
(1971) 09 AP CK 0004

In the Andhra Pradesh High Court

Case No : Writ Appeal No. 689 of 1970

The General Manager, South Central Railway, Secunderabad
and Another

APPELLANT

Vs

A.V.R. Siddhanti and Others

RESPONDENT

Date of Decision : 01-09-1971

Acts Referred:

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

Citation : AIR 1972 AP 252 : (1973) 1 LLJ 160

Hon'ble Judges : Venkateswara Rao, J;Obul Reddi, J

Bench : Division Bench

Advocate : A. Raguvir, for the Appellant; S. Rama Murty, for the Respondent

Judgement

Obul Reddi, J.—This appeal preferred by the South Central Railway is directed against the judgment of Mr. Justice Krishna Rao in W. P. No. 1145/69 allowing the petition filed by Respondents 1 to 9 herein (petitioners in the writ petition), under Article 226 of the Constitution for the issue of a writ in the nature of Mandamus or any other appropriate writ or direction to the appellants to fix the seniority of respondents 1 to 9 as per the original proceedings of the Railway Board dated 16th October 1952 and also to further direct the appellants not to give effect to the subsequent proceedings of the Railway Board dated 2nd November, 1957 and 13th January, 1961.

2. The Writ Petitions came to be filed by Respondents 1 to 9 under the following circumstances: During the Second World War, with the object to supplying foodgrains at fair prices to the Railway employees, a new Department known as "Grain Shop Department" was created and recruitment of the personnel was made on an emergency basis from three sources; the sources being (1) temporary staff who were appointed in the permanent departments initially and subsequently transferred to the Grain Shop Department. (2) temporary staff recruited for the permanent Department through the Staff Section Board but posted in the Grain Shop Department, and (3) temporary staff directly appointed

by the Grain Shop Department. After the war this Department was wound up and then the question of absorbing the staff of the Department in other permanent Departments of the Railways was taken up. Respondents 1 to 9 who belong to the category of temporary staff directly appointed by the Grain Shop Department were absorbed in the various permanent Departments of the Railways as also those who were selected by the Sections Boards. Then the question of fixing the inter se seniority among those drawn from the three sources to the erstwhile Grain Shop the Railway Board by its proceedings dated 16th October, 1952 directed that the inter se seniority of all the three categories of the wound up Grain Shop Department absorbed in the permanent Departments be fixed taking into consideration their service right from the beginning of their recruitment in the Grain Shop Department. Subsequently, representations were made to the Railway Board by the Railway employees, and as a result of the representations, the Railway Board issued proceedings on 2nd November, 1957 in partial modification of the earlier proceedings dated 16th October, 1952 directing that while inter se seniority of the first and second categories of the Grain Shop Department should be maintained as directed in its proceedings dated 16th October, 1952, the seniority of those who belong to the third category which included respondents 1 to 9 should be fixed only with reference to the respective dates of their actual absorption into the various Departments. Certain difficulties arose in giving effect to the modified proceedings and the Railway Board issued clarification by the further proceedings dated 13th January, 1961. This clarification in the proceedings dated 13th January, 1961 fixed the seniority of the staff of the Grain Shop Department including respondents 1 to 9 only from the date of their absorption in the permanent Department "irrespective of the date of their physical absorption in those Departments". Respondents 1 to 9 assailed the proceedings of the Railway Board dated 2nd November, 1957 and 13th January, 1961 on the ground that they are discriminatory and offending Articles 14 and 16 (1) of the Constitution.

3. Respondents 1 and 2, the appellants herein resisted the application on the main ground that the Board is competent to revise the seniority as the recruitment of the personal to the Grain Shop Department was on a temporary basis and that, therefore, a policy decision had to be taken after the Department was abolished, and the members of the disbanded shop were shown places in the regular Departments having regard to their educational qualifications, age and service rendered in other departments and that being a policy decision, it is not liable to be questioned nor is there anything to suggest that respondent 1 to 9 have been singled out for any discriminatory treatment. It is their case that to equate the writ petitioners (respondents herein) with regular employees would be doing injustice to the regular employees and as such there is no violation of the guarantees either under Article 14 or 16 (1) of the Constitution.

4. The learned Judge on a consideration of the materials placed before him and relying upon the judgment of a single Judge of the Madras High Court in W. P. 3110/1965 and the decision of their Lordships of the Supreme Court in Roshan

Lal Tandon Vs. Union of India (UOI), held that the Railway Board's proceedings dated 2nd November, 1957 and 13th January, 1961 are void as they offend the provisions of Articles 14 and 16 of the Constitution and therefore the impugned proceedings cannot be implemented so as to affect the writ petitioners (Respondents 1 to 9 herein) adversely. The learned Judge also held that they are entitled to the benefit of the earlier order dated 16th October, 1952 of the Railway Board.

5. Mr. a. Raghuvir, learned counsel appearing for the appellants contended that the judgment of Venkatadri, J., of the Madras High Court in W. P. 3110/65 relied upon by the learned Judge has since been reversed by a Division Bench of the Madras High Court in W. A. No. 313/67 by its judgment dated 30th July, 1969 and that further the respondents cannot invoke Articles 14 and 16 for the simple reason that there were no service Rules governing the employment of temporary personnel in the Grain Shop Department, and their absorption into permanent Departments was not by virtue of any Rules in existence, but by reason of the proceedings issued by the Railway Board on 24th August 1948 which was a policy decision taken by the authorities and the Railway Board is competent or entitled to change the service conditions including seniority in the absence of any Rules governing their original appointment in the defunct Grain Shop Department.

6. Therefore, the question that falls for determination in this Writ Appeal is whether the revision of seniority of respondents 1 to 9 by the impugned proceedings is a denial of equal opportunity to them along with those similarly drafted into the Grain Shop Department. It is not in dispute that the staff had to be recruited to the Grain Shop Department from various sources, some selected by the joint Service Commission, some selected by the Staff Selection Board and some appointed directly from the open market. Even though, all the members of the staff appointed to the Grain Shop Department did not possess the same qualifications, they were treated as belonging to one Department for the purpose of absorption into regular Departments and after absorption, they were fitted into regular vacancies fixing inter se seniority among them. It is the case of respondents 1 to 9 that the fact that they were appointed to the Grain Shop Department cannot afford a ground to treat them differently from those who were appointed to the Grain Shop Department either from among those selected by the Staff Selection Board or the Joint Service Commission since a new Department was created drawing personnel from different sources. In other words, it is their case that their length of service in the parent Department namely, the Grain Shop Department should be taken into consideration as has been done in the case of their colleagues who were appointed through the Selection Boards and the refusal to count their service in the parent Department has resulted in their being singled out or discriminated against thus offending Articles 14 and 16(1) of the Constitution. It is to be borne in mind that the fact that some of the direct recruits from open market did not have the minimum educational or technical qualifications or were above the age limit was not a factor which weighed while they were being absorbed in the permanent

Departments of the Railways. In other words, the Railway administration having regard to their length of service and experience exempted them from such disqualifications and absorbed them on a permanent basis in other Departments. It is open to the Railway Board to lay down requisite qualifications for recruitment to its service. But when the age limit and qualifications were relaxed and when they were absorbed in the permanent Departments, the fact that some of them were not fully qualified or were above the age limit became irrelevant in view of the action of the Railway Board in absorbing them in the permanent Departments. The scope of Articles 14 and 16 has been the subject of numerous decisions of the Supreme Court and we need only refer to a few of them to appreciate the question involved in this Appeal. In *Banarsi Das and Others Vs. The State of Uttar Pradesh and Others*, , Sinha, J., as he then was, said that "Article 16 of the Constitution is an instance of the application of general rule of equality laid down in Article 14, with special reference to the opportunity for appointment and employment under the Government. Like all other employees, Government are also entitled to pick and choose from amongst a large number of candidates offering themselves for employment under the Government." In the present case, the appointing authority exercised its right as an employer to pick and choose persons from several sources for appointment in the Grain Shop Department which they started during the war time irrespective of the qualifications possessed by the persons employed by them and thereafter treated them all alike without any distinction between direct recruits drawn from open market and others drawn from the panels of the Selection Board. Therefore, it is not a case where it could be contended that there could be no equality as between members of separate and independent classes and different principles govern as they do not belong to one and the same class. It is well settled that the concept of equality can have no existence except with reference to matters which are common as between individuals, between whom equality is predicated. Equality of opportunity in matters of employment can be predicated only as between persons who are either seeking the same employment or have obtained the same employment. That is what Article 16(1) enjoins upon namely that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. Gajendragadkar, J. (as he then was) had occasion to consider at length the scope of Article 16 of the Constitution in *General Manager, Southern Railway v. Rangachari*, AIR 1969 SC 36. As neatly put by the learned Judge "Article 16 (1) and (2) really given effect to the equality before law guaranteed by Article 14 and to the prohibition of discrimination guaranteed by Article 15(1). The three provisions form part of the same constitutional code of guarantees and supplement each other. If that be so, it must be held that the matters relating to employment must include all matters in relation to employment both prior, and subsequent, to the employment which are incidental to the employment and form part of the terms and conditions of such employment. Article 18(2) prohibits discrimination and thus assures the effective enforcement of the fundamental right of equality of opportunity guaranteed by Article 16(1)". Justice Wanchoo, (as he then was), stated the

scope and application of Article 16(1) of the Constitution in *Mervyn Coutindo and Others Vs. Collector of Customs, Bombay and Others*, . That was a case where seniority was to be fixed between direct recruits and promotes in a particular rotational system and in a particular ratio and that principle which was stated in the order of the Central Board of Revenue came to be challenged before the Supreme Court. The learned Judge observed:---

"We have already said that this circular also emphasizes the rotational system in the matter of fixing a seniority and all that it means is that vacancies should be filled either by direct recruits or by promotes according to the quota fixed for such appointments. This brings us back to the circular of 1959, and the main question in that connection is the meaning to be assigned to the words "seniority determined accordingly", in the explanation to principle 6 relating to relative seniority of direct recruits and promotes. As we read these words, their plain meaning is that seniority as between direct recruits and promotes should be determined in accordance with the roster, which has also been specified namely, one promotee followed by one direct recruit and so on. Where, therefore recruitment to a cadre is from two sources, namely, direct recruits and promotees and rotational system is in force, seniority has to be fixed as provided in the explanation by alternately fixing a promotee and a direct recruit in the seniority list. We do not see any violation of the principles of equality of opportunity enshrined in Article 16(1) by following the rotational system of fixing seniority in a cadre half of which consists of direct recruits and the other half of promotees, and the rotational system by itself working in this way cannot be said to deny equality of opportunity in Government service."

7. A further question arose in that case whether after the formation of a common cadre with direct recruits and promotees, promotion to the higher cadre could also be made only a ratio that existed between direct recruits and promotees at the time of recruitment to the original cadre. The learned Judge answered:

"The present method by which the respondent puts a direct recruit from the grade of Appraiser, though he is promoted later, above a promotee who is promoted to the grade of Principle Appraiser on an earlier date clearly denies equality of opportunity where the grade of Principle Appraiser has only one source of recruitment, namely, from the grade of Appraisers. In such a case, the seniority in the grade of Principle Appraisers must be determined according to the date of continuous appointment in that grade irrespective of whether the person promoted to that grade from the Appraiser's grade is a direct recruit or a promotee."

8. This decision clearly brings out the fact that when once a common cadre is formed irrespective of the sources from which the cadre was formed, the seniority in that cadre shall prevail and that cannot be disturbed and further distinction drawn as between direct recruits and promotees or others drawn from another source. Another case directly in point in *Roshan Lal v. Union of India* (supra) *Ramaswami, J.* speaking for the Court observed:

"In our opinion, the constitutional objection taken by the petitioners to this part of the notification is well founded and must be accepted as correct. 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".

9. What has been held by their Lordships in Roshanlal's case (1) applies with equal force to the case on hand. Here also there was already an integrated service namely, the Grain Shop Department Service and all the members of this Service were absorbed in different Departments and after absorption, there cannot be a further dividing line between direct recruits drawn from open market and those appointed through Selection Boards as that would clearly be a denial of equal opportunity to persons similarly situated in the matter of further promotion on the basis of their seniority, among other grounds. Since the absorption of direct recruits and others is from the integrated Grain Shop Department, no discrimination can be shown on the ground of differences that existed between various sources prior to the recruitment to the Grain Shop Department for the purpose of fixing seniority.

10. We are not inclined to agree with the view expressed by the Division Bench of the Madras High Court reversing the judgment rendered by Venkatadri J. The learned Judges of the Division Bench were to the view that there was no Service Rule which had been evolved at the time of the recruitment of persons to the Grain Shop Department on an ad hoc basis from the open market, whereas such a rule had been evolved in the case of recruits by the Staff Selection Board or the Joint Service Commission. It is in that view the learned Judges said that the direct recruits cannot complain against the decision taken which is really a matter of indulgence or discretion to be shown in their case. They went on to observe-----

"The position in the case of the temporary employees would have been different if after their recruitment to the Grain Shop Establishment, in integrated cadre has been formed treating them as common from which the recruits were selected."

We are unable to subscribe to this view for though the Grain Shop Department came into existence as a war time measure, the employees were recruited from different sources. If no specific Rules were framed for the Grain Shop Department, then the General Rules that apply to the Railway employees would apply to them also. Without the orders of a competent authority creating a Department like the Grain Shop Department, it could not have come into

existence. That order also must have prescribed the mode of selection and that is how recruitment was made to that Department from various sources. Therefore, we are not prepared to agree with the learned Judges that there was no integrated cadre simply because the personnel were drawn from different sources and possessed different qualifications. The Department came into existence to ameliorate the condition of the Railway employees who found it very difficult to procure essential commodities. The Rules of recruitment to Railway Service must have been waived as otherwise it is impossible to concede that persons who did not possess minimum educational qualifications and who were also overaged could have been recruited to serve in the newly created Grain Shop Department. Therefore, when once a Department was created from various sources and members belonging to the common cadre were absorbed later in other departments, there cannot be a further dividing line on the basis of differences that existed prior to the formation of a common cadre in the Grain Shop Department for the purpose of fixing seniority. We are with the view expressed by Venkatadri, J. Even the proceedings of the Railway Board issued in 1957 would show that it would be undesirable to alter the seniority of those who were directly recruited into the erstwhile Grain Shop Department. The Railway Board however made it clear that they were forced to accept on account of the pressure put upon them by the National Federation of the Railwaymen. There could be no dispute that the Railway Board is competent to lay down its policies. But the policies formulated by it should be such as would not offend the Fundamental Rights guaranteed to its employees. The view expressed by us is also shared by the Bombay High Court in Miscellaneous Petition No. 321/1964 following the decision of Venkatadri, J. in W. P. Nos. 3026 and 3110 of 1965.

11. We have therefore, no hesitation in confirming the order of the learned Single Judge and dismissing the Appeal with costs. Advocate's fee Rs. 100/-.

12. Appeal dismissed.