

(1973) 03 AP CK 0004
In the Andhra Pradesh High Court

V.S. Shankar and Others

APPELLANT

Vs

Reserve Bank of India and Another

RESPONDENT

Date of Decision : 05-03-1973

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 16, 226

Citation : (1974) 2 LLJ 410

Hon'ble Judges : Krishna Rao, J

Bench : Single Bench

Judgement

Krishna Rao, J.—This is an application under Article 226 of the Constitution of India for the issue of an appropriate writ or direction declaring that Para II(c) of the Administration Circular No. 8, dated 13th May, 1972, issued by the Reserve Bank of India, is unconstitutional, being violative of the provisions of Articles 14 and 16 of the Constitution and to further direct the respondent to consider the case of the petitioners for selection to the post of staff officers, Grade cadre, without reference to the provisions of Para II (c) mentioned above. The five petitioners herein are working at present as stenographers in the Hyderabad office of the Reserve Bank of India. They were originally recruited as typists and after sometime promoted as stenographers. Petitioner 2 was started as a typist in 1956 and was promoted as stenographer in 1963. Petitioner 2 was a typist from 1962 and became a stenographer in 1966, Petitioner 3 was first appointed as a typist in 1964 and became a stenographer since 1968. Petitioner 4 started as a typist since 1966 and became a stenographer only in 1971. The stenographers were also considered for promotion to the posts of staff officers. Grade II, along with the clerks. Prior to 1964 the method of recruitment was by interviewing all the candidates, i.e. clerks and stenographers. The stenographers had to pass Parts I & II examinations of the Indian Institute of Bankers and the clerks had to pass Part I examination and they are required to pass Part II for confirmation as staff officers, Grade II. In the panel of selected candidates the stenographers used to be placed at the top and above the clerks and another group of employees called the economics assistants, who were also recruited by

promotion to the staff officers, Grade II posts. In 1964 a change was introduced by Staff Circular No. 615/110-63/64, dated 23rd April, 1964, requiring a minimum total service of fifteen years for a stenographer out of which five years should be in the capacity of a stenographer. The other condition of passing Parts I and II, Indian Institute of Bankers' Examination, was retained. We are not concerned in this case with the economics assistants and the changes introduced with respect to them. The next change in the service rules was introduced by the impugned Administration Circular No. 8, dated 13th May, 1972. In addition to the fifteen years' length of qualifying service for the stenographers, it was further provided that all the clerks and stenographers should appear at a qualifying written examination that after selection at the examination the stenographers should undergo one year's training as clerks and that the stenographers en bloc should be placed below the clerks in the panel to be prepared. Out of the petitioners only petitioner I completed fifteen years of service by 23rd December, 1971 and he was allowed to appear for the examination by order of this Court. The petitioners' ground of complaint is that these drastic changes were introduced in 1972 as a result of the representations of employees' union in which the clerks had a dominant voice. It is submitted that the changes introduced are discriminatory and have deprived the petitioners of equality of opportunity guaranteed under Article 16 of the Constitution of India. It is asserted that the stenographers (petitioners) are superior to the category of clerks as their scale of pay is higher than that of clerks. It is, therefore, contended that the conditions imposed by the new circular are arbitrary, discriminatory, void and hence unconstitutional. It is further urged that prior to the impugned circular the stenographers were placed en bloc over the clerks in the panel but now the stenographers are placed below the list of the clerks in the panel. This provision also is said to be wholly arbitrary and unreasonable and also deprives the petitioners of equality of opportunity in the matter of promotion. In other words, it is urged that though the stenographers are considered for promotion, their chances of promotion have become illusory and virtually nil and in that sense they were deprived of equality of opportunity in the matter of promotion.

2. A counter-affidavit was filed by the Deputy Manager, Reserve Bank of India, Bombay, on behalf of the respondents, the Central Board of Directors of the Reserve Bank of India, Bombay, and the Manager, Reserve Bank of India, Hyderabad. The first point raised in the counter-affidavit is that the terms of appointment are purely contractual in nature in view of the declaration form signed by the petitioners and that, therefore, the writ petition is not maintainable. This contention is devoid of any force. If the circular is violative of the provisions of Articles 14 and 16 of the Constitution, it is no answer to say that the relationship between the parties is contractual. Another contention raised is that promotion to a higher grade is not a matter of right. This question also does not arise as the claim of the petitioners is not to enforce the right of promotion but to enforce a fundamental right conferring equality of opportunity

for being considered for promotion. The next point urged is that the provisions of Articles 14 and 16 of the Constitution are inapplicable to the present case as the Reserve Bank of India is not a "State" as defined in Article 12 of the Constitution. This question has not been seriously argued before me presumably in view of the judgment of the Supreme Court in Rajasthan State Electricity Board, Jaipur Vs. Mohan Lal and Others, . The case was argued before me on the assumption that the Reserve Bank is a State within meaning of Article 12 of the Constitution. So far as the merits are concerned it is urged that there is no question of equality between the category of clerks and the category of stenographers. Though the stenographers' scale of pay is higher than that of the clerks, the two cadres are entirely different. It is stated that the nature of work, responsibilities, experience and channels of promotion are entirely different from each other. The requirement as to fifteen years of service was introduced for the first time in 1964 on a fair consideration of all the relevant circumstances and it was introduced only for the promotion of efficiency of stenographers and not for any purpose of discriminating them. Ever since 1964 this rule has not been challenged by any one in the whole of India till the filing of this writ petition. So far as the requirement of one year's training as a clerk is concerned it was found essential to introduce such a clause in order to equip the stenographers with the necessary training for supervision which is expected of a Grade II officer. The main work entrusted to the staff officers, Grade II, is supervision over the work of the clerical staff. It has been, therefore, decided that the clerks could be recruited as staff officers, Grade II, without any such training, or requirement as to length of service. On the other hand, having regard to the nature of work it has been decided by the department that a stenographer cannot be straightway equated to a clerk to be promoted as a staff officer, Grade II. It was, therefore, considered that in addition to fifteen years' experience as a stenographer he should also undergo one year's actual training as a clerk. Though the work of the stenographers in a way concerns the work done by the clerks, it has been found that a stenographer requires a longer period of service in order to equip himself with the nature of clerical work. It is, therefore, submitted that this is not a case where equals were treated unequally. The stenographer and the clerk belong to different classes and it is, therefore, permissible to lay down different conditions for promoting them to the posts of staff officers, Grade II. It was also stated as a matter of history that the stenographers now stand a better chance than before. The previous practice was for the particular officer to certify that his stenographer possesses the necessary aptitude expected of a supervising official. As there was no yard-stick to measure such an aptitude on the part of a stenographer and having regard to the subjective satisfaction of different officers under whom the stenographers served, it was found that there was an element of arbitrariness resulting in injustice to the stenographers in the matter of further promotions. It was accordingly decided to abolish the said practice and permit the stenographers to appear at the qualifying examination along with the clerks, so that they become eligible for promotion through a more objective process. So far as the place allotted to the stenographers in the panel, viz., below the group

of clerks is concerned, it is submitted that the clerks belong to a superior class when compared to the stenographers and more readily suitable for being posted as Grade II officers and, therefore, can be no ground of complaint in this behalf on the part of the stenographers. It was further submitted that this circular has been issued after full consultation with the unions and the officers all over India and that there are no valid grounds for granting the reliefs asked for in the writ petition.

3. The petitioners filed a reply-affidavit practically reiterating the contentions set out in the original writ petition.

4. In order to appreciate the rival contentions it is necessary to refer to the salient features of the latest scheme (Administration Circular No. 8) for promotions to the posts of staff officers, Grade II, introduced by the Reserve Bank of India. The candidates should secure a specified minimum percentage of marks under Para 1 at a qualifying written test. The number of candidates called for the qualifying tests will not exceed double the number of anticipated vacancies under Paras II (a) and II (b)) that would occur during a panel year, i.e., 1st September of a year till 31st August of the succeeding year.

5. Paragraph II (c) which is relevant for the purpose of this writ petition lays down that so far as stenographers are concerned they should put in a minimum period of fifteen years of service in Class III cadre, including temporary service and including service in Class II cadre in the case of a personal assistant. If successful, he will be posted in the clerk's desk for acquiring experience. Then he will be placed in the next list to be prepared as a result of the ten succeeding the one in which he passed. He will have the seniority in the list below the junior most successful candidate (i.e., clerk) in the test in which he is qualified.

6. The learned Counsel for the petitioners objected to the three following conditions laid down with respect to the stenographers as being violative of the provisions of Articles 14 and 16 of the Constitution, viz.,

(1) requirement of fifteen years of service ;

(2) one year's clerical training after passing the qualifying examination ; and

(3) being placed at the bottom of the list, i.e., below the clerks in the matter of seniority.

7. I will first consider the objections relating to fifteen years' service and one year's clerical training. Both these objections relate to the discriminatory treatment, given to the stenographers. The scope of Article 16 read with Article 14 has now been settled by more than one pronouncement of the Supreme Court and it will be sufficient for the purpose of this case to refer to the following decisions.

8. In *All India Station Masters' and Assistant Station Masters' Association, Delhi and Others Vs. General Manager, Central Railway and Others*, , it was pointed out

as follows:

The concept of equality can have no existence except with reference to matters which are common as between individuals, between whom equality is predicated.... There is, in our opinion, no escape from the conclusion that equality of opportunity in matters of promotion must mean equality as between members of the same class of employees and not equality between members of separate, independent classes.

9. That was a case in which certain roadside station-masters objected to the channel of promotion which enabled guards to be promoted as station-masters in addition to the other line of promotion open to them as guards, as having contravened the provisions of Article 16(1) of the Constitution. The contention was rejected on the ground that the road-side station-masters and the guards form two distinct and separate classes, as between whom there is no scope for predicated equality or inequality of opportunity in matters of promotion,

10. Again in *Govind Dattatray Kelkar and Others Vs. Chief Controller of Imports and Exports and Others*, , the law is slated as follows:

Article 16 of the Constitution is only an incident of the application of the concept of equality enshrined in Article 14 thereof. It gives effect to the doctrine of equality in the matter of appointment and promotion. It follows that there can be a reasonable classification of the employees for the purpose of appointment or promotion. The concept of equality in the matter of promotion can be predicated only when the promotees are drawn from the same source. If the preferential treatment of one source in relation to the other is based on the difference between the said two sources, and the said difference have a reasonable relation to the nature of the office or offices to which recruitment is made, the said recruitment can legitimately be sustained on the basis of a valid classification.

11. In view of the above principles laid down by the Supreme Court the petitioners have first to establish that they belong to the same class as the clerks, for unless they are equals they cannot complain of unequal treatment, I have already pointed out that the two classes are entirely different having regard to the nature of work, the responsibilities of their office and the chances of promotion. The mere fact that the stenographers had a higher scale of pay is not the sole criterion to determine any question of equality or superiority. The question of equality has to be judged from the nature of the work and the relation of such work to the duties which have to be discharged in the posts to which they seek promotion. As pointed out in the counter-affidavit filed on behalf of the Bank, the main work of the staff officers Grade II, is supervision of the work of the clerks. It is, therefore, clear that the clerks who are promoted as staff officers, Grade II, stand on an entirely different footing from stenographers who have no clerical experience. It is as a result of experience over a period of time that when they take down the orders of their superiors, they indirectly gain experience in the work of the clerks. But this is obviously a remote method of acquiring

clerical experience. It is as a result of experience over a long course of years it was decided by the bank in 1964 to introduce the rule of fifteen years' experience as a stenographer so as to make him ripe and eligible for promotion to the post of staff officer, Grade II. It is submitted on behalf of the petitioners that even otherwise the requirement of fifteen years of service is arbitrary. It is not suggested on behalf of the petitioners as to how many years experience can be considered to be reasonable.. But I do not agree with the extreme contention on behalf of the petitioners that there should be no rule at all requiring any length of experience on the part of the stenographers. The requirement of such a rule prescribing years of service is a matter entirely within the discretion and judgment of the particular department and it is not open to me to say that it is purely arbitrary. As suggested by the learned Counsel for the bank the rule of fifteen years was arrived at on a consideration of all the relevant and material circumstances and factors gathered from long experience over a course of years throughout the branches in India. Such a condition is in the nature of a selective test which is always valid and not violative of Article 16 of the Constitution. It has also been uniformly held by the Supreme Court that in order to get the best of talent and service it is open to the State to lay down such conditions which would promote efficiency. It is also significant to note that ever since 1964 this requirement of fifteen years' experience has not been challenged by any stenographer, in the whole of India. So far as the second requirement of one year's training as a clerk is concerned, I quite agree with the stand taken by the bank that such intensive and actual training is essential in order to promote efficiency in the work of supervision over the clerks. It goes without saying that unless the supervising officer knows all the particulars of clerical work it is not possible for him to exercise any effective supervision over the clerks. I, therefore, hold that the stenographers and the clerks belong to two different categories of employees and hence it is open to the department to lay down different conditions for promoting them to the posts of staff officer, Grade II.

12. The next point raised on behalf of the petitioners is that if the stenographers are placed below the clerks en bloc the opportunities of promotion become nil or illusory. In other words, it is contended that when the clerks and the stenographers, who pass at the qualifying test, are put in the same panel, there is no justification for any further differential treatment between them on the basis of their respective sources of recruitment. There is one line of decisions of the Supreme Court, in which it was laid down that when recruitment for a service is made out of two different sources and the members of the different services are integrated or merged into one cadre, it is not thereafter permissible for the State to discriminate between them in the matter of further promotion, etc., solely on the basis of original sources from which they are respectively drawn vide *Mervyn Coutindo and Others Vs. Collector of Customs, Bombay and Others*, and *Roshan Lal Tandon Vs. Union of India (UOI)*, . But this principle does not apply to the present case for the simple reason that the clerks and the stenographers have not yet been merged into the cadre of staff officers, Grade

II. In fact there is no rule in the scheme which is under challenge now providing for a differential treatment between the clerks and the stenographers subsequent to their being recruited as staff officers, Grade II,

13. The stage at which the petitioners complain of discrimination is when the clerks and the stenographers have become eligible for promotion to the higher post and have been placed in a panel. It has to be noted that the panel is merely a list of eligible candidates and nothing more. It is not strictly a list of seniority, among staff officers, Grade II. No doubt in a loose sense. Para II (c) of the circular speaks of the stenographers being given seniority lower than the clerks. What is really meant is that promotions should be made in accordance with the order contained in the panel, viz., the clerks will be promoted in the first instance and thereafter the stenographers will be promoted. This would result in the staff officers, Grade II, who were previously clerks, becoming seniors to staff officers, Grade II, who were previously working as stenographers. The question for consideration, therefore, is when recruitment to a certain cadre of officers is being made out of two different sources, what are the guiding principles in the fixation of seniority among the persons drawn from different groups. One method of fixing the seniority is to arrange the list as per the merit, i.e., as per the marks obtained at the examination. But in the present case such a principle has not been followed, for the examination is only a qualifying test to determine the number of eligible candidates. Another method is to arrange the seniority by a system of rotation. *Mervyn Continho, Collector of Customs. Bombay, (supra)*, is a case where appraisers were appointed by direct recruitment as well as by promotion and the seniority among such appraisers was fixed alternately by rotation and it was held to be valid. In *Govind Dattatray v. Chief Controller of Imports and Exports (supra)*, it was held that when recruitment is made from different sources, it is open to the State to fix any ratio and such a ratio is held to be always good, unless it is wholly unreasonable. In the said case recruitment was made partly by promotion and partly by direct recruitment and the qualification and conditions for appointment are different for each of the groups. The recruitment was done in the ratio of 75 per cent for direct recruits and 25 per cent for promotions. It was held in the above case:

...What ratio would be adequate and equitable would depend upon the circumstances of each case and the requirements and needs of a particular post. Unless the ratio is so unreasonable as to amount to discrimination it is not possible for this Court to strike it down or suggest a different ratio.

14. In *S.G. Jaisinghani Vs. Union of India (UOI) and Others*, , the recruitment was from two different sources, viz , departmental promotion and direct recruitment. It was held that the quota fixed for the two sources is based upon a reasonable classification of the employees for the purpose of promotion. Though in the present case we are not concerned with any quota or ratio in the matter of recruitment from different sources, the principles on which the above cases are decided have a bearing on the instant case. In *State of Mysore v. M.H. Krishna*

Murthv and Ors. (1972) 2 S.C.W.R. 591, the Supreme Court had to consider a case where Government employees serving in two wings, of a department were integrated into a single permanent service, but as regards further promotions the same old distinction was made on historical grounds. It was held by the Supreme Court that when once there was an integrated service, they cannot be divided into two classes on the basis of their previous history only for the sake of promotions. But it was observed that in some cases quotas may be fixed between what are different classes or sources for promotion on grounds of public policy. It was further observed that if the classes are to be considered for promotion are really different inequality of opportunity in promotional chances may be justified, but if they really belong to one class, no distinction can be made for the purpose of selection.

15. In Bhadandra Chandra v. Postmaster-General, Assam Circle A.I.R 1968 GAU 9, it was held that in fixing a seniority list of candidates belonging to different sources, viz., direct recruits and those belonging to the department and where the method of recruitment also differed as well as qualifications, the seniority can be fixed taking into account the various factors and there can be no complaint of discrimination under Article 14 or 16 of the Constitution.

16. The above authorities establish that in fixing seniority among persons recruited from different sources it is open to the authorities to fix any quota or ratio in the same manner as such a ratio can be fixed for the purpose of recruitment from different classes. But it is fairly established that when once the persons belonging to the same class after integration they cannot be discriminated for the purpose of future promotions solely on the basis of their origin.

17. The above cases have been considered by a recent Full Bench decision of this Court in Writ Petition No. 169 of 1968 and batch, dated 21st January, 1972. The Full Bench had to deal with a case of fixation of seniority among supervisors in the engineering department (Andhra and Telangana) who have been integrated in a common gradation list. The rule altering the ratio of 2: 1 as 4: 1 was challenged before the said Full Bench. The contention was that when once the persons belonging to the two regions have been integrated in a common list after equation of posts it was no longer open to the State to lay down any such ratio. It was held by Parthasarathy, J., delivering the judgment on behalf of the Full Bench that the fixation of seniority by rotation is based on a reasonable classification and hence is valid, though it was incompatible with the respective duration and length of service of the employees. It was further pointed out in the Full Bench judgment that the mere success at a qualifying examination cannot be taken as the basis for fixing seniority and that the said success merely rendered the candidates eligible for promotion and nothing more.

18. In the present case, as I have already pointed out, there is no challenge as regards any rule of seniority among the staff officers, Grade II, or as regards any ratio or quota in the matter of recruitment. The narrow point which falls for

consideration is as to what is the effect of the panel in which the names of the clerks as well as the stenographers, who passed at the qualifying examination have been listed. No authority has been placed before me to show that the mere preparation of a panel of persons who have qualified at an examination confers any right upon the parties in the matter of priority as regards promotions. It has to be remembered that though all the successful candidates have been put in a single panel, they have not yet been integrated into a single unit of staff officers, Grade II. Until they are so promoted, they retain their differential character, viz., as clerks and stenographers. So long as this distinction continues to exist it is open to the authorities to adopt different principles with respect to different classes. The effect of a qualifying examination has been considered by the Supreme Court in *Ganga Ram and Others Vs. The Union of India (UOI) and Others*, . No doubt in the said case the Supreme Court was considering the effect of certain rules contained in the Railway Establishment Code, but we may usefully adopt the principle on which the said rules have been interpreted.

19. In the said case the procedure for determining the seniority of Grade I accounts clerks came up for consideration. The seniority of direct recruits of Grade I is determined on the basis of their appointment, whereas the seniority of the promotees from Grade II is determined with reference to their substantive and basic seniority in Grade II irrespective of the dates they qualify for promotion by passing the qualifying examination. It was held that such a rule does not violate Articles 14 and 16. As regards the effect of a qualifying examination the following observations may be usefully set out:

It is quite clear that Para 49 does not confer any right to immediate promotion on those Grade II clerks who pass the qualifying appendix 2 examination. The only benefit which accrues to them is that one hurdle is removed from their way and they become eligible for being considered for promotion to Grade I. This promotion is governed by the test of seniority-cum-suitability. All those who qualify for promotion are treated at par for this purpose and they are grouped together as constituting one class. The fact that one person has qualified earlier in point of time does not by itself clothe him with a preferential claim to promotion as against those who qualify later. This examination is considered to be a continuous examination and as is clear from Para 17 success at this examination does not constitute the basis of seniority which continues to be dependent on the substantive or basic seniority in Grade II.. . The State which encounters diverse problems arising from a variety of circumstances is entitled to lay down conditions of efficiency and other qualifications for securing the best service for being eligible for promotion in its different departments . . . The departmental authority is the proper judge of its requirements. The direct recruits and the promotees like the petitioners, in our opinion clearly constitute different classes and this classification is sustainable on intelligible differentia which has a reasonable connexion with the object of efficiency sought to be achieved . . . It is, therefore, difficult to find fault with the provisions which places in one group all those Grade II clerks who have qualified by passing the

appendix 2 examination.

20. Applying the above principles to the present case it follows that the clerks and the stenographers who have passed at the qualifying written examination do not acquire any right to promotion by merely being put in a panel. As observed by the Supreme Court in the case cited in *Ganga Ram and Others Vs. The Union of India (UOI) and Others*, , the effect of passing at the qualifying examination is only to remove a hurdle in their way for further promotions to the posts of staff officers, Grade II. In the matter of actual promotion there is nothing illegal in the department promoting the clerks as a group in the first instance and postponing the promotions of the stenographers to a later stage. No doubt it may seem inequitable but regarding it as a channel of promotion the stenographers cannot complain of better chances being open to the clerks when once they had already exercised their choice and option to the post of a stenographer which was no doubt attractive in view of its higher salary. I, therefore, hold that the petitioners have no legal right to complain about the new scheme of promotions introduced by the Reserve Bank of India. It is urged on behalf of the petitioners that previous to the new scheme, the stenographers were placed at the top of the clerks en bloc and that they have now been brought to the bottom.

21. This argument is based upon a misconception that the panel creates any rights. Hence nothing turns upon the place fixed in the panel. The placing of the two groups one below the other may even be regarded as valid on the analogy of rotation system in fixing seniority or recruiting from different sources.

22. There are, therefore, no merits in this writ petition. But to avoid frustration and dissatisfaction among the stenographers I may suggest that the Reserve Bank may frame suitable rules for fixing the seniority among the staff officers, Grade II, on some rational and equitable principles, i.e., by length of service or marks obtained at the qualifying examination or by adopting a reasonable ratio between the two classes, so that the chances of further promotions for the stenographers may not be illusory. For the above reasons I dismiss this writ petition, but there will be no order as to costs.