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P.A. CHANDRAN AND ORS.

v

BOARD OF REVENUE (EXCISE) AND ORS.

OCTOBER 24, 1994

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[KULDIP SINGH, B.L. HANSARIA AND S.B. MAJMUDAR, JJ.]

Service Law—Promotion to post of Excise Preventive Officer from Excise Guards—Prescription of ratio of 1:1 between those who possess Secondary School Leaving Certificate and those who did not possess this qualification—Whether constitutionally infirm—Held, No.

C

In this case, the point for determination was whether the prescription of ratio of 1:1 for promotion to the post of Excise Preventive Officer from Excise Guards as between those who possess the qualification of S.S.L.C. (Secondary School Leaving Certificate) and those who did not possess that qualification, was constitutionally infirm. The Kerala High Court having answered the question in the affirmative the State of Kerala accepted the judgment and issued certain Government orders pursuant thereto. These appeals/writ petitions had been filed challenging the judgment of Kerala High Court. The non-S.S.L.C. Excise Guards contended in support of the impugned judgment that the Supreme Court having held in *Abdul Basheer v. K.K. Karunakaran*, [1989] 3 SCR 201 that providing of ratio of 1:3 for graduates and non-graduates for promotion from the posts of Excise Preventive Officers to Second Grade Excise Inspectors was discriminatory, the same had to be held regarding the ratio at hand.

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Another contention raised by the respondents was that after 7 years of service experience, the non-S.S.L.C. Excise Guards came at par with those Excise Guards who had S.S.L.C. as their educational qualification and had rendered 3 years of service. It was submitted that the denial of the posts of Excise Preventive Officers to those non S.S.L.C. Excise Guards who after serving 7 years had become eligible for promotion to the posts of Excise Preventive Officers would be permissible.

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Allowing the appeals/writ petitions, this Court

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HELD: 1.1. As to when educational qualification can form the basis of qualification was examined by the Supreme Court in *T.R. Kothan-*

daraman v. Tamil Nadu Water Supply and Drainage Board, decided on 13-9-1994. In that judgment, ratio of even 1:3 was upheld on the fact situation of some cases. Here the ratio being 1:1, the same had to be regarded as reasonable. [704-C, F] A

T.R. Kothandaraman v. Tamil Nadu Water Supply & Drainage Board, [1994] Suppl. 4 SCR, relied on. B

1.2. What the laying down of ratio does is postponement of the chances of promotion and the denial of promotion as such. By providing the ratio of 1:1 the rule really gives the two categories equal opportunity, though the effect is that some non S.S.L.C. Excise Guards, even if they are senior to S.S.L.C. Excise Guards, may get not promoted to the higher post later, if the post to fall vacant be one meant for S.S.L.C. qualified Excise Guards. The senior most non S.S.L.C. Excise Guards, would, in such an eventuality, be promoted to the next vacancy as that would be meant for such an incumbent. Thus the chance of promotion of non-S.S.L.C. Excise Guards gets only deferred and not denied. It is settled law that promotion cannot be claimed with the aid of Article 16 inasmuch as no incumbent has a right *to be promoted* and it is because of this a chance of promotion has not been regarded as encompassed within the right visualised by Article 16. [706-A-C] C D

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6962 of 1994 etc. etc. E

From the Judgment and Order dated 24.7.87 of the Kerala High Court in O.P. No. 1828 of 1981-G.

G. Viswanatha Iyer, P.P. Rao, Sundervardhan, G.L. Sanghi, C. Seetharamiah, A.S. Nambiar, R.F. Nariman and P.S. Poti, N. Sudhakaran, A. Jayaram, R. Sasiprabhu, O.V. Radhakrishnan, K.M.K. Nair, R.N. Keshwani, Mrs. Shanta Vasudevan, P.K. Mahohar, E.M.S. Anam, T.T. Kunhikannan, Ms. Malini Poduval, V.J. Francis and C.V. Rappai for the Appearing Parties. F G

The Judgment of the Court was delivered by

HANSARIA, J. In these appeals, writ petitions and Special Leave Petitions, in which we grant leave, the point for determination is whether the prescription of ratio of 1:1 for promotion to the post of Excise H

- A Preventive Officer from Excise Guard as between those who possess the qualification of S.S.L.C. (Secondary School Leaving Certificate) and those who do not possess this qualification, is constitutionally infirm. The Kerala High Court having held so and the State of Kerala having accepted the Judgment and having issued certain Government Orders pursuant thereto, these appeals/writ petitions have been filed under Article 136 of the Constitution of India.

12. As to when educational qualification can form the basis of classification in the matter like one at hand was examined recently in detail by two of us (Kuldip Singh and Hansaria, JJ.) in Writ Petition (C) NO. 3736 of 1982 and connected matters (*T.R. Kothandaraman v. Tamil Nadu Water Supply & Drainage Board*), judgment in which was rendered on 13th September, 1994. The bench laid down following legal propositions in this regard after noting earlier important decisions on this point, in para 16 of the judgment:

- D (1) Higher educational qualification is a permissible basis of classification, acceptability of which will depend on the facts and circumstances of each case.
- (2) High educational qualification can be the basis not only for barring promotion, but also for restricting the scope of promotion.
- E (3) Restriction placed cannot however go to the extent of seriously jeopardising the chances of promotion. To decide this, the extent of restriction shall have also to be looked into to ascertain whether it is reasonable. Reasons for this are being indicated later.

3. In the aforesaid judgment, ratio of even 1:3 was upheld on the fact-situation of some cases. Here the ratio being 1:1, the same has to be regarded as reasonable. The learned counsel appearing for non-S.S.L.C. Excise Guards, however, contend, in support of the impugned judgment, that this Court having held in *Abdul Basheer v. K.K. Karunakaran*, [1989] 3 SCR 201 that providing of ratio of 1:3 for graduates and non graduates for promotion from the posts of Excise Preventive Officers to Second Grade Excise Inspectors is discriminatory, the same has to be held regarding the ratio at hand.

- H 4. As to the aforesaid contention we would state that in *Abdul*

Basheer's case this Court regarded the ratio in question as discriminatory as the history did not point out if the two categories of incumbents were treated differently, as has been pointed out in para 7 of the judgment in *Kothandaraman* (supra). The decision in *Abdul Basheer's* case cannot, however, assist the non-S.S.L.C. Excise Guards because there are material on record in the present cases to show that ever since the Kerala State was formed (1.11.1956), the Excise Preventive Officers were required to have educational qualification similar to that of S.S.L.C. This would be apparent from the fact that after the formation of the State, by issuing executive orders it was prescribed that for promotion to the cadre of Excise preventive Officers the incumbents must have the minimum educational qualification of E.S.L.C. or S.S.L.C. This had been done by G.O. dated 23.8.1957, a copy of which is at Annexure A-4 to the appeal arising out of SLP(C) No. 12398 of 1987. Thereafter G.O. dated 14.8.1959 (Annexure A-5) was issued in which also the minimum educational qualification for promotion of Excise Guards to the cadre of Preventive Officer was mentioned as E.S.L.C. or S.S.L.C. then came G.O. of 2.3.1965 (Annexure A-6) which provided the ratio of 1:1 between Excise Guards possessing S.S.L.C. qualification with minimum service of 3 years and non-S.S.L.C. Excise Guards with minimum service of 15 years. There is still another order dated 29.2.1968 as at Annexure A-7 which is by and large to the same effect. Thereafter came to be framed the statutory rules at hand named as Special Rules for the Kerala Excise and Prohibition Subordinate Service, in which, while maintaining the ratio as earlier, the experience qualification was reduced to 7 years in so far as non-S.S.L.C. Excise Guards are concerned.

5. This shows that historically the post of Excise Preventive Officer was required to be manned by Excise Guards having the minimum qualification of S.S.L.C. It is because of this that *Abdul Basheer's* case cannot be called in aid by the non-S.S.L.C. Excise Guards inasmuch as there history did not point out to different treatment being given to the two categories, whereas the position is different here.

6. We may deal with still another contention which has been advanced by Shri Sanghi appearing for some of the respondents - the same being that after 7 years of service experience, the non- S.S.L.C. Excise Guards come at par with those Excise Guards who have S.S.L.C. as their educational qualification and have rendered 3 years of service. According to the learned counsel, the denial of the posts of Excise Preventive Officers

A to those non-S.S.L.C. Excise Guards who after serving 7 years have become eligible for promotion to the posts of Excise Preventive Officers would not be permissible. We are not impressed with this submission because what the laying down of ratio does is postponement of the chances of promotion and not the denial of promotion as such. By providing the ratio of 1:1 the rule really gives the two categories equal opportunity, though the effect is that some non-S.S.L.C. Excise Guards, even if they are senior to S.S.L.C. Excise Guards, may get promoted to the higher post later, if the post to fall vacant be one meant for S.S.L.C. qualified Excise Guards. The senior most non-S.S.L.C. Excise Guards would, in such an eventuality, be promoted to the next vacancy as that would be meant for such an incumbent. Thus the chance of promotion of non-S.S.L.C. Excise Guards gets only deferred and not denied. It is a settled law that promotion cannot be claimed with the aid of Article 16 inasmuch as no incumbent has a right to be promoted and it is because of this a chance of promotion has not been regarded as encompassed within the right visualised by Article 16.

D 7. Though a submission had been made that educational qualification could not form the basis of classification in the Service before us, we cannot concede, as, this was not even the case of non-S.S.L.C. Excise incumbents before the High Court, and rightly so.

E 8. In view of the above, we set aside the impugned judgment as the same is against the recent decision of this Court in *Kothandaraman's* case. The G.Os. issued by the State of Kerala pursuant to the High Court's aforesaid judgment cannot also, therefore, stand and so these too are set aside.

F 9. The appeals/writ petitions are allowed accordingly. In the facts and circumstances of the case we make no order as to costs.

I.A. Nos. 11-13 in C.A. Nos. 1912-14/90.

G In view of the disposal of the appeals by the aforesaid judgment, no order is necessary in these applications, which stand disposed of.

A.G.

Petitions disposed of.