
(1994) 10 SC CK 0013

In the Supreme Court Of India

Case No : Civil Appeal No's. 1912-14 of 1990 and 6962 and 6963 of 1994 and W.P. (C) No's. 412, 504 and 935 of 1990

P.A. Chandran and Others

APPELLANT

Vs

Board of Revenue (Excise) and Others

RESPONDENT

Date of Decision : 24-10-1994

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (1994) 7 JT 509 : (1995) 1 KLT 12 : (1994) 4 SCALE 688 : (1995) 1 SCC 159 Supp : (1994) 4 SCR 702 Supp

Hon'ble Judges : S. B. Majmudar, J;Kuldip Singh Singh, J;B. L. Hansaria, J

Bench : Full Bench

Advocate : G. Vishwanatha Iyer, P.P. Rao, Sundervardhan, G.L. Sanghi, C. Sitaramiah, A.S. Nambiar, R.F. Nariman and P.S. Poti, N. Sudhakaran, A. Jayaram, R. Sasiprabhu, O.V. Radhakrishnan, K.M.K. Nair, R.N. Keshwani, Shanta Vasudevan, P.K. Manohar, E.M.S. Anam, T.T. Kunhikannan, Malini Poduval, V.J. Francis and C.V. Rappai, for the Appellant;

Final Decision : Disposed Of

Judgement

B.L. Hansaria, J.—In these appeals, writ petitions and Special Leave Petitions, in which we grant leave, the point for determination is whether the prescription of ratio of 1:1 for promotion to the post of Excise Preventive Officer from Excise Guard as between those who possess the qualification of S.S.L.C. (Secondary School Leaving Certificate) and those who do not possess this qualification, is constitutionally infirm. The Kerala High Court having held so and the State of Kerala having accepted the Judgment and having issued certain Government Orders pursuant thereto, these appeals/writ petitions have been filed under Article 136 of the Constitution of India.

2. As to when educational qualification can form the basis of classification in the matter like one at hand was examined recently in detail by two of us (Kuldip Singh and Hansaria, JJ.) in Writ Petition (C) No. 3736 of 1982 and connected matters (T.R. Kothandaraman v. Tamil Nadu Water Supply & Drainage Board),

judgment in which was rendered on 13th September, 1994. The bench laid down following legal propositions in this regard, after noting earlier important decisions on this point, in para 16 of the judgment ; ..

(1) Higher educational qualification is a permissible basis of classification, acceptability of which will depend on the facts and circumstances of each case.

(2) High educational qualification can be the basis not only for barring promotion, but also for restricting the scope of promotion.

(3) Restriction placed cannot however go to the extent of seriously jeopardising the chances of promotion. To decide this, the extent of restriction shall have also to be looked into to ascertain whether it is reasonable. Reasons for this are being indicated later.

3. In the aforesaid judgment, ratio of even 1:3 was upheld on the fact - situation of some cases. Here the ratio being 1:1, the same has to be regarded as reasonable. The learned Counsel appearing for non-S.S.L.C. Excise Guards, however, contend, in support of the impugned judgment, that this Court having held in *N. Abdul Basheer and Others Vs. K.K. Karunakaran and Others*, that providing of ratio of 1:3 for graduates and non graduates for promotion from the posts of Excise Preventive Officers to Second Grade Excise Inspectors is discriminatory, the same has to be held regarding the ratio at hand.

4. As to the aforesaid contention we would state that in Abdul Basheer's case this Court regarded the ratio in question as discriminatory as the history did not point out if the two categories of incumbents were treated differently, as has been pointed out in para 7 of the judgment in *Kothandaraman (supra)*. The decision in Abdul Basheer's case cannot, however, assist the non-S.S.L.C, Excise Guards because there are material on record in the present cases to show that ever since the Kerala State was formed (1.11.1956), the Excise Preventive Officers were required to have educational qualification similar to that of S.S.L.C. This would be apparent from the fact that after the formation of the State, by issuing executive orders it was prescribed that for promotion to the cadre of Excise preventive Officers the incumbents must have the minimum educational qualification of E.S.L.C. or S.S.L.C. This had been done by G.O. dated 23.8.1957, a copy of which is at Annexure A-4 to the appeal arising out of SLP(C) No. 12398 of 1987. Thereafter G.O. dated 14.8.1959 (Annexure A-5) was issued in which also the minimum educational qualification for promotion of Excise Guards to the cadre of Preventive Officer was mentioned as E.S.L.C. or S.S.L.C. then came G.O. of 2.3.1965 (Annexure A-6) which provided the ratio of 1:1 between Excise Guards possessing S.S.L.C. qualification with minimum service of 3 years and non-S.S.L.C. Excise Guards with minimum service of 15 years. There is still another order dated 29.2.1968 as at Annexure A-7 which is by and large to the same effect. Thereafter came to be framed the statutory rules at hand named as Special Rules for the Kerala Excise and Prohibition Subordinate Service, in which, while maintaining the ratio as earlier, the experience qualification was reduced to

7 years in so far as non-S.S.L.C. Excise Guards are concerned,

5. This shows that historically the post of Excise Preventive Officer was required to be manned by Excise Guards having the minimum qualification of S.S.L.C. It is because of this that Abdul Basheer's case cannot be called in aid by the non-S.S.L.C. Excise Guards inasmuch as their history did not point out to different treatment being given to the two categories, whereas the position is different here.

6. We may deal with still mother contention which has been advanced by Shri Sanghi appearing for some of the respondents - the same being that after 7 years of service experience, the non- S.S.L.C. Excise Guards come at par with those Excise Guards who have S.S.L.C. as their educational qualification and have rendered 3 years of service. According to the learned Counsel, the denial of the posts of Excise Preventive Officers to those non-S.S.L.C. Excise Guards who after serving 7 years have become eligible for promotion to the posts of Excise Preventive Officers would not be permissible. We are not impressed with this submission because what the laying down of ratio does is postponement of the chances of promotion and not the denial of promotion as such. By providing the ratio of 1:1 the rule really gives the two categories equal opportunity , though the effect is that some non-S.S.L.C. Excise Guards, even if they are senior to S.S.L.C. Excise Guards, may get promoted to the higher post later, if the post to fall vacant be one meant for S.S.L.C. qualified Excise Guards. The senior most non-S.S.L.C. Excise Guards would, in such an eventuality, be promoted to the next vacancy as that would be meant for such an incumbent. Thus the chance of promotion of non-S.S.L.C. Excise Guards gets only deferred and not denied. It is a settled law that promotion cannot be claimed with the aid of Article 16 inasmuch as no incumbent has a right to be promoted and it is because of this a chance of promotion has not been regarded as in compassed within the right visualised by Article 16,

7. Though a submission had been made that educational qualification could not form the basis of classification in the Service before us, we cannot concede, as, this was not even the case of non-S.S.L.C. Excise incumbents before the High Court, and rightly so.

8. In view of the above, we set aside the impugned judgment as the same is against the recent decision of this Court in Kothandaraman's case. The G.Os. issued by the State of Kerala pursuant to the High Court's aforesaid judgment cannot also, therefore, stand and so these too are set aside.

9. The appeals/writ petitions are allowed accordingly. In the facts and circumstances of the case we make no order as to costs.

I.A. Nos. 11-13 in C.A. Nos. 1912-14/90.

In view of the disposal of the appeals by the aforesaid judgment, no order is necessary in these applications, which stand disposed of.