

SUPREME COURT OF INDIA

M. Rathinaswami

Vs.

State of T.N.

(R.V.Raveendran and Markandey Katju JJ.)

08.04.2009

JUDGEMENT

Markandey Katju, J.

1. Leave granted.
2. These appeals by special leave have been filed against the impugned judgments dated 10.9.2005 and 27.02.2008 in Writ Petition No.27173 of 2003 and 5022 of 2008 respectively, of the High Court of Judicature at Madras.
3. Since common questions of law and fact are involved in both these appeals they are being disposed off by a common judgment.
4. Heard learned counsel for the parties and perused the record.
5. The appellants are promotee Assistants governed by the Tamil Nadu Ministerial Service Rules having been promoted from the post of Junior Assistants in the Revenue Department in the State of Tamil Nadu. They were appointed as Junior Assistants after having passed the competitive examination conducted by the Tamil Nadu Public Service Commission (hereinafter referred to as 'the Commission'). Though the minimum educational qualification for Junior Assistant was S.S.L.C., it is alleged that even at the time of their selection to the post of Junior Assistants, most of the appellants were graduates or post graduates, and many completed their graduation subsequently while in service.
6. For appointment to the post of Assistant there can be promotions from amongst the Junior Assistants, and there can also be direct recruitment through the competitive examination held by the Commission. The minimum qualification for directly recruited Assistant is graduation.
7. The promotion for Assistants is to the post of Deputy Tehsildar, which is governed by the Tamil Nadu Revenue Subordinate Service Rules. On being promoted as Deputy Tehsildars an Assistant is transferred from the Ministerial Service to the Revenue Subordinate Service.

8. The promotee Assistants, i.e. Assistants who were promoted from the post of Junior Assistants and were not direct recruits, filed O.A. No.5710 of 1992 and connected petitions before the Tamil Nadu Administrative Tribunal, Chennai praying for quashing G.O.Ms. No.884, Revenue Department, Tamil Nadu Government dated 12.8.1992 and the consequential G.O.Ms. No.133, Revenue Department dated 7.2.1995. In the G.O. of 1992 it was stated inter alia that qualified direct recruit Assistants could be considered for inclusion in the list for promotion as Deputy Tehsildar after completion of five years of service and placed in the top of the list, below the carried over vacancies, and above the promotee 4 Assistants. By the G.O. of 1995 necessary amendment was made to the Tamil Nadu Revenue Subordinate Service Rules.

9. The impugned G.O. 133 Revenue dated 7.2.1995 was passed amending Annexure III item (ii) of the Tamil Nadu Revenue Subordinate Service Rules and introducing two provisos by which directly recruited Assistants were given preferential treatment by making them eligible for promotion as Deputy Tehsildars on completion of five years of service as Assistants by placing them above the senior promotee Assistants.

10. Annexure III item (ii) in Tamil Nadu Revenue Subordinate Service Rules, prior and after amendment reads as under:

“Prior to amendment by G.O. dated 7.2.1995 After amendment by G.O. dated 7.2.1995 5 Provided also that an Assistant appointed by Direct Recruitment in the Office of the Board of Revenue, who has completed a total name in the approved list of Deputy service of five years, passed all the Tehsildars for Madras City on tests prescribed and undergone competitive basis, after completion training as Firka Revenue Inspector of a total service of five years, if he for a period of two years successfully has passed all the prescribed tests shall be eligible for inclusion of his and undergone training as Firka name in the approved list of Deputy Revenue Inspector for two years Tehsildars for Madras City above his successfully and is otherwise seniors appointed other than by qualified. direct recruitment or for re-fixation of his seniority over such seniors, if his name has already been included in the list of Deputy Tehsildars. The consideration of his claim shall be against the first vacancy that follows the carried over vacancies.

A similar proviso has also been added in respect of an Assistant appointed by Direct Recruitment in the District Revenue Unit.”

11. It was submitted by Mrs. Nalini Chidambaram, learned counsel for the appellant, that the impugned amendment adversely affected the vested right of the promotee Assistants for promotion as Deputy Tehsildars. Some illustrations given by learned counsel are as follows:

“In Coimbatore District, the following Assistants belonging to the list of promotee Assistants for year 1991 are still working as Assistants for no fault of theirs. 6 1) R. Saraswathy (2) V. Parvatham (3) C. Manoharan (4) R. Subramaniam (5) T. Sivajothi

(6) V. Prema Sundari (7) S. Subramanian (8) V. Narasimhan (9) D. Dhanapal (10) K. Thangavelu (11) S. Rathina (12) S. Rathinaswami (13) D. Lieon Peter. On the other hand, a directly recruited Assistant, by name Sivasubramaniam, whose name was included in the list of Assistants for the year 2004 of Coimbatore District, has been included in the list of Deputy Tehsildars of the District for the year 2008 and he is working as Deputy Tehsildar.

- In Madurai District, one of the petitioners M. Kalimuthu belonging to the list of promotee Assistants for the year 1984, was included in the list of Deputy Tehsildars for the year 2004 at Sl.No.5.

He was waiting for the panel of Deputy Tehsildars over twenty years, but four directly recruited Assistants in the list of Assistants for the year 1997, have been included in the list of Deputy Tehsildars for the year 2004 itself.

- A comparison of promotee M. Kalimuthu with the direct recruits is given below:

1. V. Baskaran - Directly recruited Assistant in the year 1997

2. R. Mangala Rama Subramaniam - Directly recruited Assistant in the year 1997

3. N. Noorjahan Begam - Directly recruited Assistant in the year 1997

4. M. Parameswari - Directly recruited Assistant in the year 1997 5. M. Kalimuthu - Promotee Assistant in the year 1984.

7 - Similar situation also prevails in the remaining Districts of Tamil Nadu.”

12. The Tamil Nadu Administrative Tribunal quashed the impugned Rule by its order dated 26.2.1997, but that judgment was reversed by the High Court by the impugned judgment dated 10.9.2005 and hence this appeal by special leave.

13. Learned counsel for the appellant submitted that once the directly recruited Assistants and the promotee Assistants are integrated into one cadre of Assistants further classification for the purpose of further promotion as Deputy Tehsildar is not permissible. She further submitted that among the promotee Assistants there are many who have the qualification of graduation and even post graduation and they have received the same kind of training in the cadre of Assistants for a longer duration than the directly recruited Assistants. Hence, she submitted that all graduate Assistants should be treated equally irrespective of whether they are promotees or direct recruits for considering them for promotion as Deputy Tehsildar. We are inclined to agree with this submission.

14. On the other hand, learned counsel for the respondent submitted that the preferential treatment to the directly recruited Assistants was justified because the erstwhile Probationary Revenue Inspectors who have now been replaced by directly recruited Assistants (Upper

Division Clerks) enjoyed such preferential treatment. This contention has been disputed by the learned counsel for the appellant, who submitted that it is not correct to state that Probationary Revenue Inspectors enjoyed preferential treatment since the relevant Rule 8A which dealt with the Probationary Revenue Inspectors in the erstwhile Annexure VIII to the Tamil Nadu Ministerial Services only stated that the seniority of the persons recruited as Probationary Revenue Inspectors in any year shall be fixed first in the list of Assistants appointed in the Revenue Department during the year. Hence she contended that the Probationary Revenue Inspectors were given seniority over other Assistants of the same year alone i.e. in the list of Assistants alone and not in the list of Deputy Tehsildars.

15. In our opinion, it is not necessary to decide this controversy because it will make no difference for deciding this case.

16. By the amendment dated 7.2.1995, the direct recruit Assistants who complete 5 years service and fulfill some other criteria are placed in the approved list for promotion as Deputy Tehsildar above his seniors who are promotee Assistants. It is contended that this is violative of Articles 14 and 16 of the Constitution.

17. In the counter affidavit filed on behalf of the respondents, it has been stated that the rationale for giving preference to the directly recruited Assistants was that their minimum educational qualification was graduation while that of the promotees was Senior School Learning Certificate (S.S.L.C.) when they joined as Junior Assistants. Hence it was alleged that the average directly recruited Assistants with a degree are superior intellectually to the average Junior Assistants with S.S.L.C. It was also contended that direct recruits are given a special training for five years.

18. As regards the training, we are satisfied that the promotees also have undergone the same experience as those of direct recruits, and in fact the former have usually longer experience than the direct recruits. Hence this cannot be a valid basis for discrimination against the promotees.

19. Learned counsel for the appellant submitted that many of the promotees in fact were graduates or post graduates even when they joined as Junior Assistants, and some became graduates or post graduates after 10 joining as Junior Assistants. Hence she submitted that there was no rational basis for denying equality of treatment to these graduates/post graduates vis-à-vis the direct recruits. We agree with this contention. If a promotee Assistant is also a graduate then there is no valid basis for discrimination against him, and he must be treated at par with the directly recruited Assistant.

20. Learned counsel for the appellant invited our attention to Rule 5(f) of the Tamil Nadu Revenue Subordinate Service Rules which is as follows :

"While preparing the list, the selecting authority shall arrange the names of the persons selected by it for appointment as Tehsildar or Deputy Tehsildar as the case

may be, in the order of the preference decided by it, which shall be based on merit, ability and seniority."

She submitted that the impugned amendment practically nullifies the above rule, without expressly repealing it.

21. The High Court in the impugned judgment has observed (vide para 22) that a graduate cannot be said to be equal to a non graduate, and on that reasoning the High Court has upheld the validity of impugned rule.

22. In our opinion, by the very same logic given by the respondent and the High Court, a promotee Assistant who is also a graduate has to be placed at par with the direct recruits because he has also got a degree. In our opinion, we have to hence read down the impugned amendment and interpret it as inapplicable to those promotee Assistants who are also graduates/post graduates. In other words, the impugned amendment will only enable the direct recruits to be placed above those promotee Assistants who are non graduates for the purpose of promotion as Deputy Tehsildar.

23. It is true that in *State of Jammu & Kashmir vs. Triloki Nath Khosa & Ors.*¹ a Constitution Bench of this Court observed that though the persons appointed directly and by promotion were integrated into a common class of Assistant Engineers, they could, for the purpose of promotion to the cadre of Executive Engineers, be classified on the basis of educational qualifications. However, in *Mohammad Shujat Ali & others vs. Union of India & others*², another Constitution Bench of this Court qualified the rule laid down in Triloki Nath Khosa's case (supra) and observed that for promotion to a higher post, discrimination based on educational qualifications not obligated by the nature of duties or responsibilities of the higher post would be violative of Article 14 of the Constitution.

24. In *Roop Chand Adlakha & others vs. Delhi Development Authority & others*³, this Court while taking note of T.N. Khosa's case (supra) and Mohd. Shujat Ali's case (supra) observed in para 7 as under:

" 7.If the differences in the qualification has a reasonable relation to the nature of duties and responsibilities, that go with and are attendant upon the promotional-post, the more advantageous treatment of those who possess higher technical qualifications can be legitimized on the doctrine of classification. There may, conceivably, be cases where the differences in the educational qualifications may not be sufficient to give any preferential treatment to one class of candidates as against another. Whether the classification is reasonable or not must, therefore, necessarily depend upon facts of each case and the circumstances obtaining at the relevant time. When the state makes a classification between two sources, unless the vice of the classification is writ large on the face of it, the person assailing the classification must show that it is unreasonable and violative of Article 14. A wooden equality as between all classes of employees irrespective of all distinctions or qualifications, or job-requirements is neither constitutionally compelled nor practically meaningful.

This Court in *General Manager, South Central Railway vs. A.V.R. Siddhanti*⁴ at p. 1760 observed:

"....A wooden equality as between all classes of employees regardless of qualifications, kind of jobs, nature of responsibility and performance of the employees is not intended, nor is it practicable if the administration is to run. Indeed, the maintenance of such a 'classless' and undiscerning 'equality' where, in reality, glaring inequalities and intelligible differentia exist, will deprive the guarantee of its practical content. Broad classification based on reason, executive pragmatism and experience having a direct relation with the achievement of efficiency in administration, is permissible...."

25. In the present case, both the directly recruited Assistants and promoted Assistants have been integrated into one cadre of Assistants. No doubt, even after this integration for further classification for promotion higher educational qualifications can possibly be a rational basis, but in our opinion there can certainly be no further classification between direct recruits and those promotee Assistants who have acquired the graduation qualification whether before joining as Junior Assistant or thereafter. Once a promotee becomes a graduate we cannot see any rational basis for discrimination against him vis-à-vis direct recruits.

26. As regards the non graduate promotee Assistants, we are of the opinion that ordinarily it is for the State Government to decide whether their qualification has a reasonable relation to the nature of duties and responsibilities that go with and are attendant on the promotional post of Deputy Tehsildar. It is true that as observed in Roop Chand Adlakha's case (supra) there may, conceivably, be cases where the differences in the educational qualifications may not be sufficient to give any preferential treatment to one class of candidates as against another, and whether the classification is reasonable or not must, therefore, necessarily depend upon the facts of each case and the circumstances obtaining at the relevant time.

“However, the question whether the difference in the educational qualifications is sufficient to give preferential treatment to one class of candidates against another, should in our opinion be ordinarily left to the executive authorities to decide. The executive authorities have expertise in administrative matters, and it is ordinarily not proper for this Court to sit in appeal over their decisions unless it is something totally arbitrary or shocking. Whether graduate degree is a sufficient basis for classification for promotion vis-à-vis non-graduates, and whether such classification has rational relation to the nature of duties of a Deputy Tehsildar, is, in our opinion for the State Government to decide, and not the Court. Hence, we uphold the validity of impugned rule to the extent that it gives preference to the directly recruited Assistants over the promoted Assistants who are non graduates.”

27. However, we cannot find any rational basis for giving preference to the direct recruits over those promotee Assistants who are graduates, since the very basis for the distinction sought to be drawn by the respondents is that the direct recruits are graduates and hence

intellectually superior to non graduates. Hence we have to read down the impugned rule in order to save it from becoming violative of Articles 14 and 16 of the Constitution.

28. It is well settled that to save a statutory provision from the vice of unconstitutionality sometimes a restricted or extended interpretation of the statute has to be given. This is because it is a well-settled principle of interpretation that the Court should make every effort to save a statute from becoming unconstitutional. If on giving one interpretation the statute becomes unconstitutional and on another interpretation it will be constitutional, then the Court should prefer the latter on the ground that the Legislature is presumed not to have intended to have exceeded its jurisdiction.

29. Sometimes to uphold the constitutional validity the statutory provision has to be read down. Thus, *In re, Hindu Women's Right to Property Act*⁵, the Federal Court was considering the validity of the *Hindu Women's Right to Property Act, 1937*. In order to uphold the constitutional validity of the Act, the Federal Court held the Act intra vires by construing the word 'Property' as meaning 'property other than agricultural land'. This restricted interpretation of the word 'Property' had to be given otherwise the Act would have become unconstitutional.

“Similarly, in *Kedernath vs. State of Bihar*⁶, this Court had to construe Section 124-A of the Indian Penal Code which relates to the offence of sedition which makes a person punishable who 'by words, either spoken or written or by sign or visible representations, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards the Government established by law'. This Court gave a restricted interpretation to the aforesaid words so that they apply only to acts involving intention or tendency to create disorder or disturbance of law and order or incitement to violence. This was done to avoid the provisions becoming violative of Articles 19(1)(a) of the Constitution which provides for freedom of speech and expression.”

30. Several other decisions on the point have been given in Justice G.P.Singh's *Principles of Statutory Interpretation* (7th Edn 1999 pp 414-417).

31. For the reason given above these appeals are partly allowed and the impugned judgment is partly set aside, and it is held that the impugned rule so far as it places directly recruited Assistants above the promotees for promotion as Deputy Tehsildar shall only apply to those promotees who are non graduates, but it is inapplicable to those promotees who are graduates.

32. The appeals are disposed of. No order as to costs.

¹AIR 1974 SC 1

²AIR 1974 SC 1631

³AIR 1989 SC 307

⁴(1974) 3 SC 207 at p. 214 : (AIR 1974 SC 1755

⁵AIR 1945 FC 28

⁶AIR 1962 SC 955