
(1991) 03 CAL CK 0004
In the Calcutta High Court
Case No : Civil Order No. 7028 (W) of 1988

Chinmoy Moulik

APPELLANT

Vs

Damodar Valley Corporation

RESPONDENT

Date of Decision : 18-03-1991

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 16, 16(1), 226

Citation : (1993) 2 ILR (Cal) 413

Hon'ble Judges : Kalyanmoy Ganguli, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Kalyanmoy Ganguli, J.—The Petitioners who are science graduates and appointed under the Damodar Valley Corporation pray in this application for a writ in the nature of mandamus commanding the Respondents, inter alia, to treat the Petitioners equally in the matters of their employment with the diploma-holder engineers who have been appointed initially on the same post and scale along with the Petitioners and further commanding the Respondents Nos. 1 to 3 to consider favourably the cases of the degree-holder Petitioners for promotion to the post of Asstt. Controller or equivalent post with the scale of pay with effect from June 11, 1982, in the same way as has been done in the case of diploma-holders with promotion of pay and restraining the Respondents from treating the degree-holders differently from the diploma-holders in the matter of upgrading the positions of Asstt. Operators and. Operators to the post of Asstt. Controller or equivalent. The Petitioners also pray that their inter se seniority vis-a-vis the degree-holders as it existed before June 11, 1982, be maintained.

2. The Petitioners are all science graduates holding the degree of B.Sc. and were initially appointed as Asstt. Operator and Operator Trainees in the electrical and mechanical division under operation and maintenance wing (O & M) of Efamodar Valley Corporation.

3. The case of the Petitioners is that they applied for service in the aforesaid post in pursuance of an advertisement inviting applications for the aforesaid posts. For the post of Asstt. Operator the qualification required in the said advertisement was B.Sc. diploma in Electrical or Mechanical Engineering. The Petitioners state that they joined their services having the same status and same rank and being equally circumstanced with the diploma engineer, i.e. L.M.E./L.E.E. The Petitioners joined in different years pursuant to similar advertisements.

4. The said statement in the petition that the science degree-holder Petitioners were treated equally with the diploma-holder engineers is not denied by the Respondents. On the contrary the Respondents state that the said statements are substantially true and not disputed.

5. The Petitioners Nos. 1 to 17 are presently holding the post of operators and the Petitioners Nos. 18 to 33 are presently holding the post of Asstt. Controllers. The undisputed statement made in para. 5 of the petition is that since the date of appointment in the post of Asstt. Operator the Petitioners and diploma-holders were getting promotion on the basis of departmental examinations, both written and oral, and that the promotions did not depend only on seniority. It is further stated that the diploma-holder engineers had also to face such departmental examinations up to certain points and the hierarchy as regards the promotional channel has been annexed to the petition marked with the letter "A-I".

6. In para. 6 of the petition it has been categorically stated that from the year 1963 to 1968 the holders of diploma engineering, namely, L.M.E., L.E.E. and the degree-holders of B.Sc. were appointed in the post of Asstt. Operators (Mechanical or Electrical) from the one and same advertisement as "Operator Trainee". The duties, responsibilities and pay scales of the diploma-holders and the science graduates are identical and same. This fact has been admitted to be correct in para. 7 of the affidavit-in-opposition filed by the Respondent No. 1. It is also an admitted position that from the year 1969 to 1977 both the diploma-holders and the graduate science degree-holders were recruited as Asstt. Operators (Mechanical or Electrical) by the self-same advertisement. A copy of such advertisement has been annexed to the petition marked with the letter "A".

7. In answer to the allegation made in paras. 8 and 9 of the petition the Respondents reassert that at the time of appointment the B.Sc. degree-holders like the Petitioners and the diploma-holder engineers were treated equally and alike.

8. It is also an admitted position that from the entry level post of Asstt. Operator promotion to the post of Controller had to be made through departmental examinations conducted by the Damodar Valley Corporation irrespective of whether the Asstt. Operators were diploma-holders in engineering or degree-holders in science." It is further stated in the petition and not denied by the Respondent that the promotional avenues for Asstt. Operators (Mechanical or Electrical) both for holders of diploma in engineering and B.Sc. degrees with

distinction or Honours were open up to the post of Junior Executive Engineers.

9. It is alleged that some of the diploma-holder engineers demanded for higher status and pay and it is further alleged that the Damodar Valley Corporation, hereinafter referred to as D.V.C, by a letter dated August 21, 1975, held out a promise that the recruitment level of diploma-holders in D.V.C. would be Asstt. Controller or equivalent and that the method of bringing up diploma-holders to level of Asstt. Controller or equivalent from the existing level of Asstt. Operators and Operators would be examined by the management.

10. The diploma-holders, not having been favoured with the special treatment alleged to have been promised by the D.V.C, moved this Court under Article 226 of the Constitution of India and Hon"ble P. C. Borooah J. was pleased to direct the D.V.C, by a judgment and order passed on February 11, 1982 in C.R. No. 10949(W) of 1980 to implement its promise held out to the diploma-holder engineers association. A copy of the said judgment of Hon"ble Borooah J. has been annexed to the petition marked with the letter "B". For the failure of complying with the judgment and order of P. C. Borooah J., a contempt proceeding was initiated and the D.V.C was directed to comply with the judgment of Borooah J., within a fixed time.

11. It appears from para. 15 o/ the petition that the D.V.C authorities immediately realised certain difficulties in the matter of blind compliance of the order of High Court passed in C.R. No. 10949(W) of 1980. The D.V.C did not prefer any appeal from the said judgment and allowed the judgment to become final knowing fully well" that blind compliance of the said order would result in discrimination amongst Asstt. Operators and Operators who were either diploma-holder engineers or degree-holder science graduates,. Infact, the said difficulties were brought to light in 449th meeting of the D.V.C.

12. It may be parenthetically mentioned here that although the judgment "directed the D.V.C to implement His lordship"s order, yet there is no single line in the judgment to indicate that in order to comply with the judgment the D.V.C was directed to practise active discrimination.

13. Indeed the D.V.C was bound to comply with the order passed by this Court in C.R. No. 10949(W) of 1980, but it was equally their duty to see that in the matter of complying with the said order they themselves did not commit any act of hostile discrimination between the persons similarly circumstanced and to treat equals unequally.

14. In the situation the only course left to the D.V.C was to make the upgradation in terms of the aforesaid judgment not only in respect of the diploma-holder engineers but also the degree-holder science graduates as for all purposes they were similarly circumstanced and have been enjoying similar service amenities including status, rank, grades and scales and there was a combined seniority list of these diploma-holders and degree-holders.

15. It may also be mentioned here that in the aforesaid Civil Rule No. 10949(W) of 1980, the present Petitioners who are science graduates were not made parties and as such they could not express their view in the said matters. The D.V.C authorities also did not think it fit to take the science graduates in their confidence in the matter of upgrading of the posts but decided to bring up the diploma-holders to the level of Asstt. Controllers or equivalent to the exclusion of the degree-holder science graduates, who were, for all purposes, similarly circumstanced. The association of the Petitioners brought this inequity to the notice of the D.V.C by their letter dated May 23, 1983, a copy of which has been annexed to the petition marked with the letter "E".

16. To comply with the orders passed by this Court in the aforesaid Civil Rule, the D.V.C created 44 new posts and 15 posts of Irrigation Supervisors (Electrical), 4 posts of Irrigation Supervisors (Mechanical) and 23 posts of Mechanical Supervisors (Material) in the same scale as that of the Asstt. Controller. It is needless to say that in the said newly created 44 posts only the diploma-holder engineers became eligible to the total exclusion of the N science graduate degree-holders. This action resulted in rank discrimination between the persons similarly circumstanced and this action of discrimination was not merely a distinction as it was not based on any intelligible differentia.

17. Being aggrieved by the aforesaid action on the part of the D.V.C, the degree-holder science graduates, some of whom are Petitioners in this application, also moved this High Court for a writ, inter alia, in the nature of mandamus commanding the Respondents Nos. 1 to 3 to treat the Petitioners equally in the matter of their employment with the diploma-holders who have been appointed initially on the same post and scale along with the Petitioners and to consider favourably the cases of the degree-holders for promotion to the post of- Asstt. Controller or equivalent posts with its scale of pay with effect from June 11, 1982, in the same way as has been done in the case of diploma-holder engineers. On the said writ petition the Hon"ble Bhagabati Prasad Banerjee J. issued a civil order on May 28, 1985, which is numbered as C.O. 6712(W) of 1985. The said matter is still pending and is being heard along with this application.

18. After the issuance of the aforesaid civil order on May 28, 1985, an office order was issued on behalf of the D.V.C. by the Directorate of Personnel through his office memo. No. PL-118/56(Con.) PT/21 dated May 13, 1988. In the said office memo, it was, inter alia, stated that the engineering diploma-holders who had completed 9 years continuous satisfactory service would be allowed to slide over without promotion or benefit to the pay scale of Rs. 1030-55-1580-60-2120 (equivalent pay scale of Foreman Grade II) and would-be redesignated as Junior Engineer (Selection Grade) entitling them, by straightway promotion, to the next higher scale without being confirmed in the promotional grade scale. In the said memorandum the promotional channel of the said Junior Engineers was also shown. A copy of the said memorandum dated May 13, 1988, has been annexed

to the petition marked with the letter "O" and this order is under challenge in the present application. The Respondent No. 1 in para. 16 of its affidavit in opposition comes out with a plea that such ex-cadre posts were created out of normal promotional channel of the operatives to accommodate the diploma-holders on the basis of this Court's order in C.R. No. 10949(W)" of 1986. On this basis the Respondent No. 1 states that there is no arbitrariness and discrimination on the part of the D.V.C. As I have already discussed that even in the matter of implementation of a Court's order, it is the solemn duty and responsibility of a public authority to see that no discrimination is practised actively and hostilely amongst persons similarly circumstanced. If the High Court directed the D.V.C. to complete the- programme of upgradation of the diploma-holder engineers, it was incumbent upon the D.V.C. to comply with the order passed by the High Court, but in doing so it would be the solemn duty of the D.V.C to apply the principle of upgradation equally to the science graduate degree-holders, namely, the Petitioners in the instant application who are otherwise similarly circumstanced. It may also be reiterated here that the High Court order passed in C.R. No. 10949(W) of 1980 did not either direct, authorise or compel the D.V.C. to practise discrimination amongst persons similarly circumstanced and treating equals unequally. It is further be reiterated that in the aforesaid civil rule the science graduate degree-holders were not even made parties and were prevented from making any submission on their behalf. The High Court was prevented from perusing the case of the degree-holders as they were completely shut out from the scope. Had their case been brought to light certainly the Court would not have directed that programme for upgradation be implemented only in case of the diploma-holder engineers to the exclusion of the degree-holder science graduates. A wholesome harmonious interpretation is to be given to the judgment passed by this Court.

19. It has been held in the case of Mohammad Shujat Ali and Others Vs. Union of India (UOI) and Others, ", inter alia, in para. 25 of the said judgment that reasonable classification is one which includes all persons or things similarly situated with respect to the purpose of the law. There should be no discrimination between one person or thing and another, if as regards the subject-matter of the legislation their position is substantially the same. This is sometimes epigram-matically described by saying that what the constitutional code of equality and equal opportunity requires is that, among equals, the law should be equal and that like should be treated alike.

20. It has been stated, inter alia, in para. 26 of the said judgment that the fundamental guarantee is of equal protection of the laws, and the doctrine of classification is only a subsidiary rule evolved by Courts to give a practical content to that guarantee by accommodating it with the practical needs of the society and it should not be allowed to submerge and drown the precious guarantee of equality. The doctrine -of classification should not be carried to a point where instead of being a useful servant it becomes a dangerous master.

21. The concept of equal opportunity to be found in Article 16 permeates the entire spectrum of an individual's employment from appointment through promotion and termination to the payment of gratuity and pension and give expression to the ideal of equality of opportunity which is one of the great socio-economic object set out in the preamble of the Constitution.

22. It was held in the case of *The Manager, Government Branch Press and Another Vs. D.B. Belliappa*, inter alia, that it is now well-settled that the expression. "matters relating to employment" used in Article 16(1) is not confined to initial matters prior to the act of employment but comprises of matters in relations to employment both prior and subsequent to the employment which are incidental to the employment and form part of the terms and conditions of such employment, such as provisions as to salary, increment, leave, gratuity, pension, age of superannuation, promotion and even termination of employment. It was further held in para. 21 of the said judgment that in such case no special circumstances or reasons had been disclosed which would justify discriminatory treatment to Belliappa as a class apart from his junior who have been retained in service.

23. Relying on the aforesaid line it may be stated in the facts of the instant case that the Respondents here, namely D.V.C., has failed to disclose any circumstances or reason for such discriminatory treatment meted out to the diploma-holder engineers and the degree-holder science graduates save and except the judgment of this Court in C.R. No. 10949(W) of 1980 the import of which has already been discussed hereinbefore.

24. Reference may next be made- to the case of *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, of the said judgment reads as follows:

If the society is an "authority" and therefore "State" within the meaning of Article 12, it must follow that "it is subject to the constitutional obligation under Article 14. The true scope and admit of Article 14 has been the subject-matter of numerous decisions and it is not necessary to make any detailed reference to them. It is sufficient to state that the content and reach of Article 14 must not be confused with the doctrine of classification. Unfortunately, in the early stages of the evolution of our constitutional law, Article 14 came to be identified with the doctrine of classification because the view taken was that that Article forbids discrimination and there would be no discrimination where the classification making the differentia fulfils two conditions, namely, (i) that the classification is founded on an intelligible differentia which distinguished persons or things that are grouped together from others left out of the group and (ii) that differentia has a rational relation to the object sought to be achieved by the impugned legislative or executive action. It was for the first time in *E.P. Royappa Vs. State of Tamil Nadu and Another*, that this Court laid bare a new dimension of Article 14 and pointed out that Article has highly activist magnitude and it embodies a guarantee against arbitrariness. This Court speaking through one of us (Bhagawati J.) said:

The basic principle which therefore- informs both "Articles 14 and 16 is equality and inhibition against discrimination. Now what is the content and reach of this great equalising principle ? It is a founding faith, to use the words of Bose J., "a way of life", and it must not be subjected to a narrow pedantic or lexicographic approach. We cannot countenance any attempt to truncate its all-embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be "cribbed, cabined and confined" within, traditional and doctrinaire limits. From a positivistic point of view, equality is antithetic to arbitrariness. In fact, equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic, while the other to the whim and caprice of an absolute monarch. Where an act is arbitrary it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14, and if it affects any matter relating -to public employment, it is also violative of Article 14. Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of) treatment. This vital and dynamic aspect which was till then lying latent and submerged in the few simple but pregnant words of Article 14 was explored and brought to light in,Royappa"s case and it was reaffirmed and elaborated by this Court in Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, where this Court again speaking through one of us (Bhagawati J.) observed:

Now the question immediately arises as to what is the requirement of Article 14: what is the content and reach of the great equalising principle enunciated in this Article. There can be no doubt that it is a founding faith of the Constitution. It is indeed the pillar on which rests securely the foundation x>i our democratic republic. And, therefore, it must not be subjected to a narrow, pedantic or lexicographic approach. No attempt should be made to truncate its all-embracing scope and meaning for, to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be imprisoned within traditional and doctrinaire limits.... Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The principle of reasonableness which, legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence." This was again reiterated by this Court in Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, of the Report. It must therefore now be taken to be well-settled that what Article 14 strikes at is arbitrariness because an action that is arbitrary must necessarily involve negation of equality. The doctrine of classification which is evolved by the Courts is not paraphrase of Article 14 nor is it the objective and end of that Article. It is merely a judicial formula for determining whether the legislative or executive action in question is arbitrary and, therefore, constituting denial of equality. If the classification is not reasonable and does not satisfy the two conditions referred to above, the impugned legislative or executive action would plainly be arbitrary and the guarantee of equality under Article 14 would be breached. Wherever before there is arbitrariness in State action "whether it be of

the Legislature or of the executive or of an "authority" under Article 12, Article 14 immediately springs into action and strikes down such State action. In fact, the concept of reasonableness and non-arbitrariness pervades the entire constitutional scheme and is a golden thread which runs through the whole of the fabric of the Constitution.

25. The similar view was expressed in the case of Punjab State Electricity Board, Patiala, and Anr. v. Ravind Kr. Sharma and Ors. AIR 1987 S.C. 367.

26. Even at the risk of emphasising the obvious and indulging--in repetitive profusion it may be said that the Respondents have signally failed to give any reason for this discriminatory treatment between the Petitioners who are science graduate degree-holders and the diploma-holder engineers excepting the judgment of the High Court passed in C.R. No. 10949(W) of 1980.

27. For the reasons stated above this application succeeds and is allowed. The Respondents are directed to treat the Petitioners equally in the matter of their employment with the diploma-holders who have been appointed initially on the same post and scale along with the Petitioners and to consider favourably the case of the degree-holders for promotion to the next higher post with its scale of pay with effect from June 11, 1982, in the same way as has been done in the case of diploma-holders with protection of pay. The Respondents are further directed to maintain the inter se" seniority of the Petitioners vis-a-vis diploma-holders as it existed before June 11, 1982. The Respondents are further directed not to give any effect or further effect to the order impugned in the petition, namely, Annex. "O" thereof. The Respondents are further directed to pay to the Petitioners arrears of pay, if any, that may accrue owing to the reorientation of the position of the Petitioners pursuant to this judgment and order within three months from the date of communication of this order.

28. There will, however, be no order as to costs.

29. After the judgment was delivered a prayer on behalf of the added Respondents for stay of the operation of the order was made, the prayer is refused.