

Shamkant Narayan Despande vs Maharashtra Industrial ... on 21 October, 1992

Equivalent citations: AIR 1993 SUPREME COURT 1173, 1992 AIR SCW 2867, 1992 LAB. I. C. 2401, 1993 (1) UJ (SC) 135, 1993 (2) SCC(SUPP) 194, 1992 () JT (SUPP) 166, (1993) 3 SERVLJ 70, (1992) 2 LAB LN 1023, 1993 SCC (L&S) 419, (1993) 24 ATC 416, (1992) 5 SERVLR 622, (1994) 68 FACLR 1013, (1993) 2 LABLJ 686, (1993) 1 SCT 263, (1993) 1 SCJ 42, (1993) 2 CURLR 11

Bench: P.B. Sawant, G.N. Ray

PETITIONER:

SHAMKANT NARAYAN DESPANDE

Vs.

RESPONDENT:

MAHARASHTRA INDUSTRIAL DEVELOPMENT CORPORATION AND ANR.

DATE OF JUDGMENT 21/10/1992

BENCH:

[P.B. SAWANT AND G.N. RAY, JJ.]

ACT:

Civil services :

Maharashtra Industrial Development Act, 1991:

Section 64- Resolution passed in 1988- Promotion to the post of superintending Engineer- Resolution reserving 75% of posts Engineering graduates and 25% to diploma holders - validity of.

Constitution of India, 1950:

Article 14, 16- Promotion-officer holding the same post-classification on the basis of qualification- whether violative of.

HEADNOTE:

The petitioner, a diploma holders in Engineering, was Executive Engineer in the respondent-Corporation. He would have been promoted as superintending Engineer, but for a Resolution passed in 1988 making 75% of the posts of Superintending Engineers available to Executive Engineers with diploma in Engineering degrees and 25% to Executive Engineers with diploma in Engineering Respondent No.2 who

junior to petitioner but had engineering degree was promoted as superintending Engineer. The petitioner challenged the promotion of Respondent No. 2 before the High court by way of a writ petition. The High court having dismissed the same, the petitioner preferred the present special Leave petition.

On behalf of the petitioner, it was contended that since there was a common seniority list of Executive Engineers, any classification on the basis of education qualification was discriminatory and violative of Articles 14 and 16 of the Constitution; and that in the absence of any statutory rule or regulation, a mere resolution could not effect such discrimination.

Dismissing the petition, this court,

HELD: 1.1. It is now well settled that for the purpose of promotion, a valid classification can be made among the members holding the same post on the basis of their qualification. Such a classification is permissible and does not violate Articles 14 and 16 of the Constitution. [99-A-B]

1.2. It is for the authorities if they so desire, taking into consideration the nature of work, the requisite qualification for the work, and the necessity for making a classification, to prescribe quotas on the basis of educational qualification. [99-D]

State of Jammu & Kashmir v. Triloki Nath Khosa & ors., [1974]1 SCR 771, followed.

H.C. Sharma & ors. v. municipal corporation of Delhi & ors., [1983] 3 SCR, 372, referred to.

2.2. In the instant case, admittedly neither the practice followed till 1988, nor the resolution passed by the respondent Corporation in 1988 was a regulation passed in accordance with section 64 of the Act. However, it is well settled that in the absence of a rule or regulation, the authority can prescribe service conditions by executive instructions and this is what was done till year 1988 and is also sought to be done since 1988 by the resolution under challenge. [100 A,B]

Mysore state Road Transport Corporation v. Gopinath Gundachar char, [1968] 1 SCR 767 and V. Balasubramaniam and others v. Tamil Nadu Housing Board and others, [1987]4 SCC 738, relied on.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Special Leave petition (c) No. 4748 of 1991.

From the Judgment and Order dated 21.1.91 of the Bombay High Court in W.P. No. 3481 of 1990.

N.B. Shetye, P.M. Pradhan and A.M. Khanwilkar for the petitioner.

Dushyant Dave, Beliram Vakil, Abrar Ali, Ajit Yogi, Gajender Lal, Mukul Gupta and Ms. Sonia Khan for the Respondents. The Judgment of the court was delivered by SAWANT, J. The petitioner is diploma- holder in Engineering and holds the post of Executive Engineer in the respondent-Corporation. Till 1974, the promotion post of the superintending Engineer was available both for diploma- holders and degree-holders according to merit-cum-seniority. This was so according to the practice followed by the Corporation without making any rules or regulation in that behalf. In 1974, the corporation made regulation by passing a resolution and continued the same practice. Admittedly, the regulation were not made under section 64 of the Maharashtra Industrial Development Act, 1961 [hereinafter referred to as the 'Act'] under which the respondent-corporation was created. Thereafter in 1988, the corporation passed a resolution, for the first time, making 75 per cent of the posts of superintending engineers available to the executive Engineers holding degrees and 25 per cent to the Executive Engineers who were diploma- holders. This resolution was also admittedly not a regulation made under the said section 64. But for this resolution, the petitioner who was senior to respondent NO. 2 would have been promoted to the post of Superintending Engineer on 31st October, 1990. However, since respondent No.2 was a degree holder, he got the said resolution and was promoted to the said post on that date. It is this promotion which was challenged by the petitioner by a writ petition in the High Court. The High Court by the impugned judgment dismissed the said petition.

2. Two contentions were raised before us.

(i) that no classification could be made among the Executive Engineers on the basis of their educational qualification for the purpose of promotion to the post of superintending Engineer, since they belong to the same cadre of Executive Engineers and do the same work. There was also a common seniority of the Executive Engineers maintained. hence the classification was discriminatory in nature and violative of Articles 14 and 16 of the Constitution .

(ii) that if at all such a discrimination was permissible, it could be made only by a statutory rule or regulation framed under Section 64 of the said Act. A mere resolution or an executive instruction could not effect such discrimination.

3. We find no merit in either of the two contentions. It is now well settled that for the purpose of promotion, a valid classification can be made among the members holding the same post on the basis of their qualification. In *State of Jammu & Kashmir v. Triloki Nath Khosla & Ors.*, [1974] 1 SCR 771, a Constitution Bench of this court has clearly held that such a classification is permissible and does not violate Articles 14 and 16 of the Constitution. The Court has observed there that in *State of Mysore & Anr. v. P. Narasing Rao*, [1968] 1 SCR 407 and *The Union of India and others v. Dr.(Mrs.) S.B. Khosla*, AIR 1973 SC 811, it was already held that classification on the basis of educational qualification was permissible. The Court then referred to *Roshan Lal Tandon v. Union of India*, [1968] 1 SCR 185 and distinguished it on the facts by pointing out that it was a case of the direct recruits and promotees integrated into one cadre. Once they were integrated they lost their birth birth-marks, viz. the different sources from which they were recruited. [Emphasis supplied]. The court pointed out that *Roshan Lal's* case [supra] was thus no authority for the proposition that if

direct recruits and promotees are integrated into one class they cannot be classified for purpose of promotion on a basis other than that in the case before them they were classified for purpose of promotion on a basis other than that they were drawn from different sources. The court also pointed out that the very Bench which decided Roshan Lal's case [supra] held about a fortnight later in Narsingh Rao's case [supra] that higher educational qualifications were a relevant consideration for fixing higher pay--scale and, therefore, matriculates Tracers could be given a higher scale than non-matriculate Tracers thought their duties were identical. The court, further on the same reasoning distinguished *Mervyn Coutindo & Ors. Collector of Customs Bombay & Ors.*, [1966] 3 SCR 600 and *S.M. Pandit and others, etc. v. state of Gujarat and others*, AIR 1972 SC 252 by pointing out that both the cases related to the classification made on the basis of the sources of recruitment and not on the basis of educations. The court then concluded :

"We are therefore of the opinion that though persons appointed directly and by promotion were integrated into a common class of Assistant Engineers, they could, for purposes of promotion to the cadre of Executive Engineers, be classified on the basis of educational qualification. The rule providing that graduates shall be eligible for such promotion to the exclusion of diploma-holders does not violate Articles 14 and 16 of the Constitution and must be upheld."

The reliance placed by Shri Shetye appearing for the petitioner on a later decision of a Bench of two learned judges of this Court in *H.C. Sharma and others v. Municipal Corporation of Delhi and others*, [1983] 3 SCR 372 is, we are afraid, not justified. It was a case where no separate quota for promotion to the post of Assistant Engineer was kept for degree-holder Junior Engineers and diploma-holder Junior Engineers. The degree-holders Junior Engineers had sought a relief that such a quota be kept. It is while dealing with this relief claimed, that this Court had observed that it could not be done except by carving out two classes in the same category of junior Engineers. It may be observed that it was not a case where the classification was already made which was challenged before the Court. It was a case where the writ petitioners wanted such a classification to be made. It is for the authorities if they so desire, taking into consideration the nature of work, the requisite qualification for the work and the necessity for making such a classification that quotas could be prescribed on the basis of educations. It is true that the following observation made in that case while dealing with the relief claimed, do support the petitioner:

"Prayer No. 4 is to declare the petitioner Graduate Engineers as a separate category amongst Junior Engineers and give them equal quota like the Diploma holder Junior Engineer's out of the 50% quota for promotion as Assistant Engineers."

This cannot be done except by carving out two classes in the same category of Junior Engineers on the basis merely of their qualification which is not permissible in law though the creation of selection grade in the same category on the basis of merit and on seniority is well known and permissible. The Junior Engineers do the same kind of work and bear the same responsibility whatever their qualification, whether they are Degree holders or Diploma holders..."

However , these observations have been made without noticing the decision in Khosa's case (supra). Hence, the observation are per incuriam as regards the next contention, admittedly neither the practice followed till 1988, nor the resolution passed by the respondent Corporation in 1988 nor the resolution passed in accordance with section 64 of the Act. It is well settled that in the absence of rule or regulation the authority can prescribe service conditions by executive instructions and this is what was done till the year 1988 and is also sought to be done since 1988 by the impugned resolution.

The proposition that in the absence of the rules and regulations, the authority can act by executive instruction finds direct support in Mysore state Road Transport Corporation v. Gopinath Gundachar char, {1968} 1 SCR 767 and v. Balasubramaniam and others v. Tamil Nadu housing Board and others, [1987] 4 SCC 738.

In view of the above, the petition stands dismissed. G.N Petition dismissed.