

SUPREME COURT OF INDIA

B.Manmad Reddy

Vs.

Chandra Prakash Reddy

C.A.Nos.933-935 of 2004

(Markandey Katju and T.S.Thakur JJ.)

17.02.2010

JUDGEMENT

T.S.Thakur, J.

1. These appeals by special leave arise out of a common order passed by the High Court of Andhra Pradesh whereby Writ Petition Nos.537, 2073, 2075, 7234 and 11033 of 2002 have been partly allowed, and the order passed by Andhra 2 Pradesh Administrative Tribunal set aside to the extent the same had declared Note 1(i) to Rule 3 of the Andhra Pradesh Educational Service Rules to be unconstitutional. To the extent the Tribunal had declared Note 6 to Rule 3 of the Rules aforementioned to be ultra vires the High Court has affirmed the view taken by the Tribunal and dismissed the writ petitions. It is noteworthy that the State of Andhra Pradesh has not assailed the judgment delivered by the High Court of Andhra Pradesh. The present appeals have been preferred by the direct recruits to the Andhra Pradesh State Educational Service who contend that the Tribunal and the High Court fell in error in declaring Note 6 to Rule 3 of the Rules in question to be unconstitutional.

2. The short question that falls for consideration and that was argued at considerable length before us by learned counsel for the parties is whether persons drawn from different sources and integrated into one class/cadre/category can be classified into separate categories for purposes of promotion on the basis of the source from which they were drawn. The question is, in our opinion, squarely covered by the decisions of this Court to which we shall presently refer but before we do so, we may briefly set out the factual backdrop in which controversy arises.

3. In exercise of the powers vested in it under Sections 78 and 99 of the Andhra Pradesh Education Act, 1982 and in suppression of the earlier rules, the Government of Andhra Pradesh framed what are known as "Andhra Pradesh Educational Service Rules". Rule 2 of the said Rules provides for the composition of the service which broadly speaking comprises four distinct classes of employees enumerated under the said Rules. Each one of these classes in turn comprises different category of officers enlisted therein. For instance in Class-I there

are in all three category of officers. In class II there are seven category of officers; while in class III there are 13 category of officers. So also in class IV there are four category of officers. Rule 3 of the said Rules prescribes the method of appointment and specifies the appointing authority for different category of posts. Since we are concerned only with promotions to class II category I posts, we may extract Rule 3 to the extent the same regulates promotion for that class and category:

“3. Method of Appointment and Appointing Authority:- The Method of appointment and appointing authority for different categories of posts of service shall be as follows:

Class Category Method of Appointment Appointing Authority

1. xxxx xxx I 1(a) xxxx xxx

2. xxxx xxx

3. xxxx xxx II 1 By promotion from Government Categories 1,2,3,4,5,8,10 , 11 and 12 of Class III xx xxx xxxx xxx”

4. Under Rule 3 are placed Notes 1 to 9 which govern several aspects relating to preparation of seniority lists and the method of recruitment to be adopted for different posts as also the academic qualifications required for such promotions.

5. The High Court has, as noticed earlier, declared Note 1 to be intra vires to which finding there is no challenge before us.

“It is the validity of Note 6 to Rule 3 which prescribes a roster 5 for promotion to the post of District Educational Officer and Deputy Director comprising category 1 of Class II, that is under attack before us. The Note reads:

"NOTE 6 : for the purpose of promotion to category 1 of class II, the following 12 point cycle shall be followed from the feeder categories:

1. A.D., G.A.O, and A.P.O.

2. Direct recruit Dy.E.O./Gazetted Head Master Grade-I, Lecturer IASE/CTE/SCERT, Senior Lecturer DIET and Special Officer (OS)

3. Promotee Dy.E.O./Gazetted Head Master Gr.I and P.E.O.

4. Promotee Lecture IASE/CTE/SCERT, Senior Lecturer DIET and A.D. (NFE)

5. Direct Recruit Dy.E.O./Gazetted Head Master Gr.I, Lecturer IASE/CTE/SCERT, Senior Lecturer DIET and Special Officer (O.S.)

6. Promotee Lecture IASE/CTE/SCERT, Senior Lecturer DIET and A.D. (NFE) 7. A.D., G.A.O, and A.P.O.

8. Direct recruit Dy.E.O./Gazetted Head Master Grade-I, Lecturer IASE/CTE/SCERT, Senior Lecturer DIET and Special Officer (OS)

9. Promotee Dy.E.O./Gazetted Head Master Gr.I and P.E.O.

10. Promotee Lecturer IASE/CTE/SCERT, Senior Lecturer DIET and A.D. (NFE)

11. Direct Recruit Dy.E.O./Gazetted Head Master Gr.I, Lecturer IASE/CTE/SCERT, Senior Lecturer DIET and Special Officer (O.S.)

12. Promotee Lecturer IASE/CTE/SCERT, Senior Lecturer DIET and A.D. (NFE)”

6. A careful reading of Rule 3 (supra) would show that for posts in Class II category (1) comprising District Educational Officer and Deputy Director, officers comprising categories 1 to 5, 8, 10, 11 and 12 of class III are eligible for appointment.

“This implies that vacancies in category 1 of class II shall be filled up in terms of the 12 point cycle stipulated in Note 6 (supra). A closer reading of Note 6 and the roster for appointment prescribed therein would indicate that appointments against vacancies in class II category 1 would, inter alia, depend upon whether the eligible officer is a direct recruit or a promotee. For instance, a vacancy at roster Point 2 would go to a direct recruit Deputy Educational Officer or a direct recruit Gazetted Head Master Grade I or Lecturer IASE/CTE/SCERT or a direct recruit Senior Lecturer DIET or 7 a Special Officer (OS). In contradiction, a promotee Deputy Educational Officer or a promotee gazetted Head Master Grade I will not be eligible for consideration against a vacancy falling at roster Point 2. Similarly, a promotee Lecturer IASE/CTE/SCERT or promotee senior Lecturer DIET even when he or she is a member of the same class as their direct recruit counterparts in that category shall have to wait for a vacancy to occur at roster Point 4. Suffice it to say that while roster Points 2, 5, 8 and 11 have been allotted to direct recruits, the promotees have been treated differently and can be considered for vacancies at roster points 4, 6, 10 and 12 only. This classification of persons drawn from different sources who stand integrated into one class for the purpose of promotion is what was assailed on behalf of the promotee officers before the Tribunal primarily on the ground that direct recruits and the promotees may have come from different sources but once they are integrated into one class, there can be no classification as between them on the basis of their birth marks. The integration of promotees and direct recruits into one class would wipe out

their birth marks with the result that 8 the same can not be made a basis for a valid classification.

Any such classification would amount to classifying equals in the matter of further promotion based solely on the source from which they were drawn. Relying upon the decisions of this Court, the Tribunal and the High Court have held that inasmuch as Note 6 to Rule 3 classifies the promotees and direct recruits for the purpose of future promotion, even after their integration into one cadre the same was discriminatory hence ultra vires of Articles 14 and 16 of the Constitution.”

7. Appearing for the appellants Dr. Rajeev Dhavan, learned senior counsel argued that in The State of Jammu and 19, this Court has recognised that a classification based on higher educational qualifications was permissible even when those for whom the classification was made were integrated into one class. He urged that the decision of this Court in reliance whereupon was placed by the Tribunal as also by the High Court in support of the view taken by them stood diluted 9 to that extent implying thereby that the law declared in Roshan Lal Tandon's case (supra) could admit of exceptions, one of which based on higher qualifications was recognised in Triloki Nath's case (supra). Dr. Dhavan strenuously argued that this Court could recognise the need for correcting imbalance, if any, in the filling up of posts by persons drawn from different categories as yet another exception to the Rule stated in Roshan Lal Tandon's case (supra). He contended that the Government had reserved to itself the power to review the roster from time to time, which power of review would, according to Dr. Dhawan, enable the Government to ensure a fair distribution of vacancies among all those eligible for appointment against the same, but who came from difference sources.

8. Mr. A. Mariarputham, learned senior counsel appearing for the contesting respondents, on the other hand, submitted that the view taken by the Tribunal and the High Court of Andhra Pradesh declaring Note 6 to Rule 3 was legally unexceptionable inasmuch as the said note was on the face of 10 it discriminatory in so far as the same classified those integrated into a particular category based not on their educational or other qualification but whether they were promotees or direct recruits. The legal position, argued the learned counsel, was much too well settled by the decisions of this Court to admit of any doubt or call for any reconsideration. It was also not, according to the learned counsel, possible to carve out an exception to the well settled legal position governing permissible classifications based on an assumed imbalance in the filling up of vacancies from out of officers drawn from different sources.

9. In Roshan Lal Tandon's case (supra), one of the questions that fell for consideration was whether the promotees and direct recruits who formed one class in Grade `D' could thereafter be classified again depending upon the source from which they were drawn for the purpose of promotion to the next higher Grade `C'. This Court observed:

“In our opinion, the constitutional objection taken by the petitioner to this part of the notification is well-founded and must be accepted as correct. At the time when the 11

petitioner and the direct recruits were appointed to Grade `D', there was one class in Grade `D' formed of direct recruits and the promotees from the grade of artisans. The recruits from both the sources to Grade `D' were integrated into one class and no discrimination could thereafter be made in favour of recruits from one source as against the recruits from the other source in the matter of promotion to Grade `C'. To put it differently, once the direct recruits and promotees are absorbed in one cadre, they form one class and they cannot be discriminated for the purpose of further promotion to the higher Grade `C'."

10. The above decision was noticed by the Constitution Bench of this Court in Triloki Nath's case (supra). In that case diploma holder engineers had challenged the validity of certain service rules, inter alia, on the ground that inasmuch as the said Rules made a distinction between Degree Holder members of the Engineering service and Diploma Holders for purposes of promotion to the post of Executive Engineers the same was unconstitutional being violative of Articles 14 and 16 of the Constitution. The Rules in that case provided for promotion of only such of the Assistant Engineers as possessed a bachelor's degree in engineering or qualification of A.M.I.E. and as had put in seven years of service in the J & K Engineering Service. The High Court had allowed the petitions 12 of Diploma Holders and struck down the Rule as unconstitutional, holding that the Diploma Holders and the Degree Holders having been integrated into one category, no distinction or classification based on educational qualification could thereafter be made between them. In an appeal to this Court that view was reversed. This Court held that a classification must be truly founded on substantial differences that distinguish persons grouped together from those left out of the group and such differential attributes must bear a just and rational relation to the object sought to be achieved.

"Having said so, this Court observed:

"33. Judged from this point of view, it seems to us impossible to accept the respondents' submission that the classification of Assistant Engineers into degree-holders and diploma-holders rests on any unreal or unreasonable basis. The classification, according to the appellants, was made with a view to achieving administrative efficiency in the Engineering services. If this be the object, the classification is clearly co-related to it, for higher educational qualifications are at least presumptive evidence of a higher mental equipment. This is not to suggest that administrative efficiency can be achieved only through the medium of those possessing comparatively higher educational qualifications but that is beside the point.

What is relevant is that the object to be achieved here is not a mere pretence for an indiscriminate imposition of inequalities and the classification cannot be characterized as arbitrary or absurd. That is the farthest that judicial scrutiny can extend."

11. The Court also observed that the classification made on the basis of educational qualifications with a view to achieving administrative efficiency can not be said to rest on any fortuitous circumstance and that one has always to bear in mind the facts and circumstances of the case in order to judge the validity of a classification. The ratio of the decision in Roshan Lal Tandon's case (supra) was reiterated by their Lordship in the following words:

“44. The key words of the judgment are: "The recruits from both the sources to Grade `D' were integrated into one class and no discrimination could thereafter be made in favour of recruits from one source as against the recruits from the other source in the matter of promotion to Grade `C', (emphasis supplied). By this was meant that in the matter of promotional opportunities to Grade `C', no discrimination could be made between promotees and direct recruits by reference to the source from which they were drawn. That is to say, if apprentice train examiners who were recruited directly to Grade `D' as train examiners formed one common class with skilled artisans who were promoted to Grade `D' as train examiners, no favoured treatment could be given to the former merely because they were directly recruited as train examiners and no discrimination could be made as 14 against the latter merely because they were promotees. This is the true meaning of the observation extracted above and no more than this can be read into the sentence next following: "To put it differently, once the direct recruits and promotees are absorbed into one cadre, they form one class and they cannot be discriminated for the purpose of further promotion to the higher Grade `C'." In terms, this was just a different way of putting what had preceded.”

12. In the light of the above pronouncements, the Tribunal and the High Court were, in our view, justified in holding that Note 6 to Rule 3 was unconstitutional inasmuch as the same classified officers eligible for appointment against class II category 1 posts depending upon whether they were direct recruits or promotees. Such a classification based on the birth mark that stood obliterated after integration of officers coming from different source into a common cadre/category would be wholly unjustified and discriminatory.

13. That leaves us with the question whether any imbalance among those eligible for appointment against class II category 1 posts coming from different sources and categories would itself justify a classification like the one made in Note 6. Our answer is in the negative. There is no gainsaying that 15 classification must rest on a reasonable and intelligible basis and the same must bear a nexus to the object sought to be achieved by the statute. By its very nature classification can and is often fraught with the danger of resulting in artificial inequalities which make it necessary to subject the power to classify to restraints lest the guarantee of equality becomes illusory on account of classifications being fanciful instead of fair, intelligible or reasonable. We may gainfully extract the note of caution sounded by Krishna Iyer J. in his Lordship's separate but concurring judgment in Triloki Nath's case (supra):

“.....The dilemma of democracy is as to how to avoid validating the abolition of the difference between the good and the bad in the name of equality and putting to sleep the constitutional command for expanding the areas of equal treatment for the weaker ones with the dope of "special qualifications" measured by expensive and exotic degrees.

These are perhaps meta-judicial matters left to the other branches of Government, but the Court must hold the Executive within the leading strings of egalitarian constitutionalism and correct, by judicial review, episodes of subtle and shady classification grossly violative of equal justice. That is the heart of the matter. That is the note that rings through the first three fundamental rights the people have given to themselves.”

14. In the result we find no merit in these appeals which fail and are hereby dismissed but without any order as to costs.