation a member of the service can be transferred from one post to another if the qualification of the two posts and the scale of pay of the two posts is the same and further there does not exist any

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- A need of any past experience or competence to hold the transferee post. But we do not think it necessary to deal with this aspect in any further detail as the parties before the High Court have primarily contested the legality in relation to the posts of Meter Readers, Switch Board Operators and Sub Station Operators having been brought into one unified cadre. We do not see any legal infirmity with the Regulation framed by the Board in exercise of powers under Section 79(c) of the Supply Act in bringing these posts into one unified cadre and the conclusion of the High Court on this score remains unassailable. In *RESERVE BANK OF INDIA* case (1976) 4 SCC 838, when the Bank had amalgamated different posts into one cadre and evolved a scheme for determining the combined seniority, the same had been challenged by the employees being violative of Articles 14 and 16 of the Constitution and this Court had observed: "that Articles 14 and 16 do not forbid the creation of different cadres for Govt. service. And if that be so, equally these two Articles cannot stand in the way of the State integrating different cadres into one cadre. It is entirely a matter for the State to decide whether to have several different cadres or one integrated cadre in its service. This is a matter of policy which does not attract the applicability of the equality clause. The integration of non-clerical with clerical services sought to be effectuated by a combined seniority scheme cannot in the circumstances be assailed as violative of the constitutional principle of equality.
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- In the aforesaid premises, we are of the considered opinion that in the case in hand the impugned Regulation constituting the posts of Meter Readers, Switch board Operators and Sub Station Operators into one cadre does not violate the equality clause and cannot be said to be hit by the provisions of Article 14 of the Constitution. The contention of Mr. Dwivedi that in the absence of any provision for interchangeability of the post in the Regulation the Meter Readers can't be transferred and posted as Switch Board Officers or Sub Station Officers is also devoid of any substance as Regulation 38(2) is a specific provision for transfer and also lays down the conditions for such transfer. We also do not find any substance in the arguments of Ms. Janani, the learned counsel that the Regulation is invalid on account of non-compliance of Section 4(i) of the U.P. Industrial Disputes Act. Proviso (ii) to the aforesaid provision makes the provisions of the Act inapplicable, in the facts and circumstances of the present case, inasmuch as the conditions of services of the employees
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of the Board are regulated by set of Regulations framed under Section 79(c) of the Supply Act, which Regulation has been duly notified in the Official Gazette. We have also examined the earlier judgments of the High Court and we do not find any direction/observation contained in any of the earlier judgments requiring issuance of notice to the employees before framing the regulation under Section 79(c) of the Supply Act. The submission of Ms. Janani on this score, therefore, is rejected. In the aforesaid premises, we do not find any substance in the argument of Ms. Janani, learned counsel appearing for the appellants in some of the appeals that the Regulation is bad being violative for non-compliance of the provisions of Section 4(i) of the U.P. Industrial Disputes Act.

In the aforesaid premises, the judgment and order dated 22.8.1995 of the Division Bench of Allahabad High Court is set aside and the appeals arising out of the said judgment are allowed and the order of the learned Single Judge dated 29.9.1994 is affirmed and it is held that prior to enforcement of the service regulations the Board was fully competent to interchange the incumbents occupying the post of Meter Readers, sub Station Officers and Operators and Switch Board Officers in view of the administrative orders issued by the Board and no such order can be held to be infirm in any manner. We further affirm the conclusions of the Division Bench of the Allahabad High Court dated 11th of July, 1997 in Special Appeal Nos. 414 of 1996 and 578 of 1996 and batch and hold that the provisions of U.P. State Electricity Board Operational Employees Category Service Regulation, 1955 is a valid piece of Regulation governing the service conditions of the employees of the Board and there is no infirmity with the said Regulation. The appeals arising out of the aforesaid judgment dated 11th of July, 1977, accordingly stand dismissed. All the appeals are disposed of accordingly. In the circumstances, however, there will be no order as to costs.

V.M.

Appeal allowed.