ANDHRA PRADESH HIGH COURT

P. Satyanarayana Raju

Vs

The State of Andhra Pradesh

(C Reddy, J.)

06.02.1973

JUDGMENT

C Reddy, J.

1. The petitioners in these two applications under Article 226 of the Constitution are supervisors in the Public Constitution are supervisors in the Public works Department of the Government of Andhra Pradesh Engineering Subordinate Service. Some of them were Supervisors and some sub-overseers under the Government of Hyderabad when the state of Andhra Pradesh was formed on 1-11-1956. The petitioners who were original Sub-Overseers were promoted as supervisors subsequent to 1-11-1956. They do not possess the degree of Bachelor of Engineering of any University. Some of them hold diplomas awarded by the University and others hold diplomas awarded by the Government.

2. In the Engineering Branch of the Andhra Pradesh Engineering Subordinate Service there are seven categories of Officers. Supervisors constitute Category I. We are concerned with Category I only. A note appended to Rule 1 of Part 2 states that Supervisors possessing a degree in Engineering shall be designated as Junior Engineers. It is important to notice straightway that Supervisors who were designated as Junior Engineers do not constitute a separate and distinct category of the Andhra Pradesh Engineering Subordinate Service but are part of the category of Supervisors only. Appointment to the category of Supervisors is to be made by direct of Supervisors is to be made by direct recruitment or promotion from overseers or Civil Draughtsmen who constitute Categories II and IV of the Andhra Pradesh Engineering Subordinate Service. The qualifications prescribed for the post of Supervisor are either a degree in Engineering or a recognised diploma in Engineering. It is also provided that no candidate possessing a diploma shall be eligible for appointment if a suitable candidate possessing a degree in Engineering is available for appointment. It is further provided that qualified approved probationers, so far as they are available for appointment as full members in the category of Supervisors, shall be appointed to substantive vacancies alternatively from those possessing a degree in Engineering and those possessing a diploma.

3. Prior to 1958 the scale of pay admissible to Supervisors was Rs. 100-5-150-10-250 (graduates to start at Rs. 150/-). From 1-11-1958 the pay of scale of pay of Supervisors was raised to Rs. 120-5-150-7 1/2-210-10-300 (graduates to start at Rs. 180/-.) The starting salary of graduates was

later changed to Rs. 200/- and their scale of pay was fixed as Rs. 200-10-300. From 1-11-1961 the scale of pay of Supervisors was further raised to Rs. 180-7 1/2-210-10-280-15-400. The scale of pay of Junior Engineers (i.e. graduate Supervisors) was fixed as Rs. 250-15-400. Once again the scales of pay were revised in 1969 by G. O. Ms. No. 173 dated 13-6-1969. According to this G. O. the scale of pay of Supervisors was Rs. 200-12-320-16-400 while the scale of pay of Junior Engineers was Rs. 300-20-600. It will be noticed that upto 1969 the maximum pay admissible to Supervisors whether graduates or non-graduates was the same. It will also be noticed that the annual increments for some years before the Supervisors reached the maximum pay admissible under the rules were the same whether the Supervisors were graduates or non-graduates. The substantial difference in the matter of pay between the graduate Supervisors was the starting pay. It was only by G. O. Ms. No. 173 dated pay came to be fixed for Junior Engineers and Supervisors though they continued to belong to the same category of the same service. In W. P. No. 2115 of 1971 the petitioners who are non-graduate Supervisors complain that while they are members of the same category of service as graduate Supervisors, doing the same work and discharging the same functions as graduate Supervisors, they are criminated in the matter of pay. They pray that the higher scale of pay admissible to graduate Supervisors should also be made applicable to them. In W.P. No. 2378 of 1971 there is no reference to G.O. Ms. No. 173, but among a host of other prayers there is also a prayer that Supervisors should be meted out the same treatment as Junior Engineers in the matter of scale of pay too.

4. On 29-4-1971 there was a meeting of the Secretary to the Government , Public Works Department and the several Chief Engineers to consider the question of 'gazetting the posts of Junior Engineers.' It was decided that Junior Engineers should be made gazetted officers and that from the posts hitherto filled by Supervisors, graduate as well as non-graduate , 2,120 posts in the Public Works Department and 428 posts in the Roads and Buildings Department should be reserved for Junior Engineers. As the number of posts reserved for Junior Engineers was in excess of the number of Junior Engineers in service it was decided that some of the posts reserved for Junior Engineers may be temporarily filled up by non-graduate Supervisors. It was further decided that the channel of promotion for both Junior Engineers and non-graduate Supervisors should be to the posts of Assistant Engineers and that the qualifying service for promotion should be the same irrespective of whether they were Junior Engineers or Supervisors. It was also decided that there should be no up gradation of Supervisors to the posts of Junior Engineers by the acquisition of graduate qualification while in service. It was decided that a ratio should be fixed for the filling up of posts of Assistant Engineers between Junior Engineers and Supervisors. As a step towards implementation of the decision taken at the meeting the Government issued G.O. Ms. No. 787 dated 9-6-1971 to the effect that the posts of Junior Engineers should be constituted as separate category , distinct from Supervisors and that those posts should be gazetted. It was mentioned in that G.O. that consequential amendments to the special Rules would be issued separately by the departments concerned. The constitutional validity of this G.O. is questioned in both W.P. Nos. 2115 and 2378 of 1971. I may mention here no amendments to the special rules have so far been issued by the Government.

5. I will first consider the claim of the petitioners to the same scale of pay as Supervisors designated as Junior Engineers . I have already, pointed out that it was only in 1969 when G.O. Ms. No. 173 dated 13-6-1969 was issued that the scales of pay of non-graduate supervisors and graduate supervisors designated as Junior Engineers became totally different. In regard to the claim of the petitioners to the same scale of pay as graduate Supervisors we are concerned with

the situation as it obtained on 13-6-1969, the date of G.O. Ms. No. 787 dated 9-6-1971 Junior Engineers were also Supervisors and both belonged to the same category of the Engineering Subordinate Service. It is also undisputed that prior to 9-6-1971 they did the same work, discharged the same duties and performed the same functions. Equal pay for equal work claim the supervisors. On the other hand, the learned Government Pleader contends that though Junior Engineers were also supervisors and belonged the same category of service , they did form a distinct class by themselves amongst the supervisors by virtue of their educational qualification and the Andhra Pradesh Engineering Subordinate Service Rules themselves, as well as the Andhra Pradesh Engineering Service Rules, recognised this distinction. The learned Government Pleader submits that it is competent for the Government to prescribe different scales of pay based on the distinction of educational qualification. He also submits that equality of opportunity in the matter of employment does not mean "Equal pay for equal work."

6. It is true that 'Equal pay for equal work' is not one of the Fundamental Rights guaranteed by our Constitution. It is also true that there is no statute or statutory rule prescribing 'equal pay for equal work'. It is true that equal pay for equal work was described by the Supreme Court in*Kishori Mohanlal v. Union of India.* as an abstract doctrine. Perhaps the attention of the Supreme Court was not drawn to the Directive Principles of State Policy. Abstract or not, it is one of the goals our people have set for themselves. It is one of the Directive Principles of our constitution that the State shall , in particular , direct its policy towards securing that there is equal pay for equal work for both men and women. (Article 39 (d) of the Constitution). Directive Principles are of course , not justifiable in the sense that the courts cannot compel the making of laws to further the Directive Principles of the State policy. But it does not mean that the Directive Principles have to be ignored by the Courts. Far from it, Art. 37 of the Constitution expressly prescribes that the directive principles are fundamental to the governance of the country and that it shall be the duty of the State to apply these principles in making laws. It has been said on high authority that the directive Principles should serve as an instrument of instructions to the legislature and the executive. They are the guidelines for the legislature and the executive. So they must serve the judiciary as an instrument of interpretation. In interpreting other provisions of the Constitution including the provisions relating to fundamental rights for the purpose of adjudicating upon the constitutional validity of any legislative or executive action, the courts will be well justified in looking to the Directive Principles for light and guidance or at any rate to seek assurance. That will be a legitimate use by the Courts of the directive principles. A Court may also prefer an interpretation which makes a fundamental right pregnant with a Directive Principle, that is, an interpretation which makes a fundamental right contain a Directive Principle to an interpretation which rejects a Directive Principle.

7. The learned counsel for the parties have cited before me a large number of cases, reported and unreported. In the case *Mervyn Continho v. Collector of customs.* . Two questions arose for the consideration of the Supreme Court. The first question was whether a rotational system of fixing seniority in a cadre half of which consisted of direct recruits and the other half of promotees was valid. The supreme Court said there was no violation of the principle of equity of opportunity. The second question was whether the rotational system could continue to be applied to the next stage of promotion where the promotion was by selection. The Supreme Court said when there was only one source of recruitment by promotion and not two sources the rotational system could not be applied and that it would offend the equality provisions of the *Constitution. In Govind Dattatray v. Chief Controller of Imports & Exports. i*t was pointed out that there could be a

reasonable classification of the employees for the purpose of appointment or promotion and it was further observed that the concept of equality in the matter of promotion could be predicated only when the promotees were drawn from the same source. In Roshanlal Tandon V. Union of India, where appointment to grade C was by promotion from Grade D and appointment to Grade D was both by direct recruitment and by promotion from the grade of artisans, there was notification which prescribed that 80% of the posts in Grade C should be reserved for those directly recruited to Grade D and the remaining 20% for those promoted from the posts of Artisans, direct recruits not being required to undergo any "Selection" for promotion to Grade C while the Artisan promotees' were required to undergo a process of selection in order to be promoted to Grade C. The validity of this notification was questioned before the Supreme Court. The Supreme Court held that the Constitutional Objection was well founded and said.

> "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 petitioner and the direct recruits were appointed to Grade D, there was one class in the 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 from one class and they cannot be discriminated for the purpose of further promotion to higher Grade C."

In Jaisighani v Union of India, the principal question which was considered by the Supreme Court was whether a rule giving wightage in seniority by three years to promotees over direct recruits was valid. The direct recruits complained that they and the promotees became one class immediately on entry and thereafter there could not be any class within that class. The Supreme Court discharged with the contention of the direct recruits and observed that it was not right to approach the problem as if it was a case of classification of one service into two classes for the purpose of promotion. It was really a case of recruitment to the service from two different sources and the adjustment of seniority between the recruits coming from the two sources. In such case, it could not be said that there was any violation of Art, 16 (1) of the Constitution. The Supreme Court reiterated the principle that there could be a reasonable classification of the employees for the purpose of appointment or promotion and that the concept of equality in the matter of promotion could be predicated only when the promotees were drawn from the same source.

8. In S. M. Pundit v. State of Gujarat, AIR 1972 SC 252 the question arose whether a distinction could be made between directly recruited Mamlatdars and promotee Mamlatdars in the matter of their further promotion to the posts of Deputy Collector by reserving half the posts available for appointment by promotion to directly recruited Mamlatdars who had put in seven years service. The Supreme Court had no hesitation in holding that the distinction could not be made.

9. In state of Mysore v. M. H. Krishnamurthy, the facts were as follows: There were formerly two separate units of the accounts service of the Mysore Government, viz, the P.W.D. Accounts Unit and the Local Fund Audit Unit. On 15-5-1959 these two units were integrated under the common administrative control of the Controller of State Accounts and the Mysore State Accounts

Services Cadre and Recruitment Rules were issued. A combined cadre strength was fixed. Promotion to higher posts in the service was on the basis of seniority cum merit. But the Mysore Government issued notifications so fixing the cadre strengths as to reduce the number of promotional posts available to the public works accounts unit to a very low figure as compared with the promotional opportunities open to the officers in the other wing. The Supreme Court upheld the judgment of the Mysore High Court holding that the notifications were unconstitutional, Beg, J. said.

> "The question which remains for consideration by us is one relating to the validity of a division into two classes of members of the same service, belonging to the same cadre, for purpose of a difference to be made in their promotional chances. Learned counsel for the State has sought to justify these differences in the historical background to the practice of making the distinction in promotional chances. The Mysore High court had very rightly observed that neither a fortuitous artificial division in the past nor the constitutional practice of making an unjustifiable discrimination in promotional chances of Government servants belonging to what was really a single category, without any reference either to merit or seniority or educational qualifications could justify the differences in promotional chances. We think that it had rightly declared the purported amendments in the Rules of 1959, which sought to disintegrate a service which had been integrated, to be ultra vires."

10. It is thus clear that while it is permissible to make a reasonable classification for the purpose of appointment or promotion where the sources of recruitment are different, it is not permissible to subdivide the same source so as to create a class within a class. Where recruitment to a post is from different sources the difference of source cannot be further continued for the purpose of promotion. Those that have been joined together by the rules should not be put asunder by the rules (with apologies to the biblical injunction : "whom God hath joined together let no man put asunder"). No long standing practice can justify such a discrimination.

11. The learned counsel for the respondents urged that a classification based on the ground of educational qualification is permissible both in the matter of appointment and promotion. Reliance was placed on the decision of a Full Bench of this Court in W. P. No. 169 of 1968 (Andh. Pra.) (FB) etc. The constitutional validity of the rotational system of promotion from graduate Supervisors and non-graduate Supervisors to the posts of Assistant Engineers was in question before the Full Bench. The Full Bench observed, "Where the persons are drawn from different sources and their technical or educational background were by no means of uniform quality, the fact that all of them are included in an integrated or unified cadre, does not ipso facto preclude a rotational system being evolved for the purpose of promotion ..... There is no inherent vice in the method of classification based on educational norms or qualifications. Nor is there anything fundamentally wrong is the adoption of a method of rotation for assigning seniority in a manner incompatible with the actual duration of service."The Full Bench then proceeded to point out that prior to 1-11-1956 non-graduate Supervisors under the erstwhile Government of Hyderabad could only aspire to become Sub-Engineers. But in the changed and enlarged set up of the service after 1-11-1956 the non-graduate Supervisors could aspire not only for the posts of Assistant Engineers. The Full Bench stated that it was apparent that the duties and responsibilities of the cadre of Assistant Engineers and Executive Engineers were of a more exacting nature and called for technical competence of a higher order than what would have been adequate for a Sub-Engineer's post. Those considerations naturally weighed with the Government

in prescribing a rotational system with weightage for the graduate supervisors. Later the Full Bench said, "The argument that all the Supervisors form one source from out of which the promotions have to be made ignores the vital fact that the supervisors are drawn from different sources and from persons with varying standards of qualifications. The classifications, in our opinion, is valid and not unreasonable and is in conformity with well established precedent. No hostile or illegal discrimination was made. The rotational method is consistent with established practice under which persons with inferior qualifications were required to have longer service to secure eligibility for promotion. There is a rational relationship between the classifications and the object of the rule."

Assuming that the classification of Supervisors into graduate and non-graduate Supervisors based on their educational qualifications was a permissible classification for the purposes of promotion to the posts of Assistant Engineers which required greater skill and higher competence, it did not follow that a classification based on educational qualification was permissible in the matter of salary when all of them belonged to one integrated service having been recruited by the same process of selections and in the case of direct recruitment to the posts of Supervisors in competition with each other, and did the same work, carried the same responsibilities, discharged the same duties and performed the same functions. No posts were reserved for graduate Supervisors on the basis of their involving arduous duties and therefore requiring officers of greater competence. Any Supervisors graduate or non-graduate, was liable to be posted to fill any post in the Engineers Subordinate Service. Once holders of diplomas entered the Engineering Subordinate service as Supervisors along with holders of degrees there was no distinction between them as long as they were members of the Engineering Subordinate Service. The learned counsel for the respondents drew my attention to Rule 8 of the Engineering Subordinate Service Rules which prescribed a rotational system of filling of up substantive vacancies. That rule was designed to protect the Supervisors and I do not see how the classification therein could have any rational bearing on the question of salary. If the Government wanted to create two categories or grades of Supervisors one consisting of graduates drawing a higher scale of pay and the other consisting of non-graduates drawing a higher scale of pay and the other consisting of non-graduates drawing a lower scale of pay nothing could have been easier then to create two distinct cadres or graduates. The posts could have been divided between the two cadres on the basis of the duties involved. If that had been done, as was the case in Kishori Mohanlal Bakshi's case, nobody could have taken exception to sustain the difference in scales of pay between persons who are members of the same category of the service, all of whom have been appointed to it on a selective basis, who do the same work who carry the same responsibilities and who discharge the same duties . In arriving at the conclusion that I have, I seek assurance from the Directive Principle of 'equal pay for equal work' enunciated in Art. 39 (d) of the Constitution.

12. The learned counsel for the respondents placed great reliance on the decision of the Supreme Court in the *State of Mysore v. P. Narasing Rao,*[1]. In that case , the two posts of Tracers were recognised into two grades, one consisting of matriculate tracers and the other of non-matriculates. The scale of pay of matriculates tracers was Rs. 50-120 while that of non-matriculate tracers was Rs. 40-80. The difference in scales of pay was challenged as unconstitutional. The Supreme Court upheld that classification of Tracers into two grades matriculate tracers and non-matriculate tracers, as constitutional and observed that the provisions of Articles 14 and 16 did not exclude the laying down of selective tests , nor did they preclude the Government from laying down qualifications for the posts. They further observed that the

qualifications need not only be technical but could also be general qualification relating to the suitability of the candidate for public service. This decision is really of no assistance to the respondents since there were two grades of tracers in the service and different scales of pay were fixed for the two different grades. It was not a case where all the tracers belonged to the same grade of service and yet different scales of pay were prescribed. In fact, Hedge, J. who was a party to the decision in Narasing Rao's case later explained it on precisely the same grounds as those mentioned by me. Later, in S.M. Pandit's case AIR 1972 SC 252 Hegde, J. observed :
"The counsel for the appellants sought to place some reliance on the decision of this Court inState of Mysore v. Narasing Rao. That decision is clearly distinguishable. In that case, according to the rules framed by the Government, the non-matriculate tracers form a separate cadre from those who passed the matriculation examination. The cadres had different pay scales. Hence there was no discrimination between the officers borne on the same cadre."

13. The learned counsel for the respondents relied on the decisions of the Mysore High Court in B. *C. K. Murthy v. State of Mysore*[2] , of the *Madya Pradesh High Court in Ghanshyam Lal v. State of Madhya Pradesh*[3], and of the Delhi High Court in *O.P. Gupta v. Municipal Corporation of Delhi*[4], The learned Judges who decided these cases purported to follow the decision of the Supreme Court in Narasing Rao's case. I have already pointed out how that case is distinguishable and how the Supreme Court itself distinguished it later in Pandit's case. The learned counsel also relied on the decision of a learned single Judge of the Madras High Court in W.P. No. 4605 of 1968 and of a Division Bench of the Madras High Court which affirmed the learned Judge's judgment on the appeal. The learned single Judge's judgment shows that it had been decided earlier in another case that the Supervisors and Junior Engineers in the service of the Madras Government did not belong to the same grade. That being so, the decisions do not apply to the facts of the present case.

14. On the other hand , the view that I have taken is supported by the decisions of the Mysore High Court in *Merey Soans v. State of Mysore* [5]. of the Punjab and Haryana High Court in Punjab State v. Lekh Raj, of the *Madya Pradesh High Court in Game v. State of Madya Pardesh* [6], of the Jammu and *Kashmir High Court in Trilokinath v. State of Jammu and Kashmir*[7] , and of the Madras High Court in W.P. Nos. 717 and 2174 of 1966 (Mad). In the Mysore case, the question arose whether physical instructors who were allotted from the State of Madras to the State of Mysore were entitled to the higher scale of pay which was assigned to those who were allotted to the State of Mysore from the erstwhile State of Hyderabad. The Mysore High Court held that those allotted from the State of Madras were also entitled to the higher scale of pay. In the Punjab case it was held that a distinction could not be made between vaidyas who held a five year degree and those who held a three or four year degree in the matter of scale of pay when all of them belonged to the same class of service. In the Madras case , Venkatadri, J. held that Assistant Surgeons who were not graduates were also entitled to the same scale of pay as Assistant Surgeons who were graduates.

15. In the light of the foregoing discussion I hold that the classification of Supervisors forming Category I of Branch I of the Andhra Pradesh Engineering Subordinates Service into graduate Supervisors (Junior Engineers) and non-graduate Supervisors for the purpose of giving different scales of pay is void. On that finding, the question is what relief can be given to the petitioners. According to the learned counsel for the respondents no relief can be given to the petitioners. According to the learned counsel all that can be done is to strike down G.O. Ms. No. 173 dated

13-3-1969. But that will not serve any purpose. I do not see why the relief which I can give to the petitioners is only to strike down the G.O. There is nothing to inhibit the Court exercising jurisdiction under Article 226 to issue writ directing the respondents to accord the petitioners the same treatment as being accorded to graduate supervisors. That was the relief which the Mysore High Court gave in the case of AIR 1969 Mys 348. A direction will, therefore issue to the respondents to give to the petitioners in the two writ petitions the same scale of pay as has been fixed for graduate Supervisors (Junior Engineers) by G.O. Ms. No. 173 dated 13-3-1969, and with effect from the same date on which the G.O. came into force. I have already pointed out that in W.P. No. 2378 of 1971 there is no express prayer that G.O. Ms. No. 173 should be applied to the petitioners therein. But there is a general prayer that the Supervisors should be meted out the same treatment as Junior Engineers in the matter of scale of pay. The prayer is wide enough and I am not prepared to deny them the relief to which they are entitled on the ground that the prayer is too general.

16. In the course of my discussion I have pointed out that it would be permissible for the Government to constitute graduate Supervisors (Junior Engineers) into a separate cadre or grade and that if that had been done it would not be open to question. That is precisely what the Government has now done by issuing G.O. Ms. No. 787 dated 9-6-1971 does not therefore, suffer from any constitutional vice.

17. Sri H. S. Gururaj Rao, learned counsel for the petitioners in W.P. No. 2378 of 1971 also raised a contention that G.O. Ms. No. 787 was opposed to the provisions of Section 115 (7) of the States Reorganisation Act as it varied the conditions of service of non-graduate Supervisors to their disadvantage. There is no substance in this submission since what the G.O. does is to raise the status of the graduate Supervisors leaving untouched the non-graduate Supervisors. It cannot be said that the conditions of service of the non-graduate Supervisors have in any manner been altered to their disadvantage. Sri Gururaj Rao also submitted that G.O. Ms. No. 787 was opposed to Article 309 of the Constitution viz., the Andhra Pradesh Engineering Subordinate Service Rules. The G.O. itself mentions that the rules are proposed to be amended . In one sense , therefore, the prayer seeking a quashing of G.O. Ms. No. 787 is premature. I do not think it is necessary to pursue the matter further.

18. In the result , a direction as mentioned by me will issue in both the Writ Petitions . The prayer to quash G.O. Ms. No. 787 dated 9-6-71 is denied. There will be no order regarding costs. Advocate's fee Rs. 100/- in each of the writ petitions.

19. Order accordingly.

Cases Referred.

1AIR 1968 SC 349
2972 Serv LR 88 = (AIR 1972 Mys 88)
31971 Serv LR 610 = (1971 Lab IC 1043) (Madh Pra.)
4(1973) 1 Serv LR 209 = (!973 Lab IC 1278) (Delhi)
5AIR 1969 Mys 348
61972 Serv LR 415 = (1972 Lab IC 925) (Madh Pra)
7(1973) 1 Serv LR 64 = (1972 Lab IC 1575) (J&K)