

(2013) 11 MEG CK 0007

In the Meghalaya High Court

Case No : Writ Petition (C) No's. 317 and 318 of 2011

Hmun Siamdinga Darlong and Another

APPELLANT

Vs

State of Meghalaya and Others

RESPONDENT

Date of Decision : 27-11-2013

Acts Referred:

Citation : (2013) 11 MEG CK 0007

Hon'ble Judges : Prafulla C. Pant, C.J.;S.R. Sen, J

Bench : Division Bench

Advocate : V.K. Jindal and Mr. S. Dey, for the Appellant; K.S. Kynjing, A.G. and Mr. N.D. Chullai, Sr. G.A., for the Respondent

Final Decision : Dismissed

Judgement

Prafulla C. Pant, C.J.—Heard. In both the above writ petitions, the petitioners have prayed that the requirement of "Diploma in Printing and Graphic Arts" mentioned in Schedule II relating to Sub Rule (4) of Rule 7 of Printing and Stationery (Technical) Service Rules, 1995 for promotion to the post of Assistant Director, be declared unconstitutional and ultravires of fundamental rights of the petitioners.

2. Heard learned counsel for the parties and perused the paper and records.

3. Brief facts of the case are that the writ petitioner Thomas Hmun Siamdinga Darlong (for brevity Shri Darlong) possesses a diploma in the trade of Composing and Printing awarded by the Don Bosco Technical School, Shillong (Press Department), to him on 1st December 1973. The writ petitioner Ambrose Krian Singh Tynsiar (for brevity Mr. Tynsiar) obtained National Trade Certificate of Printing Machine Operator after getting through the examination held by the National Council for Printing in Vocational Trade by Govt. of India, held on 27/28.07.1982 before that he completed training in "Hand Composition and Printing Machine Operator" from Don Bosco Technical School, Shillong, (Press Department). The writ petitioner Shri Darlong was initially appointed as

"Counter" in the Binding Section of the Government Press vide order dated 07.07.1975 and promoted to the post of "Copy Holder" in the year 1978. Another writ petitioner Tynsiar was initially appointed as "Distributor" in the Government of Meghalaya Press, Shillong in the year 1983 and promoted as "Copy Holder" in the year 1988. Thereafter, he was promoted as "Desk Top Printers Publishing Operator" vide Memorandum dated 10.11.1992. On 06.07.1998. He (Mr. Tynsiar) was then promoted as "Officiating Foremen" and confirmed in the year 2003. Meanwhile, Shri Darlong, also after being promoted to the post of "Desk Top Printers Publishing Operator" was promoted as "Officiating Foremen" in May, 1998 and confirmed vide order dated 08.07.2003.

4. Both the writ petitioners are aggrieved by the Printers and Stationery (Technical) Service Rules, 1995. Schedule II relating to Sub-Rule (4) of Rule 7 of the said Rules requires that, for a Foreman, for further promotion to the post of Assistant Director, he must possess "Diploma in Printing and Graphic Arts". It has been pleaded by the two writ petitioners that initially there were no Rules nor was there any such requirement for promotion to the post of Assistant Director. It is further pleaded that the requirement of Diploma in Printing and Graphic Arts have completely blocked the chances of promotion for the petitioners. Vires of the Rule has been challenged on the ground that classification between the Diploma in Printing and Graphic Arts, and in other qualifications is discriminatory and arbitrary. Challenging Sub-Rule (4) of Rule 7 of Printing and Stationery (Technical) Service Rules, 1995 it is alleged that the same is violative of Articles 14 , 16 and 21 of the Constitution of India.

5. Before further discussion, we think just and proper to quote the relevant rules. Rule 4 of Printing and Stationery (Technical) Service Rules, 1995 reads as under:

4. Composition of the Service.-

(1) The service shall consist of the following grades and posts:-

(I) Senior Grade-

(1) Director (Printing and Stationery)

(2) Jt. Director (Printing and Stationery)

(II) Grade I Deputy Director (Printing)

(III) Grade II Asstt. Director (Printing).

(2) The categories of posts in clause (i), (ii) and (iii) Sub-rule (1) shall form an independent cadre. Members of the lower cadre shall have no claim for appointment to any of the higher cadre except in accordance with the provisions made in these Rules.

Rule 9 provides that a Departmental Promotion Committee shall be headed by the Principal Secretary/Commissioner/Secretary, Printing and Stationery, Govt. of Meghalaya, and shall consist of Principal Secretary/Commissioner/Secretary,

Personnel and A or R Department, Govt. of Meghalaya, Principal Secretary/Commissioner/Secretary, Finance Department, Govt. of Meghalaya, Director of Industries, Govt. of Meghalaya and Director of Printing and Stationery, Govt. of Meghalaya as its Members.

6. Rule 7 of Printing and Stationery (Technical) Service Rules, 1995 provides "Method of Recruitment" to the various posts. Sub-Rule (4) of Rule 7 reads as under:

(4) Appointment to the post of Assistant Director (Printing) shall be made by promotion from amongst the confirmed Foremen belonging to the Meghalaya Printing and Stationery (Technical Subordinate Service), possessing the experience technical qualification as specified in Schedule II and included in the select list approved under sub-rule (4) of Rule 11.

At Serial No. (iv) in SCHEDULE II, requires Educational Qualification and experience for the promotion to the post of Assistant Director (Printing) as under:

It is the above Clause (iv) in column 8 of the table given in the Schedule II by which the writ petitioners are aggrieved.

7. Referring to para. 26 of the case of

Md. Shujat Ali Vs. Union of India, : AIR 1974 SC 1631

, it is contended on behalf of the petitioners that all the employees are entitled to equal protection of laws and the diploma holders of "Printing and Graphic Arts" cannot be allowed to completely block the promotional avenues of other employees particularly when the source of recruitment is only promotion. We have considered the submission of the learned counsel and the case law referred above. In our opinion, said case does not help the petitioners. In para. 28 of Md. Shujat Ali's case (supra), it is observed by the Apex Court that:

A rule of promotion which while conceding that non-graduate Supervisors are also fit to be promoted as Assistant Engineers, reserves a higher quota of vacancies for promotion for graduate Supervisors as against non-graduate Supervisors would clearly be calculated to destroy the guarantee of equal opportunity. But even so, we do not think we can be persuaded to strike down the Andhra Pradesh Rules in so far as they make differentiation between graduate and non-graduate supervisors.

8. Shri V.K. Jindal, learned Sr. Advocate, for the petitioners also drew attention of this Court to the case of

Punjab State Electricity Board Vs. Ravinder Kumar Sharma, (1986) 4 SCC 617

and it is argued that preference cannot be given to holders of any particular qualification for promotion. On going through the said judgment, we find that there was change in the Rules by fixing separate quota for qualification of diploma holders subsequent to the appointment as Linemen for their promotion,

but in the present case, before the petitioners were promoted as Foremen, Rules of 1995 which contained condition of diploma in Printing and Graphic Arts was already there inexistence for further promotion from the post of Foremen to the post of Assistant Director as such it cannot be said that the law laid down in Punjab State Electricity Board's case (supra) is applicable to the present case.

9. Lastly, the case of

T.R. Kothandaraman Vs. Tamil Nadu Water Supply & Drainage Board (1994) 6 SCC 282

is referred on behalf of the petitioners in which following observations are made:

.....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 favorably 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 jeopardizing 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.

On going through the judgment of T.R. Kothandaraman (supra), we are of the view that even in said case, the Apex Court did not find any infirmity in classification made under Rules for making promotion based on higher educational qualification. In para. 16 of the above case of T.R. Kothandaraman (supra), it has been clearly observed by the Apex Court that higher educational qualification can be the basis not only for barring promotion, but also for restricting the scope of promotion.

10. On behalf of the respondents, a three Judges Bench of the Apex Court i.e.

Chandravathi P.K. Vs. C.K. Saji, : 2004 AIR SCW 1178

is referred in which the Apex Court has upheld the classification on the basis of higher educational qualification and held that such classification satisfies the doctrine on equity as adumbrated in Article 14 of Constitution of India.

11. Also attention of this Court was drawn by the learned Advocate General to the case of

M. Rathinaswami Vs. State of Tamil Nadu, : 2009 AIR SCW 3930

, in which, in para. 26, the Apex Court has observed that:

.....the question whether the difference in the educational qualifications is sufficient to give preferential treatment to one class of candidates against another, should in our opinion be ordinarily left to the executive authorities to decide.....

12. In

V.T. Khanzode Vs. Reserve Bank of India, (1982) 2 SCC 7

, three Judges of the Apex Court have observed in para. 40 as under:

.....Private interest of employees of public undertakings cannot override public interest and an effort has to be made to harmonize the two considerations. No scheme governing service matters can be foolproof and some section or the other of employees is bound to feel aggrieved on the score of its expectations being falsified or remaining to be fulfilled. Arbitrariness, irrationality, perversity and mala fides will of course render any scheme unconstitutional but the fact that the scheme does not satisfy the expectations of every employee is not evidence of these.....

13. In the light of the above observations of the Apex Court, we are of the view that since before the petitioners were promoted to the posts of Foremen, Rules of 1995 were already in existence which require qualifications of Diploma in Printing and Graphic Arts for consideration for further promotion to the post of Assistant Director, it cannot be said that they were deprived of their promotions arbitrarily. It is needless to say that with the advancement in the technology, old printing methods are of no use in the age of Graphic Arts, and as such requirement of holding Diploma in Printing and Graphic Arts made necessary for further promotion of Foremen, cannot be said to be unreasonable or arbitrary. For the reasons as discussed above, we do not find force in these writ petitions, which are liable to be dismissed. Accordingly both the writ petitions i.e. WP(C) No. 317 of 2011 and WP(C) No. 318 of 2011 are dismissed. No order as to costs.