
(1987) 03 CAL CK 0002
In the Calcutta High Court
Case No : F.M.A. No. 950 of 1975

Narendra Nath Das and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 20-03-1987

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 16(1), 39(d)

Citation : 91 CWN 950

Hon'ble Judges : Chittatosh Mookerjee, C.J.; Padma Khastagir, J

Bench : Division Bench

Advocate : A.K. Motilal and Chandra Sekhar Das, for the Appellant; Satyanarayan Ray for Respondent Nos. 10 to 15 and Tapan Sen Gupta for State, for the Respondent

Final Decision : Dismissed

Judgement

Padma Khastagir, J.—The petitioners are Extension Officers and Lady Extension Officer (Social Education) Grade-III. They were originally appointed as Gram Sevak/Gram Sevika under the Development Department and served in such capacity for a number of years. The petitioners appeared for the interview before a selection board duly constituted for promotion to the post of Social Education Organiser, now designated as Extension Officer, Social Officer. At such interviews, apart from the petitioners other persons also appeared by applying directly to the said post. For the eligibility of such applicants in the case of male applicants for graduation and in the case of females, minimum qualification was undergraduate diplomas. The petitioners after such selection together with the direct recruits had undergone job training in social education organisers training center. Such training course was uniformed irrespective of educational qualification and during such training all the trainees in addition to their salaries received same amount of stipend. In accordance with the merit held at the final examination, trainees were placed in four grades "A", "B", "C" and "D" irrespective of their academic qualifications. Under the circumstances, some who belonged to Grade-

III Extension Officers category were also placed in Grade-A at such final examination. The petitioners relied upon a Manual containing Rules and/or Regulations for training of workers which enjoin that personality, resourcefulness, leadership, initiative, spirit of sacrifice and service, simple and intelligent living were considered to be more important than mere academic qualification. Such Manual on Social Education referred to by the petitioners however not only have no statutory sanction, nor any indication had been given as to how and by which authority such guidelines have been formulated. The petitioners were aggrieved inasmuch as according to them a discrimination exist between Graduates and Undergraduates in the matter of employment, although the nature of job and works performed by and between them was equal and the same.

2. In 1961, during the revision of rules of Pay Scales, both the post Gram Sevak, Gram Sevika and Extension Officer/Lady Extension Officer, Social Education under graduates were made identical. On 8th August, 1962, a revised job chart was circulated under which both the grades had to discharge the same duty and responsibility according to the revised job chart. In 1965, the Education Department created three grades of Extension Officer, Social Education/Lady Extension Officer with different scales of pay and with a new job chart. Grade-I consisted of hours graduates and Masters Degree holders. Grade-II comprised of gradates and under Grade-III the undergraduates. The petitioners contended that such classification was not only unnecessary but also it was illusory inasmuch as, the responsibilities and the nature of the work remained same. Such classification by the authorities concerned on the ground that the work performed was linked with education as such, such classification was necessary in accordance with the qualification which the petitioners refuted on the ground that the employees belonging to all the three grades had to work in rural areas to eradicate adult illiteracy, to impact social education by organising libraries, sports, jatra, kathakatha etc. While doing the same, there is no possibility of imparting higher standard of general education. Apart from that the very fact that the employees belonging to Grade-I, Grade-II and Grade-III was interchangeable inasmuch as some of the workers belonging to Grade-III had to perform the duties belonging to Grade-I. The duties performed by the petitioners are as arduous and anormous as extension official, Social Education, Grades-I and II. Hence, they are entitled to equal pay and status at per with Extension Officers, Grade-I and Grade-II. Over and above that by an order dated 11th July, 1968 all Extension Officers/Social Education/Lady Extension Officer, Social Education, were declared as self drawing officers. Such amenities were available to Gazetted officers which was similarly accorded to the petitioners without having the necessary educational qualification or graduation. In 1970 the pay scale of both the post of Gram Sevak/Gram Sevika and Extension Officer, Social Education/Lady Extension Officer, Social Education, Grade-III were made identical. The petitioners contended that they could not be placed on the same footing with the Gram Sevak. The post of Gram Sevak being a feeder post of Extension Officer, Social Education, such attempt to accord same monetary

benefit and/or pay scale was unwarranted. The petitioners made repeated representations and protested against such discrimination being arbitrary, illegal and malafide. They demanded for abolition of graduation system and grant of status of Gazetted Officer to Grade-I and Grade-II to the exclusion of the petitioners. In spite of that by order dated 19th March, 1974 the authorities ordered that Extension Officer, Social Education, Grade-I and Grade-II will be treated as Gazetted Officers. The petitioners contended that such discrimination between Grade-I and Grade-II officers and the petitioners was not based on any intelligible differentia having any reasonable nexus with the object sought to be achieved. According to the petitioners such differentiation made between graduates and under-graduates was discriminatory, and violative of Articles 14 and 16 of the Constitution.

3. The Notification issued by the Government of West Bengal through the Education Department and Development Branch, dated 28th December, 1965, the classification between Grade-I, Grade-II and Grade-III of such workers had been indicated with the respective qualification and the scale of pay. Under the heading the duties and function of such Social Education Organisers, indicated that those who belonged to Grade-I inter alia included the duty of organizing and running social education centers for removal of illiteracy, promotion of post literacy education, health education and education of citizenship. They are also required to assist the Block Development Officer in implementing schemes for improvement of primary and secondary schools. In addition thereto, they had to carry out such work as entrusted to them from time to time by the Director of Public Instruction including visits to junior high schools and senior basis schools. They had to organize and conduct seminars, and symposiums for education of workers including preparation of literacy and audio visual aids. Similarly, Grade-II workers amongst others had to organise social education centers for removal of illiteracy, promotion of post literacy, education, health education and education in citizenship through audio visual media, organising cultural and recreational activities. The workers in that grade had also to assist the Block Development Officer in implementing the schemes for establishment of primary and secondary schools apart from carrying out such work as entrusted from time to time by the Director of Public Instruction.

4. From the affidavit filed in this proceeding, it indicated that the petitioners were fully aware since the inception of their appointment that there were well defined two grades and subsequently three grades of employment and the salaries in respect of the three grades were well demarcated. In the year 1962 the Government of West Bengal commenced the development scheme and for its better achievement various persons were employed having different educational qualification in the different categories drawing different pay scales. As per the recommendation of the Pay Commission such pay scales were revised and the Pay Commission made three different categories of non-graduate, graduate and graduate with honors or with post-graduate degrees. The petitioners were not only aware of the existence of such graduation but they are also guilty of

inordinate delay in initiating the present proceeding after serving in the said category with the knowledge of the existence of such graduation. Apart from that the workers including the petitioners were given an opportunity during the tenure of their service to obtain a degree from any university and thereby making themselves eligible for higher ranks without facing any selection test by merely presenting such degrees before the concerned authorities. As indicated in the duties and functions of Social Education Organisers in Grade-I and Grade-II included visits to junior high schools and senior basic schools including implementing schemes for improvement of primary and secondary school. Hence, educational qualification like graduates, graduates with honors degrees and post graduates are not only necessary but essential. Such work cannot be effectively done by those who are under-graduates. Conferring the status of Gazetted Officers in accordance with the Cabinet decision; hence there could be no allegation of collusion and/or connivance in not granting such status to the petitioners, nor there could be any legal malice and/or discrimination and thereby violation of article 14 and 16 of the Constitution of India, when there is a distinct difference in the duties and responsibilities of Grade-I, Grade-II and Grade-III. In such service as early as in the year 1962, there were two grades one for graduates and the other for the non-graduates. Subsequently on the basis of educational qualification three grades were made in such service. In spite of the duties and job specification overlapping to some extent, there is clear distinction between the work performed by the different categories belonging to different grade. Hence, the petitioners were not similarly placed and had not been differently treated. There had not been any change of conditions of service of the petitioners.

5. In the case reported in *Randhir Singh Vs. Union of India (UOI) and Others*, . it was held that:

We concede that equation of posts and equation of pay are matters primarily for the Executive Government and expert bodies like the Pay Commission and not for Courts but we must hasten to say that where all things are equal that is, where all relevant considerations are the same, persons holding identical posts may not be treated differentially in the matter of their pay merely because they belong to different departments. Of course, if officers of the same rank perform dissimilar functions and the powers, duties and responsibilities of the posts held by them vary, such officers may not be heard to complain of dissimilar pay merely because the posts are of the same rank and the nomenclature is the same.

It is well known that there can be and there are different grades in a service, with varying qualifications for entry into a particular grade, the higher grade often being a promotional avenue for officers of the lower grade. The higher qualifications for the higher grade, which may be either academic qualifications or experience based on length of service, reasonably sustain the classification of the officers into two grades with different scales of pay. The principle of equal

pay for equal work would be an abstract doctrine not attracting Article 14 if sought to be applied to them.

Construing Articles 14 and 16 in the light of the preamble and Article 39(d), we are of the view that the principle "Equal Pay for Equal Work" is deducible from those Articles and may be properly applied to cases of unequal scales of pay based on no classification or irrational classification though those drawing the different scales of pay do identical work under the same employer.

6. In the case reported in *State of Mysore and Another Vs. P. Narasing Rao*, it was held :

Article 14 does not forbid reasonable classification for the purposes of legislation. When an impugned rule or statutory provision is assailed on the ground that it contravenes Article 14, its validity can be sustained if two tests are satisfied. The first test is that the classification on which it is founded must be based on an intelligible differentia which distinguishes persons or things grouped together from others left out of the group; and the second test is that the differentia in question must have a reasonable relation to the object sought to be achieved by the rule or statutory provision in question. Article 16 is only an instance of the application of the general rule of equality laid down in Article 14 and it should be construed as such. Hence, there is no denial of equality of opportunity unless the person who complains of discrimination is equally situated with the person or persons who are alleged to have been favored; Article 16(1) does not bar a reasonable classification of employees or reasonable tests for their selection. The provisions of Article 14 or Article 16 do not exclude the laying down of selective tests, nor do they preclude the Government from laying down qualifications 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 was held that the classification of two grades of tracers 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 Article 16 of the Constitution.

7. In the case reported in *C.A. Rajendran Vs. Union of India (UOI) and Others*, . it was held :

In our opinion there is no justification for this argument as it is well-established that there can be a reasonable classification of employees for the purpose of appointment by promotion and the classification as between direct recruits and promotees is reasonable.

8. There is a grievance was made that the discrimination was made between Class-I and Class-II where there was no reservation but in Class-III and Class-IV there were reservations for Scheduled Tribes. It was stated that in Class-I and Class-II post a higher degree of efficiency and responsibility was required and therefore reservation was considered harmful so far Class-I and Class-II were

concerned. In view of the learned Judges, requirement of efficiency in the higher echelons of service was reasonable and the objection raised thereto was rejected being untenable.

9. In the case reported in *The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others*, , where the question arose as to whether persons drawn from different source and integrated into one class could be classified for the purpose of promotion on the basis of their educational qualification. It was held that such classification could be made although the persons appointed directly and/or by promotion were integrated into common class, on the basis of educational qualification. The rule which provided that the graduate shall be eligible for such promotion to the exclusion of diploma holders did not violate Articles 14 and 16 of the Constitution. It was observed that people of higher educational qualification are at least presumptive evidence of higher mental equipment, hence classification on the basis of educational qualification made with a view to achieve administrative efficiency could not be said to rest on any fortuitous circumstances. Although formal education does not always produce excellence but a classification found on variant educational qualification is not unjust. It was further held -

Classification must be truly founded on substantial differences which distinguish persons grouped together from those left out of the group and such differential attributes must bear a just and rational relation to the object sought to be achieved.

Judicial scrutiny can therefore extend only to the consideration whether the classification rests on a reasonable basis and whether it bears nexus with the object in view. It cannot extend to embarking upon a nice or mathematical evaluation of the basis of classification, for where such an inquiry permissible it would be open to the courts to substitute their own judgment for that of the legislature or the rule-making authority on the need to classify or the desirability of achieving a particular object.

10. In view of what has been observed in the abovementioned case, to hold otherwise would be putting a premium upon under-qualification. The source of origin or of recruitment could not be the criterion on birthmark for promotional consideration when there is fusion into a common stream of service, but that does not debar the authorities from making reasonable classification for the purpose of promotion. Educational qualification have been recognized by the highest Court in India as a safe criterion for determining the validity of such classification. It is open to the authorities concerned to give preference to candidates having higher educational qualification.

11. In the case reported in *Ganga Ram and Others Vs. The Union of India (UOI) and Others*, , it was held :

The direct recruits and the promotees from Grade-II clearly constitute different classes and this classification is sustainable on intelligible differentia which has a

reasonable connection with the object of efficiency sought to be achieved. Promotion to Grade-I is guided by the consideration of Seniority-cum-merit. Hence, no fault can be found with the provisions which place in one group all these Grade-II clerks who have qualified by passing the qualifying examination. The fact that the promotees from Grade-II who have officiated for some time are not given the credit of this period when a permanent vacancy arises also does not attract the prohibition contained in Articles 14 and 16. It does not constitute any hostile discrimination and is neither arbitrary nor unreasonable. It applies uniformly to all members of Grade-II clerks who have qualified and become eligible.

12. In view of that there is no substance in the contentions of the appellants, nor there is any infirmity in the order passed by the learned Trial Judge. Under the circumstances, in our view the appeal fails. There will be no order as to costs.

Chittatosh Mookerjee, C.J.

13. I agree

Appeal dismissed.