

Food Corporation of India and Others

Vs

Om Prakash Sharma and Others

Civil Appeal No. 3969 of 1998

(S. C. Agrwal, M. Srinivasan JJ)

14.08.1998

JUDGMENT

M. SRINIVASAN, J. -

1. Leave granted in SLP.

2. The Food Corporation of India (hereinafter referred to as "the Corporation") was established under the Food Corporation of India Act, 1945 (for short "the Act"). Section 45 of the Act empowered the Corporation to make regulations for the purpose of giving effect of the provisions of the Act with the previous sanction of the Central Government. One of the matters set out in sub-section 2 is "the methods of appointment, the conditions of service etc. of the officers and employees of the Corporation other than the Secretary". For the first time in 1971 FCI (Staff) Regulations were framed. Prior to that, all matters relating to the service of employees were governed by the Office Manual.

3. Under the 1971 Regulations, Category 3 comprised, inter alia, the posts of Assistant Grade I (for short AG I), Assistant Grade II (for Short AG II), Assistant Grade III (for Short AG III), Typist and Telephone Operator in the General Administration Cadre as well as in the Godown Cadre. The minimum educational qualification for the posts of AG I, AG II and AG III was graduation while it was matriculate for the other two posts. The mode of recruitment for the post of AG I was 100% promotion from the posts of AG II or Telex Operators failing which, by direct recruitment. The eligibility criterion was three years of service as AG II or Telex Operator. The post of AG II was to be filled up by 100% promotion of those who had three years' service as AG III, Typist or Telephone Operator failing which, by direct recruitment.

4. On 1-5-1974, a circular was issued by the Corporation that it had been decided to make a differentiation at the time of first promotion from the recruiting grades between graduates and matriculates. According to the circular, the former would become eligible for promotion after three years of service while the latter would become eligible after five years of service. The circular also made it clear that promotions made in that manner will be made on a provisional basis for the time being as a purely temporary measure and they may be regularised as soon as formal amendment to the Regulations was made. On 22-4-1976 the FCI (Staff) (30th Amendment) Regulations, 1976 were notified. They were deemed to have come into force on 1-5-1974. That pertained to the General Administration Cadre. Similarly FCI (Staff) (43rd Amendment) Regulations, 1977 were notified on 10-2-1977 with respect to the Godown Cadre. The effect of the above amendments was to fix three years of service for graduates and five years of service for matriculates as the eligibility criterion.

5. The validity of the amendments was challenged by four persons who were matriculates working as AG III OP No. 1138 of 1979 on the file of the High Court of Kerala. A learned Judge of that Court allowed the writ petition on 22-2-1983 and quashed the same. The Corporation filed WA No. 430 of 1983 before a Division Bench of that Court. That appeal was withdrawn and dismissed. The 4th respondent in the writ petition who represented the graduates had filed WA No. 433 of 1983 and it was pending.

6. Two similar writ petitions were filed before the Andhra Pradesh High Court in WPs Nos. 363 and 1168 of 1987 by non-graduates. Following the judgment of the Kerala High Court referred to above, the Andhra Pradesh High Court allowed the writ petitions. WAs Nos. 905 and 907 of 1987 filed by the Corporation were dismissed by a Division Bench on 15-7-1987. After a long delay, the Corporation filed petitions for special leave in this Court. This Court refused to condone the delay and dismissed SLPs (C) Nos. 9387-88 of 1988 on 9-4-1990. The Corporation's review petition RP No. 449 of 1993 was dismissed on 20-4-1993.

7. Earlier in 1985, thirty non-graduates filed WP No. 2834 of 195 on the file of the High Court of Madras. That petition was dismissed by a Single Judge on the ground that identical matter was already pending in Kerala High Court. The petitioners filed WA No. 757 of 1988 against the same. When the appeal was being heard, learned counsel for the Corporation stated on instructions that the amendment was withdrawn and consequential reliefs were given to the petitioners therein. In view of that statement, the Division Bench set aside the order passed in the writ petition and observed that no reliefs need be given to the petitioners by the Court. It was represented to the Bench that four of the writ petitioners were not given relief by the Corporation for appropriate reliefs. When such representations were not considered favourably, those petitioners filed Contempt Application No. 310 Manager of the Corporation who was the 1st respondent therein filed a counter-affidavit in which he stated in para 2 as follows :

"It is respectfully submitted that the 43rd Amendment though was resolved to be withdrawn by the Board, the same was not withdrawn for want of Gazette Notification to this effect."

8. In para 4, the same averment was repeated. It was further added :

"The Headquarters have instructed the Zonal Office to implement the judgment of the Andhra Pradesh High Court in WPs Nos. 363 and 1168 of 1987."

9. The pendency of some subsequent proceedings in the Kerala High Court and an order passed therein were cited as reasons for not complying with the order of the Madras High Court. The Division Bench did not accept the contention of the Corporation and issued specific directions to promote the petitioners therein on the basis that the 43rd Amendment was withdrawn. Aggrieved thereby, the Corporation filed SLP No. 16797 of 1992 in this Court. We dismissed it by order dated 29-7-1998.

10. In the meanwhile, a Division Bench of the Kerala High Court took up for hearing WA No. 433 of 1983 referred to by us in para 4 above. An order passed by the Corporation on 13-7-1990 was produced before the Bench. It was stated in that order that a decision had been taken by the Southern Zone to implement the judgment of the Andhra Pradesh High Court in respect of the Southern Zone including Kerala. In that situation, the writ petitioners sought permission of the Court to withdraw the writ petition itself. Referring to the same, the Bench observed :

"It is this background that Shri Dandapani, the learned counsel for the contesting respondents who are the writ petitioners, sought permission to withdraw the writ petition OP No. 1138 of 1979 itself in the light of the decision taken by the Food Corporation of India, to apply the decision of the Andhra Pradesh High Court to the entire Southern Zone. Counsel for the Food Corporation of India submitted that a decision having been taken to repeal the impugned amendments and to restore the former provisions which treated the degree-holders and matriculates on a par for further promotion to the cadre of Assistants Grade III, it becomes unnecessary for this Court to examine the validity of the impugned amended Rules. In this background, we see no good reason for not according to the request of the petitioners in the writ petition to withdraw the writ petition itself, the Corporation having taken the stand that the amended Rules would be repealed and not given effect to. In view of the decision of the Food Corporation of India, what would stand revived will be the old Rules."

In such circumstances, the original writ petition was dismissed as withdrawn and the judgment of the Single Judge was set aside without expressing any opinion as to the correctness or otherwise thereof.

11. That order of the Kerala High Court was made on 26-11-1990. On the same day, the Zonal Office of the Corporation issued Office Order No. 461/90/Estt.I in the following terms :

"Consequent to the disposal of SLPs Nos. 9387-88 of 1988 by the Supreme Court in their order dated 9-4-1990 and HQRS decision to withdraw the 43rd Amendment from the Food Corporation of India (Staff) Regulations, 1971 vide their Telex Message No. EP30(10)/87 dated Nil July, 1990 and Telex Message No. EP16(4) dated 14-9-1990, the following officials are deemed to have been promoted provisionally to the post of Assistant Grade II (Depot) with effect from the dates noted against each.

(List of officials omitted)

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Consequent to the retrospective promotion to the post of Assistant Grade II (Depot), the above-mentioned officials would be eligible for re-fixation of their pay on notional basis, but eligible for payment of arrears only from the actual date of joining in the post of Assistant Grade II (Depot). The seniority of the above officials in the post of Assistant Grade II (Depot) would be re-fixed and revised seniority list published shortly."

Similarly another Office Order No. 462/90/Estt.I was issued on the same day with another list of officials whose promotion was subject to Regional Vigilance Clearance.

12. The petitioners in WP (C) No. 20 of 1992 who belongs to the Godown Cadre in the South Zone has filed the writ petition challenging the said office orders. Besides praying for declaration that the said office orders are null and void ab initio, the petitioner prays also for declaring that the 30th and 43rd Amendments still survive in the statute-book, for issue of a mandamus restraining the respondents from rescinding the same and for declaring that the seniority list as it existed on 31-12-

1989 continued to hold good without prejudice to the contention of the petitioners that even the said list was not properly drawn.

13. Initially, the Corporation and the Zonal Office (South Zone) of the Corporation were only made parties to the writ petition. Some non-graduates got themselves impleaded as respondents. By order dated 5-12-1995, this Court, with a view to obviate multiplicity of proceedings, directed the writ petitioner to implead some or all of the non-graduates in the writ petition or some other non-graduates in a representative capacity i.e. representing the body of non-graduates in the service of the Corporation all over the country. The petitioner filed an IA and the same was ordered on 8-1-1996.

14. Even in 1988, a writ petition viz. CWP No. 7160 of 1988 was filed in the High Court of Punjab and Haryana by some non-graduates challenging the seniority list prepared on the basis of the 30th Amendment of the Regulations. The validity of the amendment was challenged. A Single Judge of the High Court allowed the same by judgment dated 8-11-1989 following the first judgment of the Kerala High Court and adopting the reasoning thereof. Some graduates were respondents therein. They did not challenge the judgment. But the Corporation filed LPA No. 635 of 1990 against the judgment. The same was dismissed on 28-7-1992 by a Division Bench which also pointed out that the graduate employees were not aggrieved by the judgment of the Single Judge and thus the controversy did not survive. The Corporation has filed SLP (C) No. 7698 of 1993 against that judgment.

15. WP (C) No. 174 of 1995 has been filed in this Court under Article 32, Constitution of India by some non-graduate employees who were appointed as Typists/Telephone Operators in 1971 to 1973 in the Northern Zone challenging the validity of the amendments. According to them, the Corporation having decided to implement the decision of the Andhra Pradesh High Court in the South Zone cannot discriminate against the employees in the other zones and apply the amended regulations to them.

16. All the above three matters are thus concerned with the same controversy relating to the validity of the 30th and 43rd Amendments of the Regulations. When these matters came up for hearing on 21-4-1998, this Court took note of the fact that the relevant material regarding the considerations which weighed with the Corporation in making the change in the Regulations was not placed on record and consequently directed the Corporation to file an additional affidavit stating the considerations which weighed with it in making the impugned amendments and adjourned the matter for two weeks for that purpose. Pursuant to the said direction, the Deputy Manager (General) of the Corporation at Delhi had filed additional affidavit dated 4-5-1998 along with some annexures. With our permission, a counter-affidavit on behalf of non-graduates has been filed by S. Venkatesan (77th respondent) in the course of the arguments along with some annexures.

17. Though the non-graduate employees have been impleaded in the writ petition in a representative capacity as directed by this Court, the petitioner in the said writ petition has not filed the same as a representative of the graduate employees. It can be said that the petitioner in Writ Petition No. 20 of 1992 is the long crusader to support the amendments of the Regulations. In the counter-affidavit filed on behalf of the Corporation in the said writ petition in December 1992, nothing was set out to justify the amendments. On the other hand, it was stated repeatedly in the said counter-affidavit that the Corporation had decided to implement the judgment of the Andhra Pradesh High Court. In para 2 thereof, it was averred, that Writ Appeal No. 430 of 1983 on the file of the Kerala High Court was withdrawn pursuant to the decision of the Corporation to implement the judgment of the Andhra

Pradesh High Court. It was also stated that the revision of the seniority list pursuant to the implementation of the judgment of the Andhra Pradesh High Court could not be completed on account of a subsequent order of the Kerala High Court. It should be mentioned here that the subsequent order of the Kerala High Court which was passed in another writ petition challenging the revised seniority list was only to the effect that promotions made during the pendency of the writ petition would be subject to the result thereof. In short, the Corporation did not choose to place any material before the Court to justify the amendments. Strangely, no other graduate employees except of the petitioner in Writ Petition No. 20 of 1992 has come before us to support the amendments. As observed by the Division Bench of the High Court of Punjab and Haryana, the judgment of the Single Judge of that High Court in Writ Petition No. 7160 of 1988 was not challenged by the graduate employees who were parties thereto. It was only after this Court passed an order on 21-4-1998 directing the Corporation to file an additional affidavit and place the relevant materials which weighed with it in bringing about the impugned amendments, the Corporation filed an affidavit as stated earlier.

18. In the said affidavit, the following passages are relevant :

"It is submitted that Part II of Appendix I of the FCI (Staff) Regulations provided that the mode of recruitment in the post of Assistant Grade I is 100% promotion failing which, by direct recruitment and that the eligibility criterion was 3 years as Assistant Grade II or Telex Operator. The mode of recruitment for the post of Assistant Grade II was 100% promotion failing which, by direct recruitment and that the eligibility criterion is 3 years as Assistant Grade III or as Typist or as Telephone Operator. A copy of the said Part II of Appendix I to the FCI (Staff) Regulations, 1971 is annexed herewith and marked as Annexure A/A-e. It is submitted that as such, the Typists and Telephone Operators were equated with Assistant Grade III for the purpose of promotion to Assistant Grade II and the Telex Operators were treated on a par with Assistant Grade II for the purposes of promotion to Assistant Grade I. It is submitted that as such, not only promotional avenues were opened for the first time to Telex Operators, Typists and Telephone Operators, (who were till then available only for persons working as Assistant Grade II or Grade III respectively). It is submitted that in other words, the promotional avenues which were exclusively available to Assistant Grade II or Grade III, respectively, were now open to others, namely the Telex Operators, Telephone Operators even without prescribing any quota for each of the categories made eligible for such promotions. It is submitted that an anomalous situation had arisen as a result, inasmuch as persons who are better qualified (minimum qualification for being appointed as Assistant Grade III is graduation) were treated equal to persons who are less qualified (minimum qualifications for appointment as Telephone Operators or Typists is matriculation) for the purpose of promotion. It is submitted that the purpose of prescribing the minimum qualification as graduation for appointment as Assistant Grade III got defeated and in effect, the entry point became 'matriculation' for those who entered the cadre as Typists or Telephone Operators. It is submitted that it was realised that it was not correct to equate the person who have higher academic qualifications (graduation) needing 4 more years of academic pursuit with those having lesser academic qualifications, i.e., matriculation. It is submitted that as such, it was felt necessary either to create quotas or prescribe higher experience for those who are academically less qualified.

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It is submitted that it was felt that the non-existence of any quota resulting in treating the Typists or the Telephone Operators, who are generally matriculate, on a par with Assistant Grade III (whose minimum qualification was graduation), was not only incorrect but also affected the efficiency of the ministerial staff to a great extent.

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It is submitted that it was felt that different criteria should be provided for the purpose of promotion for the category of Assistant Grade III, Typist, Telephone Operator since Assistant Grade III are graduates and Telephone Operators, Typists are matriculates."

19. There is no attempt made in the affidavit to show that the nature of the work in the posts of AG I or AG II was such that it requires higher efficiency which could be expected only from graduates and not from non-graduates. In other words, there is nothing in the said affidavit to establish a nexus between the amendments and the alleged object of higher efficiency in the promotional posts of AG I or AG II. In the counter-affidavit filed by a non-graduate respondent in the writ petition as early as in October 1996, it was categorically stated that the duties to be carried out by the persons holding the posts of AG I and AG II could be performed with equal efficiency by graduates as well as non-graduates. It was stated that the nature of the work in the two posts did not warrant a classification as graduates or non-graduate. It was pointed out that all the posts of AG I, AG II and AG III are clerical, non-selectional and non-managerial. Along with the counter-affidavit, the "job descriptions" of the three posts was filed as an annexure. A perusal thereof shows that the nature of the work is not such as to make differentiation between graduates and non-graduates. It is seen from the "job descriptions" that a person holding the post of AG III could be assigned the same work as required to be performed by AG I and AG II but under close and immediate supervision of the supervisor. The Typists and Telephone Operators are also expected to perform other duties listed for AG III as required by their superiors. It is thus clear from the "job descriptions" that the duties performed by the Typists and Telephone Operators as well as AG III are similar in nature excepting that the Typists and Telephone Operators are also attending to technical work on account of their technical qualifications. None of the above matters has been touched upon by the Corporation in the additional affidavit filed as late as in May 1998. This aspect has been rightly commented upon by the learned counsel of the non-graduates.

20. In the counter-affidavit filed on behalf of the non-graduates with our permission in the course of hearing in reply to the additional affidavit of the Corporation, it is reiterated that the non-graduates are performing the same duties as the graduates. The following passages in the said counter-affidavit are relevant :

"The job description of Assistant Grade III and Assistant Grade II annexed by the deponent in his counter-affidavit filed in the writ petition is marked as Annexure C-9 which is in the paper-book of the writ petition from pp. 394 to 410. No justification whatsoever has been offered to the impugned amendments except a vague and self-serving statement that efficiency was 'affected' or 'vitiating' to a great extent. The burden which the Food Corporation of India agreed to discharge was to show how, having regard to the nature of duties of the post, efficiency was affected. This burden has not been attempted to be discharged. The picture presented in para 3 of the

affidavit tends to present a misleading picture as if the 30th Amendment was introduced in order not to equate the Typists and Telephone Operators with such of those AG III (Gen) who possess qualification of graduation. These matriculate Assistant Grade III (Gen) (Depot) were/are performing the duties of AG III on a par with Assistant Grade III who possess qualification of graduation. The duties and responsibilities of all the AG III are one and same and the salary paid is also the same. It is reiterated that the Typists, apart from typing work, are also attending to the work of AG III as required in the job description.

The very fact that the work of AG III (G) (Depot) is being carried out smoothly irrespective of officials possessing qualification of matriculations or graduation until this day, clearly demonstrates that the qualification of matriculation is adequate to carry out the nature of work prescribed for Assistant Grade III (Gen) and Assistant Grade III (Depot). The nature of work prescribed in the job description vouches for this argument. It is also submitted that had the FCI management not been satisfied with the efficiency of the officials with qualification of matriculation as stated in the 3rd para of the affidavit, it would not have gradually enhanced the quota from 10% to 20% and then to 30% for Category IV employees (with minimum qualification of matriculation) for promotion to the post of AG III (annexure as Annexure A-1).

The deponent further submits that prior to the establishment of the Food Corporation of India, the employees were working in the Food Department and for the entry level post, i.e., Junior Clerk (which is equal to Assistant Grade III) the qualification prescribed was only matriculation.

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That is relevant to mention that pursuant to the orders passed by the Kerala, Madras and Punjab and Haryana High Courts and the Delhi High Court in its judgment dated 11-1-1994 and 4-6-1981 in CWPs Nos. 3599 and 4681 of 1993, the respondent, Food Corporation of India, North Zone issued office orders dated 2-8-1995 and 11-8-1995 revising the seniority of Assistant Grade III (Min)/Typists numbering about 1206 rectifying the injustice created by the impugned amendments to the employees and those similarly placed like the deponent in the North Zone as per the old Regulations and only the employees of the South Zone are suffering because of the inaction of the authorities in the South Zone. It may be relevant to mention that the revision is subject to the outcome of the petitions pending before this Hon'ble Court. Copies of the office orders dated 2-8-1995 and 11-8-1995 are annexed herewith and marked as Annexure A-3 (collectively).

That the respondent, Food Corporation of India have annexed annexures to the additional affidavit which are not at all relevant to the present dispute and nothing has been shown by them which would require such amendments to be carried out with retrospective effect. In fact, matriculates of FCI are holding the jobs of Assistant Managers and Deputy Managers (General)/District Managers which is three and four steps respectively above the Assistant Grade III level which is the post in dispute in the present proceedings. It is also submitted that the posts of Assistant Manager and Deputy Manager are selection posts whereas the posts of AG III and AG II are non-selection posts. This clerical job of Assistant Grade III and Assistant Grade II can

certainly be performed by matriculates with utmost efficiency when persons are thrust for such higher job, viz. Assistant Manager/Deputy Manager who are only matriculates. Extracts of all-India integrated seniority list of Assistant Managers (Gen)/Dept. as on 1984 is annexed as Annexure A-4 and extract of all-India integrated seniority of Deputy Managers (Gen)/District Managers is annexed as Annexure A-5."

21. Learned counsel for the petitioner in the writ petition and learned counsel for the Corporation have contended that the differentiation between a graduate and non-graduate in the matter of promotion is valid and in this case, the same has been done by the impugned amendments in order to achieve higher administrative efficiency. Per contra, the submissions made by a learned counsel for non-graduates are threefold :

(i) The amendments are arbitrary in the facts and circumstances of this case and violative of Articles 14 and 16 of the Constitution.

(ii) The amendments are invalid insofar as they are given retrospective effect so as to affect the promotion of non-graduates who became eligible for consideration for promotion by completing three years' service as AG III, Typist or Telephone Operator before the amendment of the Regulations.

(iii) The amendments should be read down to apply only to non-graduates who are working as Typists or Telephone Operators and not to those who were working as AG III having been promoted as such from Category IV. The aforesaid second and third contentions have been advanced only in the alternative to the first contention.

22. Our attention has been drawn to *S. L. Sachdev v. Union of India* ((1980) 4 SCC 562 : 1981 SCC (L&S) 24). It was held therein that once a cadre is formed by recruiting persons down from different departments of the Government, there would normally be no justification for discriminating between them by subjecting one class to more onerous terms in the matter of promotional chances. It is observed that different tests should not be prescribed for determining their respective promotional opportunities and that too solely with reference to the source from which they were drawn. It was found on the facts that the duties, functions and responsibilities of all the UDCs in the Savings Bank Control Organisation and Saving Bank Interval Check Organisation were identical and they were all in the same cadre drawing the same pay in the same grade and therefore different tests should not be laid for their promotion.

23. Learned counsel for the non-graduates referred to *Shrilekha Vidyarthi v. State of U.P.* ((1991) 1 SCC 212 : 1991 SCC (L&S) 742) wherein it was held that once it is shown that the impugned State action is uninformed by reason inasmuch as there is no discernible principle on which it is based, the burden would shift to the State to repel the attack by disclosing the material and reasons which led to the action being taken in order to show that it was an informed decision which was reasonable.

24. It is by now settled by several decisions of this Court that educational qualification is a proper basis of classification for promotion. In *State of J&K v. Triloki Nath Khosa* ((1974) 1 SCC 19 : 1974 SCC (L&S) 49) it was held that classification on the basis of educational qualifications made with a view to achieving administrative efficiency cannot be said to rest on any fortuitous circumstances. The Constitution Bench which decided the case took care to add that one has always

to bear in mind the facts and circumstances of the case in order to judge the validity of a classification.

25. In *Mohd. Shujat Ali v. Union of India* ((1975) 3 SCC 76 : 1974 SCC (L&S) 454) another Constitution Bench referred to the earlier rulings of this Court including *Triloki Nath Khosa* ((1974) 1 SCC 19 : 1974 SCC (L&S) 49) and stated the law thus : (SCC pp. 105-06, para 28)

"But from these decisions it cannot be laid down as an invariable rule that whenever any classification is made on the basis of variant educational qualifications, such classification must be held to be valid, irrespective of the nature and purposes of the classification or the quality and extent of the differences in the educational qualifications. It must be remembered that 'life has relations not capable always of division into inflexible compartments.' The moulds expand and shrink. The test of reasonable classification has to be applied in such case on its peculiar facts and circumstances."

26. In *Punjab SEB v. Ravinder Kumar Sharma* ((1986) 4 SCC 617 : 1987 SCC (L&S) 13) the challenge was of fixation of quota between diploma-holders and non-diploma-holders among Linemen for promotion to Line Superintendent. Placing reliance on a passage in the judgment in *Mohd. Shujat v. UOI* ((1975) 3 SCC 76 : 1974 SCC (L&S) 454) the Court upheld the judgment of the High Court and the courts below which struck down the fixation of quota for promotion. The Bench did not however, make any reference to *Triloki Nath Khosa* ((1974) 1 SCC 19 : 1974 SCC (L&S) 49).

27. In *Roop Chand Adlakha v. Delhi Development Authority* (1989 Supp (1) SCC 116 : 1989 SCC (L&S) 235 : (1989) 9 ATC 639) this Court considered all the earlier cases on the subject and held that prescription of a longer period of experience for the diploma-holders to be eligible for promotion to a cadre to be made from graduates and diploma-holders was not violative of the equality clause. On the facts, it was found that a report of an Expert Committee was taken into consideration for prescribing the requisite qualification. The Court took note of the fact that there may be cases where the differences in the educational qualification may not be sufficient to give any preferential treatment to one class of candidates as against another. The Court said that whether the classification is reasonable or not must necessarily depend upon the facts of each case and the circumstances obtaining at the relevant time.

28. In *N. Abdul Basheer v. K. K. Karunakaran* (1989 Supp (2) SCC 344 : 1990 SCC (L&S) 153 : (1991) 17 ATC 160) the Court held that ordinarily it is for the Government to decide upon the consideration which in its judgment should underline a policy to be formulated by it. But if the consideration are such as prove to be of no relevance to the object of the measure framed by the Government, it is always open to the court to strike down the differentiation as being violative of Articles 14 and 16. On the facts of the case, it was found that the conditions of employment and the incidents of service recognised no distinction between graduate and non-graduate officers and for all material purposes, they were effectively treated as equivalent. It was pointed out that the history of the evolution of the Kerala Excise and Prohibition Subordinate Service had shown no uniformity either in approach or in object and that a consistent or coherent policy in favour of graduates was absent. It was also pointed that the cadre was one and graduates and non-graduates were equal members of the same. Their pay was found to be the same and the nature of the duties, whether graduate or non-graduate, was identical. Hence, it was held that the prescription of ratio dividing the quota of promotion between graduates and non-graduates was invalid as it violated Articles 14 and

16 of the Constitution.

29. In *P. Murugesan v. State of T.N.* ((1993) 2 SCC 340 : 1993 SCC (L&S) 445 : (1993) 24 ATC 149) this Court pointed out that since the decision in *Triloki Nath Khosa* ((1974) 1 SCC 19 : 1974 SCC (L&S) 49) this Court had been holding uniformly that even where direct recruits and promotees were integrated into a common class, they could for purposes of promotion to the higher cadre be classified on the basis of educational qualifications. On the facts, it was found that the degree-holders and diploma-holders represented two different categories and since 1969, they were treated differently in the matter of pay, designation and in the matter of promotion though they were discharging identical functions and duties. It was also found that the ratio 3:1 had been in vogue between graduates and diploma-holders since prior to 1965 and it was therefore permissible to the rule-making authority if it thought it necessary in the interest of administration to limit the promotional chances of non-graduates to one out of four vacancies on the basis of academic qualifications.

30. In *T.R. Kothandaraman v. T. N. Water Supply & Drainage Board* ((1994) 6 SCC 282 : 1994 SCC (L&S) 1366 : (1994) 28 ATC 276) this Court reiterated that higher educational qualification is a permissible basis of classification but the acceptability thereof will depend on the facts and circumstances of each case. In that case, it was found that differentiation between degree-holders and diploma-holders was ancient and that the former were given different designation and gazetted status and higher scale of pay whereas diploma-holders did not have such benefits. In such circumstances the Court said : (SCC p. 291, Para 22)

"22. The aforesaid shows that higher educational qualification has relevance insofar as the holding of higher promotional post is concerned, in view of the nature of the functions and duties attached to that post. The classification has, therefore, nexus with the object to be achieved. This apart, history also supports the differentiation sought to be made by the rule in question. We, therefore, uphold the classification as valid."

31. One of us (Justice Agrawal), spoke for the Division Bench which decided *Rajasthan SEB Accountants Assn. v. Rajasthan SEB* ((1997) 3 SCC 103 : 1997 SCC (L&S) 644). The entire case-law was traced in the judgment and it was held that educational qualifications could be made the basis for classification of employees in State service in the matter of pay scales, promotion, etc. On the facts and circumstances of that case, the Court upheld a reservation of 25% vacancies for candidates possessing the prescribed additional qualifications and prescription of longer length of service for those who did not possess such qualifications for the purpose of promotion.

32. An analysis of the aforesaid rulings shows that the validity of the classification has to be judged on the facts and circumstances of each case. We have already pointed out that in the facts of the present case, no material has been placed before us by the Corporation to justify the amendments introducing a classification between graduates and non-graduates. We have also referred to the conduct of the Corporation which chose to accept the judgment of the Andhra Pradesh High Court and implement the same on the basis of which the Board decided to withdraw the amendments and representations were made to that effect in the High Courts of Kerala and Madras. As stated earlier, even in the affidavits filed in this Court, the Corporation has referred to the decision of the Board to withdraw the amendments.

33. In such circumstances, we hold that the amendments to the Regulations making a differentiation

between graduates and non-graduates in the matter of promotion for the posts of AG I and AG II offend the equality clause and are therefore unconstitutional.

34. In the view we have expressed above, it is unnecessary for us to consider the alternative contentions put forward by the non-graduates with reference to the retrospective operation of the Rule and the non-applicability of the Rule to non-graduates holding the posts of AG III. We would, however, for the sake of completion set out the list of decisions cited by learned counsel in support of the contention that the amendments are invalid insofar as they seek to have retrospective effect :

1. T.R. Kapur v. State of Haryana (1986 Supp SCC 584 : (1984) 2 ATC 595).
2. P.D. Aggarwal v. State of U.P. ((1987) 3 SCC 622 : 1987 SCC (L&S) 310 : (1987) 4 ATC 272).
3. K. Narayanan v. State of Karnataka (1994 Supp (1) SCC 44 : 1994 SCC (L&S) 392 : (1994) 26 ATC 724)
4. Union of India v. Tushar Ranjan Mohanty ((1994) 5 SCC 450 : 1994 SCC (L&S) 1118 : (1994) 27 ATC 892)
5. Chairman, Rly. Board v. C. R. Rangadhamaiah ((1997) 6 SCC 623 : 1997 SCC (L&S) 1527)

35. The last of the above cases has been decided by the Constitution Bench in which one of us (Justice Agrawal), was a Member and he spoke for the Bench. It will be advantageous to quote the following passage in that judgment : (SCC p. 638, para 24)

"24. In many of these decisions the expressions 'vested rights' or 'accrued rights' have been used while striking down the impugned provisions which had been given retrospective operation so as to have an adverse effect in the matter of promotion, seniority, substantive appointment, etc. of the employees. The said expressions have been used in the context of a right flowing under the relevant rule which was sought to be altered with effect from an anterior date and thereby taking away the benefits available under the rule in force at that time. It has been held that such an amendment having retrospective operation which has the effect of taking away a benefit already available to the employees under the existing rule is arbitrary, discriminatory and violative of the rights guaranteed under Article 14 and 16 of the Constitution."

36. If the principle laid down in the above judgment is applied here, there is no doubt that the impugned amendments in the present case cannot operate retrospectively.

37. In the result, the impugned amendments are struck down as unconstitutional. The appeal filed by the Corporation and Writ Petition (C) No. 20 of 1992 fail and are hereby dismissed. In Writ Petition No. 174 of 1995, prayer A is granted. Prayer B is unnecessary and therefore negatived. The parties will bear their respective costs.