
(1978) 04 KAR CK 0013
In the Karnataka High Court
Case No : WP. 11301 of 1977

Keshavamurthy D.

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 10-04-1978

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (1978) 2 KarLJ 232

Hon'ble Judges : Rama Jois, J

Judgement

1. An order of the Karnataka State Government under which such of the Draughtsmen possessing three years Diploma in Civil Engineering alone are transferred to the cadre of Junior Engineers, is challenged in this writ petition by a Draughtsman, who is having the qualification of Diploma in Craftmanship Draughtsman (Civil) awarded at the successful completion of 18 months course in an Industrial Training Institute, by the Directorate General of Resettlement and Employment, Government of India (hereinafter referred to as "ITI Diploma") on the ground of discrimination in violation of Art. 14 and 16(1) of the Constitution.

2. The circumstances leading to the passing of the impugned order of the State Government are as follows: According to the Recruitment Rules of the Public Works Engineering Department Service of the State Government made by the Governor in exercise of the power conferred under Art. 309 of the Constitution on 3-12-1960 and as amended from time to time, there is a cadre of Junior Engineers. The method of recruitment prescribed for the said cadre is direct-recruitment. The minimum qualification prescribed for recruitment is Diploma in Civil Engg or Mechanical Engg depending upon the requirement as the case may be from a school of Engg or polytechnic in the State of Karnataka or equivalent qualification. Another cadre which is relevant for the purpose of this case is the cadre Of Draughtsmen. The method of recruitment prescribed for the cadre of Draughtsmen is 90 per cent by direct-recruitment and 10 per cent by promotion from the cadre of Tracers. The minimum qualification for recruitment is Diploma in Civil Engineering or a certificate in Draughtsmanship from a polytechnic or

equivalent qualification. The qualification prescribed for promotion is five years as a Tracer and a pass in a test conducted by the Chief Engineer. The pay-scale prescribed for both the posts of Junior Engineers and Draughtsmen are equal. Before 1-1-1977 the pay-scale for the posts was Rs. 175-10-275-15-350-EB-20-450. The existing pay-scale for both the posts is Rs. 500-25-600-30-750-50-1,000-60-1,120.

3. One of the Chief Engineers made a proposal that the cadre of Junior Engineers and Draughtsmen are occupied by persons with identical qualification, but with difference in the opportunity for promotion to the higher cadres and this has caused dis-satisfaction among the persons occupying the posts of Draughtsmen and, therefore, it is better that both the cadres are merged in one cadre. The Board of Chief Engineers in their meeting dated 10th July 1972 resolved to recommend to the Government for the amalgamation of the posts of Draughtsmen and Supervisors (now redesignated as Junior Engineers) (Ext. C). There were also representations made by the Draughtsmen to the State Government in this behalf. It appears that in a subsequent meeting of the Board of Chief Engineers held on 19-1-1974, the Board reconsidered the question of amalgamation of the cadre of Draughtsmen with that of Junior Engineers and recommended that only such of the Draughtsmen, who have got three years Diploma qualification in Civil Engineering, alone should be absorbed in the cadre of Junior Engineers. On such recommendation, the State Government considered the subject of amalgamation of the cadre of Draughtsmen with the cadre of Junior Engineers and passed order dated 27-10-1977(Ext. E). The relevant portion of the order reads as follows:

"After considering all aspects of the question in detail, the Govt of Karnataka are pleased to direct that 600 (six hundred) posts of Draughtsmen (3 years Diploma Holders in Civil Engineering) in both Public Works and Irrigation Depts be amalgamated forth-with with the cadre of Junior Engineers (Division-II)."

4. The case of the petitioner is that he holds Diploma in Craftsmanship in the trade Draughtsman (Civil) awarded to him by the Directorate General of Resettlement and Employment, Govt of India. The said qualification, according to the petitioner, is equal to Diploma in Civil Engineering qualification, but he is discriminated by not transferring him to the cadre of Junior Engineers as the Govt has directed the transfer of 600 Draughtsmen possessing three years Diploma in Civil Engineering Qualification only to the cadre of Junior Engineers. According to the petitioner, he is similarly situated in all respects as the 600 Draughtsmen, who are directed to be transferred to the cadre of Junior Engineers by the Government Order (Exhibit-E).

5. The case put forward by respondent-1-State Govt.-and some of the persons, who have been transferred to the cadre of Junior Engineers from the cadre of Draughtsmen and who have got themselves impleaded as respondents 3 to 13 to the writ petition is that the qualification possessed by the petitioner and others similarly situated, is not equal to the qualification of three years Diploma in Civil

Engineering possessed by the persons, who are directed to be transferred under the impugned Govt Order to the cadre of Junior Engineers and, therefor, the petitioner cannot complain of discrimination.

6. Sri U.L. Narayana Rao, learned Counsel appearing for the petitioner, raised the following contention in support of the writ petition:

"The petitioner is similarly situated in all respects including the qualification as the 600 Draughtsmen, who are transferred to the cadre of Junior Engineers by the Govt Order (Ext. E), and, therefore, not providing for transfer of the petitioner and others similarly situated to the cadre of Junior Engineers amounts to denial of equal opportunity in matters relating to the employment under the State and also equality before Law and consequently the impugned order is violative of Arts. 14 and 16(1) of the Constitution."

In support of the case of the petitioner, the petitioner placed reliance on the following documents:

(1) Letter dt. 12-5-56 from the Secretary to the Govt of Mysore (before re-organisation of States), in which the certificate awarded by the Central Board of Technical Examinations was considered as equivalent to Diploma issued by the State Govt. (Ext. F1 produced along with I.A.-V dated 21-3-1978);

(2) Government Order dt. 21-2-62 declaring that the National Certificates in Civil and Mechanical Engineering awarded by the All India Council for Technical Education as equivalent to Diploma awarded in Civil, Mechanical and Electrical Courses of the State Board of Technical Education of the State Govt. for purposes of recruitment to subordinate posts and services under the State in the respective fields (Ext. F1) produced along with rejoinder dt. 1-3-78;

(3) Judgment of this Court in WP. 878/63 filed by the petitioner in which, after considering the aforesaid two documents, this Court held that the petitioner was entitled to the pay scale of Rs. 150-320 on the ground that his qualification is equal to three years Diploma (Ext. A) in the main petition;

(4) Certificate issued by the Directorate General of Resettlement and Employment, Govt of India, showing that the qualification possessed by the petitioner is Diploma in Craftsmanship (Draughtsman Civil) to show that the qualification possessed by the petitioner in Diploma (Ext. A1) produced along with rejoinder dt. 15-2-78; and (5) Government Order dt. 21-7-65 stating that though the equivalence of the certificates awarded by the Directorate General of Resettlement and Employment, Govt of India to Diplomas awarded by the Board of Technical Education has been withdrawn by the State Govt. by its order dt. 19-11-64, it shall not have the effect of reducing the pay-scale of persons who are appointed prior to the issue of that Govt Order (Ext. C1) produced along with the rejoinder dt. 15-2-78; and (6) The order of the Chief Engineer (Communication of Buildings) dt. 28-6-72, under which two persons, namely, S. Vijayakumar and Iqbal Ahmed with the identical qualification as possessed by the

petitioner were regularly appointed as Junior Engineers.

6. On the basis of the aforesaid documents, the contention of the petitioner is that the qualification, namely, Diploma in Craftsmanship (Civil) possessed by the petitioner is equivalent to the qualification of Diploma in Civil Engineering awarded by the State Govt. and, therefore, he is entitled to equal treatment by way of his transfer to the cadre of Junior Engineers.

7. The State Govt. in the statement of objections has taken the stand that the Diploma qualification possessed by the petitioner is not equivalent to three years Diploma in Civil Engineering and, therefore, the petitioner cannot claim equivalence. With regard to the documents produced by the petitioner, it is explained that though in the Govt. Orders dated 2-5-61 and 23-2-62, the ITI qualification was treated as equivalent to the three years Diploma awarded by the Board of Technical Education Of the State Govt., the same has been withdrawn by the subsequent Govt Order dt. 19-11-64. It is further stated that the Certificate of Draughtsmanship (Ext. C) is a course of 18 months duration, and, therefore, cannot be considered as equivalent to three years Diploma in Civil Engineering and therefore the petitioner cannot claim equivalence particularly when the equivalence given earlier by the State Govt. has been withdrawn. It is clarified that in the case of two persons referred to by the petitioner, namely, Vijayakumar and another, they were appointed as Junior Engineers to Division-II before the amendment of the Recruitment Rules and there may be only a few persons of this category and this does not amount to discrimination. It is, further stated that since 1974 no certificate holder and craftsmanship holder have been appointed to the cadre of Junior Engineers.

8. In the statement of objections filed on behalf of the impleaded respondents 3 to 13, they have stated that though the State Govt. had earlier declared that the ITI Diploma qualification is equivalent to three years Diploma awarded by the State Govt., the said equivalence has been withdrawn by the State Govt. in their order dt. 19-11-64 (Ext.G produced along with their statement of objections dt. 13-2-78) and, therefore, the reliance placed by the petitioner either on the govt letter dt. 12-5-56 issued by the Govt of the former State of Mysore or on the Govt Order dt. 2-5-61 and 23-2-62 referred to earlier or on the basis of the judgment of this Court in WP.878|63, which was delivered on the basis of the Govt letter dt. 12-5-56 and the Govt Order dt. 2-5-61 and 23-2-62, can be of no assistance in view of the specific withdrawal of the equivalence by Govt Order dt. 19-11-64. They have also produced Govt Order dt. 9-4-76 (Ext.H) along with the statement of objections under which the ITI Diploma in Draughtsmanship is declared equivalent to the Certificate of Draughtsmanship (lower than Diploma of the Board of Technical Education). They placed strong reliance on this document and submitted that the qualification possessed by the petitioner is lower than the Diploma and, therefore, he cannot claim equivalence with the three years Diploma awarded by the Board of Technical Education of the State Govt.

9. Now I shall take up for consideration the contention of the petitioner that by

the impugned order the petitioner has been discriminated. The two relevant criteria for considering the contention of the petitioner are- (i) Whether the classification made by the State is a reasonable classification; and (ii) Whether such classification has nexus to the object sought to be achieved.

In order to find out whether there is reasonable classification or not, it is necessary to refer to the minimum qualification prescribed for recruitment to the cadre of Junior Engineers and to the cadre of Draughtsmen. The qualifications prescribed for these posts in the Recruitment Rules, as they stood at the time Of passing of the impugned Govt. Order are as follows:

JUNIOR ENGINEERS:

A Diploma in Civil or Mechanical Engineering or other equivalent qualification.

DRAUGHTSMEN:

Direct Recruitment-A Diploma in Civil Engineering or a Certificate in Draughtsmanship.

PROBATION:

One year in the case of Diploma Holders and two years in the case of Certificate holders.

PROMOTION:

Five years service as Tracers or pass in the test conducted by the Chief Engineer (General).

On a comparison of the method of recruitment and qualification prescribed for the post of Junior Engineers and Draughtsmen under the Rules, it is seen that the cadre of Junior Engineers are required to be filled up entirely by direct recruitment and the minimum qualification prescribed for direct-recruitment is Diploma in Civil Engineering or Mechanical Engineering or equivalent qualification according to the requirements. Therefore the cadre of Junior Engineers consists of persons who possess either Diploma in Civil Engineering qualification or Diploma in Mechanical Engineering qualification or those possessing equivalent qualification and none else. But as far as the cadre of Draughtsmen is concerned, the cadre consists of persons with the following qualification.

- (1) Persons possessing Diploma in Civil Engineering;
- (2) Persons holding certificate in Draughtsmanship from a polytechnic or other equivalent qualification; and (3) Persons, who have only SSLC qualification and who have been appointed as Tracers and having been promoted to the cadre of Draughtsman after passing a test conducted by the Chief Engineer.

The resultant position is that there are certain persons in the cadre of Draughtsmen, who possess the qualification of Diploma in Civil Engineering which is also the minimum qualification prescribed for the post of Junior

Engineer. There are also other persons who possess the qualification of certificate in Draughtsmanship or equivalent qualification and also persons who do not possess any such qualification, but who have been promoted from the cadre of Tracers. All that is done under the impugned Govt Order is such of the persons who possessed the minimum qualification prescribed for recruitment to the cadre of Junior Engineers, but who have got themselves recruited to the cadre of Draughtsman are ordered to be transferred from the cadre of Draughtsman to the cadre of Junior Engineers.

10. It is not disputed that the Govt has the power to transfer a person from one post to another equivalent post subject to his possessing qualification prescribed for the post to which he is sought to be transferred under Rule 16 of the Karnataka Civil Services (General Recruitment) Rules, 1977. If the petitioner possesses the minimum qualification prescribed for the post of Junior Engineer, but still he is not given the benefit of transfer to the cadre of Junior Engineers, which has certain advantages in the matter of further promotion to the cadre of Asst Engineers and other higher posts, certainly the petitioner can say that he is denied equality before Law in violation of Art. 14 of the Constn and also denied equality of opportunity in matters relating to employment under the State in violation of clause (1) of Article 16 of the Constitution.

11. It is not the case of the petitioner that the qualification possessed by him is of three years Diploma awarded by the State Govt., but his case is that the qualification possessed by him is equivalent to three years Diploma. The authority for declaring equivalence of qualification for purposes of recruitment to the State services is the State Govt., as is clear from Rule 2(1)(h) of the Karnataka Civil Services (General Recruitment) Recruitment Rules, 1977, corresponding to Rule 2(1)(c) of the 1957 Rules. The State Government had at one point of time declared the ITI Diploma qualification possessed by the petitioner as equivalent to the three years Diploma. From the facts set out earlier, it is clear that such equivalence was withdrawn by Govt Order dt. 19-11-64 and further there is a subsequent equivalence declared by the State Govt. in their order dated 9-4-76 (Ext. H produced by respondents 3 to 13) to the effect that the Draughtsman qualification possessed by the petitioner is equivalent to certificate qualification (less than Diploma qualification). In the face of withdrawal of equivalence by the Govt in their order dt. 19-11-1964 and the subsequent order dt. 9-4-76 under which ITI qualification is specifically equated to certificate qualification (less than Diploma), it is not possible to accede to the contention of the petitioner that his ITI qualification is equivalent to Diploma. The fact that a few persons possessing the ITI qualification were appointed as Junior Engineers and are continuing as Junior Engineers as pointed out by the petitioner cannot also affect the validity of the present classification, as such appointments were made at the time when equivalence was in force. Therefore the classification made by the State Government for purposes of transferring 600 draughtsmen from the cadre of draughtsmen to the cadre of Junior Engineers on the basis of their possessing qualification of Diploma in Civil Engineering which is

the prescribed minimum qualification for Recruitment to the cadre of Junior Engineers cannot be considered as an unreasonable classification. The petitioner who does not possess the minimum qualification for recruitment to the post of Junior Engineers cannot claim equivalence with those who possess the minimum qualification prescribed for recruitment to the post of Junior Engineer. Therefore, I hold the classification made by the State Govt., on the touchstone of the possessing of 3 years Diploma qualification in Civil Engineering by the persons, who are ordered to be transferred, is a reasonable classification. Coming to the second aspect of the matter, I see that there is a clear nexus between the classification made and the object sought to be achieved. From the impugned Government Order, it is seen that the object of transferring such of the Draughtsman possessing three years Diploma in Civil Engineering qualification is to ensure that all the persons possessing the minimum qualification prescribed for the post of Junior Engineer should belong to that cadre, so as to ensure equal opportunity in all respects to all those possessing equal qualification and that the cadre of the Draughtsmen should consist of only persons possessing the qualification of certificate in Draughtsmanship and of persons promoted from the cadre of Tracers after passing the test prescribed by the Chief Engineer. From the copy of the Rules incorporating the latest decision of the Government produced before the Court it is seen that the State Government has also taken a decision to delete the Diploma in Civil Engineering qualification prescribed for the post of Draughtsman from the category of minimum qualification prescribed for recruitment to the post of Draughtsman. This is in conformity with the policy decision of the Government, to see, that no person with the minimum qualification Prescribed for the post of Junior Engineer should hereafter enter the cadre of Draughtsmen on that basis.

12. In the light of the discussion as above, I hold that the classification of Draughtsmen for purposes of transfer to the cadre of Junior Engineers on the basis of their possessing three years Diploma in Civil Engineering, is an intelligible and a rational classification and has relevance to the object sought to be achieved and therefore the State Government in passing the impugned order has not transgressed the mandate of Art. 14 and 16(1) of the Constitution.

13. The learned counsel, however, submitted that even assuming that there is some difference in the qualification possessed by the petitioner and others, who are transferred to the cadre of Junior Engineers there is no justification for denying similar treatment to the petitioner as the petitioner and the aforesaid 600 persons all belong to the cadre of Draughts-men till the impugned order was passed and were in the identical payscale. In support of the submission, strong reliance was placed on certain observations made by Bhagwati, J. in the case of Mohammad Shujat Ali v. Union of India, AIR. 1974 SC. 1631, 1654-1656 Para 28. In the earlier part of the para there are some observations to the effect that in the matter of promotion to the cadre of Asst Engineers, there is no justification to provide separate or better opportunity for graduate supervisors in preference to non-graduate supervisors. But in the same para after referring to the

observations of Krishna Iyer, J., it is pointed out by Bhagwati, J. that to permit discrimination based on educational attainments not obligated by the nature of the duties of the higher post is to stifle the social thrust of the equality clause. (emphasis supplied). Further it may be seen in the same paragraph, the classification made on the basis of Diploma and Degree qualification for the purpose of promotion to the higher cadre of Assistant Engineer was upheld on the ground that such classification always existed. Therefore the question for consideration is whether the classification made by the State Government on the basis of the qualification of three years Diploma in Civil Engineering is not necessitated by the nature and duties of the posts of Junior Engineers. In this behalf it is sufficient to point out that the minimum qualification prescribed for the post of Junior Engineer is a Diploma in Civil Engineering or Mechanical Engineering according to the requirements of the department. The said qualification has been prescribed by the Governor having due regard to the executive duties of Junior Engineers. The petitioner who is appointed to the post Draughtsman and others similarly situated, who are not transferred to the cadre of Junior Engineers, do not possess the minimum qualification prescribed for the post of Junior Engineer. In other words, the classification made by the State Government is on the basis of the minimum educational qualifications prescribed for the post of Junior Engineer. Only such of the Draughtsmen who possess the minimum qualification prescribed for recruitment to the post of Junior Engineer alone are transferred. Therefore, it cannot be said that any discrimination based on educational attainments unconnected with the duties and responsibilities of the post of Junior Engineer is sought to be made by the impugned order. Further, as pointed out in Mohammad Shujat Ali's case (supra) in this case also classification on the basis of Diploma in Civil or Mechanical Engineering qualification as minimum qualification for recruitment to the cadre of Junior Engineers always existed. Certificate in Draughtsmanship was never the minimum qualification prescribed for the post of Junior Engineer. The minimum qualification prescribed for the post of junior Engineer was and is Diploma in Civil Engineering or Mechanical Engineering or equivalent qualification. A classification based on educational qualifications, either general or technical, for the purpose of pay-scale or promotion, has always been recognised and in this behalf, it is sufficient to make reference to the following decisions:

(i) State of Mysore v. P. Narasinga Rao, AIR. 1968 SC. 349. In this decision the classification made by the State for purposes of pay-scale on the ground of SSLC and non-SSLC qualification was upheld.

(ii) State of Jammu & Kashmir v. Triloki Nath Khosa, AIR. 1974 SC. 1. In this case, the classification made in the Engineering Service for purpose of promotion and pay-scale on the basis of Degree and Diploma qualification possessed by the concerned persons was held to be a valid classification.

(iii) Union of India v. Dr. (Mrs.) S.B. Kohli, AIR. 1973 SC. 841. In this case, the classification made on the basis of general surgery and special qualification in

orthopaedics for purposes of promotion was upheld.

(iv) *Ramesh Prasad v. State of Bihar*, AIR. 1978 SC. 327. In this case, the classification made on the basis of specialised qualification in tele-communication for purpose of promotion as against the general qualification in electrical engineering with tele-communication as one of the subjects was upheld and the principles laid down in the earlier three cases have been reiterated.

(v) *State of Mysore v. N.S. Subba Rao*, (1975) 2 Kar.LJ. 64. In this case, a Division Bench of this Court upheld the classification made for the purpose of pay-scale in the cadre of village accountants on the basis of SSLC and non SSLC qualification.

14. In the light of the discussion made above and in view of the decisions referred to above, I do not find any substance in the contention urged for the petitioner.

15. It is, however, necessary to refer to one other aspect on which the petitioner relied in the additional statement dt. 21-3-1978. The petitioner has stated that among the 600 persons, who are transferred to the cadre of Junior Engineers, there are also some persons, who possess only Diploma in Draughtsmanship qualification and not Diploma in Civil Engineering (General) and on that basis it is contended by the petitioner that if persons possessing only Diploma in Draughtsmanship qualification are transferred to the cadre of Junior Engineers, there is absolutely no justification why the petitioner, who also possessed the ITI Diploma in Draughtsman (Civil) qualification, should not be transferred, for the reason that there is not much difference between the two qualifications and, therefore, the Govt has discriminated against the petitioner in not giving an opportunity for being transferred to the cadre of Junior Engineers. The petitioner has also referred to a few persons by name and has stated that they possess only Diploma in Draughtsmanship. In the reply filed on behalf of respondents 3 to 13 the said allegation is denied and it is asserted that every one of them possesses the Diploma in Civil Engg.

16. Having regard to the clear wordings of the impugned order and the averments made in the statement of objections, it is clear that only persons possessing three years Diploma in Civil Engineering qualification alone are sought to be transferred from the cadre of Draughtsmen to the cadre of Junior Engineers. If under the impugned order any person or persons with qualification similar to the one possessed by the petitioner is taken to the cadre of Junior Engineers, then only the petitioner may complain of discrimination. If the Govt. does so by interpreting the impugned order in such a way or by making any amendment to the impugned Govt order, it is only then cause of action will arise for the petitioner and others who are similarly situated on the ground of discrimination, if their contention is well founded. Hence, I leave this contention open.

17. For the reasons aforesaid, the Rule is discharged and the writ petition is

dismissed, but without costs.