
(1997) 07 KL CK 0011

In the High Court Of Kerala

Case No : O.P. No. 1584 of 1990 L and O.P. 10221 of 1992

M.G. Ramachandra Warriar and Others

APPELLANT

Vs

TELK and Others

RESPONDENT

Date of Decision : 03-07-1997

Acts Referred:

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

Citation : (1997) 2 KLJ 138

Hon'ble Judges : P. Shanmugam, J

Bench : Single Bench

Advocate : K. Ramakumar, for the Appellant; M. Pathrose Mathai, Smt. Mariam Mathai, T.C. Mohan Das, T.M. Sunil and M.A. Shajique, for the Respondent

Final Decision : Dismissed

Judgement

P. Shanmugam, J.—Petitioners are Engineers/Diploma Holders working under the 1st respondent company (TELK). They have sought to quash Exts.P2 and P5 TELK Management Cadre (Appointment and Promotion) Rules and for a direction to promote them to the post of Assistant Managers and above on the basis of the seniority and eligibility without reference to educational qualification and length of experience. O.P. No. 1584/1990 is filed by another set of Diploma Holding Engineers seeking the same relief, but put on a wider terms.

2. The 1st respondent company is fully owned by the Government of Kerala and headed by the Managing Director appointed by the State. There is a deep and pervasive control over the 1st respondent company and, therefore, is an undertaking within the scope of Article 12 of the Constitution of India. The Company was incorporated in the year 1963 with the technical and financial collaboration with M/s. Hitachi Ltd., a Japanese Company manufacturing high voltage equipments. It started its commercial production in the year 1966. The service of the 1st respondent company consists of two branches, viz. technical and non-technical. The Original Petitions are concerned with technical branch. The Technical branch consists of the following categories:

- 1) Manager.
- 2) Deputy Manager.
- 3) Assistant Manager.
- 4) Engineer.
- 5) Junior Engineer.
- 6) Foreman.
- 7) Chargeman.

3. The Company for the first time evolved its promotion policy in April, 1989 which is the subject matter of litigation before this Court. In view of the various demands, the management resolved to review the promotion policy by appointing an expert to consider all aspects of the question. Accordingly, Justice V. Bhaskaran Nambiar was requested to review the policy and formulate the principles for making appointments and promotions to the various categories of staff at the managerial level. The report was preceded by the receiving and hearing of the representations of the various categories of officers including the Telk Technical Staff Association representing the Diploma holding Engineers. After considering the recommendations and the report Ext.P2 rules called the "Telk Managerial Cadre (Appointment and Promotion) Rules" as amended by Ext.P5 rules were brought into existence. The Original Petitions are filed against these rules.

4. The petitioners have confined themselves with the promotion rules relating to the post of Assistant Manager and Deputy Manager. The method of appointment and the promotion to the relevant categories that are dealt with in the Original Petition are as follows:

Category

Method of appointment

Qualification

1.

Manager

By promotion from

Deputy Managers.

Selection

First Class Degree in Engineering recognised by any of the Universities in Kerala and two years experience as Deputy Manager.

Selection

Provided that 20% of the posts are reserved for first class diploma holder with 10 years experience as Deputy Manager/Assistant Manager.

Note: In case there are no suitable candidates in this reserved category, those vacancies will be Filled by first class graduates.

2.

Dy. Manager

By promotion from As st.

First class degree in Engineering and a minimum of 4 years service

Manager. Selection

as Assistant Manager.

Selection

(Provided that 10% of the posts-are reserved for first class diploma holders with 5 years experience as Assistant Manager.

3.

Assistant Manager.

By promotion from Engineers. Seniority cum merit basis.

First Class degree in Engineering recognised by any of the Universities in Kerala and 4 years experience as Engineer.

OR

First Class Diploma recognised by the Kerala Govt. and 6 years experience as engineer.

Provided that 5% of the posts are reserved for Engineers with ITI and SSLC and 20 years experience in the managerial cadre.

Note I: In the absence of Diploma holders or certificate holders with the requisite experience that vacancy will be filled by qualified first class graduates.

Note 2: There shall be a ratio of 1:2 between Diploma holders and graduates.

4.

Engineer

By direct recruitment.

First class Engineering degree recognised by any of the universities in Kerala.

By promotion from Junior Engineers. Seniority-cum-merit.

First class diploma in Engineering recognised by the Kerala Govt. and 5 years

experience as Junior Engineer.

Note 1: A ratio of 1:2 shall be maintained between Diploma holders and Degree holders.

10% of the posts are reserved for appointment by transfer of Junior Engineers with ITI and SSLC and 6 years experience as Junior Engineer.

Provided that a Junior Engineer with ITI and SSLC shall not be eligible for promotion as Engineer over his senior with a diploma in the category of Junior Engineer unless the latter is promoted or otherwise rendered ineligible for promotion.

5. The case of the petitioner is that the appointment to the post of Engineer is by direct recruitment from degree holders in Engineering and promotion from Junior Engineers. While so, for further promotion to the post of Assistant Manager and Deputy Manager a distinction is made based on the educational qualification which is violative of Articles 14 and 16 of the Constitution. As per these rules, a ratio of 1:2 is maintained between diploma and graduate Engineers for the post of Assistant Engineers. It is seen that for a graduate Engineer an experience of 4 years is a requirement for promotion to the post of Assistant Manager whereas it is 6 years experience as Engineer for the diploma holders to the promotion to Assistant Manager. Again it is seen that for promotion to the post of Deputy Manager 4 years of service as Assistant Manager or 8 years of total service as Assistant Manager and Engineer is required for the Graduate Engineers whereas for diploma holding Assistant Managers 5 years experience as Assistant Manager is required. This according to them is arbitrary and violative of Articles 14 and 16 of the Constitution.

6. According to the petitioners, while providing ratio prescription of different years of experience for Diploma holders and Graduate Engineers is unjust, unfair and unreasonable. It is contended on their behalf that they are under one common seniority. They do the same work and the training obtained. Some of them in abroad and have longer experience to the credit have earned them equal position with degree holders. They have fused into one unit and, therefore, they cannot be treated different plea.

7. The respondent has filed a counter affidavit. According to learned counsel, the respondent's industry being a high technology industry, higher technical educational qualification is absolutely necessary. Mere experience in industrial production work acquired by doing routine production work can never be substituted for Engineering Degree qualification in technical subjects. Design techniques and pattern of transformers undergo rapid changes and to absorb and execute the change in technology higher educational qualification of degree in engineering is absolutely necessary. Each transformer has to be a tailor-made product to suit the requirement of the customers and they have to be designed accordingly. It would require utilisation and applying the analytical ability and expertise to get the optimum design. The Assistant and Deputy Managers have

to be in touch with the free sales and after sales service of the customers including preparation of tender, acceptance of tender and following it up for execution and completion. There are various departments in the factory like production, quality control, sales, industrial engineering, design or research and development, project engineering division etc. The knowledge and service of the Degree Holders are required in all these departments. Superior educational qualification is necessary and relevant to be taken into account for the purpose of classification and categories in an industry like that of the respondent. The quality and the manner of performance depend upon the high educational qualifications in the field. It is further submitted that in the growing high competition and entry of multinationals most efficient and highly qualified personnel is required for maintenance of excellence and development of the industry.

8. Before Justice V. Bhaskaran Nambiar the petitioners' association had an opportunity to make their representations. While Engineers' Association has put forth their stand that educational qualification of Graduate Engineers is more specialised and they must be given preference. They have set out the grounds on which the academic qualifications must be given importance. In contrast the technical staff association had not raised any ground for justifying their representation equally with that of the Degree Holders. After considering these representations the report accepted the basic principle as follows:

Distinct channels of career advancement for graduate engineers and diploma holders must be specified. This principle is adopted in all other undertakings like HMT, KMML, TTP, FACT, KWA, etc.

After considering the legal aspect the report referred to the category of Engineers and recommended that the ratio between Diploma Holders and Degree Holders is continued as 1:2. For the post of Assistant Managers the report found that a higher mental equipment and educational qualification in this higher cadre and also experience in the feeder category have to be borne in mind while prescribing the qualification. Accordingly it was suggested that a graduate with four years experience as Engineer or diploma with six years experience as Engineer. It was also suggested to maintain the ratio of 1:2. In reference to the post of Deputy Managers the report found that the said post should, in the interests and efficiency be mainly held by Engineering degree holders with reasonable experience in the feeder category of Assistant Manager. However, 30% of the posts in the category of Deputy Managers was recommended to be reserved for Diploma Holders with five years experience as Assistant Manager.

9. The only question that arise for consideration in respect of the parties at issue is whether after the petitioners/diploma holders and Graduate Engineers are integrated into one cadre of Engineers, can there be different criteria for promotion on the basis of educational qualification. The said question is well settled by series of decisions of the Supreme Court and our High Court. It is true though recruitments are made from two sources, they are integrated into one

common category of service. However, that does not mean, for the purpose of promotion, different standards of conditions of eligibility cannot be laid down. For the purpose of promotion, there can be a classification with a view to meet the challenging needs and the requirements of promotion posts and in the interests of efficiency of service. The said principle has been reiterated in many decisions of the Supreme Court and the High Court.

10. In *Rajasthan S.E.B. Accountants Assn, v. Rajasthan S.E.B.* (1997) 3 S.C.C. 103). The contention in that case was against making a reservation of 25% vacancies for Accountants possessing Cost and Works qualification and prescription of longer length of service for those who did not possess the qualification. The Supreme Court while rejecting the said contention held that educational qualifications can be made the basis for classification of employees in State service in the matter of pay scales, promotions etc. In the matter of promotion, classification based on educational qualifications so as to deny eligibility for promotion to a higher post to an employee possessing lesser qualification or requiring longer experience for those possessing lesser qualification has been held valid.

11. The Supreme Court in the above decision approved the principles laid down in the decision in *The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others*, , *Roop Chand Adlakha and Others Vs. Delhi Development Authority and Others*, *P. Murugesan and Others Vs. State of Tamil Nadu and Others*, , *Shamkant Narayan Deshpande Vs. Maharashtra Industrial Development Corporation and another*, , *Nageswar Prasad v. Union of India*, 1995 Supp. (4) SCC 718 & *T.R. Kothandaraman and Others Vs. Tamil Nadu Water Supply and Drainage BD and Others*, wherein prescribing higher experience on the basis of different educational qualifications for eligibility for promotion and prescribing quota based on qualifications in the matter of promotion to higher posts have been upheld. In *Nageswar Prasad v. Union of India*, 1995 Supp. (4) SCC 718 the Supreme Court held that prescription of 50% quota rule is not violative of Article 14 or 16 of the Constitution, and that prescription of separate quotas for persons in the feeder channel on the basis of educational qualifications and experience is valid, In that case, the Supreme Court also approved the view that the efficiency of diploma holders can be approved after a particular stage in the hierarchy and thereafter it is realised that for manning higher posts a degree in the Engineering is a must.

12. In *Chandran v. Board of Revenue* (1995 (1) KLT 12) the Supreme Court upheld the prescription of 1:1 promotion to the post of Excise Preventive Officer from Excise Guard as between those who possess the qualification of S.S.L.C. and those who do not possess S.S.L.C. According to the Supreme Court, higher educational qualification is permissible on the basis of classification. It is not only for barring promotion, but also for restricting the scope of promotion. By providing ratio of 1:1, the rule gives the two categories equal opportunity and the chance of promotion is deferred and not denied. In *Damodaran v. State of*

Kerala (1996 (2) ILR Ker. 175) a Division Bench of this Court held that fixation of 4:1 ratio for promotion as Research Officers from Junior Research Officers possessing M.Sc. degree and others not discriminatory or violative of Article 14 of the Constitution of India. According to the Division Bench there is no constitutional infirmity in the classification based on educational qualification.

13. A Division Bench of this Court in Balakrishnan v. State of Kerala (1990 (1) KLT 66) held that though graduates and non-graduates merged into a common category, graduates alone can be preferred in the matter of promotion to the next higher post provided the possession of higher qualification of graduation is necessary for a proper and satisfactory discharge of the functions of the higher post. If, having regard to the requirement of service persons possessing higher technical skill are required for discharging the duties and responsibilities of the higher post, the rule making authority would be well within its right in prescribing that persons possessing such higher technical skill or experience alone from the common category that would be eligible for promotion to the next higher category. The Division Bench further held that the prescription of the ratio of 1:1 between graduates and non-graduates, far from discriminating against Diploma holders, metes out a favourable treatment. If at all it is the graduates who are really affected by continuing the concession shown to the less-qualified non-graduates who are inadequate for the job. The decision referred to by the learned counsel for the petitioners in Bhagirathdan v. State of Rajasthan & others (1993 (1) L.L.J. 209) was in reference to prescription of practical experience as a qualification. The Supreme Court held that a better educational qualification does not obviate the need for the prescribed practical experience. The said decision does not in any way help the case of the petitioner. The decision of the Supreme Court in Roshan Lal Tandon Vs. Union of India (UOI), was explained in The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others, holding that the persons appointed directly and by promotion were integrated into a common class of Assistant Engineers, they could, for purposes of promotion to the cadre of Executive Engineers, be classified on the basis of educational qualifications. According to the Supreme Court, the Roshan Lal's case is not authority for the proposition that the direct recruits are integrated into one class for the purposes of promotion. The Supreme Court approved the classification if it is fairly and squarely on consideration of the educational qualification. Thus the principle of classification on the basis of educational qualification having been well settled, I do not find any infirmity in the impugned rules of the 1st respondent. Justice v. Bhaskaran Nambiar's recommendations on the promotion policy had gone into all the aspects raised by the petitioners in detail and considered the case of each and every category of service. As a matter of fact, the report protects the interests of the diploma holders by reserving a percentage of vacancy in each category up to the level of Manager. The prescription of ratio on different periods of experience for diploma holders and degree holders is, therefore, has to be upheld. I am of the view that the 1st respondent Company has taken all the aspects before formulating Exts.P2 and P5

rules. They are fair, reasonable and just and, therefore, valid.

For all these reasons, I hold that the Original Petitions fail. Original Petitions are accordingly dismissed.