
(2000) 06 KL CK 0063
In the High Court Of Kerala
Case No : W.A. No. 286/93

F.A.C.T. and Another

APPELLANT

Vs

H. Sooryanarayana Iyer and Another

RESPONDENT

Date of Decision : 29-06-2000

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 16

Citation : (2000) 06 KL CK 0063

Hon'ble Judges : A.V. Savant, C.J;K.S. Radhakrishnan, J

Bench : Division Bench

Advocate : C.N. Ramachandran Nair, for the Appellant; N. Sukumaran, for the Respondent

Judgement

A.V. Savant, C.J.—Heard both the learned Counsel; Mr. C.N. Ramachandran Nair for the Appellants and Mr. N. Sukumaran for the Respondents.

2. This is an appeal against the judgment dated 12th November, 1992 rendered by the learned Single Judge in O.P. No. 5419 of 1988. The Original Petition was filed by the Respondents challenging the letter Ext. P-2 dated 4th April 1988 issued by the Appellant rejecting the Respondents' representation dated 21st December, 1987. The Respondents were employed in the first Appellant company. Admittedly the Respondents are Diploma holders in Electrical Engineering. They were initially appointed by the first Appellant as Draughtsmen in 1967; promoted as Supervisors in 1969, further promoted as Technicians in 1971 and thereafter promoted as Engineers in the managerial cadre in 1979.

3. The first Appellant namely the Fertilisers and Chemicals Travancore Limited, is a Government of India undertaking, which is represented before us by its Chairman and Managing Director. There is no dispute that the first Appellant is a State within the meaning of Article 12 of the Constitution. The first Appellant also employs first class Graduate Engineers. But the method of recruitment of Graduate Engineers is entirely different from that in the case of Diploma holders who start at the lowest rung of the ladder as Draughtsmen. As far as Graduate

Engineers are concerned, only first class Engineering Graduates are eligible to apply. There is a written test on an all India basis. The candidates who are successful in such a test are then called for group discussion followed by an interview where final selection is made. In the very nature of things, having regard to the higher academic qualification and excellence involved in, firstly, being a first class graduate; secondly, being qualified at an all India written test; thirdly, being successful at the group discussion and finally being selected at a viva voce, such candidates are technically very competent and, therefore, taken up as management trainees, which is usually for a period between 18 months to two years. During this period they are only paid stipend. On successful completion of training they are absorbed as Engineers in the grade of Rs. 1060-1930. These Graduate Engineers who undergo such a rigorous selection process and for whom the method of recruitment is entirely different than that for the Diploma holders, are eligible for a higher time scale of Rs. 1560-2280 on completion of three years' service in the time scale of Rs. 1060-1930. However, this higher time scale is extended only on the basis of assessment of performance by the Departmental Promotion Committee. The terms of appointment of such Graduate Engineers who are appointed as management trainees, contain the above provision as an eligibility criterion for the higher time scale, namely Rs. 1560-2280. The first class graduates who join as management trainees are also required to execute a bond undertaking to serve the first Appellant for a period of five years from the date of absorption as Engineer in the grade of Rs. 1060-1930, failing which they are liable to pay damages.

4. The short point raised by the Respondents in the Original Petition was whether the disparity in the scale of payment between the first class Graduate Engineers on the one hand and Diploma holders on the other who get merged in the cadre of Electrical Engineer was justified or was arbitrary, hit by Article 14 of the Constitution. Whereas the Diploma holder continues in the time scale of Rs. 1060-1930 as an Electrical Engineer such time as he is promoted to the next higher post of Assistant Plant Engineer in the time scale of Rs. 1560-2280, a first class Graduate Engineer is entitled to be considered for a higher time scale of Rs. 1560-2280 on his completion of three years in the cadre of Electrical Engineer subject, of course, to the assessment of his work by the Departmental Promotion Committee. This privilege of being considered for a higher time scale of Rs. 1560-2280 on the completion of three years service as Engineer is not available to the Diploma holders who are also working in the cadre of Engineers.

5. The learned Single Judge, by his judgment dated 12th November, 1992 came to the conclusion that both diploma holders and degree holders were doing the same work and were, therefore, entitled to the same pay. The Graduate Engineers and Diploma holders were appointed on the same pay scale in the cadre of Electrical Engineers and, therefore, there were no justification for differentiation in the matter of payment as far as the higher time scale being made available to the first class Graduates alone as against the Diploma holders. The argument that the first class Graduates have superior educational

qualification, have undergone a very rigorous selection process, after an all India written test, and thereafter training, did not find favour with the learned Judge. Relying upon the decisions in (i) Abdul Basheer v. Karunakaran 1989 (2) KLT 3 (ii) Govindankutty v. State of Kerala 1990 (1) KLT 479 and in (iii) State of Mysore Vs. B. Basavalingappa, the learned Judge came to the conclusion that such distinction in the matter of granting a higher time scale of pay was not permissible and was hit by Article 14 of the Constitution. The learned Judge distinguished the four decisions that were cited before him on behalf of the Appellants namely (i) State of A.P. v. G. Sreenivasa Rao (1989) 2 LL.J. 149 (ii) Supreme Court Employees Welfare Association v. Union of India (1989) 2 LL.J. 506, (iii) Mew Ram Kanojia v. All India Institute of Medical Science (1989) 2 LL.J. 578 and (iv) Grih Kalyan Kendra Workers" Union v. Union of India (1991) 2 LL.J. 578. In the result the learned Judge allowed the Original Petition and directed the Appellants to grant the Respondents higher time scale of pay of Rs. 1560-2280 on completion of three years of service in the cadre of Electrical Engineers. It is this judgment which is assailed before us by the Appellants.

6. We have heard both the learned Counsel. It is well settled that Article 14 does not prohibit reasonable classification. All that is necessary is that such a classification must be founded on some intelligible differentia which distinguishes persons or things grouped together from others left out of the group. The second test to be satisfied is that the differentia in question must have a reasonable relation to the object sought to be achieved by the rule in question. Though the Apex Court has upheld, in certain decisions, the principle of equal pay for equal work, two Constitution Benches of the Apex Court have held that this rule is not a rigid rule to be put in a straight jacket formula. The rule is subject to well known exceptions where a distinction-classification is held permissible on the basis of different academic qualifications, mode of recruitment being different as also the nature of duties being different. We may only refer to some of the decisions which permit a different pay scale or a different ratio of promotion to employees in the same cadre on the basis of either difference in academic qualification or difference in the method of recruitment or difference in the nature of duties.

7. In State of Mysore and Another Vs. P. Narasing Rao, a Constitution Bench of the Apex Court held that classification of two grades of tracers, one for matriculate tracers with higher pay scale and another for non-matriculate tracers with lower pay scale was not violative of Articles 14 or 16 of the Constitution. A contrary view taken by the Mysore High Court was reversed by the Apex Court. In paragraph 4 of the judgment at page 351, the Court reiterated the well settled principle that whereas Article 14 forbids class legislation, it does not forbid reasonable classification for a well defined purpose. Two tests have been indicated, which we have mentioned earlier; (i) the classification must be founded on an intelligible differentia which distinguishes persons or things grouped together from others left out of the group and (ii) the differentia in question must have a reasonable relation to the object sought to be achieved by

the rule. This decision clearly supports the Appellants' case.

8. The same view was reiterated by another Constitution Bench in *The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others*, . It was categorically held that in this unequal world, the proposition that all men are equal has working limitations, since absolute equality leads to procrustean cruelty or sanctions indolent inefficiency. The question was whether Engineers with Diploma and Graduate Engineers who were integrated into a common class of Assistant Engineers, could be classified for the purpose of promotion to the cadre of Executive Engineers on the basis of their educational qualifications. The rule providing that graduates shall be eligible for such promotion to the exclusion of diploma holders was held to be not violative of Articles 14 and 16 of the Constitution. The constitutional code of equality and equal opportunity is a charter of equals and it was held that equality of opportunity in matters of promotion means an equal promotional opportunity for persons who fall, substantially, within the same class. If a classification is made on the basis of higher educational qualification with a view to achieving administrative efficiency in engineering services, it cannot be said that the classification was unreal or unreasonable. It is clearly based on higher educational qualification which would normally indicate a higher mental equipment, which is a relevant factor for achieving administrative efficiency. The relevant observations are to be found in para 39 of the judgment at pages 11 and 12, which are as under:

Judged from this point of view, it seems to us impossible to accept the Respondents' submission that the classification of Assistant Engineers into Degree-holders and Diploma-holders rests on any unreal or unreasonable basis. The classification, according to the Appellant, was made with a view to achieving administrative efficiency in the Engineering services. If this be the object, the classification is clearly correlated to it for higher educational qualifications are at least presumptive evidence of a higher mental equipment.

In our view, the above ratio clearly exposes the fallacy in the reasoning of the learned Single Judge in the impugned judgment.

9. The Apex Court had occasion to consider this question again in *P. Murugesan and Others Vs. State of Tamil Nadu and Others*, . The question was about the distinction between promotees for the purpose of fixing the ratio of 3:1 between Graduate Assistant Engineers and Diploma holder Junior Engineers for promotion to the post of Assistant Executive Engineer in the State of Tamil Nadu. It was held, relying upon the constitution Bench decision in *Triloki Nath Khosa* (supra) that even where direct recruits and promotees are integrated into a common class, they could, for purposes of promotion to the higher cadre, be classified on the basis of educational qualifications. When rules can be framed barring altogether the diploma holders from promotion, the rule making authority cannot be precluded from restricting the promotion. The rule making authority may be of the opinion, 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 altogether, their chances of promotion should be restricted as was done by introducing the ratio of 3:1 between Graduate Assistant Engineers and Diploma holder Junior Engineers. The contention that by prescribing a longer qualifying period of service for Diploma holders, as "is the case before us, they have been equated with Graduates, when they merged into the cadre of Electrical Engineers, and that thereafter no further distinction is permissible was in terms rejected by the Apex Court in para 23 of the judgment at page 354.

10. In yet another decision in *Sita Devi and others etc. etc. Vs. State of Haryana and others*, the question of doctrine of equal pay for equal work being subjected to certain exception/limitations based on educational qualifications, method of recruitment, nature of duties and functions, was considered again. The grievance was that if the principle of equal pay for equal work was to be upheld, except the difference in the matter of educational qualifications, there was no other distinction between the post held and the duties and functions performed by the Petitioners in *Jaipal and Others Vs. State of Haryana and Others*, . The Petitioners were working as non-matriculate instructors in the Adult Literacy Programme of the Government of Haryana and matriculate instructors were granted certain relief by the Apex Court in the case of *Jaipal and Others Vs. State of Haryana and Others*, . It was however, held that classification on the basis of educational qualification was always permissible. Reference was made to the ratio in (i) *State of Mysore and Another Vs. P. Narasing Rao*, , (ii) *State of Jammu and The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others*, and (iii) *P. Murugesan and Others Vs. State of Tamil Nadu and Others*, which we have discussed above. It was therefore, held that distinction was always permissible based on the fact that persons in the same cadre namely instructors in the Adult Literacy Programme were either under matriculates or matriculates.

11. In *State of U.P. v. Ministerial Karamchari Sangh AIR 1998 S.C. 303*, the question of applicability of the doctrine of equal pay for equal work to the Lower Division and Upper Division Assistants in the U.P. Secretariat vis-a-vis the Lower Division and Upper Division Assistants (Clerical Cadre) in Directorate of Information in U.P. was considered again. It was found that the persons were holding the same posts and performing the similar work. However, their mode of recruitment, qualification and promotion was different. This was held to be a sufficient ground for making a difference in their pay scales. The relevant observations are to be found in para 18 of the judgment at page 307 which we find it appropriate to reproduce as under:

18. On facts, we have seen that the mode of recruitment, qualification, promotion are totally different in the case of appointments of Lower Division and Upper Division Assistants in the Secretariat and in the case of Lower Division and Upper Division Assistants (Clerical Cadre) in the Directorate of Information. This ground is sufficient for fixing different scales. The impugned Office Memorandum gives convincing and acceptable reasons for retaining the pay scales of those Lower and Upper Division Assistants appointed in the Directorate of Information

prior to 1st April 1965. In the circumstances, we are of the view that none of the reasons given by the High Court to issue writ of mandamus as prayed for by the Respondent-Association can be sustained in law. Accordingly, the appeal is allowed.

(emphasis supplied)

In the result the decision of the Allahabad High Court was reversed.

12. The learned Counsel for the Appellants Mr. Ramachandran Nair made a grievance that the learned Single Judge has not considered the four decisions which were cited by him (referred in para 5 above) and that they had been brushed aside in one sentence-"Those cases arose out of different sets of facts." The four cases are:

(i) State of A.P. v. G. Sreenivasa Rao (1989) 2 LL.J. 149, (ii) Supreme Court Employees Welfare Association v. Union of India (1989) 2 LL.J. 506, (iii) Mew Ram Kanojia v. All India Institute of Medical Science (1989) 2 LL.J. 578 and (iv) Grih Kalyan Kendra Workers' Union v. Union of India (1991) 1 LL.J. 349. We will make a brief reference to these decisions.

13. In State of A.P. v. G. Sreenivasa Rao (1989) 2 LL.J. 149, it was held by the Apex Court that the doctrine of equal pay for equal work did not mean that all the members in the cadre must receive the same pay (irrespective of their seniority , source of recruitment, educational qualification and various other incidents of service). When pay fixation is done under valid statutory rules and when persons recruited from different sources are given pay protection, when a promotee from a lower cadre or a transferee from another cadre is given pay protection, when a senior is stopped at Efficiency Bar, when advance increments are given for experience/passing a test/acquiring higher qualification or as incentive for efficiency are some of the eventualities when a junior may be drawing higher pay than this senior without violating the mandate of equal pay for equal work. It was held that the differentia on these grounds would be based on intelligible criteria which has rational nexus with the object sought to be achieved. These observations are to be found in para 14 of the judgment at page 153.

14. The second decision on which Mr. Ramachandran Nair had placed reliance before the learned Single Judge was in the case of Supreme Court Employees Welfare Association v. Union of India (1989) 2 LL.J. 506. The limitations on the doctrine of equal pay for equal work have been considered in para 38 of the judgment at page 519 and in para 39 at page 520. A reference is made to the decision in G. Sreenivasa Rao's case (1989) 2 LL.J. 149 (supra), where it was held that equal pay for equal work did not mean that all the members of a cadre must receive the same pay irrespective of their seniority, source of recruitment, educational qualifications and various other incidents of service.

15. The third decision cited before the learned Single Judge was in Mew Ram

Kanojia v. All India Institute of Medical Science 1989 (2) LL.J. 578. Here again it was held by the Apex Court that the doctrine of equal pay for equal work was not an abstract one. It is open to the State to prescribe different scales of pay for different posts having regard to educational qualification, duties and responsibilities of the posts. It was also held that in judging equality of work for the purpose of equal pay, regard must be had not only to the duties and functions, but also to the educational qualifications, qualitative difference, and the measure of responsibility prescribed for the respective posts. Even if the duties and functions of two posts are of similar nature, if the educational qualifications prescribed for the two posts are different and there is difference in measure of responsibility, the principle of equal pay for equal work would not apply. These observations are to be found in paragraph 7 of the judgment at page 582.

16. The last decision was in Grih Kalyan Kendra Workers' Union v. Union of India 1991 (1) LL.J. 349. The same principle was reiterated by the Apex Court.

17. It is true that the learned Single Judge has made a reference to three decisions in support of the Respondents' plea. They are (i) Abdul Basheer v. Karunakaran 1989 (2) KLT (S.C.) 3, (ii) Govindankutty v. State of Kerala 1990 (1) KLT 479 and (iii) State of Mysore Vs. B. Basavalingappa, . We have considered the said decisions. However, having regard to the ratio of the decisions of the Constitution Benches in (i) State of Mysore and Another Vs. P. Narasing Rao, , (ii) The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others, , and the subsequent decisions in (iii) Sita Devi and others etc. etc. Vs. State of Haryana and others, and (iv) Ministerial Karamchari Sangh case AIR 1998 S.C. 303 (supra) we do not think that the ratio of the three decision referred to by the learned Single Judge in para 6 of his judgment can have any application to the facts of the case before us. They are clearly distinguishable.

18. We have already indicated at the outset that the educational qualifications of the first class Engineering Graduates are much superior and undoubtedly reflect a higher mental calibre. Not only are they first class Engineering Graduates, they were required to qualify at a written test on all India basis and thereafter were called for a group discussion followed by an interview/viva voce when the final selection is made. That is not the end of the matter. Even after joining the cadre of Electrical Engineers the question of their getting higher time scale of Rs. 1560-2280 depends upon the completion of three years' service in the grade of Rs. 1060-1930 and the assessment of their performance by the Departmental Promotion Committee. We do not think that the case of such first class Engineering Graduates can be compared with Diploma holders who joined at the lowest rung of the ladder as Draughtsmen and are promoted to the grade of Supervisors, then Technicians and thereafter as Engineers. In the facts of the case before us, the promotion from the Draughtsman's cadre to the Engineer's cadre has taken 12 long years. Having regard to the basic distinction in the academic qualification and the very rigorous procedure for recruitment of the

first class Engineering Graduates directly at the managerial level of Electrical Engineers, we do not think that the Respondents can justifiably invoke the principle of equal pay for equal work in the facts of the case. The distinction is wholly justified. It is based on a rational differentia which has a nexus with the object sought to be achieved, namely higher efficiency in the engineering service of the first Appellant. It was not disputed before us that far as the seniority in the cadre of Electrical Engineers is concerned, even if the Graduates got the higher scale of Rs. 1560-2280, the seniority of the Diploma holders in the cadre would not be adversely affected. Thus as far as the chances for further promotion are concerned, they would not be adversely affected.

19. In this view of the matter it is difficult to sustain the judgment of the learned Single Judge allowing the Original Petition. For the reasons indicated earlier, the impugned judgment dated 12th November, 1992 passed in the Original Petition is hereby quashed and set aside. The Original Petition shall stand dismissed accordingly.

20. The writ appeal is allowed.