
(1983) 02 KL CK 0007
In the High Court Of Kerala

Pushpadharan

APPELLANT

Vs

Food Corporation of India

RESPONDENT

Date of Decision : 22-02-1983

Acts Referred:

Constitution of India, 1950 — Article 14, 16
Food Corporations Act, 1964 — Section 45

Citation : (1983) 2 ILR (Ker) 454 : (1984) 1 LLJ 417

Hon'ble Judges : Balakrishna Menon, J

Bench : Single Bench

Judgement

Balakrishna Menon, J.—The four petitioners are Assistants Grade III in the general administration cadre and the godown cadre of the Food Corporation of India (hereinafter referred to as the Corporation) working in different stations of its Southern zone. They joined service in Category 4 of the Staff Regulations of the Corporation. The Staff Regulations were issued in 1971 in exercise of the powers conferred u/s 45 of the Food Corporation of India Act, 1964 (Act 37 of 1964). Assistant Grade III falls under Category 3. Appointment to the post of Assistant Grade HI is by direct recruitment of graduates and also by promotion from among matriculate employees in Category 4, with three years experience. As per the amended regulations, eighty per cent of the total vacancies of Assistants Grade III are to be filled up by direct recruitment of graduates. The promotion quota for matriculate Category IV employees is only twenty percent. The petitioners are matriculate Category IV employees who had secured promotion to the cadre of Assistants Grade III. The next higher post is of Assistant Grade II in Category III and as per the Staff Regulation of 1971 as it originally stood, the mode of recruitment is by promotion of employees with 3 years experience as Assistants Grade III "Typists, Telephone Operators, and in their absence by direct recruitment of graduates with 4 years experience in any office.

2. The 30th Amendment of the Staff Regulations as per Ext. P 1 notification dated 22nd April, 1976 relates to the General Administration Cadre. As per the

amended provisions 3 years experience as Assistant Grade III typist/telephone operator is fixed for graduates and 5 years experience for non-graduates for promotion to Grade II. A similar amendment was effected with respect to the Godown Cadre also requiring three years experience in the case of graduates and five years for non-graduates as per the 43rd amendment of the Staff Regulation. A true copy of the notification effecting the 43rd amendment is produced along with the Original petition as Ext. P.1(a) dated 10th February, 1977. As per the amended regulations non-graduate Assistants Grade III of the General Administration Cadre as well as of the Godown Cadre require five years experience for promotion to the post of Assistant Grade II, while as regards graduates the experience required is only of three years. Exts. P.2 and P.3 are copies of seniority-lists of Assistants Grade III in the general administration and godown cadres respectively in the South Zone of the Food Corporation of India. Ext. P.4 dated 10th August, 1978 is a copy of the representation submitted by the 1st petitioner against the promotion of some of his juniors in service, consequent on the amendment of the Staff Regulations requiring five years experience for non-graduates for promotion to the post of Assistants Grade II and Ext. P.5 is a similar representation submitted by the All India Food Corporation Executive Employees Federation. Ext. P.6 dated 28th September, 1978 is the reply to Ext. P.4 by the administrative manager of the Regional Office of the Corporation stating that the 1st petitioner being a nongraduate has to complete five years of service as Assistant Grade III to become eligible for promotion to the post of Assistant Grade II. There is no reply to Ext. P.5. Ext. P.6 refers to a circular of the Food Corporation of India dated 22nd December, 1977, a true copy of which is produced as Ext. P.7 is also in conformity with the amended staff regulations requiring three years experience in the case of graduates and five years experience in the case of non-graduates to be eligible for promotion to the post of Assistant Grade II from the feeder category of Assistant Grade HI. Ext. P.8 dated 1st May, 1974 is a circular issued from the Head Office of the Corporation wherein it is stated that different qualifications are prescribed for appointment to the various grades, the qualification for appointment as Assistant Grade III is graduation while the qualification for typists etc., is only matriculation, and hence those who possesses a degree would become eligible for promotion after they have put in three years service, whereas non-graduates to be eligible for promotion should require five years service. It is also stated that the differentiation as aforesaid would be made only at the time of first promotion from the recruiting grades. This Original Petition is filed to quash Ext, P.1 and Ex. P.1(a) notifications amending the Staff Regulations of 1971 requiring five years experience as Assistant Grade III for non-graduates for promotion to the post of Assistant Grade II. There is also a prayer to quash Ext. P.6 order, rejecting Ext. P.4 representation submitted by the 1st petitioner. Respondents 3 and 4 in the original petition are impleaded to represent graduate Assistants Grade III and notice of the original petition was published as per Rule 148 of the Rules of the High Court.

3. The main ground of attack against Exts. P.1 and P. 1(a) is that the amendment of the Staff Regulations effected as per these orders is in violation of Articles 14 and 16 of the Constitution of India. According to the petitioners, on their promotion from Category IV to the post of Assistants Grade III falling under Category III, they are fully integrated with the graduate Assistants Grade III who entered service on direct recruitment and there cannot be any differentiation on the basis of the source of recruitment. The classification on the basis of the source of recruitment is discriminatory and is opposed to the objective to be achieved by the Staff Regulations, which had effected a complete fusion of the promotees and the directly recruited Assistants Grade III. There cannot therefore be a classification for further promotion to the next higher grade.

4. Article 14 of the Constitution ensures equality before law and equal protection of the laws. Article 16 lays down that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. Article 16 is only an instance or incident of the guarantee of equality enshrined in Article 14 in its application to the sphere of public employment. These Articles do not however prohibit reasonable classification on the basis of intelligible differentia having a rational nexus to the objects to be achieved by such classification. The classification should ensure that persons or things similarly situated are similarly treated.

5. Learned Counsel for the petitioner relies on the decision of the Supreme Court reported in Roshan Lal Tandon Vs. Union of India (UOI), in support of his proposition that the classification of graduates and non-graduates for the purpose of promotion to the next higher category is opposed to Articles 14 and 16 of the Constitution. In the aforesaid decision of the Supreme Court it is stated thus at page 1893:-

At the time when the petitioner and the direct recruits were appointed to Grade "D", there was one class in Grade "D" formed of direct recruits and the promotees from the grade of artisans. The recruits from both the sources to Grade "D" were integrated into one class and no discrimination could thereafter be made in favour of recruits from one source as against the recruits from the other source in the matter of promotion to Grade "C". To put it differently, once the direct recruits and promotees are absorbed in one cadre, they form one class and they cannot be discriminated for the purpose of further promotion to the higher Grade "C".

The classification on the basis of the source of initial recruitment was held invalid once there had been a complete integration of the direct recruits and promotees in a particular grade. This decision has restated the principle laid down in an earlier decision of the Supreme Court in Mervyn Coutindo and Others Vs. Collector of Customs, Bombay and Others, These decisions however do not prohibit the authorities concerned from fixing qualifications for promotion to a higher post".

6. In the decision in S.M. Pandit and Others Vs. The State of Gujarat and Others, the Supreme Court has occasion to consider the validity of the second proviso to the amended Rule 1 of the Bombay Civil Services Classification and Recruitment Rules. Rule 1 is extracted below:-

(1) Appointment to the posts of Deputy Collector shall be made either by nomination or by promotion of suitable Mamlatdars.

Provided that the ratio of appointment by nomination and by promotion shall as far as possible, be 50 : 50.

Provided further that half the vacancies reserved for appointment by promotion shall be filled by directly recruited Mamlatdars who have put in at least seven years service in the post including the period spent on probation.

In considering the validity of the Second proviso quoted above, the Supreme Court stated thus at paragraph 5:-

The learned Counsel for the appellants did not contest the proposition that if both the directly recruited Mamlatdars as well as the promotee Mamlatdars formed one class then the impugned Rules will be violative of Articles 14 and 16 on the basis of the decision of this Court referred to earlier. But he challenged the conclusion of the High Court that they formed one class or one cadre. According to him, the directly recruited Mamlatdars and the promotee Mamlatdars formed two different classes. The High Court rejected that contention and in our opinion rightly. Both the directly recruited Mamlatdars as well as the promotee Mamlatdars are designated as Mamlatdars. They have the same pay scale. They discharge same functions. The posts held by them are interchangeable. There is nothing to show that the two groups are kept apart. The only circumstance urged in support of the contention that they form two different classes is that before promotion to the post of Deputy Collector, the directly recruited Mamlatdars have to put in a certain minimum period of service. This condition, in our opinion, does not indicate that the two groups were kept apart. The High Court seems to think that that condition is not a valid condition. We express no opinion on that question.

The same view is expressed in a later decision in Ramchandra Shankar Deodhar and Others Vs. The State of Maharashtra and Others,

So far as the question of validity of the second proviso to Rule 1 of the Rules of 30th July, 1959 is concerned, there can be no doubt that the Bombay High Court was right in declaring it to be invalid. It can hardly be disputed that both the directly recruited Mamlatdars as well as the promotee Mamlatdars form one class. They are both known by the same designation. They have same scales of pay. They discharge the same functions. The posts held by them are interchangeable. There is nothing to show that the two groups are kept apart. Both are merged together in the same Class. It is not competent to the Government thereafter to discriminate between directly recruited Mamlatdars

and promotee Mamlatdars in the matter of further promotion to the posts of Deputy Collector. That would be violative of Article 16 of the Constitution. This is abundantly clear from the decisions of this Court in *Mervyn Continho v. Collector of Customs Bombay*, (supra) and *S.M. Pandit v. The State of Gujarat*, (supra). In fact *S.M. Pandit's* case is directly in point. The facts of the present case are almost indistinguishable from *S.M. Pandit's* case. The second proviso Rule 1 of the Rules of 30th July, 1959 must consequently be held to be bad as being in conflict with Article 16 of the Constitution.

These two decisions of the Supreme Court striking down the second proviso to Rule 1 of the Bombay Civil Services Classification and Recruitment Rules as violative of Article 16 would clearly show that a classification based on the source of recruitment when there had been a complete integration of these recruited from different sources is opposed to Article 16 of the Constitution.

7. In considering the validity of the Andhra Pradesh Engineering Service Rules fixing a proportion among graduate and non-graduate Supervisors for promotion to the posts of Assistant Engineers, the Supreme Court in the decision in *Mohammad Shujat Ali and Others Vs. Union of India (UOI) and Others*, after considering its earlier decisions stated thus at page 1644:

But from these decisions it cannot be laid down as an invariable rule that whenever any classification is made on the basis of variant educational qualifications, such classification must be held to be valid, irrespective of the nature and purpose of the classification or the quality and extent of the differences in the educational qualifications. It must be remembered that "life has relations not capable always of division into inflexible compartments". The moulds expand and shrink. The test of reasonable classification has to be applied in each case on its peculiar facts and circumstances. It may be perfectly legitimate for the administration to say that having regard to the nature of the functions and duties attached to the post, for the purpose of achieving efficiency in public service, only degree holders in engineering shall be eligible for promotion and not diploma or certificate holders. That is what happened in *The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others*, and a somewhat similar position also obtained in *The Union of India (UOI) and Others Vs. Dr. (Mrs.) S.B. Kohli and Another*, . But where graduates and non-graduates are both regarded as fit and, therefore, eligible for promotion, it is difficult to see how, consistently with the claim for equal opportunity any differentiation can be made between them by laying down a quota of promotion for each and giving preferential treatment to graduates over -graduates in the matter of fixation of such quota.

On the facts of the case it was however found that the two categories of Supervisors had never been integrated into one class and there was no question of unconstitutional discrimination by reason of the differential treatment given to them in the matter of promotion to the cadre of Assistant Engineers.

8. In *State of J. & K. v. T.N. Khosa* (supra), the question decided was as to the validity of the J. & K. Engineering (Gazetted) Service Recruitment Rules, 1970, requiring a Bachelor's degree in engineering or a pass in A.M.T.E., Sections A and B for promotion to the cadre of Executive Engineers. Until the 1970 Rules were brought into force Assistant Engineers were eligible for promotion as Executive Engineers on the basis of seniority and merit irrespective of their educational qualification, whether degree-holders or diploma holders in engineering. As per the Rules issued in 1970 Diploma holders were not eligible for promotion as Executive Engineers. Upholding the validity of the Rule, the Supreme Court stated at paragraph 34 of the judgment as follows:

34. On the facts of the case, classification on the basis of educational qualifications made with a view to achieving administrative efficiency cannot be said to rest on any fortuitous circumstances and one has always to bear in mind the facts and circumstances of the case in order to judge the validity of a classification. The provision in the 1939 Rules restricting direct recruitment of Assistant Engineers to Engineering graduates, the dearth of graduates in times past and their copious flow in times present are all matters which can legitimately enter the judgment of the rule-making authority. In the light of these facts, that judgment cannot be assailed as capricious or fanciful. Efficiency which comes in the trial of a higher mental equipment can reasonably be attempted to be achieved by restricting promotional opportunity to those possessing higher educational qualifications and we are concerned with the reasonableness of the classification not with the precise accuracy of the decision to classify nor with the question whether the classification is scientific. Such tests have long since been discarded. In fact American decisions have gone as far as saying that classification would offend against the 14th Amendment of the American Constitution only if it is "purely arbitrary, oppressive or capricious", *Joseph Radice v. People of the State of New York* (1923) 68 LawEd 690 *American Sugar Ref. Co. v. Louisiana* (1900) 45 LawEd 102 and the inequality produced in order to encounter the challenge of the Constitution must be "actually and palpably unreasonable and arbitrary". *Arkansas Natural Gas Co. v. Railroad Commission* (1923) 67 LawEd 107 We need not go that far as the differences between the two classes--graduates and diploma-holders--furnish a reasonable basis for separate treatment and bear a just relation to the purpose of the impugned provision.

The Supreme Court following its earlier decision in *State of Mysore and Another Vs. P. Narasing Rao*, Where the cadre of Tracers was recognised into two, one consisting of matriculate Tracers with a higher scale of pay and the other of non-matriculates in a lower scale, held that Articles 14 and 16 do not exclude the laying down of qualifications for the post in question. The decisions in *Ganga Ram v. Union of India* AIR 1970 SC 178 and *Union of India v. Dr. (Mrs.) S.B. Kohli* (supra) are also referred to and followed in *Dr. (Mrs.) S.B. Kohli's case* (supra), a Central Health Service Rule requiring that a Professor in Orthopaedics must have a post-graduate degree in the particular speciality was upheld on the

ground that the classification made on the basis of such a requirement was not without reference to the objectives sought to be achieved and there was no question of discrimination in such cases. Thus a classification requiring a higher qualification for promotion to a higher post was recognised as valid in the decision in *The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others*, This is one of the decisions referred to and considered in *Muhammed Shujat Ali's case (supra)* in the passage extracted above, and it was further stated at page 1955 as follows:

A Rule of promotion, which while conceding that non-graduate supervisors are also fit to be promoted as assistant engineers, reserves a higher quota of vacancies for promotion for graduate supervisors as against non-graduate supervisors would clearly be calculated to destroy the guarantee of equal opportunity.

The same principle applied to the source of recruitment is reiterated in the decision of the Supreme Court in *S.L. Sachdev and Another Vs. Union of India (UOI) and Others*, . In that case, UDCs in the Savings Bank Control Organisation and Savings Bank Internal Check Organisation of the P & T Department were appointed from among those who were previously serving in the Telegraph Audit Office and from among the other employees of the Department. The Director General of P. and T. issued a direction that the total number of selection grade posts available for the UDCs who came from the Audit Offices should be 10% of the total number of the Audit Office UDCs working in any particular circle of the Organisation. This directive was held to be invalid as opposed to Article 16 of the Constitution. The Supreme Court at page 567 stated thus:

12. Apart from the injustice in specific cases where UDCs drawn from the Audit offices are attached to comparatively smaller circles, the classification made for the purpose of determining the promotional opportunities seems to us unreasonable and arbitrary. It is contended by the learned Attorney-General that persons drawn from different sources were not integrated into a common service in the instant case and therefore different rules of promotion can be applied to the two classes. We are unable to accept this contention. The duties, functions and responsibilities of all the UDCs in the new Organisation are identical. They are all in the same cadre and they draw the same pay in the same grade. There is no reason then why different tests should be prescribed for determining their respective promotional opportunities, and that too solely in reference to the source from which they are drawn. The test of educational qualifications can conceivably be an intelligible differentiate bearing nexus with the object of ensuring greater efficiency in public services. But once a cadre is formed by recruiting persons drawn from different departments of the Government, there would normally be no justification for discriminating between them by subjecting one class to more onerous terms in the matter of promotional chances. The impugned directives are therefore unconstitutional.

9. A Division Bench of this Court in *Velappan v. Chandran and Ors. (1975) KLT*

801 declared Rule 6 of the Kerala Forests Subordinate Service Rules 1963 invalid as opposed to Article 16 of the Constitution. The rule prescribed a minimum general educational qualification of S.S.L.C. standard for promotion of Forest Guards to the posts of Foresters, with an added proviso that 25% of the vacancies arising in the category of Foresters shall be filled up by promotion of Forest Guards, who do not possess S.S.L.C. Or equivalent qualification, but had put in 10 years service as Guards. The Division Bench in paragraph 11 of its judgment at page 804 stated thus:

We shall now consider whether there has been violation of Article 16 of the Constitution. Forest Guards belong to a single cadre and there is only one grade applicable to Forest Guards. In that category there are persons who possess the S.S.L.C. qualification and those who do not possess the S.S.L.C. qualification. According to the rules, the relevant parts of which we have read both groups in the category have been found fit to be promoted to the cadre of foresters. Nevertheless only 25% of the promotion posts have been reserved for those who do not possess the minimum general educational qualification of S.S.L.C. There is a further restriction imposed that those who belong to that group must have put in 10 years" service as Guards. The question to be considered is whether such curtailment of the chances of promotion by fixing a limited quota to those who belong to the eligible category is justified in law. The Supreme Court had occasion to consider the question whether it will be proper to prescribe qualifications for a promotion post which might result in some of those belonging to the category from which promotions are to be effected being denied promotion. It has been ruled that there is no impediment in so prescribing qualifications and that by prescribing such qualification there will be no violation of Article 16 of the Constitution. But it has also been laid down by the Supreme Court that once it is accepted that persons who do not possess certain qualifications which others in the same category possess, are also entitled to be promoted then any rule which discriminated against those who do not possess such qualifications, say by limiting their promotion chances by providing a fixed limited quota is violative of Article 16. There is a full discussion of the matter in paragraph 28 of the judgment in the decision of the Supreme Court in Mohammed Shujat Ali and Ors. v. Union of India and Ors. (supra).

10. A later Division Bench of this Court in Abdul Basheer and ors. v. Karunakaran and ors. (1981) 2 Ker 52 had occasion to consider the validity of a rule providing for a ratio of 3 : 1 between graduates and non-graduates for promotion from the post of Excise Preventive Officers to that of II Grade Excise Inspectors in the Kerala Excise and Prohibition Subordinate Service. After considering the decisions of the Supreme Court in T.N. Khosa's case and Mohd. Shujat Ali's case (supra) this Court stated thus at page 541.--

Article 16 of the Constitution which gives effect in the doctrine of equality in the field of public employment must necessarily apply to the circumstances where without justification and without any relevant purpose to be achieved, a

classification is made. Such would be a classification which, while recognising the eligibility of non-graduates for promotion to a higher post along with graduates, prescribes that as between them the graduates will have the advantage of reservation of a quota for promotion. The consequence of such a rule would be to infringe the right of promotion based on seniority. The resultant supersession would not obviously be by way of recognition of superior merit but would be the result of application of rule which should be found to be arbitrary.

11, In a recent decision of M.P. Menon J. in *E.C. George and Anr. v. State of Kerala and Anr.*, upholding the validity of a rule providing for different periods of experience and a proportion of 6 : 3 : 1 among graduates, diploma holders and certificate holders in Engineering for promotion of 1st Grade Draftsmen to the next higher post of Assistant Engineers, the learned Judge observed at page 529 as follows:

As I understand the Rules, the best men for manning the posts of Junior Engineers, in the opinion of the rule-making authority, are graduates. They are superior to the others in the matter of general and technical qualifications. In an ideal situation, all the vacancies can go to the graduates so that the best men are there to perform the duties attached to the post. But the rule-making authority was also aware it was not dealing with an ideal situation, but a different one where those in service in the lower posts, facing stagnation were aspiring for promotion. In the interests of efficiency it thought that while the bulk of the posts (60%) should go to graduates some provision could be made for those in the lower grades also, because discontentment at those levels was also a matter likely to affect efficiency of the service as a whole. A smaller percentage of the vacancies was therefore set apart for them. Among those eligible, the diploma holders were comparatively better qualified and they were allotted 30% of the vacancies. The least suited were the certificate holders but they too had to be kept satisfied. Ten percent of the vacancies was accordingly fixed as their quota. A balance was thus attempted between the needs of efficiency in the cadre of Junior Engineer, and the needs of efficiency (arising from contentment) in the lower cadres. Dilution up to 30% was found possible without serious detriment to efficiency, in the case of diploma holders; but in the case of certificate holders, the rule-making authority thought that such dilution should not exceed ten percent. Can it be said that a rule creating such a scheme of things, is based on an implied recognition of equality between diploma holders and certificate holders? In my opinion, the rule recognises that graduates, diploma holders and certificate holders are not equal in all respects. The difference in the matter of eligibility for direct recruitment to the various posts, and the prescription of different percentage for appointment to the cadre of Junior Engineer, can be understood only on the premises that in the opinion of the rule-making authority at least, the three groups were unequal.

12. The challenge before the learned judge related only to the quota of 3 : 1 fixed for promotion between diploma-holders and certificate holders. There was

no challenge against the quota fixed for graduates. The question as to whether there had been an integration of service of the degree-holders, diploma holders and certificate holders among the draftsmen was considered in paragraph 19 of the judgment, and after adverting to the history of the service conditions applicable to the personnel allotted from the Madras Engineering Subordinate Service, and of the Travancore-Cochin Service, prior to and after the States Re-organisation the learned judge held:

To my knowledge, the genetic difference between diploma and certificate holders had not been completely obliterated at anytime, either by rules or by executive orders. No question of discrimination can therefore arise on the test accepted in Mohd. Shujat Ali.

In Mohd. Shujat Ali's case the Supreme Court after holding that a rule of promotion fixing a higher quota of vacancies for promotion of graduates from among an integrated category of graduates and non-graduates conceding the eligibility of non-graduates also for promotion is invalid, stated:

But even so we do not think we can be persuaded to strike down the Andhra Pradesh Rules in so far as they make differentiation between graduate and non-graduate supervisors. This differentiation is not something brought about for the first time by the Andhra Pradesh Rules. It has always been there in the Engineering Services of the Hyderabad and the Andhra States. The graduate supervisors have always been treated as a distinct and separate class from non-graduate supervisors both under the Hyderabad Rules as well as the Andhra Rules and they have never been integrated into one class.

The decision in E.C. George v. State of Kerala is based on the facts of that case, similar to the facts in Shujat Ali's case, and is not relevant to the question for decision in this writ petition.

13. As per the Staff Regulations of the Food Corporation of India, the posts of Assistants Grade I to III and also certain other posts are classified as Category III posts. The method of recruitment of Assistants Grade II is by promotion 100% of Assistants Grade III/typists/ telephone operators, on failure of which alone there can be direct recruitment. The post of Assistant Grade II is designated as a non-selection post. Assistants Grade III are therefore eligible for promotion on the basis of their seniority. It is true that 80% of Assistants Grade III are appointed by direct recruitment of graduates and 20% are appointed by promotion of matriculate category IV employees, with three years experience. Both the promotees as well as the direct recruits among Assistants Grade III are qualified for promotion to the next higher grade of Assistant Grade II, The direct recruits and promotees are integrated into one class and are known by the same designation as Assistants Grade III. They have the same scale of pay and discharge the same functions. The posts held by them are interchangeable, and there is nothing to indicate that the two groups are kept apart. Once the direct recruits and the promotees are fused into one class it is not competent for the

authorities concerned to discriminate between them in the matter of further promotion to the post of Assistant Grade II to which post both the direct recruits and promotees are qualified. There can therefore be no doubt that the amendments effected to the Staff Regulations by Exts. P.1 and P.1(a) notifications in so far as they prescribe different periods of service for graduates and non-graduates for promotion to the cadre of Assistant Grade II are opposed to Articles 14 and 16 of the Constitution.

The result is a writ of certiorari will issue to quash Ext. P. 1(a) and also Ext. P.1 in so far as it relates to the Amendment effected to Column 6 of Serial No. 7 of part II Appendix I (General Administration Cadre) of the Food Corporation of India (Staff) Regulations 1971. Prayer (b) in the original petition is also allowed and Ext. P.6 order is quashed. The writ petition is allowed. There will however be no order as to costs.