

(1999) 10 KL CK 0043
In the High Court Of Kerala
Case No : O.P. 11275 of 1991 P

Unnikrishnan and Others

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 14-10-1999

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 16, 226
Kerala Public Services Act, 1968 — Section 2(1)

Citation : (1999) 10 KL CK 0043

Hon'ble Judges : P.K. Balasubramanyan, J;G. Sasidharan, J;A.S. Venkatachala Moorthy, J

Bench : Full Bench

Advocate : K.M. Joseph, for the Appellant; K. Sasikumar, Govt. Pleader for Respondents 1 and 2, C.P. Sudhakara Prasad, for Respondents 4 and 10 and N. Govindan Nair, for Respondents 5 to 9, for the Respondent

Final Decision : Allowed

Judgement

A.S. Venkitachala Moorthy, J.—Government of Kerala in exercise of the powers conferred by Sub-section (1) of Section 2 of the Kerala Public Services Act, 1968 and in supersession of all existing rules and orders on the subject framed rules for the Kerala Government Presses Subordinate Service Rules (hereinafter called the Special Rules) as per G.O. (P) No. 327/76/PD, dated 29th July 1976 and duly published in Kerala Gazette No. 40, dated 12th October 1976. The said rules set out the various branches and categories of officers. A perusal of the said rules would show that there are 12 branches and each branch is with reference to a section (department). In this case we are concerned with Branch VII and Branch VIII. While Branch VII relates to Printing Section, Branch VIII deals with Warehouse Section. As per the Special Rules a person who desires to be considered for appointment as Printer (Lower) Division should be:

S.S.L.C. pass or equivalent qualification with printing technology under diversified course,

or

A person who have completed S.S.L.C. course or equivalent and passed in K.G.T.E. or M.G.T.E. Machine Work (Lower) or a certificate issued by the After Care Home in Machine Work.

The next avenue of promotion for the above category is Printer (Upper) Division. The further avenue of promotion is Assistant Foreman, Machine and the qualification required for this post is pass in S.S.L.C. or equivalent qualification and K.G.T.E. or M.G.T.E. in Machine Work (Higher). For the Assistant Foreman, Machine, the next avenue of promotion is Junior Foreman, Machine and thereafter Senior Foreman, Machine.

2. As far as Branch VIII is concerned, for the person to be appointed as Assistant Warehouseman, he should have passed S.S.L.C. or equivalent qualification and passed K.G.T.E. or M.G.T.E. in Printers Warehouse Work (Lower) or any equivalent qualification. On promotion with the same qualification the Assistant Warehouseman becomes Warehouseman. As per the Special Rules the feeder categories for Assistant Foreman, Machine are Printers (Upper) Division and Warehouseman. Of course in the absence of qualified persons, Printers (Lower) Division and Assistant Foreman can be considered for promotion.

3. Subsequently thereafter Government passed G. O. (P) N0.211/8L/H. Edn., dated 18th December 1981 pertaining to the revision of scale of pay, revision of ratio between grades and fixation of revised cadre strength and creation of new posts.

4. As far as the Printing Section is concerned, the post Printer (Lower) Division was redesignated as Printer Grade II and the pay was revised from Rs. 330-515 to Rs. 340-535. Similarly the Printer (Upper) Division was redesignated as Printer Grade I with the scale of Rs. 420-720 as against the original pay of Rs. 390-685. Among the Printers Grade I the seniors were given a higher scale of pay, namely Rs. 450-785 and they were designated as Printers Senior Grade. As far as Assistant Foreman, Machine is concerned, the salary was revised from Rs. 420-720 to Rs. 470-830.

5. Coming to the Warehouse Section the salary of the Assistant Warehouseman who was originally drawing Rs 330-515 was revised Rs. 370-600 with a new designation known as Warehouseman Grade II. Similarly the higher post in that section which was known as Warehouseman with a salary of Rs. 390-685 was redesignated as Warehouseman Grade I with a salary of Rs. 420-720.

6. Just like in the other section, the seniors among the Warehouseman Grade I were given a higher scale of pay at Rs. 450-785 and they are known as Warehouseman senior Grade. A new post was also created, namely Chief Warehouseman with a salary of Rs. 470-830. This post has to be filled up only by and from out of the Warehouse man Senior Grade by promotion. The qualification for the Chief Warehouseman is pass in S.S.L.C. and Printers

Warehouse (Lower) in K.G.T.E./M.G.T.E.

7. In 1985 three employees of the Printing Section, one from Printer Grade I and two from Printer Grade II filed O.P. No. 9881 of 1985 before this Court challenging the revision of pay scale for the Warehouseman Grade II and they also questioned the inclusion of Warehouseman in the feeder category for the post of Assistant Foreman, Machine in Printing Section. Another writ petition, O. P. No. 1820 of 1987 was filed by a Warehouseman Grade I with a grievance that he should be given promotion as Assistant Foreman, Machine with effect from 16th December 1986 and in the place of one Basheer Kunju.

8. These two writ petitions were disposed of by a learned Single Judge of this Court by judgment dated 17th February 1988. The learned Single Judge took the view that as far as O.P. No. 9881 of 1985 is concerned, even after the report of the Committee which went into all aspects regarding the service conditions of the personnel belonging to the two branches, the Government thought it fit not to change the Special Rules by excluding the personnel in the Warehouse Section from the feeder category and it is not for this Court in exercising jurisdiction under Article 226 of the Constitution of India to hold that the inclusion of Warehouseman in the feeder category is illegal or arbitrary and consequently dismissed the same.

9. As regards O.P. No. 1820 of 1987, since the seniority of the Petitioner in that original petition was conceded as one over and above Mr. Basheer Kunju by the State of Kerala and since the Petitioner was the senior-most among the personnel in the feeder category, he was entitled to be promoted in that vacancy. The learned Single Judge also pointed out that as far as the Government letter dated 15th January 1987 wherein it was ordered that the promotion to the post of Assistant Foreman, Machine from Warehouseman should be kept in abeyance till necessary amendments to the Special Rules are made is concerned, since the vacancy in the cadre of Assistant Foreman, Machine arose earlier, that post must be filled up in accordance with the Special Rules as it stood on the date of occurrence of the vacancy.

10. As against the judgment in the above two Original Petitions, Writ Appeals were filed (W.A. No. 726 of 1988 against O.P. No. 9881 of 1985 and W.A. No. 738 of 1988 against O.P. No. 1820 of 1987) and the said Writ Appeals were disposed of by a common judgment by the I Bench of this Court by judgment dated 5th September, 1989. The Division Bench after pointing out that the State Government having accepted the opinion of the expert committee, the learned Single Judge rightly came to the conclusion that the decision by the Government cannot be regarded as arbitrary or whimsical and both the Writ Appeals were dismissed by the Division Bench.

11. Thereafter both personnel in the Printing Department and Warehouse Department filed Writ Petitions mainly claiming promotions. All those Writ Petitions were disposed of by this Court by applying the decision in W.A. Nos.

726 and 738 of 1988.

12. It is in this background the present Original Petition came to be filed in the year 1991. Coming to the facts of this case there are four Petitioners who were during the relevant time working as Printer Grade I and Printer Grade II. The prayer that is sought for in this Original Petition is to declare the inclusion of personnel from the Warehouse Section as feeder category as per Ext. P-1 (a) as unconstitutional, arbitrary and irrational. There is also Anr. prayer to call for the records relating to Ext. P-2 which is dated 7th September 1991 and quash the same. A consequential prayer is also there seeking direction to the second Respondent, namely the Director of Printing and Stationery to promote the seniormost among the Petitioners in the place of third Respondent by name A. Balakrishnan. Yet Anr. prayer is for direction to the second Respondent to desist from promoting Respondent No. 4 as Assistant Foreman, Machine without first promoting the seniormost among the Petitioners.

13. The case of the Petitioners as set out in the Original Petition as well as the reply affidavit can be stated as under:

The duties and functions of a Printer are entirely different that of a Warehouseman and that the two sections are wholly unconnected. Printer's job is a skilled one and the post of Printer is a technical post. The main duty of Assistant Foreman is to distribute the work of printing and his duties include distribute indents to the Printer and compare the printed copy with the original for correction. That apart he has to check the registration, pages in its order of imposing scheme, perfectness of impression, typographical error, etc. Knowledge of all types of machines, their scope and limitations to carry out minor repairs and to judge the paper quality and their suitability, etc. are essential and only possessed by a Printer and not by a Warehouseman. Similarly the Assistant Foreman should have knowledge about the printing inks problems and knowledge about the mixing of colour inks to get the required colour for printing. He has to watch the workers and give required guidance to the printers whereas a Warehouseman is only a store keeper and all that he is required to know is about the quality of paper and supply the material on receipt of indents from the printing section. In fact prior to 1976 Warehousemen were not eligible to be promoted as Assistant Foreman, Machine. As per the Special Rules while the Warehouseman Grade I can be appointed as Assistant Foreman, Machine the Printer Grade I cannot be appointed as Chief Warehouseman. When the Printers are 329 in number there are only less than 20 Warehousemen. In view of this there is a stagnation in the Printing Section. The Printing Section and Warehouse Section are two different branches and that they cannot be clubbed together. Such clubbing of the unequals as equals probably only on the basis of scale of pay, certainly cannot stand to reason and that the same has to be only described as irrational, arbitrary and whimsical and thereby there is violation of Articles 14 and 16 of the Constitution of India. While the Warehouseman Grade I has got two avenues of promotion as per the existing Special Rules, namely as Assistant

Foreman, Machine and Chief Foreman, the Printer Grade I has got only one avenue of promotion, namely as Assistant Foreman, Machine. In fact the promotion in all other sections is given only to the worker in that section. For example, in composing section and binding section the promotion as Assistant Foreman, Junior Foreman and Senior Foreman are given to the experienced qualified workers of that section. For these and other reasons the Petitioners seek the reliefs as enumerated above.

14. On behalf of the first Respondent a counter affidavit has been filed by one R. Raveendra Kumar, the Under Secretary to Government, Higher Education Department, who has categorically stated that he is conversant with the facts of the case from the relevant records and that he has been authorised to swear the said affidavit on behalf of the first Respondent, namely the State of Kerala represented by Secretary, Higher Education, Trivandrum. In the affidavit details with regard to the dates of appointment of the Petitioners and Respondents 3 to 10 have been set out. For the purpose of this petition the said dates may not be quite necessary and relevant. In paragraph 5 of the said affidavit a statement is made to the effect that it is not fully correct to say that the machine section and the warehouse section have no connection as the Warehouseman is supplying paper items required for the Printers in the correct size, quality and quantity. In the said affidavit it is admitted that there are about 330 Printers in the department whereas the number of Warehousemen is only 11. In paragraph 9 of the said counter affidavit the State of Kerala has admitted that the qualification prescribed for Printers and Warehousemen are different and they are not interchangeable and that the job of Printer is entirely different from that of Warehouseman, A mention is also made about the agitations by the Printers to bifurcate the Warehouse Section from Printing Section and in that regard Government also issued a communication dated 15th January 1987 to the effect that promotions to the post of Assistant Foreman, Machine from Warehouseman may be kept in abeyance till necessary amendments to the Special Rules are made. With regard to the duty of Warehouseman it is mentioned that such a person is to stock and supply the printing materials according to the necessity whereas the duty of Printers is to operate the machine and print and supply the work entrusted to them. In the concluding paragraph it is stated that the Government in G.O. (M.S.) 301/90/H. Edn. dated 29th November 1990 ordered to separate the Warehouse Section from the Printing (Machine) Section with independent status and that a consolidated proposal to amend the Special Rules is under consideration by the Government.

15. The 4th Respondent in this Original Petition has filed a counter affidavit wherein it is stated as follows: It is admitted that one of the main duties of the Assistant Foreman, Machine is to calculate the requirement of various items required from the Warehouse Section for the purpose of printing in the Machine Section, and once such a requirement is calculated by the Assistant Foreman, he gives an indent regarding the various items required from the Warehouse Section to the Machine Section. Thereupon the Warehouse Section will find out whether

the calculation made by the Assistant Foreman, Machine Section is correct or not and only in case the calculation made by the Assistant Foreman was found to be correct the materials required by the Assistant Foreman will be supplied to the Machine Section. This, according to this Respondent, would clearly show that the person trained in the Warehouse Section is better suited to discharge the duties of Assistant Foreman in the Machine Section. He would further claim in the counter affidavit that only because of this reason the Government thought it necessary to prescribe Warehouseman as feeder category for promotion to the post of Assistant Foreman and that so long as experience in the post of Warehouseman has some relevance in the discharge of duties of Assistant Foreman, Government is perfectly competent to prescribe it as feeder category for promotion to the post of Assistant Foreman in the Machine Section. That being so, the Petitioners are not competent to challenge the Special Rules issued by the Government prescribing Warehouseman as feeder category for promotion to the post of Assistant Foreman. According to this Respondent, in fact the Special Rules prescribe a higher qualification for the post of Assistant Warehouseman because as per the Special Rules he is required to pass S.S.L.C., whereas a Printer Grade II needs only to complete S.S.L.C. course. The further contention raised is that only because of this a higher scale of pay was given to Warehouseman Grade II when compared to Printer Grade II. The counter affidavit refers to the various Original Petitions and Writ Appeals filed earlier, about which this Court has already referred to in the earlier paragraphs. In the counter affidavit there is also a specific plea that as for the post of Warehouseman Grade II a higher scale of pay is fixed than Printer Grade II, it is only natural that Warehouseman Grade II would get opportunity for promotion as Warehouseman Grade I earlier than those who are initially appointed as Printer Grade II in a lower scale of pay than Warehouseman Grade II. According to this Respondent, since the Warehouseman Grade I and Printer Grade I are common feeder categories for promotion to the post of Assistant Foreman, Machine necessarily the seniority in the combined category should be the relevant criteria for promotion to the category of Assistant Foreman. It is also pointed out therein that in the Technical Education Service there are different Sections or Units in the Engineering Colleges in the State and those who started career as Lecturer may get promotion as Assistant Professor, Professor, Principal and Director of Technical Education on different occasions and that in one section it may be possible to get promotion as Assistant Professor, Professor, etc. earlier than in Anr. section. It is further stated that same is the case in Medical Education Service also and that those who are appointed in the Non-clinical subjects are enabled to get promotion to the category of Assistant Professor, Associate Professor and Professor and later on the basis of that as Principal and Director of Medical Education, earlier than those who appointed in the clinical subjects. Considering all these, according to this Respondent, there is nothing unusual in Warehouseman getting opportunity for promotion as Assistant Foreman earlier than Printers.

16. The additional 10th Respondent filed a separate counter affidavit and he has virtually reiterated the various points/objections raised by the 4th Respondent. A mention is made that as on 20th May 1993 the number of posts of Senior Grade Printer, Printer Grade I and Printer Grade II are 62, 130 and 139 respectively whereas the number of posts of Warehouseman Senior Grade, Warehouseman Grade I and Warehouseman Grade II are 2, 4 and 5 respectively and on that basis it is contended that the chances of promotion available in the Printing Section and Warehouse Section are more or less the same. In paragraph 6 of the counter affidavit a categorical stand is taken that in as much as the Special Rules came to be issued in 1976 and the challenge against the same was rejected by this Court in Writ Appeal Nos. 726 and 738 of 1988 and the department has been strictly implementing the directions issued in those orders, the Petitioners cannot have any grievance to put forward before this Court.

17. This Original Petition in fact came up for hearing before a learned Single Judge of this Court earlier. The learned Single Judge pointing out the stand taken by the Government in the counter affidavit that the qualifications prescribed for Printers and Warehouseman are different and they are not interchangeable categories and that the job of a Printer is entirely different from that of a Warehouseman and by taking note of G.O. (Ms.) 301/90/H. Edn., dated 29th November 1990 in and by which the Government ordered to separate the Warehouse Section from the Printing (Machine) Section with independent status and also referring to the judgment in Writ Appeal No. 726 of 1988, wherein a Division Bench of this Court upheld the validity of the rules, took the view that it is appropriate that this Original Petition be decided by a Division Bench. Thereafter the Original Petition came up for hearing before a Division Bench of this Court (before two of us Justice P.K. Balasubramanian and Justice G. Sasidharan) and after examining the matter the Division Bench. felt that the question is of sufficient importance for being decided by a Full Bench, especially in the context of the apparent adjudication in that behalf in W.A. No. 726 of 1988 and W.A. No. 738 of 1988. The Division Bench also felt that it has also to be considered, where a particular special rule was brought into force in the year 1976 and the challenge on the basis of its constitutionality is raised after 14 years, how far the Court would be justified in accepting the challenge and striking down the rule especially since the High Court as such does not have the power of declaring that its decision will have only prospective operation.

18. This Original Petition has thus now come up before this Bench for consideration.

19. Heard learned Counsel for the Petitioners and Respondents and perused the materials available on record. The question arises for consideration and to be decided, by this Court can be set out as under:

(a) Whether the inclusion of Warehouseman Grade I as one of the feeder categories of Assistant Foreman, Machine would amount to putting/treating unequals as equals?

(b) If the answer is yes, whether this Court has got jurisdiction to declare that the inclusion of personnel from the Warehouse Section as feeder categories as per Ext. P-1 (a) as unconstitutional, arbitrary and irrational and consequently the rule is liable to be struck down to that extent notwithstanding the fact that it is a policy decision of the Government?

(c) If the answer goes in favour of the Petitioners with reference to the previous issue/question, then whether the long delay on the part of the Petitioners in approaching this Court seeking for such declaration would stand in the way of this Court granting the relief?

20. To discuss and decide the first question we have to consider the basic factual details namely the qualifications, nature of job and duties of the Printers and Warehousemen.

21. The qualification that is prescribed for a Printer Grade II and Grade I is completion of S.S.L.C. course or its equivalent and pass K.G.T.E. or M.G.T.E. in Machine Work (Lower), whereas for a Warehouseman Grade I and Grade II the required qualification is pass in S.S.L.C. or equivalent qualification plus pass in K.G.T.E. or M.G.T.E. Printers Warehouse (Lower). In the nature of job, be it a Printer or a Warehouseman, the completion of S.S.L.C. course or passing of the S.S.L.G. do not really matter much in the discharge of their duties in their respective branches. Hence that part of required qualification can be safely ignored for the purpose of this case.

22. In this original petition we are concerned with certain employees in the Printing Section and Warehouse Section. These persons have passed K.G.T.E. Machine Work (Lower) or K.G.T.E. Machine Work (Higher) or K.G.T.E. Warehouse Lower Grade. Before considering the nature of the job and duties that are expected to discharge we thought it necessary to have a glance at the syllabus prescribed for the courses relevant for this case by the Department of Government Examinations in the State of Kerala. Accordingly we directed the production of the same and it is necessary to quote the syllabus as placed before this Court.

(His Lordship read the syllabus and continued-Edr.)

23. The next aspect to be considered is what is the nature of the job and duties to be discharged by a Printer or Warehouseman. It is claimed by the Petitioners that the Assistant Foreman, Machine, has got number of duties which would include distribution of intends to the Printer; comparing the printed copy with the original and to carry out corrections; verify the impression and typographical error; knowledge about the machineries, capacity to carry out minor repairs, decide the suitability of materials, namely the paper; knowledge about the printing inks and the method of mixing colours; to supervise the printers, etc. whereas according to the Petitioners, a Warehouseman has to only stock the material and supply to the printing section as per indent. A specific claim is made that printing is a skilled job which would be acquired with theoretical knowledge

and practical experience. These claims of the Petitioners are not in fact denied by the Respondents, but instead what is stated is that when the Assistant Foreman, Machine gives indents the Warehouseman verifies the calculation of such indents and only if found correct materials are supplied and from that it would be clear that a person in the Warehouse Section is better suited to discharge the duties of Assistant Foreman, Machine Section. Barring this statement nothing has been claimed by the Respondents. In this context the learned Counsel appearing for the 4th Respondent produced before this Court the Government Press Manual printed in the year 1970 by the Government of Kerala and prepared by the Superintendent of Government Presses, Kerala. The said Manual was printed in the Government Press under the authority of the Government of Kerala. The relevant chapter in this Manual is Chapter XVI which deals with Machine Section. It is stated therein that Machine Section deals with the printing and supply of clean copies of the type formes received from the Composing branches and it shall be the duty of the Printers to pull the proofs for comparing of the corrections and also to print and supply clear copies as instructed on each and every work order using the paper prescribed. It is stated that the Senior Machine Foreman is being assisted by Junior Foreman and Assistant Foreman.

24. In the same chapter paragraph 500 deals with Assistant Foreman. It is stated that Assistant Foreman shall assist the Junior Foreman and the Senior Foreman in the discharge of all their duties and functions and he shall carry out the instructions of the Senior Foreman and Junior Foreman. According to the Manual, the duties of Assistant Foreman include making necessary entries in the work register and other registers; calculating the number of sheets of paper required for printing and preparation of indents as required; to get it required from the general stores, acknowledge the work orders as well as strike orders received from the composing section; maintenance of all types of records for the receipt and printing of the gazette formes; inspection of every machine at frequent intervals to see whether the printers are doing their work upto the mark, despatch of printed items to the various sections; sort out the time sheets pertaining to the employees; check the time sheets for the number of impressions with the concerned registers and pass them, etc. Paragraph 501 of the said Manual deals with Printers, wherein it) is stated that they are in charge of the machines and the rollers entrusted with them and they are responsible for the printing work done by them. In case of any accident the printers should at once stop it and before doing anything further report to the Foreman in charge of the section, it is also their duty to examine the machines to see that all parts of the machines are properly adjusted and they are thoroughly cleaned and carefully oiled. So also they should notice the defects in the machines and report to the Foreman for necessary action and they shall survey the machine briefly before striking commences in order to avoid any possibility of damage. They should also clean the machine and lubricate everyday. The Senior Machine Foreman who is in direct charge of the Machine Section is responsible for all printing machines and see that they are kept in clean and serviceable condition

at all times. He must also see the progress of the worker in his section and train his men into good and efficient workmen so that no bad work is turned out from the section. He shall also instruct the printers in his section the best methods of producing good work. The Junior Foreman shall pass the sign copy for all the formes taken on the machine and go from machine to machine as of ten as possible and see to the colour, impression, margins and general neatness of the work. He shall also bring to the notice of the officers concerned all cases of defective composing or imposing which causes delay or spoilage and watch carefully how each machine is handled by the printers and give them instructions whenever necessary.

25. Chapter XX deals with Warehouse. In paragraph 680 it is stated that this section is intended for stocking paper of all kinds for printing, pulp boards, art boards, straw boards, etc. required for the entire printing and binding works of the Department. Paragraph 681 deals with Warehouseman. He will supervise all duties connected with the receipt and issue of paper and the maintenance of paper accounts regarding the same. He has to verify the indents and suitable orders are issued in that regard. He must so to do about the maintenance of registers and accounts. With regard to the duties of Assistant Warehouseman, it is stated in paragraph 682 of the said Manual that he shall issue paper and paper boards as per the requisitions received duly sanctioned by the Assistant Superintendent and maintain necessary records. He shall also note on the back of the work order necessary particulars such as the voucher number, date, etc. The facts narrated above would clearly show that in the case of Warehouseman he is only in charge of the stock of the materials and despatch of the same on requests made by various sections and it cannot be called as a skilled job, but whereas in the case of Printers Grade II or Grade I and the Assistant Foreman, Machine, the major part of their work can be certainly said to be skilled one or technical one in the sense that they have to keep an eye on the working of the machineries getting the correct and required colour, clear print/impression, etc. This kind of job can be satisfactorily and effectively done by persons only with theoretical knowledge as well as enough practical experience.

26. In this context it may be recalled that in this Original Petition the Government has filed a counter affidavit categorically admitting that the qualification prescribed for Printers and Warehousemen are different and they are not inter changeable and further the post of Printer is entirely different from that of a Warehouseman.

27. The next aspect to be considered is what would happen because of this grouping, namely including Warehouseman Grade I as one of the feeder categories for the post of Assistant Foreman, Machine. Firstly it has to be pointed out that the quantity and quality of the product in the press would suffer. This is because if a person from the post of Warehouseman Grade I who has not worked as Printer Grade II and Grade I with required qualification is appointed as Assistant Foreman, Machine, necessarily he will not have the required knowledge

and experience to effectively discharge his duties. That apart whenever there is any accident the Assistant Foreman, Machine should act swiftly as the situation demands to prevent any further damage to both men and machines by stopping the machineries. All these could be expected only from an experienced person and not from a raw hand. That apart as far as the present case is concerned, while the Warehouseman Grade II will have two avenues of promotion as Chief Warehouseman and Assistant Foreman, Machine, a Printer Grade I will have only one avenue of promotion. In the earlier part of the judgment we have pointed out the number in the Printing Section as well as Warehouse Section, while in the Printing Section there are more than 300 employees in the Warehouse section there is less than 15. Certainly this will affect the promotion prospects of the employees in the Printing Section. In this regard we have also to note that in the Binding Section and Composing Section the promotion as Assistant Foreman, Junior Foreman and Senior Foreman are given to the experienced qualified workers in that section. Simply because the Warehouseman Grade I and the Printer Grade I are drawing the same scale of pay they cannot be treated alike for the purpose of promotion prospects by grouping them both in the feeder category. It is not as if the learned Counsel for the Respondents would put it that only a handful of personnel or negligible percentage of Printers are affected by this provision of the Special Rules.

28. At this stage we would like to refer to some of the rulings which would clearly indicate the legal position. The first ruling that can be referred is one reported in Prem Chand Somchand Shah and Another Vs. Union of India (UOI) and Another, wherein the Apex Court pointed out that treating unequals as equals would be discriminatory and the same cannot be said to be a valid classification. The Supreme Court observed thus:

As regards the right to equality guaranteed under Article 14 the position is well settled that the said right ensures equality amongst equals and its aim is to protect persons similarly placed against discriminatory treatment. It means that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Conversely discrimination may result if persons dissimilarly situate are treated equally. Even amongst persons similarly situate differential treatment would be permissible between one class and the other. In that event it is necessary that the differential treatment should be founded on an intelligible differentia which distinguishes persons or things that are grouped together from Ors. left out of the group and that differentia must have a rational relation to the object sought to be achieved by the statute in question.

29. In a case reported in Kerala Hotel and Restaurant Association and others Vs. State of Kerala and others, , the Apex Court ruled that reasonableness of classification has to be decided with reference to the realities of life and not in the abstract. It is the substance and not form alone which must be seen. The Apex Court further held that unless the classification so made is found to be arbitrary there is no ground to reject the same and substitute it with Anr. method

simply because Anr. method may be more desirable. In paragraph 23 of the said judgment the Apex Court held thus:

In other words, those grouped together must possess a common characteristic justifying their inclusion in the group, but distinguishing them from those excluded; and performance of this exercise must bear a rational nexus with the reason for the exercise.

30. The next decision that may [be referred is one reported in Secretary, Finance Department and others Vs. West Bengal Registration Service Association and others, . The Supreme Court had to consider the pay fixation revision of the Judicial Officers and Sub Registrars. In that context the Apex Court observed thus:

The responsibilities of a Judicial Officer are also far greater than those of Sub Registrars. Therefore, to compare the Sub-! Registrars with Judicial Magistrates-Munsiffs is to compare unequals. It would, therefore, be wholly arbitrary to place them in the same pay scale.

31. The learned Counsel for the Respondents submitted that whenever some rules are framed and clarifications are issued, there may be certain persons affected and on that score it cannot be said that the rules are bad, irrational, arbitrary, etc. In this regard the learned Counsel relied on certain rulings:

(1) In Kamal Kanti Dutta and Others Vs. Union of India (UOI) and Others, . The learned Counsel drew attention of this Court to the relevant portion of the said Judgment, namely paragraph 52, which reads thus:

In regard to the individual instances cited before us as exemplifying the injustice caused to the promotees, it is not safe to test the constitutionality of a service rule on the touchstone of fortunes of individuals. No matter with what care, objectivity and foresight a rule is framed, some hardship, inconvenience or injustice is bound to result to some members of the service. The paramount consideration is the reconciliation of conflicting claims of two important constituents of service, one of which brings fresh blood and the other mature experience.

(2) V.K. Sood Vs. Secretary, Civil Aviation and others, . The learned Counsel referring to paragraph 5 of the said decision, submitted that equality of opportunity need not be confused with absolute equality as such. The relevant portion in paragraph 5 of the judgment reads thus:

In the The General Manager, Southern Railway Vs. Rangachari, Anr. Constitution Bench held that equality of opportunity need not be confused with absolute equality as such. What is guaranteed is the equality of opportunity and nothing more.

(3) S.P. Shivprasad Pipal Vs. Union of India and Others, . The learned Counsel drew attention of this Court to paragraph 19, wherein the Apex Court ruled thus:

However, it is possible that by reason of such a merger, the chance of promotion of some of the employees may be adversely affected or some Ors. may benefit in consequence. But this cannot be a ground for setting aside the merger which is essentially a policy decision. This Court in *Union of India and others Vs. S.L. Dutta and another*, examined this contention. In *S.L. Dutta Case* a change in the promotional policy was challenged on the ground that as a result, service conditions of the Respondent were adversely affected since his chances of promotion were reduced. Relying upon the decision in the *State of Maharashtra v. Chandrakant Anant Kalkarn* (1981) 4 S.C.G. 130 this Court held that a mere chance of promotion was not a condition of service and the fact that there was a reduction in the chance of promotion would not amount to a change in the conditions of service.

32. As discussed earlier, in this case inclusion of Warehouseman Grade I as one of the feeder categories of Assistant Foreman, Machine would amount to putting unequals as equals or treating unequals as equals. That apart such inclusion has affected Printer Grade I and II very substantially and certainly it has caused serious prejudice to them. That being so, the rulings relied on by the learned Counsel for the Respondents may not come to the rescue of the Respondents.

33. That being so, we are of the view that treating Printer Grade I and Warehouseman Grade I and if none are available then Printer Grade II and Warehouseman Grade II together as feeder categories for the post of Assistant Foreman, Machine cannot be said to be a proper classification or grouping of equals but in fact it is grouping of unequals as equals.

34. For the reasons stated supra we are of the considered opinion that the inclusion of Warehouseman Grade I and Grade II as one of the feeder categories for Assistant Foreman, Machine without any basis or reason whatsoever by the Government of Kerala is arbitrary and irrational.

35. Now that we have answered the first question in the positive, the next question that arises for consideration is whether notwithstanding the fact that inclusion of Warehouseman Grade I as one of the feeder categories of Assistant Foreman, Machine being a policy decision of the State Government, this Court has jurisdiction to declare that inclusion of personnel from the Warehouse Section as feeder category as per Ext. P-1 (a) is/as unconstitutional, arbitrary and irrational and consequently the rule is liable to be struck down to that extent.

36. As mentioned earlier, the Government of Kerala in exercise of its powers conferred by Sub-section (L) of Section 2 of the Kerala Public Services Act, 1968 framed rules for the Kerala Government Presses Subordinate Service as per G.O. (P) No. 327/76/PD, dated 29th July 1976. Admittedly prior thereto Warehouseman Grade I of Branch VIII was not one of the feeder categories for Assistant Foreman, Machine in Branch VIII, that is Printing Section. What is claimed by the State of Kerala is that in 1976 a policy decision was taken by the State and consequently this Warehouseman Grade I was included as one of the

feeder categories for the post of Assistant Foreman, Machine in Branch VIII in the Special Rules. In fact as already mentioned, O.P. No. 9881 of 1985 was filed by three employees in the Printing Section and O.P. No. 1820 of 1987 was filed by a Warehouseman Grade I. A learned Single Judge of this Court disposed of the said Original Petitions by a common Judgment. The point that was considered by the learned Single Judge was whether the State is correct in including the Warehouseman Grade I as one of the feeder categories for Assistant Foreman, Machine. In the said judgment dated 17th February, 1988 the learned Single Judge has observed in paragraph 4 as follows:

The Government then constituted an Expert Committee to go into the question of revision of scales of pay and regarding the parity of posts. On the recommendation of that Committee by Ext. P-4 order dated 21st August 1982, the scale of pay of Warehouseman Grade II was revised as 370-600 with effect from 1st September 1980, The said Committee went into the question of inclusion of Warehouseman in the feeder category for promotion to the post of Assistant Foreman, Machine. Even after the report of the Committee which went into all the aspects relating the service conditions of the personnel belonging to the two branches, the Government thought it fit not to change the Special Rules by excluding the personnel in the Warehouse Section from the feeder category. In these circumstances, it is not for this Court in exercise of the powers under Article 226 of the Constitution to hold that the inclusion of Warehouseman in the feeder category is illegal or arbitrary.

(emphasis supplied)

In fact, as against this judgment W.A. Nos. 726 and 738 of 1988 respectively were filed. These appeals were disposed of by a common judgment dated 5th September, 1988 and the Division Bench of this Court observed as under:

The Government has constituted an expert committee to go into the question of revision of pay scales and regarding parity of posts. The expert committee having examined all aspects, recommended a higher scale of pay of Rs. 370-600 being given to the cader of Warehouseman, making it a feeder category for the post of Assistant Foreman (Machine). The State Government having accepted the opinion of an expert committee in this behalf, the learned Single Judge has rightly come to the conclusion that the decision cannot be regarded as arbitrary or whimsical. The challenge in O.P. No. 9881/85 was therefore rightly repelled.

37. In an endeavour to find out what transpired at the time of framing the Special Rules referred above in the year 1976 and also to know about the recommendations of the expert committee, we called up on the learned Government Pleader to produce the files. In the file relating to G.O. (P) No. 327/76/PD., dated 29thjuly 1976, we do not find anything which prompted or persuaded the Government to take a policy decision including the category in question, Warehouseman Grade I, as one of the feeder categories for Assistant Foreman, Machine. The learned Government Pleader also did not place any other

material in this regard. Or in other words, we have to only proceed on the basis that the Government while taking such a policy decision did so arbitrarily without any rhyme or reason or a reasonable classification based on the qualifications and experience. Then we examined the expert committee report. The Government passed G.O. (Rt.) 249/79/H, Edn., dated 11th December 1979 appointing an expert committee consisting of ten members representing the State as well as the Unions. The terms of reference for the said expert committee were:

- (i) Is there any special (technical) nature of work in the Government Presses calling for a different pay structure,
- (ii) Whether any change in the present staff pattern is called for and, if so, what should be the revised pattern with relation to the turnover of work,
- (iii) Whether the available avenues of promotion to the employees are too low calling for higher grade above that of the U.D., and if so, what should be the criterion for giving such higher grade.

The expert committee filed a detailed report running to more than 100 pages. We called upon the learned Government Pleader to point out that portion of the report wherein the said expert committee considered the correctness or otherwise/justifiability or otherwise in including the category, namely Warehouseman Grade I in the feeder category for Assistant Foreman, Machine. Though the learned Government Pleader pointed out various portions in the said report, we have found all those relate to the pay structure and number of staff required in each post and not about the inclusion of the category in question as one of the feeder categories for Assistant Foreman, Machine. That being so, it has to be taken that in the first round of litigation before this Court in the Original Petitions and Writ Appeals, on behalf of the State it was erroneously represented that the expert committee also went into the issue.

38. Then comes Ext. P-3 filed in this Original Petition. It is a communication dated 15th January 1987 from the Commissioner and Secretary to Government to the Director of Printing and Stationery, wherein after referring to a petition dated 5th January 1986 from the Printers of Government Press, Trivandrum it has been observed that in view of the anomaly pointed out in the petition promotion to the post of Assistant Foreman, Machine from Warehouseman may be kept in abeyance till necessary amendments to the Special Rules are issued. The matter did not stop there. Thereafter a meeting was convened with the representatives of the various Unions of the Government Presses on 20th June 1990 by the concerned Minister. In the said meeting certain recommendations were made. The relevant one reads thus:

12. It was generally agreed to recommend to maintain the Warehouse Section independent of other section of the Government Central Press, Thiruvananthapuram with the attendant requirement of upgradation of a post of Section Head (Demand No. 24).

Following this the Government passed G.O. (Ms.) 301/90/H. Edn., dated 28th November 1990 which reads thus:

In the case of Printing and Warehouse Sections the qualification prescribed for Printers and Warehouseman are different. The total number of posts under Warehouse Section is 11 (eleven) and that in Printing is 328. Considering the total number of posts in each category those in the Warehouse Section gets an early promotion compared to those in Printing Section. The undue advantage to Warehouseman has been discussed at various levels and various occasions.

Government have examined the matter in detail and are pleased to order that the Warehouse Section will be separated from the Printing (Machine) Section with immediate effect with independent status.

39. In this Original Petition on behalf of the first Respondent a counter-affidavit has been filed, relevant portion of the same reads thus:

The qualification prescribed for Printers and Warehouseman are different and they are not inter changeable categories. The job of a Printer is entirely different from that of a Warehouseman.

It is also submitted that Government in G.O. (Ms.) 301/90/H, Edn. dated 29th November 1990 ordered to separate the Warehouse Section from the Printing (Machine) Section with independent status. A consolidated proposal to amend the Special Rules issued as per G.O. (P) 327/76/P.D., dated 22nd September 1976 is under consideration of Government.

40. All that have been narrated earlier would clearly demonstrate the following:

(a) In 1976 the Government when, framed Special Rules including Warehouseman Grade I as one of the feeder categories for Assistant Foreman, Machine, it had no materials whatsoever available to take such a decision and such a decision was taken arbitrarily without any rhyme or reason.

(b) The expert committee did not go into the question of correctness or otherwise of including the category in question as one of the feeder categories for the post of Assistant Foreman, Machine.

(c) Even the Government in January, 1987 thought it necessary to keep in abeyance the promotions to the post of Assistant Foreman, Machine from Warehouseman till necessary amendments to the Special Rules are issued.

(d) In the meeting held on 20th June 1990 by the concerned Minister with the representatives of the various Unions and the Government decided to maintain the Warehouse Section independent of other section of the Government Central Press.

(e) The Government by issuing G.O. (M.S.) 301/90/H. Edn., dated 28th November 1990 clearly realised that in the case of Printing and Warehouse Sections, the qualifications prescribed for the Printers and Warehousemen are

different, the total number of posts under Warehouse Section is 11 and that in Printing Section is 328 and hence considering the total number of posts in each category those in the Warehouse Section gets an early promotion compared to those in Printing Section which would show that there has been undue advantage to the Warehouseman. In the said order Government ordered that the Warehouse Section will be separated from the Printing (Machine) Section with immediate effect with independent status.

(f) In the counter-affidavit also the Government took a clear stand that the qualifications prescribed for Printers and Warehousemen are different and they are not inter-changeable categories and that the job of a Printer is entirely different from that of a Warehouseman.

41. In the light of what is stated above it has to be held that the Government when framed the Special Rules did so without any rhyme or reason and arbitrarily and that now it has realised the mistake and intends to rectify the same.

42. The Apex Court has repeatedly held that Article 14 strikes at arbitrariness in State action, whether it be of the Legislature or of the executive or of an "authority" under Article 12, because any action that is arbitrary must necessarily involve the negation of equality and if it affects any matter relating to public employment, it is also violative of Article 16, since an action per se arbitrary itself denies equal protection by law. Certain decisions "n this regard can be usefully referred to. In A.L. Kalra Vs. Project and Equipment Corporation of India Ltd., the Supreme Court ruled thus:

Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14, and if it affects any matter relating to public employment, it is also violative of Article 16. Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment.

* * *

Wherever, therefore, there is arbitrariness in State action whether it be of the Legislature or of the executive or of an "authority" under Article 12, Article 14 immediately springs into action and strikes down such State action.

The next decision that can be noticed to is one reported in Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others, . In paragraph 29 of the said judgment the Apex Court observed thus:

It can no longer be doubted at this point of time that Article 14 of the Constitution of India applies also to matters of Governmental policy and if the policy or any action of the Government, even in contractual matters, fails to satisfy the test of reasonableness, it would be unconstitutional.

* * *

It was emphasised that every State action has to be for a public purpose and must promote public benefit. Referring to some earlier decisions, it was reiterated that all State actions "whatever their mien" are amenable to constitutional limitations, the alternative being to permit them "to flourish as an imperium in imperio". It was pointed out that "Governmental policy would be invalid as lacking in public interest, unreasonable or contrary to the professed standards", if it suffers from this vice. It was stated that every State action must be reasonable and in public interest and an infraction of that duty is amenable to judicial review. The extent of permissible judicial review was indicated by saying that "actions are amenable to judicial review only to the extent that the State must act validly for a discernible reason, not whimsically for any ulterior purpose.

In the decision reported in *Union of India and others Vs. S.L. Dutta and another*, the Apex Court ruled that if the considerable materials in the fixing of policy are of a highly technical or scientific nature, the Court should rarely interfere. The Apex Court in that case was considering change of policy in the promotion of the Indian Air Force. In that context the Apex Court observed:

A consideration of a policy followed in the Indian Air Force regarding the promotional chances of officers in the Navigation Stream of the Flying Branch in the Air Force qua the other branches would necessarily involve scrutiny of the desirability of such a change which would require considerable knowledge of modern aircraft, scientific and technical equipment available in such aircraft to guide in navigating the same, tactics to be followed by the Indian Air Force and so on. These are matters regarding which Judges and the lawyers of Courts can hardly be expected to have much knowledge by reason of their training and experience.

In the present case the Court can very well decide that certainly the issue to be decided cannot be said to be highly technical or scientific in nature. In the ruling reported in *State of Punjab and Others Vs. Ram Lubhaya Bagga Etc. Etc.*, the Apex Court ruled thus:

So far as questioning the validity of governmental policy is concerned in our view it is not normally within the domain of any Court, to weigh the pros and cons of the policy or to scrutinize it and test the degree of its beneficial or equitable disposition for the purpose of varying, modifying or annulling it, based on howsoever sound and good reasoning, except where it is arbitrary or violative of any constitutional statutory or any other provision of law.

43. Applying this legal principle to this case, this Court has no hesitation to hold that inasmuch as the policy decision taken by the State Government has not satisfied the touchstone of reasonableness, but on the other hand the same is arbitrary and irrational and was taken without any rhyme or reason, the same is unconstitutional being violative of Article 14 of the Constitution of India.

44. Then the next question that arises for consideration is whether by virtue of the fact that that part of the rule has been in force from 1976 and now

questioned in the year 1990, whether this Court is prevented from interfering with it on the ground that there is long lapse of time of 15 years. True, before this Original Petition came to be filed considerable time have passed. But, one has to remember that that will not automatically stand in the way of this Court considering whether that part of the rule which is the subject-matter of discussion in this Original Petition is legal or not.

45. The Apex Court in the decision reported in Union of India and Others Vs. Dr. S. Krishna Murthy and Others, ruled thus:

At the same time, it should be borne in mind that when a particular rule conferring benefits on a particular group of Government servants in recognition of their past services in the army, has been in operation for over twenty years, this Court will be very slow to interfere with the rule and deprive such group of Government servants of the benefits so conferred on them. This, however, does not mean that this Court will shut its eyes even though such rules are illegal and are violative of the provisions of Articles 14 and 16 of the Constitution.

Similarly in Motor General Traders and Another Vs. State of Andhra Pradesh and Others, the Apex Court ruled thus:

Time does not run in favour of legislation. If it is ultra vires, it cannot gain legal strength from long failure on the part of lawyers to perceive and set up its invalidity. Albeit, lateness in an attack upon the constitutionality of a statute is but a reason for exercising special caution in examining the arguments by which the attack is supported.

46. As far as the present case is concerned, three aspects have to be taken into consideration. Firstly, as already mentioned, qualified and trained hands with enough experience are necessary to achieve best results. Secondly it is a case where the employee has to deal with machineries and in emergency, namely whenever there is an accident, etc. he has to act swiftly to prevent major disaster for men and machineries. Thirdly it is not as if there is one time violation/danger and that is already over long back. This is something like a continuous loss and risk and that being so, to say that by virtue of the lapse of time the validity of the rule cannot be questioned is nothing but refusing to face the reality. In this view of the matter we hold that the delay in questioning that part of the validity of the rule, which is the subject-matter of this writ petition, will not stand in the way of this Court striking down the same.

47. In the light of the above findings we hold that for the purpose of recruitment as Assistant Foreman, Machine, the categories, namely (1) Warehouseman- category 1 of Branch VIII or (2) Assistant Warehouseman- category 2 of Branch VIII should not be considered. Or in other words, Branch VII in the Annexure to the Special Rules in so far as it lays down that Warehouseman- category 1 of Branch VIII or Assistant Warehouseman- category 2 of Branch VIII are eligible for being considered for promotion as Assistant Foreman, Machine is hereby quashed.

48. Consequently the order of the Director of Printing and Stationery (Printing), Thiruvananthapuram dated 7th September 1991 bearing No. 23715/85/E4 in so far as promoting the third Respondent as Assistant Foreman, Machine is hereby quashed.

49. There will be a further direction to the second Respondent to promote the seniormost among the Petitioners in the place of the third Respondent.

50. There will also be a direction to the second Respondent to desist from promoting the 4th Respondent as Assistant Foreman, Machine.

The Original Petition is allowed.