Devi Prasad and Others

Vs

Government of Andhra Pradesh and Others

Vs

Rajaram Mohan and Others

Vs

State of Andhra Pradesh and Others

Writ Petition No. 132 of 1977 and Civil Appeals Nos. 1225-26 of 1977

(V. R. Krishna Iyer, A. P. Sen JJ)

08.04.1980

JUDGMENT

KRISHNA IYER, J. –

1. These two appeals and the sister writ petition raise the same point of law, seeking to derive succor from a ruling of this Court in the State of Gujarat v. C. G. Desai ((1974) 2 SCR 255 : (1974) 1 SCC 188 : 1974 SCC (L&S) 116), which re inclined to think is distinguishable because unlike in that decision the weightage which is objected to as violative of Article 14 is based upon a rule framed under proviso to Article 309 which we regard as reasonable and in the circumstances fair.

2. We are upholding he decision of the High Court in P. Bhavanarayana v. D. V. Prabhakarasarma (Letters Patent Appeals Nos. 942 of 1974 and 193 & 858 of 1975) where there is an elaborate discussion of the questions of law raised and reference to the precedents which have a bearing on the point debated before us. We wholly agree with the reasoning and conclusion of the High Court and that is why we are not inclined to elaborate over again the reasons for rejecting the submission of the appellants.

3. Briefly, the case turns on the validity of a certain rule in the Andhra Pradesh Engineering Subordinate Service Rules. There are two sources of initial recruitment to the service, those who posses diplomas are recruited to the posts of Supervisors, those who posses engineering degrees are recruited to the posts of Junior Engineers. The fact is that by and large they discharge the same functions and it is wrong to say that there is no functional parity as between Supervisors and Junior Engineers. However, the academic superiority of the Junior Engineers is also a reality and has been recognised in the rules framed. The promotion to the next higher rank is to the post of Assistant Engineers in the State Engineering service and for the purpose of promotion to that rank, according to the rules, it was necessary for a degree holder like a Junior Engineer to put in five years of service while for a non-degree holder, that is a diploma holder like a Supervisor, a minimum service of ten years was prescribed. This caused considerable hardship to the Supervisor and, therefore, having a second look at the whole situation, government by G.O. Ms. No. 893 framed the following

rule which may be read here :

> Note 2. - Supervisors who acquire, while in service, B.E., A.M.I.E. (India) qualification shall be entitled to count 50 per cent. of their service rendered as Supervisor prior to acquisition of such qualification, subject to a maximum limit of 4 years as if it had been in the post of Junior Engineers for the purpose of consideration for appointment by transfer to the post of Assistant Engineer from Junior Engineers and subject to the following conditions :
>
> (1) They should render a minimum service of one year after acquisition of B.E. or A.M.I.E. (India) qualification.
>
> (2) They should be considered to have been placed below the list of the Junior Engineers of the year after giving weightage as indicated above.
>
> (3) They should put in a total service of 5 years as Junior Engineer inclusive of the period given as weightage.
>
> (4) The benefit of weightage given above shall be given effect for the purpose of all selections that are made by Public Service Commission pertaining to the years from 2nd January, 1968 onwards till 28th February, 1972.

4. It is apparent from this new rule that nothing unreasonable or shocking, nothing arbitrary or violative of fair play is done because what has been prescribed is that if a Supervisor acquires A.M.I.E while in service and renders service as Supervisor be he is given credit a Junior Engineer for half the period of his service as Supervisor subject to a maximum of four years. It is common ground that A.M.I.E is equal to an engineering degree. Thus virtually the Supervisor acquires an engineering degree and discharges functions which are substantially similar to that of a Junior Engineer yet there is inequality of opportunity. The Government has tried to mitigate the hardship by framing this rule which accords to such new Junior Engineers or upgraded Supervisors the benefit of half the length of service as Supervisors. This weightage is challenged as arbitrary, unjust and therefore, violative of article 14.

5. It is contended by counsel for the Junior Engineers who are the appellants before us, relying on the decision we have earlier referred to namely, State of Gujarat, v. C. G. Desai ((1074) 2 SCR 255 : (1974) 1 SCC 188 : 1974 SCC (L&S) 116) that, if the date of upgrading is prior to the date of commencement of probation of the regular Junior Engineers, such upgraded Junior Engineers cannot be treated as seniors to the directly recruited Junior Engineers and promotions cannot be ordered on that footing. This grievance may be or may not be but it is impossible to hold that there is anything arbitrary or violative of Article 14.

6. After all, we must remember that Supervisors and Junior Engineers discharge substantially similar functions. We must further remember that Supervisors get the special weightage only if they acquire A.M.I.E. which is equivalent to an Engineering degree. Furthermore, the weightage given is only for half the period they have served as Supervisors. In the light of their wide experience and basic qualification, we are unable to say that there is anything capricious is giving them the limited benefit or weightage under the new rule. We, therefore, do not agree that there is any merit in the appeal.

7. Ultimately, it is a matter of government policy to decide what weightage should be given as

between two categories of government servants rendering somewhat similar kind of service. In the present case, there may be truth in the case of the appellants that they are hard hit because of the new rule. Dr. Chitale tried to convince us of the hardship that his clients sustain consequent on this rule and weightage conferred thereby. But mere hardship without anything arbitrary in the rule does not call for judicial intervention, especially when it flows out of a policy which is not basically illegal. However, government must be interested in keeping its servants specially in strategic areas like engineering contented and efficient. In so producing contentment, it may have to evolve a flexible policy which will not strike a group as inflicting hardship on them. A sense of justice must permeate both the groups. Perhaps there is force in the submission of Dr. Chitale that the Junior Engineers have to face adversity in the matter of promotions. All that we can do is to emphasize that this being a matter of government policy, the State will receive any representation that may be made for change of policy from the Junior Engineers and consider whether any such change in the policy is justified in the circumstances of the case. In so doing, there is no doubt that the other affected groups will also be heard because administration fair play is basic to satisfaction of government servants as a class. We say no more nor do we indicate that in our view there is any hardship. We only mean to say that government will remove hardships if by modification of policy it can achieve this result. Undoubtedly, in this process, both sides will have to be heard not as a rule of law but as a part of administrative fair play. Subject to these observations, we dismiss the appeals and the writ petition.

</html