

(1985) 07 MAD CK 0040
In the Madras High Court

Harry Gupta and Another

APPELLANT

Vs

The Madras Port Trust and Others

RESPONDENT

Date of Decision : 17-07-1985

Acts Referred:

Major Port Trusts Act, 1963 — Section 21, 28

Citation : (1986) 1 MLJ 73

Hon'ble Judges : N.M. Chandurkar, C.J

Bench : Single Bench

Judgement

N.M. Chandurkar, C.J.—The two appellants in these two appeals had filed two separate writ petitions challenging the order of the promotion made by the Chairman on 22.12.1979 promoting eight persons out of whom six persons were Junior Engineers being decree-holders and two were General Foremen. All these were promoted as temporary Assistant Executive Engineers. The contention of the petitioners who are diploma holders before the learned single Judge was that the ratio of 1:4 between the diploma holders and the Junior Engineers was an arbitrary exercise of the power by the Chairman and that the Chairman had no power to fix the ratio for promotion of Foremen and Junior Engineers to the post of Assistant Executive Engineers. These contentions have been negated by the learned Judge and that order is challenged in these appeals.

2. Admittedly, both the appellants initially entered the service of the Port Trust as Supervisor Grade II. The next promotional post of the Supervisor Grade II is Supervisor Grade I and Supervisor Grade I is then promoted as Foreman. Vacancies in the posts of Assistant Executive Engineers were to be filled in by promotion from two categories of employees, that is, from amongst Foremen and from amongst Junior Engineers.

3. In exercise of the power u/s 28 of the Major Port Trusts Act, 1963, the Port Trust had made certain regulations which are known as the Madras Port Trust Employees' (Recruitment, Promotion, etc.) Regulations, which came into force on the 1st of April, 1977. Regulation 5 with which we are concerned is as follows:

Manner of Appointments - The manner of appointment to a post or category of posts, i.e. whether by direct recruitment or by departmental promotion or by transfer and in "the latter case" the channel of promotion and whether the promotion is by selection or by seniority subject to suitability, age limit, educational and other qualifications and experience shall be as laid down by the Chairman from time to time:

Provided that the upper age limit may be relaxed in the case of candidates belonging to Scheduled Castes Scheduled Tribes or any other Special category in accordance with the general orders issued from time to time by the Central Government.

Regulation 5 has left the manner of appointment to a post or category of posts i.e. whether the appointment should be made by promotion or by transfer or by direct recruitment and whether the promotion should be by selection or on the basis of seniority-cum-merit and other conditions such as age limit, educational and other qualifications, were all left to the Chairman to determine from time to time. In exercise of the powers conferred by this Regulation 5, the Chairman laid down the manner of appointment to the posts of Assistant Executive Engineers. The posts were to be filled up by promotion of diploma holders and degree-holders. We are not concerned with the other qualifications with regard to the length of service. While providing for the post of Assistant Executive Engineer to be filled up by direct recruitment, departmental promotion, or transfer, the Chairman laid down that 20 per cent of the vacancies will be reserved for diploma holders in Civil Engineering, and the remaining vacancies will be reserved for Junior Engineers and such of those diploma holders who have acquired a degree or equivalent qualification and who held posts in the same scale of pay as that of the Junior Engineer or higher scales.. The order of promotion dated 22.12.1979 impugned in the writ petitions by the two persons (appellants) is made in accordance with this ratio.

4. In this appeal Mr. A.R. Ramanathan appearing for the appellants contended that delegation was not permissible to be made by the Board in favour of the Chairman permitting him to fix the ratio and alternatively if it was permissible to delegate such a power, the power of the Chairman is arbitrary and must, therefore be struck down.

5. Now undoubtedly there is no express provision in Regulation 5 permitting the Chairman to fix a ratio between the two feeder categories from which promotions have to be made to the posts of Assistant Executive Engineers. But it is obvious that when Regulation 5 refers to the manner of appointment to a post, that is, whether by direct recruitment or by departmental promotion or by transfer, this power necessarily implies that promotion to a particular post could be made both by direct recruitment or by departmental promotion and where there are more than one feeder category from which promotions have to be made to the posts of Assistant Executive Engineers, it would become necessary to fix a ratio between the members of the two feeder categories before promotion can validly be

made. We must, therefore, construe Regulation 5 as clearly enabling the Chairman to fix a ratio where promotions are to be made from more than one feeder category.

6. Now the second argument that such a power is arbitrary and cannot be sustained must also be rejected. The regulations in question are made in exercise of the power u/s 28 of the Major Port Trusts Act, 1963. Clause (a) of Section 28 enables the Board to make regulations not inconsistent with the Act to provide for any one or more of the matters specified in Section 28. Clause (a) refers to the appointment, promotion, suspension, reduction in rank, compulsory retirement, removal and dismissal of the employees of the Board. There is an important provision in Section 21 of the Act which provides for delegation of powers of the Board to the Chairman. Section 21 of the Act read as follows:

A Board may, with the approval of the Central Government, specify--

(a) the powers and duties conferred or imposed upon the Board by or under this Act, which may also be exercised or performed by the Chairman, and....

Clause (b) and the proviso are not relevant for our purposes. Clause (a) of Section 21, therefore, is a specific provision which enables the Board to delegate its powers and the duties to the Chairman. The only condition of valid delegation being that it is to be done with the approval of the Central Government. It is obvious that Regulation 5 is clearly made taking Section 21 of the Act in view and the preamble of the regulations also specifically recites that the regulations are made with the previous approval of the Central Government. Regulation 5 is not challenged before us. The one safeguard in respect of powers and duties which could be delegated is, therefore, the control of the Central Government and such delegation cannot, therefore, be called arbitrary.

7. Now undoubtedly, even though the delegation may be valid, the exercise of delegated power could, in a given case, be struck down, if such power has been arbitrarily exercised. We therefore requested Mr. Ramanathan to tell us the number of Foremen and the Junior Engineers in the respective cadres because where promotion to a post is made from two categories, the number of employees who constituted such cadres is a relevant consideration while making available to them the chances of promotion. We have been fairly informed that the cadre of Foremen consisted of 16 employees and the cadre of Junior Engineers consisted of 64 employees. It is obvious therefore, that the proportion of 1:4 fixed is the same as between the strength of cadre of Foremen" to the strength of the cadre of Junior Engineers. It cannot, therefore be said that the power of the Chairman to fix the ratio has been exercised arbitrarily.

8. An argument was advanced before us that a Junior Engineer who is promoted as an Assistant Executive Engineer works in the scale of Rs. 675-1052 while the Foreman works in the scale of Rs. 900-1230. The argument appears to be that the post of the Foreman having higher scale of pay should be given a higher ratio when promotion is made. It is pointed out that it is Supervisor Grade I who is in

the same scale of pay as the Junior Engineer and it is therefore unfair, according to the learned Counsel, to give higher chances of promotion to a Junior Engineer who is equivalent in terms of the scale of pay to an employee inferior to the post of a Foreman. Now admittedly in the case of the degree holders, who are initially appointed as Junior Engineers, the immediate higher post was the Assistant Executive Engineer. In so far as the diploma holders were concerned, it is obvious that Supervisor Grade I could not be promoted straightaway as Assistant Executive Engineers because their immediate next post of promotion is that of a Foreman. Therefore, irrespective of the scales of pay of the junior Engineer and the Foreman, a Foreman alone, and not a Supervisor Grade I, could be promoted to the post of Assistant Executive Engineer. Having regard to the structure of the two cadres, therefore, it appears to us that there was nothing unreasonable when the Junior Engineers were to be promoted to the posts of Assistant Executive Engineers, which was the next higher post, and the ratio fixed having regard to the strength of the two cadres of Foremen and Junior Engineers cannot be said to be unreasonable.

9. In our view, there is no substance in these appeals and they must therefore fail. They are accordingly dismissed. However, we make no orders as to costs.