T.R. Kothandaraman vs T.N. Water Supply & Drainage Bd on 13 September, 1994

Equivalent citations: 1994 SCC (6) 282, JT 1994 (6) 157

Author: B.L Hansaria

Bench: B.L Hansaria, Kuldip Singh

PETITIONER:
T.R. KOTHANDARAMAN

Vs.

RESPONDENT:
T.N. WATER SUPPLY & DRAINAGE BD.

DATE OF JUDGMENT13/09/1994

BENCH:
HANSARIA B.L. (J)
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HANSARIA B.L. (J)
KULDIP SINGH (J)

CITATION:
1994 SCC (6) 282 JT 1994 (6) 157
1994 SCALE (4)115

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by B.L. HANSARIA, J.- The golden triangle of our Constitution is composed of Articles 14, 19 and 21. Incorporation of such a trinity in our paramount parchment is for the purpose of paving such a path for the people of India which may see them close to the trinity of liberty, equality and fraternity. It could also be said that the trio assists the deprived and destroys the exploiters of the depressed class.

2. In the cases at hand, we are concerned with one of the constitutional trinities, namely, Article 14 and that too with one of its facets as embodied in Article 16, which takes care of equality of

opportunity in matters of public employment. As to what Article 16 has to say when right to be considered for promotion is either barred or restricted on the basis of educational qualifications, with which aspect of Article 16 we are concerned in these cases, has been spelt out by a good number of Constitution Bench decisions of this Court. It is not necessary to take note of all those cases. It would be enough to first apprise ourselves as to what such a Bench had said in the case of State of J&K v. Triloki Nath Khosa1. Chandrachud, J., as he then was, speaking for self, Ray C.J., and Palekar, J., made certain pertinent observations in this regard which were very ably supplemented by Krishna Iyer, J., speaking for self and Bhagwati, J., as he then was. The sum and substance of what was stated in the leading judgment is that the guarantee of equality is precious and the theory of classification may not be allowed to be extended so as to subvert or submerge the same. Of course, while being called upon to decide whether the classification in question is constitutionally permissible, excellence in service has also to be borne in mind; so too the fact that excellence and equality are not friendly bedfellows. A pragmatic approach is, therefore, required to harmonise the requirements of public services with the aspirations of public servants.

3. Krishna Iyer, J., stated that the social meaning of Articles 14 and 16 is neither dull uniformity nor specious 'talentism'. Further, the soul of Article 16 is the promotion of the common man's capabilities, opening up full opportunities to develop without succumbing to the sophistic argument of the elite that talent is the privilege of the few and they must rule. But then, personnel policy does require an eye on efficiency; and so, though "chill penury"

> should not "repress their noble rage", technical proficiency cannot be sacrificed at the altar of wooden equality. All these call for a striking of balance between the long hunger for equal chance of the lowlier and the 1 (1974) 1 SCC 19: 1974 SCC (L&S) 49: (1974) 1 SCR 771 disturbing concern of the community for higher standards of performance. Even so, mini-classifications based on micro- distinctions are false to our egalitarian faith; and overdoing of classification would be undoing of equality. The Court has to function always as a sentinel on the qui vive.

4. Despite the difference in the underlying thoughts as reflected in the aforesaid two judgments, the Bench was unanimous on the question that educational qualifications can form the basis of a valid classification. In coming to this conclusion, Khosa Bench1 noted earlier decisions rendered in State of Mysore v. P Narasing Rao2, which is by a Constitution Bench and Union of India v. Dr (Mrs) S.B. Kohli3, a rendering of a three-Judge Bench.

5. The Constitution Bench decision rendered in Roshan Lal Tandon v. Union of India4, which seemed at the surface to have struck a discordant note, was explained by the Khosa Bench1 by stating that what that case had laid down was that if two differently situated holders of public office have fused into one, causing disappearance of "genetic blemishes", they cannot be differentiated thereafter having been integrated into a common class, as that would amount to make equals unequals once again. To reinforce this understanding of Roshan Lal case4, the Khosal majority Judges pointed out that the very Bench which had decided that case had after a fortnight later in Narasing Rao case2 held that higher educational qualifications can form basis of classification for the purpose of fixing different pay scales to the persons belonging to the same service.

6. Another Constitution Bench decision which needs to be noted is Mohd. Shujat Ali v. Union of India5, wherein Bhagwati, J., as he then was, speaking for the unanimous court dealt with this aspect of the matter at pages 476 to 481 of the Report. After noting what was held in Khosa case,, it was pointed out that though educational qualifications can form basis of classification, it could not be laid down as an invariable rule that whenever any classification is made on such basis, the same must be held to be valid, irrespective of the nature and purpose of the classification or the quality and extent of the difference in the educational qualifications. The learned Judge required it to be remembered that "life has relations not capable always of division into inflexible compartments". These moulds "expand and shrink". It was thereafter observed that in a case it may be perfectly legitimate for the administration to say that having regard to the nature of the functions and duties attached to the post, for the purpose of achieving efficiency in public service, only degree-holders shall be eligible for promotion and not diploma or certificate-holders. It was then observed that though this distinction may be permissible for deciding the question of eligibility for promotion, it would be difficult, consistently with the claim for equal opportunity, to lay down a quota of promotion for each and give a preferential treatment to graduates 2 (1968) 1 SCR 407: AIR 1968 SC 349: (1968) 2 LLJ20 3 (1973) 3 SCC 592: 1973 SCC (L&S) 136: AIR 1973 SC 811 4(1968) 1 SCR 185 : AIR 1967 SC 1889 :(1968) 1 LLJ 576 5 (1975) 3 SCC 76: 1974 SCC (L&S) 454: (1975) 1 SCR 449 over non-graduates in the matter of fixation of the quota. Shujat Ali Bench5 ultimately took the stand that to permit discrimination based on educational attainments not obligated by nature of the duties of the higher post is to stifle the social thrust of equality clause. Even so, the Bench did not strike down the quota rule challenged before it because of the historical background noted at page 481 of the Report.

7. The aforesaid two decisions have been understood and applied differently by different courts including this Court. There are also decisions of this Court rendered thereafter which took note either of Khosal or Shujat Ali5. This was so in Punjab State Electricity Board v. Ravinder Kumar Sharma6 wherein a two-Judge Bench did not approve of the fixation of quota between diploma and non-diploma- holders, without having noted Khosat decision. Another Bench of two learned Judges held the classification on the basis of educational qualifications as permissible by relying solely on Khosal. This was in Shamkant Narayan Deshpande v. Maharashtra Industrial Development Corpn.7 These decisions, therefore, cannot be called in aid by any of the parties. For the same reason, we would say that the judgment of a three-Judge Bench in N. Abdul Basheer v. K. K. Karunakaran8 is not of much assistance to us, because, though that decision took note both of Khosal and Shujat Ali5, the ratio of 1:3 for graduates and non-graduates for promotion was held to be discriminatory, as the history did not point out if these two categories of incumbents were treated differently, which was the reason for holding the quota rule as valid in Shujat Ali5.

8. We would now refer to the decision which can be said to be a trendsetter. It was rendered in Roop Chand Adlakha v. Delhi Development Authority9. A two-Judge Bench speaking through Venkatachaliah, J., as he then was, after taking note of not only the decisions rendered in Khosal and Shujat Ali5 cases but some others as well on the point under examination made a very pertinent observation at page 268 of the Report. The same is that if diploma-holders (of course, on the justification of job-requirements and in the interest of maintaining a certain quality of technical expertise in the cadre) can validly be excluded from the eligibility for promotion to the higher cadre,

it does not necessarily follow as inevitable corollary that the choice of the recruitment policy is limited to two, namely, either to consider them 'eligible' or "not eligible". The Bench then stated that the State is not precluded from conferring eligibility on diploma-holders conditioning it by other requirements like varying period of length of experience, which in the case of Roop Chand9 was 10 years for the diploma-holders and 8 years for degree-holders. It was concluded by stating that Article 16 would not prevent the State from formulating a policy which prescribes as an essential part of the conditions for the very eligibility that the candidate must have a 6 (1986) 4 SCC 617 : 1987 SCC (L&S) 13 : (1987) 1 SCR 72 7 1993 Supp (2) SCC 194 : 1993 SCC (L&S) 419: (1993) 24 ATC 8 1989 Supp (2) SCC 344: 1990 SCC (L&S) 153: (1991) 17 ATC 160: (1989) 3 SCR 201 9 1989 Supp (1) SCC 116: 1989 SCC (L&S) 235 :(1989) 9 ATC 639: 1988 Supp 3 SCR 253 particular qualification plus a stipulated quantum of service experience. Being of this view, the rule in question laying down different period of service experience for diploma-holders and degree-holders was not found violative of Articles 14 and 16.

9. Before adverting to the decision rendered in P Murugesan v. State Of TN. 10, which has been pressed into service by the degree-holders, it would be profitable to know what was held in two earlier decisions, which are by two-Judge Benches of this Court. The first of these is the case of V Markendeya v. State of A.P11, in which differentiation of non-graduate supervisors and graduate supervisors for the purpose of pay scales was held not have violated Articles 14 and 16. Of course, in coming to this decision the historical background was also kept in mind as would appear from what has been noted in paragraph 14 of the judgment. Another decision is the one rendered in Govt. of A. P v. P Dilip Kumar12, holding that classification on the basis of hi-her educational qualifications to achieve higher administrative efficiency is permissible under our constitutional scheme, because of which the Bench did not find fault with giving of preference to the postgraduates as a class in matter of promotion.

10. We now come to the decision in Murugesan10, which is by a three Judge Bench, which first noted the judgment in Khosa case1 and observed in paragraph 11 that to say that placing of restriction on diploma-holders by limiting their chances of promotion to one out of four promotions (as was done by the impugned amendment) after the graduate engineers and diploma-holder engineers constituted one class and performed same duties and discharged same responsibilities, would not be justified, was "too simplistic way of looking at the issue". Having said so the Bench noted the ratio of Khosa case1 and observed in paragraph 14 that if diploma-holders can be barred altogether from promotion, it was difficult to appreciate how and why the rule-making was precluded from restricting the promotion. It was pointed out that the rule-making authority may be of the view, having regard to the efficiency of the administration and 'other relevant circumstances, that while it is not necessary to bar the diploma-holders from promotion alto-ether, their chances of promotion should be restricted. It was then stated that on principle there is no basis for the contention that only two options are open to rule-making authority either bar the diploma-holders altogether or allow them unrestricted promotion on a par with the graduates. The view expressed in Roop Chand case9 was also referred.

11. Murugesan Bench 10 thereafter noted the hallmark of Shujat Ali case5 which was the need to keep in mind the historical background of the service in question. Decisions in Shamkant7, Ravinder

Kumar6 and Abdul Basheer8 were then traversed and the Bench upheld the validity of ratio of 3:1 between 10 (1993) 2 SCC 340: 1993 SCC (L&S) 445: (1993) 24 ATC 149 11 (1989) 3 SCC 191 : 1989 SCC (L&S) 454: (1989) 11 ATC 3 12 (1993) 2 SCC 310: 1993 SCC (L&S) 464: (1993) 24 ATC 123 graduates and diploma-holders in promotion; so also, the longer qualifying period for service for diploma-holders.

12. An oven-hot decision was also brought to our notice the same being by a Bench of two Judges in Nageshwar Prasad v. Union of Indial3 rendered on 28-7-1994. The Bench, after taking note of the decisions in Roop Chand9, Dilip Kumar12, Murugesan 10 and Shujat Ali5 did not find fault with the prescription of 50% quota for the diploma-holders.

13. The aforesaid bird's-eye view of important decisions of this Court on the question of prescribing quota in promotion to higher post based on the educational qualification makes it clear that such a qualification can in certain cases be a valid basis of classification; and the classification need not be relatable only to the eligibility criteria, but to restrictions in promotion as well. Further, even if in a case the classification would not be acceptable to the court on principle, it would, before pronouncing its judgment, bear in mind the historical background. It is apparent that while judging the validity of the classification, the court shall have to be conscious about the need for maintaining efficiency in service and also whether the required qualification is necessary for the discharge of duties in the higher post.

14. The aforesaid propositions seem indisputable to us. We, however, propose to project two other determinants, or to put it differently, introduce two more spokes in the wheel. They are call of social justice and importance of education. In view of the interrelationship which exists in the fundamental rights, which got established by the decision in Bank Nationalisation case14, we have to see, while examining the provision on the anvil of Articles 14 and 16 of the Constitution, whether Article 21 is offended in any way. This article has expanded its reach almost phenomenally. For the purpose of the cases at hand we may not dwell upon that it would be enough to note that even education (up to primary stage) was held by a Constitution Bench to be a part of Article 21 in Unni Krishnan, J. P v. State of A. P 15 The importance of education has been well brought home by Mohan, J., (a majority Judge) in his concurrent judgment by stating that education is "a preparation for living and for life, here and hereafter" and that education is "at once a social and political necessity", and that "[v]ictories are gained, peace is preserved, progress is achieved, civilisation is built up and history is made not on the battlefields ... but in educational institutions which are seed-beds of culture, where children in whose hands quiver the destinies of the future, are trained." (See p. 665, paragraphs 10, 12 and

13). So, whatever view we take has to be one which does not play down the importance of education.

15. At the same time we shall have to remember that diploma-holders are drawn mainly from poorer families and they are incapable of making the degree grade. The "chill penury" should not, therefore, be allowed to " repress their noble rage". Social justice would not permit us to do so. It may 14 Rustom Cavasjee Cooper v. Union of India, (1970) 1 SCC 248 : (1970) 3 SCR 530 15 (1993) 1 SCC 645 be that social justice is not a fundamental right and what has been stated by Ramaswamy, J., (a

minority Judge) in C.E.S.C. Ltd. v. Subhash Chandra Bose16 about social justice being a part of fundamental right may not be accepted by all, there is little to doubt that social justice being a requirement of directive principles of our Constitution, the same has to be our desideratum in any case.

16. From what has been stated above, the following legal propositions emerge regarding educational qualification being a basis of classification relating to promotion in public service:

> (1) Higher educational qualification is a permissible basis of classification, acceptability of which will depend on the facts and circumstances of each case. (2) Higher educational qualification can be the basis not only for barring promotion, but also for restricting the scope of promotion. (3) Restriction placed cannot however go to the extent of seriously jeopardising the chances of promotion. To decide this, the extent of restriction shall have also to be looked into to ascertain whether it is reasonable. Reasons for this are being indicated later.

17. Keeping in mind the aforesaid legal position, we may now advert to the facts of the cases at hand and decide whether the restriction on the promotion as placed by the provisions concerned violated the mandate of Article 16 or fits in with the wavelength of Article 16.

18. In the cases at hand, we are concerned with two different services and we propose to take each of them separately to find out not only the nature and duties of the promotional post(s) but also whether the higher educational requirement as prescribed is necessary to discharge those duties. We shall have to ascertain the historical setting as well of the services in question. We shall then see as to whether the restriction imposed is reasonable. TAMIL NADU AGRICULTURE ENGINEERING SERVICE CASES

19. The writ petitioners/appellants of this service have two grievances. The first is that the proviso to Regulation 19(2)(b) of Tamil Nadu Water Supply and Drainage Board Service Regulations, 1972 is violative of Article 16 of the Constitution. Secondly, what has been provided in Rule 2(b) of the Special Rules for the Tamil Nadu Agriculture Engineering Service brought into force w.e.f. 1-2-1981 is similarly infirm. We proposed to examine these two grievances separately.

20. The purport of the first challenge is that the proviso permits diplomaholders Assistant Engineers to become eligible for promotion to the post of Executive Engineer only if they were to have "exceptional merit" in work; otherwise a diploma-holder is not eligible for such promotion. This challenge has to fail because of what was held in Khosa case' according to which diploma-holders being less educationally qualified than degree- 16 (1992) 1 SCC 441 : 1992 SCC (L&S) 313 :(1992) 3 SCR 23 holders can be made non-eligible for promotion to higher post. The proviso really takes out the rigour by permitting the diploma-holders to be considered for promotion in case they were to show exceptional merit in their work. The proviso being thus favourable to the diploma-holders has really to be welcomed by them, instead of inviting their wrath.

21. The validity of aforesaid Rule 2(b), which has prescribed the ratio of 3:2 for direct recruits and promotees the former being degree-holders and latter diploma-holders is challenged as violative of the guarantee of quality embodied in Article 16. The counsel for the respondents has, inter alia, drawn our attention to the fact that this differentiation is ancient as mentioned in the counter-affidavit filed by the State, a part of which has been quoted at pages 13 to 16 of SLP (C) No. 10645 of 1989. A perusal of the same shows that the degree-holder Assistant Engineers were designated as Assistant Engineer (Agriculture Engineering) and given gazetted status, whereas diploma-holders were denied the same. This apart, the degree-holders were given higher scale of pay. The affidavit further shows that the post of Executive Engineer (Agricultural Engineering) calls for higher skill, administration, planning and evolving of proposals and drafting. In these aspects most of the diploma-holders were found lacking. It has been mentioned in this affidavit that the degree-holders had studied for six years at college level after leaving school stage, whereas diploma-holders have only three years' study at the level of Institute of Technology after school stage. Because of this, higher technical calibre in degree-holders is presumed. Insofar as the common seniority list is concerned, the submission in the counter-affidavit is that the same "did not allow (sic) to give preference in promoting graduates to the level of Assistant Executive Engineer (Agricultural Engineering) in the department". The further averment is that in other departments where separate lists were being maintained, ratio adopted was 3: 1, whereas in the department at hand ratio of 3:2 was recommended taking into account large number of diploma-holders.

22. The aforesaid shows that higher educational qualification has relevance insofar as the holding of higher promotional post is concerned, in view of the nature of the functions and duties attached to that post. The classification has, therefore, nexus with the object to be achieved. This apart, history also supports the differentiation sought to be made by the rule in question. We, therefore, uphold the classification as valid.

23. The next question to be examined is about the extent of the preference given to the degree-holders. At this stage, we may first give our reasons as to why this aspect is amenable to examination. The rule-making authority having made a diploma-holder eligible for promotion, it follows that a diploma-holder does not suffer from such an infirmity as to make him totally unfit for holding the higher post. If that is so, question is whether the ratio could be made so inequitable as to mock at the guarantee of equality? The right which has been conferred by one hand cannot be taken away by another; nor can the right be converted to a husk. It must continue to be a meaningful right. Too much emphasis on higher education may even cause dent to cause of social justice, as it would be the poorer section of the society which would be deprived of its legitimate expectations. The preference given to the degree-holders would, at the same time, give fillip to the desire to receive higher education, as such persons would always be favourably placed as compared to the lesser educated ones. A harmony would thus be struck, by maintaining reasonableness in the ratio, between the call of social justice and the need for higher education, without in any way jeopardising the principal object of classification. But then, no particular ratio can be spelt out which would satisfy these requirements; the reasonableness of the ratio shall depend on facts of each case.

24. In the present cases the ratio is 3:2 and we regard the same as reasonable in view of what has been stated above relating to adoption of this ratio. Having felt satisfied about the permissibility of

the classification also, the cases challenging the constitutionality of the quota for- promotion as fixed in this service have to be dismissed. TAMIL NADU ELECTRICITY BOARD SERVICE CASES

25. The writ petitioners and appellants, among whom is the Engineering Diploma-holders' Association, have challenged the decision of the Tamil Nadu Electricity Board which amended the Board's Service Regulations fixing ratio of 3:1 for promotion to the post of Assistant Engineers (Electrical) between the Junior Engineers (Electrical) and Supervisors (Electrical Grade-1) the former being degree- holders and latter diplomaholders.

26. The aforesaid shows that the classification is based on higher educational qualification and the same has to receive our approval because for certain types of work the Supervisors are not sufficiently qualified, whereas Junior Engineers are. The nature of the work performed by the two classes of post holders and the higher educational qualification of the degree-holders did permit the Electricity Board to classify the two groups differently for the purpose of their promotion. As to the ratio of 3: 1, we have applied our mind and we have come to the conclusion that we may not interfere with the same because of the fact that any different view would create almost a chaotic situation in the working of the Board as the Board's decision, which is of 1974 has held the field for about two decades and any disturbance at this stage would not to be conducive to the functioning of the Board inasmuch as the number of persons to be affected would be in thousands, as it has been stated in paragraph 22 of the counter-affidavit filed on behalf of the Board in CA No. 559 of 1991 that the number of qualified diplomaholders and degree-holders in all branches would be in region of 1000; Junior Engineers Grade- 1 about 2000 and Assistant Engineers also 2000.

27. The aforesaid being the position, we do not find any constitutional infirmity in the classification and would not interfere with the ratio as prescribed because of the aforesaid special facts.

CONCLUSION

28. None of the objections raised and contentions advanced having been accepted by us, all the writ petitions, appeals and special leave petitions stand dismissed. Parties are, however, left to bear their own costs.