
(1987) 08 CAL CK 0014
In the Calcutta High Court
Case No : C. R. No's. 13084 (W) of 1981

Manik Lal Bhunia

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 27-08-1987

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 16, 226

Citation : (1987) 08 CAL CK 0014

Hon'ble Judges : S. R. Roy, J

Bench : Single Bench

Advocate : Chittaranjan Bag, for the Appellant; R. N. Das, Prabir Kumar Samanta, for the Respondent

Judgement

S. R. Roy, J.—Whether motor drivers belonging to the same grade and also similarly situated and circumstances otherwise, can be classified into two different groups on the basis of their general educational qualification for promotional purposes to the next higher grade, is the sole point for consideration in the instant two writ petitions, which were heard analogously.

2. The petitioners in the instant writ petitions, who are altogether 12 in number, are all drivers of the Hindustan Fertilizer Corporation Limited, Haldia Division, which is an authority within the meaning of Article 12 of the Constitution of India.

3. At the time of appointment of the petitioner the prescribed qualification for recruitment of drivers in Grade III, which is the initial grade, was knowledge of reading and writing English and Bengali and possession of a valid driving licence with minimum experience of 5 years.

4. After being appointed to Grade III, the petitioners in due course were promoted to Grade II according to the seniority maintained by the respondents. They also became due promotion to grade I. As matter of fact, the petitioners in C.R. No.18085(W) of 198 were actually promoted to Grade I though subsequent to some of their juniors.

5. The respondents, however, introduced a Rule under which Matriculate drivers were made eligible for promotion from Grade II to Grade I after having 4 years of service in the said Grade and non-Matriculates were made eligible for such promotion after having 5 years of service in the Grade, namely, Grade II.

6. Consequent to the introduction of the said Rule, the petitioner who are all Non-Matriculates, became junior to the Matriculate Drivers since they were promoted earlier to Grade I.

7. According to the petitioners, the Rule is bad in law as violative of Articles 14 and 16 of the Constitution since it makes an arbitrary classification between employees of the same Grade having the same technical qualification. It is further the case of the petitioners that such a classification could not be made inasmuch as academic qualification has no reasonable nexus with the proficiency of a driver in the art of driving and maintaining the vehicles.

8. Having, however failed to obtain any redress from the concerned authority, the petitioners have coming up before this Court under Article 226 of the Constitution for the issuance of a writ in the nature of Mandamus commanding the respondents not to give any effect to the impugned Rule and also to promotions given in accordance therewith and for certain other reliefs.

9. According to the respondents in their affidavit-in-opposition, educational qualification adds to the efficiency and/or competency of a driver. That since 1976 the respondents Company and the employees' Union were thinking that there should be a similar specification regarding promotion of drivers along with the technicians and that the promotional specification of the drivers were made in consultation with the said recognised Union, which is the only representative body of the Workman of the Corporation including one petitioners. In fact, the Corporation entered into an agreement with the Union laying down specifically the promotional qualifications of the drivers. That the conditions and/or specifications for promotion are matters of policy in which the authority concerned must have discretion, because it would be otherwise difficult and impossible to run the Organisation smoothly.

10. Coming now to the rival contentions of parties, it is not disputed that when the drivers were initially appointed by the Corporation, they were not classified on the basis of their academic qualifications. Their appointments were on the basis of existing recruitment Rule under which they were required to hold valid driving licence with 5 years experience besides having knowledge in reading and writing Bengali and English. There was one common gradation list for all the drivers irrespective of their academic qualifications and mainly on the basis of seniority they were promoted from Grade III to Grade II.

11. However, in the matter of their promotion from Grade II to Grade I the respondent Corporation arrived at an agreement with the recognised Union under which it was agreed inter alia that Non-Matric driver should have 5 years experience in the said grade to make them eligible for promotion. Due to

implementation of this Rule, some drivers junior to the petitioners in the gradation list, were promoted earlier to Grade I on account of their being Matriculates.

12. Mr. Bag, the learned Counsel representing the-petitioners in both the Rules, strongly contended that this Rule, which makes an arbitrary classification between employees belonging to the same Grade and having the same proficiency and experience in the art of motor driving, is ex-facie violative of Articles 14 and 16 of the Constitution of India since it denies equality of opportunity for promotion to employees similarly situated and circumstances. According to Mr. Bag, academic qualification cannot have any reasonable nexus to the proficiency of a motor driver in the matter of driving and maintaining the vehicle and that being so, the classification made solely on the basis of academic qualification, cannot be said to be a reasonable classification.

13. It is now more than well-settled that in order to pass the test of permissible classification two conditions must be fulfilled, namely: -

(1) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others who are left out of the group, and

(2) that the difference must have a rational relation to the object sought to be achieved.

14. According to Mr. Bag, the learned Counsel representing the petitioners, drivers whose main function is to drive and maintain their vehicles properly, can, under no circumstances be classified on the basis of their academic qualifications and that being so, the classification made by the concerned authority cannot be said to be founded on an intelligible differentia. He also contended that the classification so made, has no rational relation to the object sought to be achieved, since in the matter of promotion of a driver the only thing that should be looked into is whether he has earned sufficient maturity and experience in driving and in maintaining the vehicle. This requirement has absolutely no nexus with the academic qualification of a driver. A driver, according to Mr. Bag, may be a Matriculate or Non-Matriculate, but that is immaterial so far his proficiency in the art of driving is concerned. It is not necessarily that a Matriculate driver would be a better driver than a Non-Matriculate driver. And that being so, it cannot be said that a Matriculate driver, simply on the ground of his being a Matriculate, becomes suitable for promotion earlier than his Non-Matriculate counter-part since proficiency in driving does not in any way depend on academic qualification.

15. In support of his contentions, Mr. Bag relied upon the decision of the Supreme Court in Punjab State Electricity Board, Patiala and Another Vs. Ravinder Kumar Sharma and Others, . In that case there was a common seniority list for both Diploma-holder and Non-Diploma-holder line men. The State Electricity Board, however, created a distinction between Diploma-holder

line men and Non-Diploma-holder line men and promoted certain persons who were junior to the petitioner on the basis of quota fixed for Diploma-holders. It was held by the Supreme Court that the said promotion was arbitrary. In this connection reliance; was placed upon the earlier decision of the Supreme Court in Mohammad Shujat Ali and Others Vs. Union of India (UOI) and Others, . In the said decision it was observed by the Supreme Court that "where graduates and non-graduates are both regarded as fit and, therefore, eligible for promotion, it is difficult to see how consistently with the claim for equal opportunity any differentiation can be made between them by laying down a quota of promotion for each and giving preferential treatment to graduates over non-graduates in the matter of fixation of such quota. The result of fixation of quota of promotion for each of the two categories of Supervisors would be that when a vacancy arises in the post of Assistant Engineer, which, according to the quota is reserved for graduate Supervisors, a non-graduate Supervisor cannot be promoted to that vacancy, even if he is senior to all other graduate Supervisors and more suitable than they. His opportunity for promotion would be limited only to vacancies available for non-graduate Supervisors. That would clearly amount to denial of equal opportunity to him".

16. According to Mr. Bag, on toe oasis or one aforesaid two decisions of the Supreme Court, no reasonable classification between the drivers can be made on the basis of their academic qualification, since whether they are Matriculates or not, they are performing the same kind of work and duties and they also belong to the same cadre having a common/joint seniority list for promotion to Grade I.

17. On the other hand, Mr. R. N. Das, the learned Counsel representing the respondents, contended that the classification made between the drivers for promotion on the basis of their academic qualification, cannot be said to be arbitrary and in support of his contention he relied upon the five Judge Bench decision of the Supreme Court in State of Mysore and Another Vs. P. Narasing Rao, . In the said case a classification was made of two grades of tracers, one for matriculate tracer with a higher pay scale and the other for non-matriculate tracer with a lower pay scale and the Supreme Court held that this classification was not violative of Article 14 or 16 of the Constitution. In that connection the Supreme Court observed that "the provisions of, Article 14 or Article 16 does not exclude the laying down of selective tests, nor do they preclude the Government from laying down qualification for the post in question. Such qualifications need not be only technical but they can also be general qualifications relating to the suitability of the candidate for public service as such. It is, therefore, not right to say that in the matter of appointment to the post of tracers the Government ought to have taken into account only the technical proficiency of the candidates in the particular craft. It is open to the Government to consider also the general educational attainments of the candidates and to give preference to candidates who have better educational qualifications besides technical proficiency of a tracer. The relevance of general education even to technical branches of public service was emphasized long ago by Macaulay as follows:

Men who have been engaged up to one and two and twenty, in studies which have no immediate connection with the business of any profession, and the effect of which is merely to open, to invigorate and to enrich the mind, will generally be found, in the business of any profession, superior to men who have at eighteen or nineteen devoted themselves to the special studies of their calling. Indeed, early superiority in literature and Science generally indicates the existence of some qualities which securities against vice-industry, self-denial, a taste for pleasure not sensual, a laudable desire of honourable distinction, a still more laudable desire to obtain the approbation of friends and relations. We, therefore, think that the intellectual test about to be established will be found in practice to be also the best moral test that can be devised. (Hansard, Series 3, CXXVIII, 754, 755).

In our opinion, therefore, higher educational qualifications such as success in the S.S.L.C. examination are relevant considerations for fixing a higher pay scale for tracers who have passed the S.S.L.C. examination and the classification of two grades of tracers in the new Mysore State, one for matriculate tracers with a higher pay scale and the other for non-matriculate tracers with a lower pay scale is not violative of Article 14 or 16 of the Constitution.

18. Now, so far the aforesaid decision of the Supreme Court as referred to by Mr. Das is concerned there appears to be one broad distinguishing feature, In the said case matriculate tracers were given a higher scale of pay than the non-matriculate tracers, but in the instant two writ petitions the matter is somewhat different. Here, matriculate as well as non-matriculate drivers under the impugned Rule are eligible for promotion from Grade II to Grade I but the matriculates will have quicker promotional prospect than the non-matriculates. Thus, the basis of the classification seems to be that the matriculates because of their being so, become competent and suitable for promotion after rendering 4 years of service in Grade II, whereas the non-matriculates simply on account of their not being matriculates, take a longer time to become competent for promotion. This prima-facie smacks of unreasonableness and does not appear to be founded on any intelligible differentia.

19. It need not be emphasized that eligibility or suitability for promotion to a higher grade normally depends upon the proficiency in the line and not upon any extra qualification having no reasonable nexus to the object sought to be achieved by such promotion. It may be possible that a non-matriculate driver may be more proficient in driving than a matriculate driver. This is particularly because any academic qualification in the general line is not likely to have any direct or indirect impact upon the proficiency of driver. I do not know whether in view of the later decisions of the Supreme Court even a higher scale of pay could be recommended for the matriculate drivers since that would very likely have been violative of the principle of "equal pay for equal work".

20. As regards the tracers, their being matriculate might have some impact on the quality of their work, so far drivers are concerned, it is not desirable their

proficiency in driving may be affected either depending on their academic achievements in the general line. In any event, I cannot persuade myself to hold that a driver only on account of his being a matriculate becomes competent for promotion to a higher grade quicker than his non-matriculate counter-part. It need not be emphasized that while promoting a driver to a higher grade from a lower grade, the only consideration would be how much proficiency he has earned as a driver including his proficiency in mechanism. It may so happen that a matriculate driver may not be as proficient as a non-matriculate driver in such matters.

21. I do agree with Mr. Bag that all the drivers being similarly situated and circumstances and having similar experience in driving, cannot be distinguished or discriminated in the matter of their promotion to a higher grade, simply on the basis of academic qualification in the general line, which can have no reasonable nexus to the driving proficiency. The drivers, in my view, should be distinguished from tracers, since tracers have mainly paper works to do and the quality of such work is likely to improve where the tracer is possessed of better academic qualification. Such academic qualification may not have any direct impact on his work but is very likely to have an indirect impact.

22. Mr. Das in support of his contention referred also to the decision of the Supreme Court in *The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others*, . There, a classification was made of Assistant Engineers between Diploma-holders and Degree-holders for promotion as Executive Engineers and it was held that such classification did not violate Articles 14 and 16 of the Constitution. Obviously, the said classification, as it will clearly appear, was based on an intelligible differentia, since a Degree-holder Assistant Engineer could naturally be expected to be better qualified for promotion than a Diploma-holder. But here, the facts are entirely different. Here a distinction has been sought to be made among motor drivers similarly situated and circumstances, on the basis of academic qualification in the general line which has no reasonable nexus to the proficiency or otherwise in the art and skill of driving.

23. It was next contended by Mr. Das that since the impugned Rule was introduced on the basis of a bipartite agreement between the respondent Corporation and the workers' Union, the said Rule should be favoured despite hardship and inconvenience to few. Reference in this connection was made to the agreement which is Annexure "Y" to the affidavit-in-opposition. Significantly, Annexure "Y" is simply a record of the notes of the meeting held on the 11th of May 1981 with the representatives of the recognised Union to discuss various issues involved in the promotion cases. It is signed only by the Personnel Officer of the respondent Corporation and not by any Union official. However, even assuming Annexure "Y" to be an agreement between the respondent Corporation and the recognised Union of the workers, it cannot override the fundamental rights of the workers. As already seen, the Rule of promotion for the drivers as agreed upon between the Corporation and the

Union, creates an arbitrary classification between the same class of employees by introduction of extraneous considerations.

24. It is true that a bipartite agreement between the employer and the Union will continue to remain in force till it is terminated in due course of law. But it is equally true that any such agreement will have to stand the test, of constitutionality. Here, it is not a case of mere hardship of some of the drivers since the impugned Rule ex-facie violates Articles 14 and 16 of the Constitution.

25. It appears that in compliance with the impugned Rule some of the matriculate drivers have already been promoted to Grade I superseding the claim of their senior non-matriculate counter-parts and in this connection it was contended by Mr. Das, the learned Counsel representing the respondents, that the instant two writ petitions are not maintainable without making those promoted drivers as parties respondents. But here, since the impugned Rule itself is bad in law as violative of Articles 14 and 16 of the Constitution of India, any promotion made in pursuance thereof, would automatically fall through and the respondents have to consider afresh the cases of promotion of the eligible drivers in Grade II on the basis of their seniority-cum-merit with reference to the general gradation list including the petitioners. In other words, the impugned Rule of promotion of drivers from Grade II to Grade I on account of its being struck down as unconstitutional, will be deemed to have been not in existence at any time and that being so, the employees who have already derived the benefit of the said Rule are liable to be reverted to their former position and as such, it is immaterial whether they have been made parties to the instant writ petitions or not.

26. As a result, the writ petitions succeed and the Rules issued are made absolute.

27. The impugned Rule of promotion of the drivers from Grade II to Grade I as incorporated in the alleged agreement (Annexure "Y" to the affidavit-in-opposition) is hereby struck down, since the classification made between the drivers for the purpose of such promotion from Grade II to Grade I, is not founded on any intelligible differentia and also on account of the fact that the classification so made has no rational relation with the object sought to be achieved by the promotion.

28. The impugned Rule being struck down, the promotion already made in compliance therewith should also fall through.

29. The respondents will, however, be at liberty to consider afresh the cases of promotion of the drivers in accordance with the Rules and/or procedure which was being previously followed in the matter of promotion of drivers from Grade II to Grade I.

30. Fresh rules for such promotion may also be framed by the authority in accordance with law if it so desires.

31. There will be no order for costs.

32. This order will govern both the Civil Rules hereby disposed of analogously.

33. A verbal prayer made on behalf of the respondents for stay of operation of this order is considered and refused.