

**(1964) 07 KAR CK 0003**  
**In the Karnataka High Court**  
**Case No : Writ Petition No. 1431 of 1961**

Narayana Murthy Srinivasa Murthy and Others

APPELLANT

Vs

State of Mysore and Another

RESPONDENT

**Date of Decision :** 14-07-1964

**Acts Referred:**

Constitution of India, 1950 — Article 14, 16, 311 (2)  
States Reorganisation Act, 1956 — Section 115, 115 (7)

**Citation :** AIR 1966 Kar 22 : AIR 1964 Kar 22 : (1965) 2 LLJ 508 : (1965) 1 MysLJ 435

**Hon'ble Judges :** T.K. Tukol, J;M. Sadasivayya, J

**Bench :** Division Bench

## Judgement

Sadasivayya, J.—The three petitioners were, prior to 1 November, 1956, the date on which the Reorganization of States came into effect, serving as permanent overseers in the former State of Bombay. From what has been stated in the affidavit which has been filed by the petitioners in support of their petition and has been admitted in the counter-affidavit filed on behalf of the respondent-State, there were two categories of overseers in Bombay. These two categories were referred to as the Subordinate Service of Engineers (S.S.E.). One category was known as the temporary establishment; it consisted of persons who were qualified as holders of either a diploma in Civil Engineering, or a degree in Engineering. The minimum qualification which had been prescribed for being eligible to be admitted into the temporary establishment was the possession of a diploma in Civil Engineering. In the case of the persons who possessed the higher qualification of a degree in Engineering, a benefit was given to them by way of eight advanced increments; in this way, they had seniority over the mere diploma-holders who had not yet completed eight years of service at the date of their respective appointments. The selection for promotion to the permanent establishment was being made on the basis of seniority-cum-merit. Once such a promotion was made, no distinction was made in the permanent establishment, between those who held merely a diploma in Civil Engineering and those who

were holders of degrees in Engineering. All the overseers so promoted to the permanent establishment were required to pass a departmental test, within a specified period. The three petitioners in the present case were promoted to the permanent establishment with effect from April 1, 1952, as can be seen from the order dated January 5, 1956, made by the Superintending Engineer, Southern Circle, Belgaum. It is also seen from the affidavit which has been filed by the petitioners that all the three of them had passed the departmental test, the petitioners 1 and 2 taking the first rank in the years 1952 and 1956. These facts are all undisputed.

2. On November 1, 1956 when the reorganization of the States took place, these three petitioners, under the provisions of the States Reorganization Act stood allotted to the new State of Mysore from the erstwhile State of Bombay. It should also be mentioned that according rule 53(10) of the Bombay Civil Services (Classification and Recruitment) Rules (which continued to be applicable to them until December 3, 1960 when the Mysore Public Works Department Engineering Services Cadre and Recruitment Rules, 1960, were promulgated by the Governor of Mysore), one of the methods by which appointments were made to the Bombay Service of Engineers, Class II, was by promotion from the Subordinate Service of Engineers. It is thus clear that the petitioners were in the same category as the graduate-overseers of the permanent establishment of the former State of Bombay; and they were, along with the graduate permanent overseers, eligible for being promoted to Class II Services (i.e., Deputy Engineers of the former Bombay State on the basis of seniority-cum-merit.

3. On March 18, 1958 the Secretary to the Government of Mysore in the Public Works Department addressed a communication No. PWD. 77/EWG. 58 to the Chief Engineer (General) of Mysore, Bangalore. The subject that letter was the equation of posts and the preparation of interstate seniority list of non-gazetted officers. The relevant portion of that letter runs as follows :

"I am directed to forward herewith a copy of the list showing the equation of posts of non-gazetted staff of the Public Works Department and to request you kindly to prepare the interstate seniority list of non-gazetted officers urgently and circularize the same among the staff for eliciting their objections based on the equation of posts and to report to Government the action taken by you :-

4. Copy of list showing the equation of posts

5. Public Works Department

1. The Chief Engineers of Mysore and Hyderabad are equal.

2. The Superintending Engineers of Mysore, Madras, Bombay and Hyderabad are equal.

3. The Executive Engineers of Mysore, Divisional Engineers of Madras and Executive Engineers of Bombay and Hyderabad are equal.

4. The graduate Assistant Engineers of Mysore, non-graduate Junior Engineers of Mysore, the graduate Assistant Engineers and non-graduate Assistant Engineers of Madras and Deputy Engineers (both graduate and non-graduate), Bombay, and the Assistant Engineers (graduates and non-graduates) and Sub-Engineers (graduates and non-graduates) of Hyderabad and Executive Engineers of Coorg are equal.

5. Graduate supervisors of Mysore, Junior Engineers of Madras, graduate overseers of Bombay, graduate supervisors of Hyderabad and graduate section officers of Coorg are equal.

6. Non-graduate Sub-Engineers of Mysore and non-graduate supervisors of Hyderabad are equal.

7. Overseers of Mysore, non-graduate supervisors of Madras, non-graduate overseers of Bombay and non-graduate section officers of Coorg are equal."

6. The matter may be treated as very urgent.

7. What requires to be noted for the purpose of the present writ petitions is, that in item 5 above, graduate overseers of Bombay were equated with certain categories of officers of other areas which were integrated to make the new State of Mysore; similarly, in item 7 above, the non-graduate overseers of Bombay were equated with certain other categories of officers of the different areas. Consequent on receiving this letter, the Chief Engineer (General) prepared the provisional interstate seniority list of overseers of ex-Mysore, non-graduate supervisors of Madras, non-graduate overseers of Bombay and non-graduate section officers of Coorg, in accordance with the equation set out in the letter. In his order dated 29 May, 1958, the Chief Engineer (General) drew the attention of all concerned to the fact of the interstate seniority list having been published and invited such of the subordinates, who may have objections within ten days from the date of the publication of that list. Again, on 15 January, 1960, the Chief Engineer (General) made an order which is as follows :

"Revised interstate seniority list of overseers of Mysore, non-graduate supervisors of Madras, non-graduate section officers of Coorg and non-graduate overseers of Bombay as per equation of posts sanctioned and communication (vide letter No. PWD. 77/EWG. 58 dated March 18, 1958) is prepared and the same is published herewith for information. If there are any omissions or inaccuracies in the list published, the Superintending Engineers of circles and other officers concerned are requested to intimate the correct position."

8. The officials in the aforesaid seniority list were designated as "supervisors" [vide order dated December 15, 1960 made by the Chief Engineers (General), together with the corrigendum dated December 20, 1960]. It is the validity of these four orders referred to above that is now challenged by the present petitioners before us. It may be stated at this stage alone that Sri Datar, the learned counsel for the petitioners, made it plain that it is really the validity

of the first Government order dated 18 March, 1958 that the petitioners are vitally interested in questioning, as the subsequent orders are all consequential ones.

9. The validity of the aforesaid orders has been challenged on a number of grounds. It is stated that they are violative of Arts. 14 and 16 of the Constitution, that they contravene the statutory protection given to Government servants under S. 115(7) of the States Reorganization Act and that they have also violated the principles which had been accepted (both by the Central Government and the Governments of the concerned States) for the purpose of bringing about the integration of services in the reorganized States. It is alleged that the effect of these orders is to contravene the safeguard that is assured to the petitioners under Art. 311(2) of the Constitution.

10. Having regard to the view which we propose to take, we do not consider it necessary to discuss all the grounds of attack which have been set out in the affidavits of the petitioners. Nor do we propose to examine the validity or otherwise of the basis of the classifications for purposes of equation of the other categories of posts referred to in the Government order of 18 March, 1958; we are concerned only with the permanent overseers coming to the new State of Mysore from the former State of Bombay. No materials have been placed before us by either side, which may enable us to pronounce on the validity or otherwise of the equations in regard to the other categories found in the Government order to 18 March, 1958. Therefore, anything stated by us in the course of our order in this writ petition, is not intended to affect the validity or otherwise of the equations of those other categories of posts.

11. Two main grounds of attack have been urged by Sri Datar before us, against the validity of the Government order dated 18 March, 1958. The first ground is that this Government order contravenes the conditions of service set out in rule 53(10) of the Bombay Civil Services Classification and Recruitment Rules. Even after November 1, 1956 and at the time when the Government order of March 18, 1958 was made, the petitioners were governed by those rules. For purposes of promotion to the higher class, the petitioners were eligible under rule 53(10) of the said Recruitment Rules. That sub-rule [which is at pp. 48-49 of the 1954 Edition of the Bombay Civil Services Classification and Recruitment Rules, 1939] is as follows;

"53 \* \* \*

(10) Appointments to the Bombay Service of Engineers, Class II, shall be made either -

(a) by nomination under sub-rule (11), or

(b) by promotion from

(i) the Subordinate Service of Engineers,

- (ii) permanent or temporary supervisors, and
- (iii) temporary Engineers appointed on annual sanction."

12. The post of Deputy Engineer was in Class II of Bombay Service of Engineers. Though there was not the post of "Deputy Engineers" in the new State of Mysore, it is seen that the post of Assistant Engineer has been equated to the post of the Deputy Engineer of the former State of Bombay. The position, therefore, was that immediately prior to the Government order dated 13 March, 1958 the petitioners were, by virtue of rule 53(10), eligible to be promoted to the higher post of Assistant Engineers (equated to that of Deputy Engineers) in the new State of Mysore, even though they did not happen to be graduates in Engineering. The permanent graduate overseers of Bombay had to take their chance for promotion along with the permanent non-graduate overseers, in the order of seniority-cum-merit. But, what has resulted from the Government order dated March 18, 1958 is that all the permanent graduate overseers from Bombay area are lifted out of the category which was common to them and the non-graduate permanent overseers and are put in a higher cadre along with graduate supervisors of Mysore, Junior Engineers of Madras, graduate supervisors of Hyderabad and graduate section officers of Coorg. By this order dated March 18, 1958, the graduate overseers, irrespective of their being permanent or temporary, were placed in a category above that of the permanent non-graduate overseers. But this procedure, the opportunity for promotion which the petitioners and other non-graduate overseers had, equally with the graduate overseers under rule 53(10) of the Bombay rules, was violated. Further, they were relegated to a position of disadvantage when compared with even temporary graduate overseers by being placed in a lower category. Such a result cannot be brought about by the issue of a departmental order contravening the provisions of the recruitment rules promulgated by the Governor in the exercise of his power under S. 241 of the Government of India Act (corresponding to Art. 309 of the Constitution). To the extent to which the Government order dated 18 March, 1958 contravened the provisions of rule 53(10) of the Bombay Civil Services Classification and Recruitment Rules it must be held to be void. This position is in no way rendered different by the fact that at a subsequent date the Bombay Civil Services Classification and Recruitment Rules were replaced by the Mysore Public Works Department Engineering Service Cadre and Recruitment Rules, 1960, issued by the Governor of Mysore.

13. The second contention of Sri Datar is that certain principles which had to be followed in making equations in order to bring about the integration of the services in the reorganized State, had been violated by Government order dated March 18, 1958. These principles had been accepted by the Government of India. In this connexion, Sri Datar has referred to what has been observed by this Court in the case of *Lakshmanan v. State of Mysore* (1963) 1 Mys. L.J. 472 the following statements have been made :

"The procedure for the integration of services consequent upon the

reorganization of States was agreed upon at a meeting of the Chief Secretaries of the various States held at Delhi at which certain principles were decided upon by common consent. The process of integration according to these principles was to take place in at least two stages. The first of them was the equation of posts having regard to certain considerations like the nature of duties and responsibilities of the posts, scale of pay applicable thereto and the educational qualifications necessary for a person being appointed to those posts. Having decided upon the equation of the posts, the next stage was to determine in respect of each person the date of his entry into the equated cadre or post".

14. In the official memorandum dated November 8, 1956 issued by the Government of Mysore the agreed principles for determining the equation of posts have been set out as follows :

"ANNEXURE I

12. It was agreed that in determining the equation of posts, the following factors should be borne in mind :

- (i) the nature and duties of a post;
- (ii) the responsibilities and powers exercised by the officer holding a post; the extent of territorial or other charge held or responsibilities discharged;
- (iii) the minimum qualifications, if any, prescribed for recruitment to the post;
- (iv) the salary of the post".

15. It is not disputed on behalf of the State that these principles should be adhered to in making the equation of the posts for the purpose of bringing about the integration of services. As has been held in the case of *Jaleel v. State of Mysore* (1963) 1 Mys. L.J. 425, it is the Government of India that is the authority competent to bring about the integration of the services, under S. 115 of the States Reorganization Act. From the letter of the Government of India dated September 22, 1959 addressed to the Chief Secretary to the Government of Bombay and which has been referred to in a recent decision of the Gujarat High Court in *A. J. Patel v. State of Gujarat* ILR 1963 Guj. 1204 it is clear that the Government of India required adherence to the said principles. The relevant portion of that letter is to be found at p. 1228 and is as follows :

"The Government of India have carefully considered the representations, the comments of the Government of Bombay thereon and the recommendations of the State Advisory Committee. In their view the principles of equation adopted by the Government of Bombay not only conflict with the general principles laid down on the basis of unanimous decisions of the Chief Secretaries' Conference but also with orders announced by the Government of Bombay from time to time. The Government of India find that due regard has not been paid to the following criteria :

- (1) Nature of duties of a post.

(2) The responsibilities and powers exercised by the officer holding a post; the extent of territorial or other charge held or responsibilities discharged.

(3) The minimum qualifications, if any, prescribed for recruitment to the post.

(4) Salary of the post.

\* \* \*

16. It is further found that the equation of posts ordered by the Government of Bombay has resulted in unfair and inequitable treatment to the employees of former Saurashtra State. The Government of India are not able to approve of the basis of equation adopted by the Government of Bombay stipulating a qualifying service of five years to entitle a person to be equated with the corresponding post in Bombay and that in cases where five years is not available equating such a post with a lower post. The principle adopted by the Government of Bombay is discriminatory and results in unfair treatment to certain categories of Government servants even to the extent of making them lose periods of approved service for purposes of seniority. The Government of India, therefore direct that these representations may once again be placed before the State Advisory Committee for reconsideration in the light of what has been stated above".

17. The complaint of Sri Datar, the learned advocate for the petitioners, is that so far as the non-graduate overseers are concerned, the Government order date March 18, 1958, seeks to bring about not so much an equation of posts as the equation of categories of persons. His contention is put in the following manner. The posts of overseers were being held both by non-graduates as well as graduates. That post had to be equated with similar posts that existed in the different areas which joined to make the new State of Mysore. By applying the principles which had been agreed to for purposes of equation, the Government ought to have specified the posts of the different areas, which were equivalent to the post of overseer (of the permanent and temporary establishment) of the former State of Bombay. But, what has been actually done as per the Government order dated March 18, 1958 is not the specification of such equivalent posts, but the splitting up into two groups of the persons who were holding the posts of overseers. The criterion applied for making those two groups was whether the official possessed a degree in Engineering. This criterion was an irrelevant one for holding that post; because, it was not the prescribed minimum qualification. After so splitting the holders of these posts by the application of an irrelevant test or standard, one group was equated with certain categories of persons, while the remaining group was equated with some other inferior categories. As contended by Sri Datar, the four agreed principles accepted for the purpose of determining the equation of posts, do not contemplate any classification based on the possession of a higher educational qualification. On the other hand, what is stated in the official memorandum dated November 18, 1956 is that one of the factors to be taken into consideration is the minimum

qualification, if any, prescribed for the recruitment to the post. Neither the source of power nor the rationale for splitting up the holders of the same post into two groups of unequal levels, has been pointed out to us by the learned Government Pleader. The impugned equation contravenes the principles accepted for equation of posts. The petitioners have been undoubtedly relegated to a position of disadvantage by this Government order, solely because of their being non-graduate overseers. It is also undisputed that one of the principles agreed to for the purpose of equation was, that as far as possible, the inter se seniority of the officers drawn from the State should not be disturbed. That this was one of the requirement indicated by the Government of India, is clear from the State Government's official memorandum dated 9 January, 1957. The equation effected on the basis of the educational qualification, viz., the holding of a degree in Engineering, results in a violation of the said principles also. Because, it is conceivable that a graduate overseer (whether permanent or temporary) who was junior to a permanent non-graduate overseer may, by resort to this kind of classification, be placed in a higher category and thus deprive the permanent non-graduate overseer of his seniority. As a matter of fact, it is not disputed in the affidavit filed on behalf of the State, that as a result of the action taken on the basis of this Government order, there is a possibility of the disturbance of the inter se seniority as among the overseers coming from the Bombay area.

18. In the result, we find no valid authority or competence in the State Government to bring about what is practically a split in the post of overseers for the purpose of equating some of the holders of that post to one category and the others to another inferior category. Therefore, to the extent to which the Government order dated March 18, 1958 and the consequential orders above referred to operate to bring about a division in the code of overseers from the Bombay area, they are liable to be quashed and are accordingly quashed. The State Government will make a fresh equation, as may be necessary, on an appropriate and valid basis and in accordance with such directions as the Government of India might have issued in the matter. The petitioners will get their costs from the State Government. Advocate's fee Rs. 100.