
(1990) 07 KL CK 0026
In the High Court Of Kerala
Case No : O.P. No. 10108 of 1985

Abdul Rasheed

APPELLANT

Vs

K.S.R.T.C.

RESPONDENT

Date of Decision : 31-07-1990

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (1991) 2 LLJ 485

Hon'ble Judges : Thomas, J

Bench : Single Bench

Advocate : A.A. Abdul Hassan, for the Appellant; S. Sankara Subban, T.P. Kelu Nambiar and B. Raghunathan and A.B. Molly, Govt. Pleader, for the Respondent

Judgement

Thomas, J.—Degree holders and Diploma holders in the cadre of Asst Executive Engineers in Kerala State Road Transport Corporation (for short "the Corporation") have been classified into two categories for the purpose of further promotion to the cadre of Executive Engineers, The relevant clause in the Regulations formulated by the Corporation which made the aforesaid classification has been assailed in this Original Petition filed by two Diploma holders.

2. The petitioners and the fourth respondent are now Asst. Executive Engineers in the Corporation. Their next promotion is to the cadre of Executive Engineers. While petitioners are diploma holders the 4th Respondent is a graduate in Civil Engineering. Clause 5(1) of the K.S.R.T.C. Civil Engineering Staff (Method of Appointment) Regulations (for short "the Regulations") reads thus:

Executive Engineer

Method of Recruitment

(1) By Selection from among Asst. Executive Engineers with minimum 3 years experience in case of Degree holders and 5 years in case of Diploma holders.

According to the petitioners, the requirement that Diploma holder should have 5 years experience as Asst. Executive Engineer for entitlement to promotion to the next cadre is discriminatory and hence violative of Articles 14 and 16 of the Constitution. Learned Counsel for the petitioners contended that when once two categories have been fused into one cadre, a dichotomy as between them subsequently, even if it is for further promotion, is impermissible as it would offend Articles 14 and 16 of the Constitution. Learned Counsel also contended that the burden is on the authority which formulated the rule to substantiate that the classification is not discriminatory or that the classification has a nexus with the object sought to be achieved.

3. Classification as such is not altogether forbidden by Articles 14 and 16 of the Constitution. The oft repeated rule is that the classification must be based on an intelligible rationale having a nexus with the object sought to be achieved. In the impugned Regulations the classification is apparent as between Degree holders and Diploma holders. One cannot contend that a Diploma holder stands on a par with a Degree holder from academic standpoint. A degree in one subject is certainly weightier than diploma in that subject; although, perhaps a Diploma holder may successfully carry out the same amount of work with the same amount of skill as what a Degree holder is able to perform. But it is unreasonable to compel any one to treat a Degree holder and a Diploma holder alike without any rider whatsoever. Even if Diploma holders and Degree holders were treated alike at a particular stage or cadre, the authority concerned is not under any disability to retain the integration unbroken atleast for higher echelons in the same service. In the impugned Regulations what is stipulated is that Diploma holder must acquire a larger length of service to qualify himself to be promoted to the next cadre while Degree holder need acquire a lesser length of service. Such a stipulation, even on the face of it, is only consistent with the ostensible difference between a degree and a diploma in the same subject.

4. A plethora of case law had developed in this aspect. Though it is unnecessary to refer to all of them or even a good number of them, it would be helpful to advert to the decision which a Constitution Bench of the Supreme Court The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others, has pronounced. The question posed before the Supreme Court then was this: If persons drawn from different sources are integrated into one class, can they be classified for purposes of promotion on the basis of their educational qualifications? There also the classification made was as between Diploma holders and Degree holders in Engineering. A larger length of service was prescribed for Diploma holders for promotion to the next cadre. The Diploma holders challenged the Rule which put them under the aforesaid disability vis-a-vis the Degree holders. The ratio laid down by the Supreme Court mainly consists of two limbs. The following observations in the first limb are important for notice here. (p. 128):

"There is always a presumption in favour of the constitutionality of an enactment

and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles.--A rule cannot be struck down as discriminatory on any a priori reasoning. That where a party seeks to impeach the validity of a rule made by a competent authority on the ground that the rules offend Article 14 the burden is on him to plead and prove the infirmity is too well established to need elaboration. The burden thus is on the respondents to set out facts necessary to sustain the plea of discrimination and to adduce "cogent and convincing evidence" to prove those facts for there is a presumption that every factor which is relevant or material has been taken into account in formulating the classifications."

The second limb of the ratio is this (pp.128-129):-

" Formal education may not always produce excellence but a classification founded on variant educational qualifications is, for purposes of promotion to the post of an Executive Engineer, to say the least, not unjust on the face of it and the onus, therefore, cannot shift from where it originally lay."

5. It is not out of place to make a reference to the observations of M.P. Menon, J. in E.C.George and Anr. v. State of Kerala 1986 KLT 746. The learned Judge has taken into account the ratio laid down by the Supreme Court in Triloki Nath Khosa's case (supra) and stated thus:

"Equal treatment of unequals is as much discrimination as unequal treatment of equals; and if the assumption of equality rests on a slender foundation any direction to do away with unequal treatment may itself run the risk of being discriminatory. Despite integration or fusion of different classes into one group, further classification was permissible on the basis of educational qualifications."

In a recent decision a Bench of two judges of the Supreme Court reiterated the same position. Incidentally it is relevant to note that the said case also was as between Diploma holders and graduates in Engineering where the rule making authority prescribed a larger length of service for Diploma holders for promotion to the next cadre. That decision is in Roop Chand Adlakha and Others Vs. Delhi Development Authority and Others, The following observations would support the respondent's case:

"If the educational qualification by itself was recognised as conferring eligibility for promotion, then, the super-imposition of further conditions such as a particular period of service, selectively, on the diploma-holders alone to their disadvantage might become discriminatory. This does 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 particular qualification plus a stipulated quantum of service experience."

6. Learned Counsel for petitioners invited my attention to a number of decisions. Among them are, Supreme Court decision in N. Abdul Basheer and Others Vs. K.K. Karunakaran and Others, Balakrishnan v. State 1990 I KLT 66, and

Govindankutty v. State 1990 I KLT 479. Though dispute in those three decisions related to classification made by the Rules of promotion as between Degree holders and Diploma holders, the point focused in them was regarding the quota provided for each category in the matter of promotion. Pathak.C.J. who spoke for the Bench in Basheer's case (supra) specifically pointed out that as graduates and non-graduates were both regarded as eligible for promotion to the post no differentiation should have been made between them when prescribing a rule of quota for promotion. The Division Bench which decided Balakrishnan's case (supra) has further observed that prescription of a ratio of 1:1 between graduates and non-graduates, far from discriminating against Diploma holders, metes out a favourable treatment to them. Malimath C.J. has observed thus:

"If at all, it is the graduates who are really affected by continuing the concession shown to the less qualified non-graduates who are inadequate for the job. The rules far from discriminating against the non-graduates, have shown favour to the non-graduates. The non-graduates cannot therefore complain about discrimination."

7. No decision has been brought to my notice in which a different stand was taken in regard to the graduates and non-graduates in the matter of promotion when non-graduates have to acquire a larger length of service to qualify them for promotion.

8. Learned Counsel for the petitioners then contended that classification in the Regulations was made only for the cadre of Executive Engineer to which the petitioners seek promotion and this was done malafide to favour the 4th Respondent. He invited my attention to certain other categories included in the Regulations wherein no such insistence is made for larger length of service. True, there are other categories where no such insistence is seen made. But it cannot be said that the cadre of Executive Engineer is the sole category for which such an insistence is made in the Regulations. Even for promotion to the cadre of Asst. Executive Engineer also there is a similar classification. That apart, it is not enough that petitioners merely say that the Regulations were made malafide to favour the 4th Respondent. Why should the Corporation favour the 4th Respondent and why should the Corporation disfavour the petitioners? No averment is made in the O.P. and no material is placed before me to show that the Corporation officials had any axe to grind against petitioners or any reason to show special favour personally to the 4th Respondent. I therefore reject the contention based on malafides alleged.

9. For the said reasons I dismiss this O.P.