PETITIONER:
STATE OF MYSORE & ANR.

Vs.

RESPONDENT:
P. NARASING RAO

DATE OF JUDGMENT:
31/08/1967

BENCH:
RAMASWAMI, V.
BENCH:
RAMASWAMI, V.
WANCHOO, K.N. (CJ)
BACHAWAT, R.S.
MITTER, G.K.
HEGDE, K.S.

CITATION:
1968 AIR 349 1968 SCR (1) 407
CITATOR INFO :

D	1972 SC 252	(6)
D	1974 SC 1	(40A,46,52)
F	1974 SC1631	(28)
F	1976 SC 490	(27,106)
R	1978 SC 327	(7,9,10)
RF	1981 SC 298	(24)
RF	1985 SC1124	(7)
RF	1989 SC 307	(9)
APR	1989 SC1256	(8)
F	1989 SC1308	(7)
R	1992 SC1754	(5)

ACT:
Constitution of India Arts. 14, 16--Non-matriculate Government employee placed in lower pay scale--Matriculate employees doing similar work placed in higher scale--Whether discrimination--Whether higher general education relevant consideration for fixing higher pay where technical qualifications are similar.
States Reorganisation Act, 1956, s. 115(7)--Respondent in single cadre of matriculate and non-matriculate tracers in old Hyderabad State--Placed in separate cadre of non-matriculates in new Mysore State--Whether his conditions, of service adversely affected.

HEADNOTE:
The respondent was employed as a Tracer in the Engineering Department in the erstwhile Hyderabad State where the cadre of Tracers consisted of both matriculates as well as non-matriculates and no distinction was made between them. As a result of the reorganisation of States in 1956 he was allotted to the appellant Mysore State where the cadre of Tracers was reorganised into two, ,one consisting of matriculate Tracers in a higher scale of pay and the other of non-matriculates in a lower scale. The respondent was given the option either to remain in his old Hyderabad scale of pay or to accept the new scale applicable to non-matriculates. He refused to exercise the option and claimed that the cadre of Tracers should not have been divided into

two grades and that no distinction should have been made between matriculates and non-matriculates. His claim was rejected by the Superintending Engineer on March 19, 1958 and he filed a writ petition in the High Court praying that the order of the Superintending Engineer be quashed and for the issue of writ in the nature, of mandamus to fix his pay in the scale prescribed for matriculate Tracers. The High Court allowed the petition, holding that there was no valid reason for making a distinction as both matriculate and non-matriculate Tracers were doing the same kind of work and the distinction made was in violation of Arts. 14 and 16 of the Constitution.

On appeal to this Court,

Held: Allowing the appeal. Higher educational qualifications are relevant considerations for fixing a higher pay scale and the classification of two grades of Tracers in the new Mysore State was not violative of Arts. 14 or 16 of the Constitution.

Articles 14 and 16 form part of the same constitutional code Of guarantees and supplement each other. In other words Art. 16 is only an instance of the application of the general rule of equality laid down in Art. 14 and it should be construed as such. Hence there is no denial of equality of opportunity unless the person who complains of discrimination is equally situated with the person or persons who are alleged to have been favoured. [411E-F]

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The provisions of Art. 14 or Art. 16 do not exclude the laying down of selective tests, nor do they preclude the Government from laying down qualifications for the post in question. Such qualifications need not be only technical and it is open to the Government to consider the general educational attainments of the candidates and to give preference to candidates who have better educational qualifications besides the technical proficiency of a Tracer. [411G412B]

General Manager, Southern Railway v. Rangachari, [1962] 2 S.C.R. 586, 596, referred to.

There was no force in the respondent's contention that because of his having been in one grade with matriculate Tracers in the old State and, on his being made to work in a separate non-matriculate grade in the new State his conditions of service were adversely affected in violation of s. 116(7) of the States Reorganisation Act 1956. Furthermore the basis of promotion was merit and seniority based on the interstate seniority list prepared under the provisions of the Act; thus the respondent's seniority had not been affected and he was not deprived of any accrued benefits. [412F-G; 414C-D]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1238 of 1966.

Appeal by special leave from the judgment and order dated January 15, 1963 of the Mysore High Court in Writ Petition No. 48 of 1962.

R. Gopalakrishnan and S. P. Nayar, for the appellants.

S. C. Mazumdar, M. M. Kshatriya and G. S. Chatterjee, for the respondent.

The Judgment of the Court was delivered by

Ramaswami, J.This appeal is brought, by special leave, from the judgment of the Mysore High Court dated January 15, 1963 in Writ Petition No. 48 of 1962 granting a writ -in the nature of mandamus directing the appellants to accord to the

respondent that benefit of both the revised higher pay scales for the Matriculate tracers with effect from the respective dates on which they came into force.

The respondent, Narasing Rao was employed as a tracer in the Engineering Department in the Ex-Hyderabad State on the scale of pay Rs. 65-90.In the cadre of tracersof that State,there were matriculates as well as non-matriculates.But there was no distinction made in the scale of pay for that reason and all the tracers were placed in the -same scale. The respondent was a non-matriculate. There was re-organisation of States in 1956 and as a result of the re-organisation a part of the area of Hyderabad State became part of the new Mysore State. The respondent was allotted to the new Mysore State. After the transfer of the respondent to the new State. the cadre of tracers into which tracers from Bombay State had also been absorbed, was re-organised into two grades, one consisting of matriculate tracers whose scale of pay was fixed at Rs. 50-120 and the other of non-matriculates

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at Rs. 40-80 with effect from January 1, 1957. It is necessary to state that in the old Mysore State even before November 1, 1956 there were two grades of tracers, viz., non-S.S.L.C. tracers on the pay scale of Rs. 30-50. and S.S.L.C. tracers on the pay scale of Rs. 40-60. As the respondent was a non-matriculate he was given the option to accept the new scale of pay i.e., Rs. 40-80 or remain in the old Hyderabad scale of Rs. 65-90. But the respondent refused to exercise the option and claimed that the cadre of tracers in the new Mysore State should not have been divided into two grades and that no distinction should have been made between matriculates and non-matriculates. The respon-dent insisted that his pay should be fixed in the grade Rs. 50-120. The claim was rejected by the Superintending Engineer on March 19, 1958 and the respondent was told that he could only be fixed in the new revised scale of Rs. 40-80 as he had not passed the S.S.L.C. examination. Meanwhile, by an order of the Government dated February 27, 1961 the pay scales of the tracers in the new State of Mysore were further revised and the revised pay scales were directed to come into force with effect from January 1, 1961. Under this Government order, the tracers who had passed the S.S.L.C. examination were entitled to opt in favour of the pay scale Rs. 80-150 and those who had not passed that examination were entitled to get into pay scale of Rs. 70-1 10. The respondent claimed that he was entitled to the pay scale applicable to the tracers who had passed the S.S.L.C. examination viz., Rs. 80150. The claim of the respondent was rejected. Thereafter the respondent filed a writ petition in the Mysore High Court praying that the order of the Superintending Engineer dated March 19, 1958 fixing his pay in the scale of non-matriculate tracers and giving him the option; to retain his old scale may be quashed and for a writ in the nature of mandamus to fix his pay in the scale prescribed for matriculate tracers. The High Court allowed the writ petition, holding that there was a violation of the guarantees given under Arts. 14 and 16 of the Constitution and granted the relief claimed by the respondent on the ground that there was no valid reason for making a distinction as both matriculate and non-matriculate tracers were doing the same kind of work.

The first question to be considered in this appeal is whether the creation of two scales of tracers in the new Mysore State who were doing the same kind of work amounted to a discrimination which violated the provisions of Arts.

14 and 16 of the Constitution.
The relevant law on the subject is well-settled. Under Art. 16 of the Constitution, there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State or to promotion from one office to a higher office thereunder. Article 16 of the Constitution is only an incident of the application of the concept of equality enshrined in
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Art. 14 thereof. It gives effect to -the doctrine of equality in the matter of appointment and promotion. It follows that there can be a reasonable classification of the employees for the purpose of appointment or promotion. The concept of equality in the matter of promotion can be predicated only when the promotees are drawn from the same source. 'This Court in dealing with the extent of protection of Art. 16(1) observed in General Manager, Southern Rly. v. Rangachari(1):

> "Thus construed it would be clear that matters relating to employment cannot be confined only to the initial matters prior to the act of employment. The narrow construction would confine the application of Art. 16(1) to the initial employment and nothing else; but that clearly is only one of the matters relating to employment. The other matters relating to employment would inevitably be the provision as to the salary and periodical increments therein, terms as to leave, as to gratuity, as to pension and as to the age of superannuation. These are all matters relating to employment and they are, and must be, deemed to be included in the expression 'matters relating to employment' in Art. 16(1)..... This equality of opportunity need not be confused with absolute equality as such. What is guaranteed is the equality of opportunity and nothing more. Article 16(1) or (2) does not prohibit the prescription of reasonable rules for selection to any employment or appointment to any office. Any provision as to the qualifications for the employment or the appointment to office reasonably fixed and applicable to all citizens would certainly be consistent with the doctrine of the equality of opportunity; but in regard to employment, like other terms and conditions associated with and incidental to it, the promotion to a selection post is also included in the matters relating to employment, and even in regard to such a promotion to a selection post all,that Art. 16(1) guarantees is equality of opportunity to all citizens who enter service..... In this connection it may be relevant to remember that Art. 16(1) and (2) really give effect to the equality before law guaranteed by Art. 14 and to the prohibition of discrimination guaranteed by Art. 15(1). The three provisions form part of the same constitutional code of guarantees and supplement each other. If that be so, there would be no difficulty in holding that the matters relating to employment must include

'all matters in relation to employment both prior, and subsequent, to the employment which are incidental to the employment and form part of terms and conditions of such employment."

(1) [1962] 2 S.C.R. 586, 596.

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The argument was stressed on behalf of the respondent that success in the S.S.L.C. examination had no relevance to the post of tracer and the tracers of the erstwhile State of Hyderabad who were allotted to the new State of Mysore were persons similarly situated and there was no justification for making a discrimination against only some of them by creating a higher pay scale for tracers who had passed the S.S.L.C. examination. It was contended for the respondent that all, the tracers who were allotted to the new State of Mysore were persons who were turning out the same kind -of work and discharging the same kind of duty and there was no rational basis for making two classes of tracers, one consisting of those who had passed the S.S.L.C. examination and the other consisting of those who had not. In our opinion, there is no justification for the argument put forward in favour of the respondent. It is well-settled that though Art. 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. When any impugned rule or statutory provision is assailed on the ground that it contravenes Art. 14, its validity can be sustained if two tests are satisfied. The first test is that the classification on which it is founded must be based on an intelligible differentia which distinguishes persons or things grouped together from others left out of the group; and the second test is that the differentia in question must have a reasonable relation to the object sought to be achieved by the rule or statutory provision in question. In other words, there must be some rational nexus between the basis of classification and the object intended to be achieved by the statute or the rule. As we have already stated ' Arts. 14 and 16 form part of the same constitutional code of guarantees and supplement each other. In other words, Art. 16 is only an instance of the application of the general rule of equality laid down in Art. 14 and it should be construed as such. Hence, there is no denial of equality of opportunity unless the person who complains of discrimination is equally situated with the person or persons who are alleged to have been favoured, Article 1.6(1) does not bar a reasonable classification of employees or reasonable tests for their selection. It is true that the selective test adopted by the Government for making two different classes will be violative of Arts. 14 and 16 if there is no relevant connection between the test prescribed and the interest of public service. In other words, there must be a reasonable relation of the prescribed test to the suitability of the candidate for the post or for employment to public service as such. The provisions of Art. 14 or Art. 16 do not exclude the laying down of selective tests, nor do they preclude the Government from laying down qualifications for the post in question. Such qualifications need not be only technical but they can also be general qualifications relating to the suitability of the candidate for public service as such. It is therefore not right to say that in the appointment to the post of tracers the Government ought to

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have taken into account only the technical Proficiency of the candidates in the particular craft. It is open to the Government to consider also the general educational

attainments of the candidates and to give preference to candidates who have a better educational qualification besides technical proficiency of a tracer. The relevance of general education even to technical branches of public service was emphasised long ago by Macaulay as follows:

> Men who have been engaged, up to one and two and twenty, in studies which have no immediate connexion with the business of any profession, and the effect of which is merely to open, to invigorate, and to enrich the mind, will generally be found, in the business of every profession, superior to men who have,, at eighteen or nineteen, devoted themselves to the special studies of their calling. Indeed, early superiority in literature and science generally indicates the existence of some qualities which are securities against vice-industry, self-denial, a taste for pleasures not sensual, a laudable desire of Honourable distinction, a still more laudable desire to obtain the approbation of friends and relations. We, therefore, think that the intellectual test about to be established will be found in practice to be also the best moral test can be devised."

(Hansard, Series, 3 CXXVIII, 754, 755)

In our opinion, therefore, higher educational qualifications such as success in the S.S.L.C. examination are relevant considerations for fixing a higher pay scale for tracers who have passed the S.S.L.C. examination and the classification of two grades of tracers in the new Mysore State, one for matriculate tracers with a higher pay scale and the other for non-matriculate tracers with a lower pay scale is not violative of Arts. 14 or .16 of the Constitution.

We proceed to consider the next question raised on behalf of the respondent, viz., that the condition of service of the respondent has been adversely affected by the creation of two new pay scales and that there was a violation of the provisions of s. 115 of the States Reorganisation Act, 1956 (Act No. 37 of 1956) which states:

> "115. Provisions relating to other services-
> (I) Every person who immediately before the appointed day is serving in connection with the affairs of the Union under the administrative control of the Lieutenant-Governor or Chief Commissioner in any of the existing State of Ajmer, Bhopal, Coorg, Kutch and Vindhya Pradesh, or is serving in connection with the affairs of any of the existing States of Mysore, Punjab, Patiala and -East Punjab States Union and Saurashtra shall, as from

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> that day, be deemed to have been allotted to serve in connection with the affairs of the successor State to that existing State.
> (2) Every person who immediately before the appointed day is serving in connection with the affairs of an existing State part of whose territories is transferred to another State by the provisions of Part 11 shall, as from that day, provisionally continue to serve in connection with the affairs of the principal successor State to that existing State unless he is required by general or special order of

the Central Government to serve provisionally in connection with the affairs of any other successor State.

(3) As soon as may be after the appointed day, the Central Government shall, by general or special order, determine the successor State to which every person referred to in subsection (2) shall be finally allotted for service and the date with effect from which such allotment shall take effect or be deemed to have taken effect.

(4) Every person who is finally allotted under the provisions of sub-section (3) to a successor State shall, if he is not already serving therein be made available for serving in that successor State from such date as may be agreed upon between the Governments concerned, and in default of such agreement, as may be determined by the Central Government.

(7) Nothing in this section shall be deemed to affect after the appointed day the operation of the provisions of Chapter I of Part XIV of the Constitution in relation to the determination of the conditions of service of persons serving in connection with the affairs of the Union or any State:

Provided that the conditions of service applicable immediately before the appointed day to the case of any person referred to in sub-section (1) or sub-section (2) shall not be varied to his disadvantage except with the previous approval of the Central Government."

It was stated that in the erstwhile Hyderabad State the respondent was kept in one grade along with matriculate tracers and there has been a violation of the proviso to s. 115(7) of the States Reorganisation Act, 1956, because in the new Mysore State the respondent has been made to work in a separate grade of non-matriculate tracers. We do not think there is any substance in this contention. We do not propose, in this case, to consider what is the full scope and meaning of the phrase "Conditions of

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service" occurring in the proviso to S. 115 of the States Reorganisation Act. It is sufficient for us to say that, in the present cast,, there is no violation of the proviso and the respondent is not right in contending that his condition of service is adversely affected because he is made to work in the grade of non-matriculate tracers in the new Mysore State. It was alleged by the respondent that according to Hyderabad rules 20 per cent of the vacancies of SubOverseers were to be from the grade of tracers and for those who were not promoted there was another grade of Rs. 90-120 and if the order of the Superintending Engineer dated March 19, 1958 was to stand, the respondent's chance of promotion would be affected. In their counter-affidavit the appellants have said that 10 percent of the tracers in the new State of Mysore are entitled to be promoted to the grade of Assistant Draftsmen in the scale of Rs. 110-220. The basis of promotion to the higher grade was the inter-State seniority list prepared under the provisions of the States Reorganisation Act. It was stated that the seniority of the respondent was not affected and he had not been deprived of any accrued benefits. The basis of promotion to the higher

grades was selection based on merit-cum-seniority. In other words, both matriculate and non-matriculate tracers were eligible for promotion on the basis of the inter-State seniority list prepared for this Department. In our opinion, Counsel on behalf of the respondent is unable to make good his submission on this aspect of the case.

For the reasons expressed we hold that the judgment of the Mysore High Court dated January 15, 1963 in Writ Petition No. 48 of 1962 should be set aside and this appeal must be allowed. But, as directed by this Court in its order granting special leave dated November 6, 1963, the appellant State of Mysore will pay the costs of the respondent.

R.K.P.S. Appeal allowed.

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