

(1984) 09 MAD CK 0024

In the Madras High Court

Case No : Writ Petition No. 4041 of 1984

R. Ranganathan

APPELLANT

Vs

Govt. of Tamilnadu and Others

RESPONDENT

Date of Decision : 19-09-1984

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 21, 309

Citation : (1985) 2 LLJ 124

Hon'ble Judges : S. Nainar Sundaram, J

Bench : Single Bench

Judgement

1. In the present writ petition, we are concerned with the service in the Town and Country Planning Department of State Tamil Nadu. There were

five categories as follows. (i) Architectural Assistant (Special); (ii) Planning Assistant (Special); (iii) Architectural Assistant; (iv) Planning Assistant;

(v) Supervisor. The petitioners are in the category of Architectural assistant. All the categories are feeder posts to the post of Assistant Director.

They formed a common channel for promotion. No classification for promotion was envisaged as between them on the basis of educational

qualification as degree holders and non-degree holders. There was no ratio fixed inter se between them. There was an integrated seniority list and

the post of Assistant Director was filled up taking note of the seniority in the integrated seniority list. The Third Pay Commission made some

suggestions. The merging of all the five categories into a single group was recommended. There was a suggestion that personnel in possession of

appropriate degree in the above group may be designated as Architectural cum-Planning Assistants and so far as diploma-holders and others are

concerned, they be designated as Supervisors. The suggestions of the Third Pay

Commission, when they went thus far, were implemented by subsequent actions by the State of Tamil Nadu and the petitioners have no grievance over the same. By G.O. Ms. No. 108, Housing and Urban Development, dated 28th January, 1980, these five categories were merged into a single category known as Architectural-planning Assistant (Degree holders) Supervisors (non-degree holders, including diploma holders and non-diploma holders). The Third Pay Commission made a further suggestion as follows :

An appropriate ratio of promotion of the Supervisors and Architectural-cum-planning Assistants to the category of Assistant Director may be evolved.

No stand was taken on behalf of the respondents that they are duly bound to follow the suggestion of the Third Pay Commission or such a suggestion has got any binding force on them. However, they ventured further and that has brought about grievances to the petitioners, By G.O.

Ms. No. 169, Housing and Urban Development, dated 5th March, 1984 it was directed that with regard to filling up the post of Assistant

Director, the ratio of 3 : 1 be adopted between degree holders and non-degree holders respectively. This was followed by G.O. Ms. No. 170.

Housing and Urban Development, dated 5th March, 1984, whereby the rules framed pursuant to the proviso to Art, 309 of the Constitution of

India, apart from redesignation were amended to the above effect, prescribing the ratio between the degree holders and non-degree holders.

These have driven the petitioners to come to this Court by way of the present writ petition seeking to quash both the Government Orders as

violative of Arts. 14, 16 and 21 of the Constitution of India, so far as the prescription of the ratio is concerned.

2. The law on the question of discrimination and classification in matters like this is replete even at the level of pronouncements of the highest court

in the land. In The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others, on which much reliance was placed by Mr. P

Chandrasekharan, learned Government Advocate, between 1939 and 1970 holders of degrees and diplomas were treated alike in the matter of

promotion from the post of Assistant Engineer of that Executive Engineer. In 1970, rules were introduced providing that only those Assistant

Engineers who possessed Bachelor's degree in Engineering, etc., would be eligible for promotion to the post of Executive Engineer, Educational

qualification criterion for classification was upheld on the facts of that case, where there was a total exclusion of those who are not holders of

degree. Reasons were found by the Supreme Court for justifying this action. It was found that earlier there was dearth of Engineering Graduates

and later there was a spurt in the availability of Engineering graduates and, in that context the Supreme Court held that the impact of changing

pattern had to receive its due recognition. In the present case, we are not facing a total exclusion of non-degree holders.

3. In Mohammad Shujat Ali and Others Vs. Union of India (UOI) and Others, the Supreme Court again dealt with a plea of discrimination

between graduates and non-graduates in the matter of promotions from the post of Supervisor of Assistant Engineer in the services of the State of

Andhra Pradesh. After advertent to its earlier pronouncement in the State of J. and K. v. T. N. Khosa (*supra*) the Supreme Court with regard to

prescribing a ratio as amongst personnel, through of different educational qualification but found fit to be treated on par without any disparity,

discountenanced that there could be a rule of promotion which, while conceding that non-graduate Supervisors are also fit to be promoted as

Assistant Engineers, reserved a higher quota of vacancies for promotion for graduate Supervisors as against non-graduate supervisors, and the

Supreme Court pointed out that such a rule would clearly be calculated to destroy the guarantee of equal opportunity. The following passage,

occurring in para 30 of the judgment Mohammad Shujat Ali and Others Vs. Union of India (UOI) and Others, is elucidative and needs extraction :

.... 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 non-graduates in the matter of fixation of such quota. The result of fixation of quota of promotion for each

of the two categories of Supervisors would be that when a vacancy arises in the post of Assistant Engineer, which, according to the quota is

reserved for graduate supervisors, a non-graduate supervisors cannot be promoted to that vacancy, even if he is a senior to all other graduates

supervisors and more suitable than they. His opportunity for promotion would be limited only to vacancies available for non-graduate supervisors.

That would clearly amount to denial of equal opportunity to him. When there is vacancy is a vacancy ear-marked for graduate supervisors, a non-

graduate supervisor would be entitled to ask "I am a senior to the graduate supervisor who is intended to be promoted, I am more suitable than he

is. It is no doubt true that I am a non-graduate, but my not being a graduate has not been branded as a disqualification. I am regarded as fit for

promotion and like the graduates supervisors. I am equally eligible for being promoted. My technical equipment supplemented by a experience is

considered adequate for discharging the functions of Assistant Engineer. Then why am I being denied the opportunity for promotion and the

graduate supervisor is preferred ?" There can be no satisfactory answer to this question. It must be remembered that many of these non-graduate

supervisors might not have been able to obtain degree in engineering because they come from poorer families and did not have the financial

resources to pursue degree course in engineering and not because they lacked the necessary capacity and intelligence. ""Chill penury" might have

"repressed their noble rage". It is of the essence of equal opportunity for such persons with humble and depressing back grounds that they should

have opportunity, through experience or self study" to level up with their more fortunate colleagues who, by reason of favourable circumstances,

could obtain the benefits of higher education, and if they prove themselves fit and more suitable than others, why should they be denied an

opportunity to be promoted in a vacancy on the ground that vacancy belongs. Supervisors possessing higher educational qualifications. As pointed

out by Krishna Iyer, J., in State of J. and K. v. T. N. Khosa (supra), "the soul of Art. 16 is the promotion of the common man"s capabilities, over-

powering environmental adversities and opening up full opportunities to develop in official life without succumbing to the sophistic argument of the

elite that talent is the privilege of the few and they must rule". To permit discrimination based on educational attainments not obliged by the nature

of the duties of the higher post is to stifle the social thrust of the equality clause. A rule of promotion which while conceding the 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"".

However on the facts of that case, the Supreme Court found that graduate supervisors were always treated as a separate and distinct class from

non-graduate supervisors at all relevant points of time and they were never integrated into one class, and, in that context, the Supreme Court held

that no unconstitutional discrimination arose by reason of differential treatment being given to them. The question of discrimination and classification

cannot be decided by applying a rigid code irrespective of situations and exigencies faced by the administration. The test of reasonable

classification should always be applied with reference to the peculiar facts and circumstances of each case. It would be within the competency of

the State to say that the nature of the functions and duties attached to a particular post require drafting in of personnel possessing a particular

educational qualification and they alone shall be eligible for promotion and not others. Depending upon the exigencies of services and the facts and

circumstances, including the availability or otherwise of qualified personnel, which have come to transpire at the relevant point of time, there could

also be a total exclusion of non-degree holders from the avenue of promotion, as it happened in State of J. and K. v. T. N. Khosa (supra). But, if

there existed no justification for excluding the non-degree holders from the avenue of promotion, the degree holders and non-degree holders having

been fused into one class, treated on par with each other and there being no inefficiency or non-suitability on the part of the non-degree holders

from the service point of view, bringing in a quota and prescribing a ratio as between degree holders and non-degree holders in the absence of

convincing grounds therefor, will patently come within the mischief of discrimination inhibited by the constitutional provisions guaranteeing equal

opportunity. For prescribing such a ratio as between them, strong reasons should exist and they must have found expression both in the records

with the authorities and in the pleadings before this Court. Neither the pleadings put forth on behalf on the respondents nor the facts based as per

records, before me, make out a reason justifying the prescription of such a notice as between the degree holders and non-degree holders. By the

prescription of the ratio, the integrated seniority list gets disrupted. A non-degree holder, through he may be senior to a degree holder in the

integrated seniority list, could not be promoted to the vacancy arising if the fixation of quota or ratio is to be adopted and implemented. No

justifiable factor has been made out by the respondents for prescribing the ratio. It is not a case of total exclusion of the non-degree holders on the

ground that earlier there was a spurt and a copious availability of degree holders. If non-degree holders are fit to be promoted as Assistant

Directors and they could also fill in the avenue of promotion, as to what could be, and what was the reason behind the prescription of the ratio, the

respondents are not in a position to bring conviction to the mind of this Court. The prescription of the ratio, giving one post to non-degree holders

cannot be a matter of gratis. Either (sic) it should go by principles, having the backing of reasons, or, otherwise it will come within the mischief of

discrimination. Why there should be three as against one between the degree holders and non-degree holders is practically left unanswered by the

respondents, and obviously, they could not find an answer in the materials that were before them at the time of the passing of the impugned

Government Orders. Certainly, they cannot improve matters by the pleadings and rightly, the pleadings on behalf of the respondents have not

endeavored to improve. The rationale, if there was one, for this ratio was not at all exposed before this Court.

4. In this state of affairs, I have to uphold the grievances of the petitioners that discrimination is writ large in the impugned Government Orders, so

far as they laid down the ratio, and they require quashing in writ jurisdiction.

5. For the reasons stated above, this writ petition is allowed, and impugned Government Orders will stand quashed, so far as they prescribed the

ratio of 3 : 1 as between degree holders and non-degree holders for promotion to the post of Assistant Director. I make no order as to costs.