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**(1991) 01 MAD CK 0002**  
**In the Madras High Court**

The Tuticorin Port Trust

APPELLANT

Vs

V. Chockalingam and Others

RESPONDENT

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**Date of Decision :** 02-01-1991

**Acts Referred:**

Constitution of India, 1950 — Article 14, 16

**Citation :** (1991) 1 MLJ 506

**Hon'ble Judges :** Nainar Sundaram, J

**Bench :** Division Bench

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**Judgement**

Nainar Sundaram, J.—These two writ appeals are directed against the common order of the learned single Judge in W.P. Nos. 9361 and

9363 of 1981. The second respondent in the writ petitions is the appellant in these two writ appeals. Respondents 1 to 38 were the writ-

petitioners; respondent No. 39 was the first respondent in the writ petition and respondents 40 to 61 were respondents 3 to 24 in the writ

petitions. We propose to refer to the parties as per their nomenclature in the writ petitions. W.P. No. 9363 of 1981 was preferred by the

petitioners seeking for a declaration that entries 10, 16 and 18 of the schedule to the Tuticorin Port Trust Employees (Recruitment, Seniority and

Promotion) Regulations, 1979, are unconstitutional, illegal and void. W.P. No. 9361 of 1981 was preferred by the petitioners to quash the

proceedings relating to the creation of 22 additional posts in the category of Technical Assistant and all the consequential orders making

appointments to the said 22 additional posts. The order of the learned single Judge, who dealt with these two writ petitions, covered not only the

said two writ petitions, but also W.P. Nos. 9360 and 9362 of 1981 with which we are not concerned in these two writ appeals. In the services of

the second respondent for the post of Junior Engineer, both diploma holders and degree holders are eligible. When they get so appointed, they go

by one. and the same designation as Junior Engineers. The posts held by them are inter-changeable. The scale of pay is also identical. In short, they

are fused into one combined category and they formed one cohesive class. It must be noted here that for the higher post of Assistant Engineer both

are eligible. So far as the features mentioned by us above are concerned, there is no dispute. Then by the entries in the Regulations impugned in

W.P. No. 9343 of 1981, posts of Technical Assistants in three categories as civil, mechanical and electrical came to be created and for the said

posts it was declared that only graduate engineers working as Junior Engineers are eligible. In fact, respondents 3 to 24 had the benefit of

consideration of posting as Technical Assistants in one or other of the three categories. These gave room for grievance for the diploma holders, the

petitioners to come to this Court by way of the writ petitions.

2. The learned single Judge after taking note of the undisputed factual features found no warrant for excluding the diploma holders from being given

the posting as Technical Assistants in the three categories and finding that such exclusion violated the equality right guaranteed under Articles 14

and 16 of the Constitution of India, gave a declaration in the following terms:

Consequently, there will be a declaration in these writ petitions declaring that the Regulations called Tuticorin Port Trust Employees (Recruitment,

Seniority and Promotion) Regulations, 1979, in so far as they prescribe a degree in Engineering in the concerned faculty for promotion as Technical

Assistant (Civil, Mechanical and Electrical) are violative of Arts. 14 and 16 of the Constitution of India and declaring further that both the diploma-

holders and the degree-holders working as Junior Engineers are eligible to be considered for promotion to the post of Technical Assistant.

However, taking a pragmatic view and with the laudable intention of not disturbing the promotion already accorded to respondents 3 to 24,

moulded the reliefs in the following terms:

It has already been held in W.P. Nos. 9361 and 9363 of 1981 that the Regulations which restrict the promotion to the post of Technical Assistant

to the degree\*holders alone are not sustainable. But, such a declaration may have the adverse effect of unsettling the settled affairs. During the

pendency of these writ petitions for over nine years, many of the respondents might have been promoted to further higher posts of Assistant

Engineers or Assistant Executive Engineers or even further to the post of Executive Engineer. Therefore, while making the declaration as aforesaid,

it is ordered that such declaration would not adversely affect the respondents who have since been promoted and none of them would be reverted

on the basis of the declaration made. At the same time, it is made clear that the petitioners who had been denied the right of promotion as

Technical Assistants by reason only of the fact that they do not possess a degree in Engineering should at least be afforded monetary relief on

notional basis of promotion to that post on the dates on which their respective juniors (degree-holders) were promoted to the post of Technical

Assistant. The petitioners are at liberty to give representation to the authorities concerned for affording them the said monetary relief and for fixing

their due seniority and when such representations are made, the authorities will pass orders thereon within a period of three months from the date

of receipt of such representations.

As already noted, these two writ appeals have been preferred by the second-respondent questioning the order of the learned single Judge.

3. Mr. K. Alagiriswami, learned Advocate General appearing for the second respondent, would submit that the expertise that could be availed of

from the degree-holders will not be available with the diploma-holders while they discharge that functions assigned to the post of Technical

Assistant in the three categories and hence there is a justification for preferring degree-holders for the post of Technical Assistant in the three

categories. Learned Advocate General would also attack the view of the learned single Judge that the. diploma-holders in the cadre of Junior

Engineers when they are eligible to be and could be promoted as Assistant Engineers, should not have been denied the chance of getting the

posting as Technical Assistant, which post is in between the posts of Junior Engineers and Assistant Engineers. Learned Advocate-General would

say that the post of Technical Assistant stands on a separate footing.

4. The case law on the subject of discrimination and classification in matters like this is replete and profuse even at the level of the pronouncements

of the highest Court in the land. The two oft quoted pronouncements are those

found in The State of Jammu and Kashmir Vs. Shri Triloki Nath

Khosa and Others, and Mohammad Shujat Ali and Others Vs. Union of India (UOI) and Others, . In the latter pronouncement, the Supreme

Court dealt with the plea of discrimination between graduates and non-graduates in the matter of promotions from the post of Supervisor as

Assistant Engineer in the services of the State of Andhra Pradesh. The Supreme Court, after adverting to its earlier pronouncement in The State of

Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others, , with regard to prescribing a ratio as amongst personnel, though of different

educational qualifications, but found fit to be treated on par without any disparity, discountenanced that there could be rule of promotion, which

while conceding that non-graduate supervisors are also fit to be promoted as Assistant Engineers reserved a highest 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 half quoted passage in this pronouncement is found in paragraph 28 and it runs as

follows:

...But where graduates and non-graduates and 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 supervisor cannot be promoted to that vacancy, even if he is senior to all other graduate

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 a vacancy earmarked for graduate supervisors, a non-graduate

supervisor would be entitled to ask : I am 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 fit for promotion and, like the graduate supervisor, I am equally eligible for being promoted. My technical equipment supplemented by 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 backgrounds 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 that"" vacancy belongs to supervisors possessing higher educational qualifications. As pointed out by Krishna Iyer, J. in *The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others*, , the soul of Article 16 is the promotion of the common man"s capabilities, overpowering 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 obligated by the nature of the duties of the higher post is to stifle the social thrust of the equality clause. A rule or promotion which while conceding that non-graduate Supervisors are also fit to be promoted as Assistant Engineers, reserves a highest quota of vacancies for promotion for graduate Supervisors as against non-graduate Supervisors are also fit to be promoted as Assistant Engineers, reserves a highest 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 are 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.

5. It is true that the question of discrimination and classification cannot be decided by applying any inflexible rule or rigid code, irrespective of or

without reference to peculiar 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 the duties attached to a particular post required drafting in a 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 may 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 I happened in The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others, . 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 making out to the conviction of the Court of any inefficiency or lack of

expertise or non-suitability on the part of the non-degree holders, from the service point of view, even 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 I opportunity. For prescribing such a ratio as j between them, strong

reasons should exist and they must have found expression both in the records of the authorities and the pleadings before this Court;

6. Here we find a case of complete exclusion of the non-degree holders from the avenue of getting at the post of Technical Assistant in the three

categories. Neither the pleadings put forth on behalf of the second respondent nor any record produced before us make out a convincing reason

justifying the exclusion of non-degree holders from such avenue. By such exclusion, discrimination stands writ large on the face of the records. No

justifiable factor has been made out by the second respondent for excluding the non-degree holders from the avenue to get at the post of the

Technical Assistant in the three categories.

7. It is only in this context, Mr. P. Chidambaram, learned Counsel for the petitioners, pointed out a feature which is certainly unique to the facts of

the present case and that is for the post of Assistant Engineer, both degree-holders and non-degree holders, holding and functioning in the post of

Technical Assistant in three categories has come only in between. If non-degree holders are fit and eligible to be promoted as Assistant Engineers,

and they could also fill in the avenue of promotion, as to what could be and what were the reasons for totally excluding them from getting into the

post of Technical Assistant, the second respondent is not in a position to bring conviction to our mind. The learned single Judge relevantly points

out that if for the higher post of Assistant Engineer, both degree holders and non-degree holders, holding and occupying the posts of Junior

Engineer would be eligible; it stands to no reason as to why the non-degree holders should stand excluded to the post of the Technical Assistant in

the three categories, which has come in between the posts of Junior Engineer and Assistant Engineer. Our assessment of the facts of the case and

the law as settled by the pronouncements of the highest Court in the land, obliges us to concur with the view of the learned single Judge.

8. We must place on record that there was an endeavour on the part of Mr. P. Chidambaram, learned Counsel appearing for the petitioners, to

advance other points concerning the legal propriety of the very method of giving posting to respondents 3 to 24 in the posts of Technical Assistant

in the three categories and also on the question of mala fides. There is no need for us to go into these aspects in these two writ appeals, since we

have sustained the ground which found favour with the learned single Judge. Accordingly, we dismiss these two writ appeals. We make no order

as to costs.

9. We are told that with reference to the directions given by the learned single Judge, as per extract made above, there has been a stay pending the

writ appeals, after the petitioners made their representation. Now we have dismissed the writ appeals, the authorities concerned shall carry out the

directions of the learned single Judge, now confirmed by us, within four months

from today. It is needless to say that by the dismissal of the writ appeals, no portion of the directions given by the learned single Judge has been disturbed.