
(1986) 07 GAU CK 0001
In the Gauhati High Court
Case No : Civil Rule No. 574 of 1984

S.Ananta Kumar Sharma

APPELLANT

Vs

State of Manipur and Others

RESPONDENT

Date of Decision : 15-07-1986

Acts Referred:

Citation : (1987) 1 GLR 90

Hon'ble Judges : K.N.Saikia, J and S.N.Phukan, J

Bench : Division Bench

Advocate : Y.Imo Singh, S.B.Singh, H.B.Singh, B.Nabakumar Singh, Advocates appearing for Parties

Judgement

Saikia, J.—The writ petitioner, an Executive Engineer (Mechanical), Electricity Department, Manipur, challenges the vires of Column 12 of the MPSCFORM 8 annexed to the Manipur Electricity/Superintending Engineer (Electrical) Recruitment Rules, 1977 (Annexure A/3 to the petition) which prescribes the qualification for promotion to the post of superintending Engineer, and the appointments of Respondents 3 to 7 as Superintending Engineers made there under. Column 12 reads :

"Promotion.

Executive Engineer (Elect/Mech) and Surveyor of Workspossessing Degree or equivalent in Elect/Mech. Engineering of recognised Institute with 6 years regular Service in the grade."

2. Holder of a Diploma in Mechanical Engineering, the petitioner was first appointed as Section Officer under the Government of Manipur in 1962 on regular basis, and he was recruited as Assistant Director (Mechanical) in 1965 on regular basis in the Industries Department of Manipur and was later promoted to a post of Executive Engineer (Electricity) in 1972 on ad hoc basis putting him in the common pool of Executive Engineers (Electricity) in the Electricity Department of the Government of Manipur and that appointment was regularised

in 1975.

3. Mr. N. K. Singh, the learned counsel for the petitioner submits, inter alia, that while at the stages of Assistant Engineers and Executive Engineer in the Electricity Department no distinction is made between Engineering Diploma Holders and Engineering Degree Holders, the Electricity Department/Superintending Engineer (Elect) Recruitment Rules, 1977, shortly "the Rules", in column 12 provides that only Executive Engineer (Electrical/Mechanical) and Surveyor of Works possessing Degree or equivalent in Electrical/Mechanical Engineering of recognised Institute with six years' regular service in the Grade shall be eligible for promotion to the post of Superintending Engineer (Electricity). Because of this provision it is submitted, the petitioner being a Diploma Holder even after having more than ten years' experience as Executive Engineer is not eligible for promotion as Superintending Engineer, while the respondents 3 to 7 who are junior to him have already been promoted to that rank. Hence the challenge to the vires of the column 12 of the MPSC Form 8 annexed to the Rules and the impugned appointments of respondents 3 to 7 as being violative of Articles 14 and 16 of the Constitution of India.

4. The petition is resisted by the State of Manipur filing the counter affidavit dated 17.4.85. It is stated in para 7 thereof that the Electricity Department was bifurcated from the P.W.D., in 1970 and the petitioner was appointed as Assistant Engineer as per the common Recruitment Rules which existed in 1969 in respect of A. E./PWD/IFC/PHE and Electricity Department. He was appointed as Executive Engineer (Elect) as per Recruitment Rules framed in 1973. Under the recruitment Rules of 1973 for the post of Superintending Engineer (Electrical) only the Executive Engineer (Electrical) and Surveyor of Works possessing Degree in Electrical Engineering of a recognized institution with 7 years' service in the grade rendered after the appointment thereto or regular basis was eligible for consideration for promotion to the post of Superintending Engineer (Electrical). Neither the Executive Engineer (Electrical) possessing Diploma in Electrical Engineering nor the Executive Engineer (Electrical) possessing Diploma in Mechanical Engineering, as in the case of the petitioner, was eligible for consideration for promotion to the post of Superintending Engineer under the Recruitment Rules of 1973.

5. Mr. Y. Imo Singh, the learned Advocate General, Manipur inter alia, submits, that the Recruitment Rules of 1973 are substantially the same as the impugned Rules of 1977, except that the incumbent should have seven years' service as Executive Engineer on regular basis in the former, while six years under the latter, and that the petitioner who was promoted to the post of Executive Engineer (Electrical) on 9.1.73 on ad hoc basis and on 9.5.75 on regular basis duly accepted the said Recruitment Rules of 1973 which did not provide for promotion of Diploma holder Executive Engineer to the post of Superintending Engineer. The learned Advocate General further submits that the Recruitment Rules of 1969 were so framed as to suit the then prevailing circumstances when

there was dearth of qualified Engineering Degree holders, and hence, the Diploma holders had to be made eligible. Gradually, on the one hand more and more Degree holder Engineers become available and on the other hand nature of work and public interest demanded higher scientific knowledge in Engineering at least at the stage of Superintending Engineer; and that new projects undertaken by the Electricity Department of the State Government for the last decade have been demanding higher mental equipment in the Electricity and in that view of the matter the State Government had taken a policy decision that the administrative efficiency in the engineering service of the State should be geared up in the public interest and accordingly the classification was made between the Degree holder and Diploma holder in the Recruitment Rules of 1973 and the Rules of 1977 with a view to achieve administrative efficiency in the Engineering Service; and that the classification of the Executive Engineers into Degree holders and Diploma holders for the purposes of promotion to the post of Superintending Engineer cannot, therefore, be held to rest on any unreasonable and unreal basis as the classification has got nexus with the achievement of administrative efficiency in the Engineering Service. It is submitted that the posts of Superintending Engineer and upwards being at the apex hierarchy of the technical department requires "higher technical knowledge in the field and are of supervisory nature and should be manned by the engineering personnel who possess higher educational qualification in whose case there is at least presumptive evidence of higher mental equipment. The Rules, it is submitted, therefore, are not violative of Articles 14 and 16 of the Constitution.

6. Mr. N. K. Singh replies, on the basis of the petitioner's affidavit, that there was neither any public policy nor any norms decided by the State of Manipur as is evident from the Govt. Letter dated 7.2.85 written by the Deputy Secretary (Power) addressed to the Secretary/Chairman, M. P. S. C. (Annexure A/10) enquiring about the cause of debarring diploma holders, which shows that it was the M. P. S. C. which decided the matter and not the Govt. It is the State of Manipur which is to decide the policy and not the Manipur Public Service Commission (MPSC). Mr. Singh accordingly submits that there being no Govt. policy behind the classification the same is discriminatory, being violative of Articles 14 and 16 of Constitution of India.

7. The only question to be decided, therefore, is whether column 12 of the MPSC Form 8 annexed to the Rules in so far as it makes the degree holder Executive Engineers eligible but does not make Diploma holder Executive Engineer, eligible for promotion to the post of Superintending Engineer is liable to be struck down as violative of Articles 14 and 16 of the Constitution of India ?

8. To our mind the question is no longer res integra. Admittedly, the classification between Diploma holder Executive Engineers and the Degree holder Executive Engineer is based on educational qualifications, namely, holding of engineering degree. In *State of J. & K. v. T. N. Khosa*, AIR 1974 SC 1 a similar provision came up for consideration before the Supreme Court. The *J. & K. Engineering*

(Gazetted) Service Recruitment Rules (1970) provided in the Schedule annexed thereto that recruitment to the cadre of Executive Engineers and above was to be made only by promotion. But as regards promotion to the posts of Executive Engineers, and to those only, it was provided that those Assistant Engineers would be eligible for promotion who possess a Bachelor's Degree in Engineering or hold the qualifications of A. M. I.E. and who have put in at least eight years' service in the J. & K. Engineering (Gazetted) Service. The diploma holder Assistant Engineers were not eligible for similar promotion. It was contended that the discrimination made by the Rules between Degree holders and Diploma holders was arbitrary and capricious because academic or technical qualifications could be germane only at the time of recruitment, and for purposes of promotion, efficiency and experience alone must count. It was further contended that once the Government appointed candidates with different academic or technical qualifications to the same cadre, having same pay scale and similar duties, such candidates would form one class and they could not be further classified for purposes of promotion on the basis of their educational qualifications; and the Rules, therefore, were violative of Articles 14 and 16 of the Constitution of India. As against that the State contended that in the Rules the Government had laid down a method of recruitment and prescribed qualification for appointment to various categories of posts in the Government Department keeping in view the nature of duties and responsibilities attached to those posts and classification for purposes of promotion on the basis of educational qualification had an intelligible differentia and was, therefore, not violative of the constitutional provision of equality. Their Lordships of the Supreme Court while upholding the validity of those Rules (1970) held that there was always a presumption in favour of the constitutionality of an enactment and the burden was upon him who attacked it to show that there had been a clear transgression of the constitutional principles. It was so held also in *Ram Krishna Dalmia v. Justice S. R. Tendolkar*, AIR 1958 SC 538: 195 SCR 279, 297 (b). A rule cannot be struck down as discriminatory on a priori reasoning.

9. It is settled law that where a party seeks to impeach the validity of a rule made by a competent authority on the ground that the rules offended Art. 14, the burden is on him to plead and prove the infirmity. The burden thus is on the instant petitioner to set out facts necessary to sustain the plea of discrimination and to adduce "cogent and convincing evidence" to prove those facts, for "there is a presumption that every factor which is relevant or material has been taken into account in formulating the classifications". Applying the ratio in the *State of Jammu and Kashmir vs. Triloknath Khosa* (Supra), *State of Uttar Pradesh vs. Kartar Singh*, 1964 (6) SCR 679, 687: AIR 1964 SC 1135, *G. D. Kelkar vs. Chief Controller of Imports and Exports*, (1967) 2 SCR 29 at p. 34 : (AIR 1967 SC 839, it can be taken to be settled law that unless the classification is unjust on the face of it, the onus lies upon the party attacking the classification to show by placing the necessary material before the court that the said classification is unreasonable and violative of Art. 16 of the Constitution. Thus, it is no part of

the respondents" burden to justify the classification or to establish its constitutionality. Higher educational qualification, formal education may not always produce excellence but a classification founded on variant educational qualifications for purposes of promotion to the post of Superintending Engineer, cannot be said to be unjust on the face of it, and the onus therefore cannot shift from the petitioner on whom it originally lay. It must also be remembered that classification is primarily for the legislature or the rule making authority charged with the duty of prescribing the terms and conditions of service, and if, looked at from the standpoint of the authority making it, the classification is found to rest on a reasonable basis, it has to be upheld and the Court cannot sit in appeal over the legislative judgment in this regard. The contention that qualification classification can be germane only at the stage of initial recruitment is untenable. Of course the relevant materials will be admissible in support of the reason is and the justification for the classification and such reasons need not always appear on the face of the Rule or law which effects classification, to our view it is impossible to accept the submission that the classification of Executive Engineers into Degreeholders and Diploma holders is based on any unreal or unreasonable basis. The classification was made as has been shown by the learned Advocate General with a view to achieving administrative efficiency in the Engineering Services. If this be the object, the classification clearly correlated to it has nexus with the object or administrative efficiency sought to be achieved, for higher educational qualifications are "at least presumptive evidence of a higher mental equipment." It can not, of course be suggested that administrative efficiency can be achieved only through those possessing engineering degrees but that is not relevant here. What is relevant is the object sought to be achieved and it is not shown to be a mere pretence for an indiscriminate imposition of inequalities; and the instant classification cannot be characterized as arbitrary or absurd. A rulemaking authority may be guided by the realities of the time, just as the legislature, while making a classification; and " is free to recognize degrees of harm and it may confine its restrictions to those classes of cases where the need is deemed to be the clearest." If the law presumably hits the evil where it is most felt, it is not to be overthrown because there are other instances to which it might have been applied. Mr. Singh relies on Roshan Lal's case, AIR 1967 SC 1889 : (1968) 1 SCR 185. But what has been laid down in that case is that direct recruits and promotees lose their birth marks on fusion into a common stream of service and they cannot thereafter be treated differently by reference to the consideration that they were recruited from different sources. Their genetic blemishes disappear after they are integrated into a common class and cannot be revived so as to make equals unequal once again. Roshan Lal was 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 T. N. Khosa (supra), as 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 classification, therefore, is not on the basis of the source of recruitment as in Roshan Lal's Case. In Narsing Rao's case AIR 1968 SC 349: (1958) 1 SCR 407 it has been held that higher educational qualifications are relevant considerations for fixing a higher pay scale. If such classification on the basis of educational qualifications was valid, there is no reason why there could not be a classification on the basis of educational qualifications for the purposes of promotion. Applying the law as enunciated above we are of the opinion that though the Diploma holder and Degreeholder Engineers were integrated into a common class of Executive Engineers, they could for purposes of promotion to the cadre of Superintending Engineers be validly classified on the basis of educational qualifications and the column 12 of the MPSCFORM 8 annexed to the Rules providing that Degreeholder Engineers shall alone be eligible for such promotion to the exclusion of the Diplomaholder Engineers does not violate Articles 14 and 16 of the Constitution of India and must accordingly be held valid.

10. The view we have taken in this case is also in consonance with the decisions in T.N. Khosa's case (Supra), State 4 Mysore vs. Narasinga Rao, AIR 1958 SC 349 : (1953) 1 SCR 407 where matriculate tracers were given higher pay than nonmatriculate tracers, Union of India vs. Dr. (Mrs.) S. B. Kohli (1973) 3 SCC 592 where prescribing a post graduate degree for the post of Professor of Orthopedics, B. Venkata Reddi vs. State of Andhra Pradesh, AIR 1983 SC 1108: 1983 Lab. I. C. 1296 where the third class post graduates were eliminated from promotion of junior lecturers as Principal of junior College while first and second class post graduates were made eligible.

11. In view of the admitted fact that even the 1973 Rules did not make the Diploma holder Engineers eligible for promotion to the post of Superintending Engineers and in view of the statements made by the learned Advocate General, on the basis of the submissions made in the affidavit in opposition we entertain no doubt that the column 12 of the MPSCFORM 8 annexed to the Rules is based on State policy. The letter dated 7.2.85 written by the Deputy Secretary (Power) to the Govt. of Manipur to the Law Reference cum Research Officer, Manipur Public Service Commission indicates consultation with the M. P. S. C., but casts no doubt as to the existence of the policy. The MPSC FORM 8 embodies the State's policy. The submission that there was no State policy is accordingly rejected. The appointments of Respondents Nos. 3 to 7 cannot therefore be assailed on the ground of invalidity of the Rules where under they were appointed.

12. No other point has been urged on behalf of the petitioner. In the result this petition is found to be without merit and it is rejected; but without costs. The Rule is discharged.