

(1978) 09 MP CK 0030

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 152 of 1973

Pratap Narain Bajpai

APPELLANT

Vs

State of M.P. and others

RESPONDENT

Date of Decision : 11-09-1978

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 16(1), 226

Citation : (1980) JLJ 399

Hon'ble Judges : K.K. Dube, J;A.R. Naokar, J

Bench : Division Bench

Advocate : H.N. Upadhyay, for the Appellant; S.N. Tandon, Dy. Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

K.K. Dube, J.—By this petition under Article 226 of the Constitution of India, the petitioner seeks a writ of mandamus or a writ in the nature of mandamus to quash the order of the State Government creating a new grade carrying higher scale of pay in the cadre of Block Extension Educator and for a further direction requiring the State Government to frame rules regarding the conditions of service for the post of Block Extension Educator, District Extension Educator, Mass Education and Information Officer etc. and all the classes of employees under the Public Health Department.

2. Before we come to the facts that have given rise to the grievance, it would be proper to refer to the service history of the petitioner. The petitioner entered the services of the Government as a Sanitary Inspector. In about April 1965, the petitioner passed the Sanitary Inspector's training from Rewa after undergoing one year's course. The petitioner was vested with extra power of Food Inspector. By an order dated 27-7-1970, he was transferred as Block Extension Educator in Primary Health Centre, Barai, District Gwalior.

3. Despite the direction of the General Administration Department, no rules were

framed by the Department for recruitment, promotion and other conditions of services of Class II and Class III Ministerial and non-ministerial employees except for the gazetted posts. The Government, vide G. A. D. Memo No. 1292/1651/I (III)/65, dated Bhopal, 26th June 1965, stated that academic qualifications should not be treated as a bar for departmental promotion and that in the case of promotion it was not always necessary to have the minimum academic qualifications as were prescribed for a direct recruit and that the promotion should not be withheld simply for want of academic qualifications except in technical or specialised field. A Government servant, it was directed, should not be debarred from promotion merely because of lack of academic qualifications as prescribed for a new entrant.

4. The petitioner was holding the post of a Block Extension Educator, in the scale of pay of Rs. 120-120-4-140-5-160-EB-6-190. The Government then created a new grade for the post of Block Extension Educator in the time scale of Rs. 150-150-5-160-6-190-EB-6-220-10-240-EB-12?-290. The Government appointed a few person in this new grade carrying better pay scale. The Government here fixed a minimum qualification for the new grade, which was M.A., M.Sc. or M.A. in Sociology or Social work. The petitioner contends that the creation of the new grade in the time scale of Rs. 150-290 is illegal as it creates a superior class of servants in the same cadre on the basis of holding of M.A. or M.Sc. degree which differentia has no rational connection with the duties of Block Extension Educator thus violating Articles 14 and 16 of the Constitution of India. It is urged that the Block Extension Educator is not a technical post but requires a special training and experience and the persons like the petitioner are more suited to the post. The Government, not having specified the principles which would govern the recruitment to the two grades of Block Extension Educator, the creation of the new grade, carrying higher scale of pay, was arbitrary and against fair play. It adversely affected the petitioner. Since according to the Government's own policy, academic qualifications were not taken into account in the matter of departmental promotions, the basis adopted in the creation of new grade was bad. The new grade created was not based on any intelligible differentia between the two classes of Block Extension Educator having any nexus to the object sought to be achieved. Since persons of different qualifications and degrees were all integrated into one class it was not possible to create a new class out of the above on the basis of degree of M.A. or M.Sc. The petitioner contends that he is better trained and qualified and having served as a Sanitary Inspector, was more competent to the higher scale of pay in the new grade. The creation of the new grade was arbitrary, fanciful and unconstitutional and is liable to be struck down.

5. A look at the distribution of duties of the Block Extension Educator would show that he has to inter alia perform the duties of enquiring planning, discuss problems and also do supervisory visits. He has to organise exhibitions and assist in preparation of indigenous educational material. The work, undoubtedly requires initiative, intelligence and imagination.

6. The stand of the Government is that the rules for recruitment and promotion for class III executive and clerical are under consideration of the Government and they would soon be framed. It is contended that the duties of Block Extension Educator are of a technical specialised nature and the academic qualifications are essential. The lack of minimum qualifications rendered such persons unfit for the job. The duties are of specialised nature as it is required to deal with extension, education, family planning programmes etc. The posts of Sanitary Inspectors and Block Extension Educators were formerly interchangeable but the Government now created a new grade with higher scale of pay and wanted to recruit persons having higher qualifications, namely, M.A./ M.Sc. All the persons who have been recruited to the post in the new grade are holding the Master's degree. Since the petitioner did not hold the Master's degree at the relevant time, he could not be absorbed in the new grade. There was no question of depriving anybody of a right to the post. All those who were qualified and eligible were permitted to apply for the new grade. The stand of the Government, in short, is that the new grade of Block Extension Educator is to meet a more sophisticated performance of duties.

7. We have to consider whether the Government was justified in creating a new grade of Block Extension Educator which would carry a higher scale of pay on the ground that the persons recruited to the new grade were holding a Master's degree. The classification made by the Government would be justified if stood two tests. First, that the classification on which it was founded was based on an intelligible differentia which distinguishes persons or things grouped together from others left out of the group, and the second, that the differentia in question has a reasonable relation to the object sought to be achieved by creating the new grade in question. The requirement of holding a Master's degree adopted by the Government for recruitment to the post of the new grade carrying higher scale of pay would be required to be shown to be in the interest of public bearing a reasonable relation to the object the Government wanted to achieve when the classification was made.

8. The petitioner seeks support from Supreme Court decision in *Roshan Lal Tandon Vs. Union of India (UOI)*, and two Single Bench decisions, namely, *Aswini Kumar Rath v. Director of Public Instructions, Govt. of West Bengal 1965 (11) IFLR 163* and *N.S. Subba Rao Vs. State of Mysore and Another*, . The Mysore High Court case distinguished the Supreme Court decision in *State of Mysore and Another Vs. P. Narasing Rao*, . In the Mysore case (*supra*), the Government framed rules by which a discrimination was brought about in the pay scales of village accountants on the basis of qualifications possessed by them. Those who had passed S. S. L. C. were given the pay scale of Rs. 90-3-105-4-145-EB-5-200 and the non-S. S. L. C. accountants' pay was fixed at Rs. 80-2-90-3-120-4-140-5-145. The petitioner in that case who was a non-S. S. L. C. accountant challenged the fixation of different scales of pay in the same cadre as discriminatory. The Supreme Court case of *State of Mysore v. P. Narasinga Rao* was distinguished as in the Supreme Court case, by the rules framed by the

Government, the non-matriculate tracers formed a separate cadre from those who had passed the matriculation examination. The two cadres had different pay scales. Hence there was no discrimination between the officers borne on the same cadre. The matriculate and non-matriculate tracers in P. Narasinga Rao's case formed two separate cadres according to rules framed by the Government. It was not a case where the discrimination was done between the officers borne on the same cadre. In the Calcutta case (supra), the Director of Public Instructions invited applications for the post of Sub-Inspectors of Schools in the pay scale of Rs. 100-225 from persons possessing a Bachelor's degree in the minimum, with a degree or diploma in teaching. Amongst others, there were persons who were holding the degree of M. As. and M. Scs and who were chosen to be appointed to the post. Subsequently, by the impugned order, the State Government with a view to attracting people with good academic qualifications to the cadre of Sub-Inspectors of Schools, the pay of those Sub-Inspectors who were Honours Graduates or held a Master's degree were given a higher scale of pay of Rs. 130-350. This order was given retrospective effect. In this case, the service was one and prescribed the minimum qualification for the cadre. The method of recruitment was the same. They formed a single unit of employment. The subsequent differentiation on the basis of qualification in the matter of pay as between the members of the same unit was struck down as violative of Article 16(1) of the Constitution as it was discriminatory.

9. The third case relied on is Roshan Lal's case (supra). In that case the Supreme Court pointed out that though the recruitment was from different sources, that is, by way of direct appointment and by way of promotion they were integrated into one class and no discrimination thereafter could be made in favour of recruits from the source as against the recruits from other source in the matter of higher promotion. It could not be then said that the direct recruits could be preferred in the matter of promotion to the departmental promotees.

10. Now, in the instant case, the difficulty is that there are no recruitment rules. However, from the facts it is clear that the cadre of Block Extension Educator was formed by taking persons who were Sanitary Inspectors and those who were already working as Block Extension Educators. Previously, the post of Sanitary inspector, was inter changeable with that of the Block Extension Educator. Thereafter, by the impugned memo dated 5-9-1970, the Government decided to give higher scale of Rs. 150-290 to persons possessing higher academic qualifications. The Government laid down that M. A. or M. Sc. would be the minimum qualification which would be essential for manning this new grade. The Government, it would be seen, created a separate grade from the one which was existing before and the question would be whether this was permissible. The present case does not fall in line with the Single Bench decision of the Calcutta or the Mysore Courts. Roshan Lal's case was explained by the Supreme Court in The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others, . Their Lordships of the Supreme Court examined a similar question with reference to promotion to a higher cadre. The proposition that their Lordships of the Supreme

Court considered was formulated thus:

if persons recruited from different sources are integrated into one class, they cannot thereafter be classified so as to permit in favour of some of them a preferential treatment in relation to others. (Para. 45)

11. It was pointed out in the discussion of Roshan Lal's case that in the matter of promotional opportunities, no discrimination could be made between promotees and direct recruits by reference to the source from which they were drawn. It was observed that if Apprentice Train Examiners who were recruited directly to Grade I as Train Examiners formed one common class with skilled artisans who were promoted to Grade D as Train Examiners, no favoured treatment could be given to the former merely because they were directly recruited as Train Examiners and no discrimination could be made as against the latter merely because they were promotees. To put in differently, once the direct recruits and promotees were absorbed into one cadre, they formed one class and they cannot be discriminated for the purpose of further promotion to the higher Grade "C".

12. The Supreme Court then further observed in that case as under:

Roshanlal's case is thus no authority for the proposition that if direct recruits and promotees are integrated into one class, they cannot be classified for purposes of promotion on a basis other than the one that they were drawn from different sources. In the instant case, classification rests fairly and squarely on the consideration of educational qualifications, Graduates alone shall go into the higher post, no matter whether they were appointed as Assistant Engineers directly or by promotion. The discrimination therefore is not in relation to the source of recruitment as in Roshan Lal's case.

(Para. 51)

It is relevant, though inclusive, that the very Bench which decided Roshan Lal's case held about a fortnight later in Narsinga Rao's case, that higher educational qualifications are a relevant consideration for fixing a higher pay scale and therefore Matriculate Tracers could be given a higher scale than non-matriculate Tracers though their duties were identical. Logically, if person recruited to a common cadre can be classified for purposes of a pay on the basis of their educational qualifications, there could be no impediment in classifying them on the same basis for purpose of promotion. The ratio of Roshan Lal's case can at best be an impediment in favouring persons drawn from one source as against those drawn from another for the reason merely that they are drawn from different sources.

(Para 52).

13. It would appear from the above observations that persons recruited to a common cadre can be classified for the purpose of pay on the basis of their educational qualifications. There could also be no impediment in classifying them

on the same basis for the purpose of promotion. This being the position, the Government's order creating a new Grade for those possessing M.A. or M.Sc. degrees cannot be said to be arbitrary or fanciful. The above Supreme Court case also points that what the Court has to consider is whether the qualification rests on a reasonable basis and whether it bears nexus with the object in view. The enquiry cannot extend to embark upon a nice mathematical evaluation on the basis of qualification. Applying the test indicates the creation of a new Grade on the basis of higher qualification would be fully justified. The classification was made with a view to achieve better efficiency in the execution of the extension programme. The higher educational qualification thus bear a close relation to the object sought to be achieved. In our opinion, relying on Triloki Nath Khosa's case (supra) the creation of a new Grade with M.A. or M.Sc. as the minimum qualification carrying better scale of pay cannot be struck down as the higher educational qualification was clearly co-related with the success of the scheme.

14. It would be clear that Government was not discriminating between the employees recruited from one source as against the recruits from other source. What the Government has done is to create a new Grade altogether for persons having higher educational qualifications. This is not a Grade for promotion post but altogether a new Grade. As far as the old Grade was concerned, the policy of the Government not to give weightage to person of higher qualifications in the matter of promotion may still remain as it is. The creation of a new Grade cannot be said to be violative of Article 16. Every one had equal opportunity to get into the Grade. We do not think that the creation of the new Grade could be struck down on the ground that it was discriminatory.

15. Though the order of the Government cannot be said to be bad as violating Article 16, we may, however, observe that the Government should frame the recruitment rules as then the service class would know their position and much of the bitterness would be avoided.

16. We, therefore, dismiss this petition. There shall be no order as to costs in the circumstances of the case. The outstanding amount of security deposit shall be refunded to the petitioner.