

CASE NO.:

Appeal (civil) 811 1998

Appeal (civil) 822 1998

PETITIONER:

K.R. LAKSHMAN & ORS.

Vs.

RESPONDENT:

KARNATAKA ELECTRICITY BOARD & ORS.

DATE OF JUDGMENT: 12/12/2000

BENCH:

B.N.Agrawal, G.B.Pattanaik

JUDGMENT:

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JUDGMENT

PATTANAIAK, J.

The Judgment of the Division Bench of Karnataka High Court, setting aside the judgment of the learned Single Judge is the subject matter of challenge in these appeals. The appellants are technically qualified direct recruits to the post of Operator/Overseer/Meter Reader/Assistant Store Keeper. The Karnataka Electricity Board Recruitment and Promotion Regulations, 1969 were amended on 3.2.1982, providing a ratio of 1:1 for promotion to the post of Junior Engineer (Electrical) between technically qualified (Direct Recruit) and technically not qualified (Promotees). The present appellants, assailed the aforesaid amendment by filing writ petitions, inter alia, on the ground that it is highly discriminatory and arbitrary and that there is no rational basis for providing a ratio between technically qualified and technically unqualified people for promotion to the post of Junior Engineer. The learned Single Judge accepted the contention of the appellants and allowed the writ petitions by judgment dated 12th of January, 1994. In arriving at its conclusion that providing ratio for promotion is discriminatory, the learned Single Judge relied upon the decisions of this Court in Mervyn Coutindo, 1966(3)SCC 600, Roshan Lal Tandon 1968(1) SCR 185, Punjab State Electricity Board, 1986(4) SCC 617, Mohammed Shujat Ali, 1975(5) SCC 76, G.M.S.C.Rly Vs. AVR Siddanti, 1974(4)SCC 335, and N.Abdul Basheer- 1989(Supp.)2 SCC 344. The Board assailed the judgment of the learned Single Judge by preferring an appeal. The Division Bench of the Karnataka High Court, set aside the judgment of the Single Judge and allowed the appeal, preferred by the Board, relying upon the decisions of this Court in P.Murugesan vs. State of Tamil Nadu, 1993(2) SCC 340 and S. N. Deshpande vs. Maharashtra I.D. Corporation, 1993(Supp.)2 SCC 194.

It is this judgment of the Division Bench, which is the subject matter of these appeals.

Mr. M.Rama Jois, the learned senior counsel, appearing for the appellants, contended that providing a ratio for promotion to the post of Junior Engineer for the unqualified promotees, would not tantamount to a classification based on qualification, as in the case of Murugesan, and as such the Division Bench of the Karnataka High Court committed serious error in interfering with the judgment of the learned Single Judge. According to Mr. Rama Jois, the amendment to the regulation is nothing but an act of hostile discrimination against the qualified direct recruits inasmuch as there is no rationale behind providing such a ratio, which jeopardises the chances of promotion of the qualified people and consequently, the regulation is liable to be struck down, being violative of Article 14 of the Constitution. Mr. Rama Jois, further urged that the unqualified people, who are not ordinarily entitled to the promotion to the post of Junior Engineer, were being shown favoritism by providing a channel of promotion to them. But without any rational basis for providing a ratio and putting the unqualified people at more advantageous position, must be held to be discriminatory and the Division Bench of the High Court committed error in holding that it does not work out any discrimination.

The learned counsel, appearing for the respondents on the other hand contended that stagnation in any public service, not being in the interest of administration and taking into account the experience of the unqualified promotees, when the Rule making Authority, provided for a ratio for promotion to the post of Junior Engineer, the same cannot be struck down, as being violative of Article 14, unless it is positively shown that either it is mala fide or that it really works out any hostile discrimination between the two category of employees. According to the learned counsel, no doubt in the feeder category, the appellants had entered by direct recruitment, while respondents had entered by way of promotion, but the further promotion to the post of Junior Engineer is the maximum rank to which the unqualified promotee could ever aspire of, whereas qualified direct recruits can go still higher up in the ladder and that being the provision to avoid harassment of stagnation, the authorities having provided for a ratio between the qualified direct recruits and unqualified promotees, on consideration of germane and relevant materials, the same should not be interfered with by this Court. According to the learned counsel for the respondents, the ratio of the judgment of this Court in Murugesan, squarely applies and, therefore, the Division Bench of the Karnataka High Court was fully justified in interfering with the conclusion of the learned Single Judge.

The Recruitment and other service conditions including promotion in the Karnataka Electricity Board is governed by a set of regulations called the Karnataka Electricity Board Recruitment and Promotion Regulations (hereinafter referred to as the Recruitment Regulations). The Recruitment to the post of Operator, Meter Reader and Assistant Store Keeper, which constitute a combined cadre, is made both by direct recruitment as well as by promotion, on the basis of

seniority-cum-merit. The Regulation provides that 50% of the combined cadre would be filled up by direct recruitment and 40% of the cadre by promotion on the basis of seniority-cum-merit and equivalent post and 10% by direct recruitment from among the in-service personnel. The minimum qualification for direct recruitment is I.T.I. certificate in Electrical or Telecommunication or Electronic trade or certificate in Lineman trade of Karnataka Electricity Board Training Institute, after passing of the 10th standard, whereas for promotees, from the Mechanic Grade II, the minimum educational qualification is up-to 10th standard. The next higher rank is the Junior Engineer(Electrical) and the cadre of Junior Engineer is required to be filled up, by direct recruitment of persons possessing diploma in Electrical or Computer Engineering to the extent of 40%. Against this 40% quota, appointment could be made by transfer of inservice personnel, possessing Engineering Degree qualification. 10% of the cadre of Junior Engineer could be filled up by direct recruitment of in service personnel possessing diploma qualification. 10% of the post could be filled up by promotion of Operators, Meter Readers, Overseers, Assistant Store Keepers, having diploma qualification. 35% of the post of Junior Engineer could be filled up by promotion from the common cadre of Operator, Overseers, Meter Readers and Asstt. Store Keepers and 5% by promotion of Mechanics with five years of service. By the amendment of the Regulation in February, 1982, a ratio was provided in respect of the 35% quota, which was to be filled up by promotion for the common cadre, the same ratio as 1:1 between the technically qualified direct recruits and technically unqualified promotees. It is this amendment which had been assailed by the present appellants by filing writ petitions in Karnataka High Court. The question for consideration, therefore is whether the amended Regulation, providing a ratio of 1:1 between the technically qualified direct recruits and technically unqualified promotees, as against 35% quota available to them in the cadre of Junior Engineer, could be held to be violative of Article 14 or such a classification is permissible in law and the Rule making Authority had considered all relevant and germane materials in providing for the aforesaid ratio? The concept of equality before law means that among equals the law should be equal and should be equally administered and that the likes should be treated alike. All that Article 14 guarantees is a similarity of treatment and not identical treatment. The guarantee of equal protection of law and equality before the law does not prohibit reasonable classification. Equality before law does not mean that things which are different shall be treated as though they were the same. The principle of equality does not absolutely prevent the State from making differentiation between the persons and things. The State has always the power to have a classification on a basis of rational distinctions relevant to the particular subject to be dealt with but such permissible classification must satisfy the two conditions namely the classification to be founded on intelligible differentia which distinguishes persons or things that are grouped from others who are left out of the group and that the differentia must have a rational relation to the object sought to be achieved by the legislation. In other words, there must be a nexus between the basis of classification and the object of the legislation. So long as the classification is based on rational basis and so long as all persons falling in the same class are treated alike, there can be no question of violating the equality clause.

If there is equality and uniformity within each group, the law cannot be condemned as discriminatory, though due to some fortuitous circumstances arising out of a peculiar situation, some included in the class get an advantage over others, so long as they are not singled out for special treatment. When a provision is challenged as violative of Article 14, it is necessary in the first place to ascertain the policy underlying the statute and the object intended to be achieved by it and having ascertained the policy and object of the Act,, the Court has to apply a dual test namely whether the classification is rational and based upon an intelligible differentia which distinguished persons or things that are grouped together from others that are left out of the group and whether the basis of differentiation has any rational nexus or relation with its avowed policy and objects. The power to make classification can be exercised not only by the legislature but also by the Administrative Bodies acting under an Act.

When the validity of the amended Regulation, providing ratio for promotion between the technically qualified and technically unqualified persons in 1:1 is examined from the aforesaid stand point, we are unable to hold that the direct recruit technically qualified personnel had been treated with hostile discrimination. The feeder category for promotion to the post of Junior Engineer is the combined cadre of Operator-Overseer-Meter Reader-Assistant Store Keeper. To the aforesaid combined cadre, a direct recruitment is possible and those with ITI Certificate in Electrical or Telecommunication or electronic Trade , after passing of 10th standard could be recruited. Whereas in case of promotees, the qualification required is only study upto 10th standard and for them the entry point is Mechanic Grade II, from where they get promoted to the combined cadre, as noted above. For the technical post of Junior Engineer, which is the next higher post, the Regulation itself provided that 35% of the said posts could be filled up by promotion from the common cadre and the aforesaid provision for promotion from the common cadre had been made, after prescribing different quotas for direct recruitment of in service personnel having diploma qualification, promotion from the combined cadre who have diploma qualification and promotion of Mechanics with five years service. According to the Board, though the Regulation, initially provided for promotion to the extent of 35% in the cadre of Junior Engineer from the common cadre but it used to work out gross injustice to the technically unqualified promotees inasmuch as such technically unqualified operators could be considered for promotion to the post of Junior Engineer only after they have rendered more than 15 years of service. That apart the only promotional avenue available to such technically unqualified promotees is the 35% quota in the cadre of Junior Engineer and they could not aspire of any further promotion, whereas the qualified direct recruits could be promoted still further higher ups. The Board claimed that while fixing the ratio as 1:1, it took into account the qualification, the experience and the smooth functioning of the Board and for striking a balance between the qualification on the one hand and the experience on the other. In Trilokinath, this court has affirmed the principle of classification but has held that it should be founded on a reasonable differentia which distinguishes the persons grouped together from those who are left out of the group and in that case the classification was between the

Degree holder Assistant Engineers and Diploma holder Assistant Engineers. The Court upheld such classification as it was intended to achieve administrative experience in the Engineering Service. In Murugesan, a three judge Bench of this Court upheld the ratio of 3:1 between graduate Assistant Engineers and Diploma holder Junior Engineers for promotion to the post of Assistant Executive Engineer, as such a distinction had been maintained through out between the two categories. It is no doubt true that in that case, it is the diploma holders who had approached the Court, challenging the introduction of ratio of 3:1 between such diploma holders and graduate Assistant Engineers and the Court upheld the provisions, whereas in the case in hand, it is the qualified direct recruits, who have approached the Court. But in deciding the question whether such a provision can be held to be violative of Article 14, the principle in Murugesan would apply with full force to the case in hand. It may be noticed that the learned Single Judge relied upon the two earlier decisions of this Court in Roshan Lal Tandon and Mervyn Coutindo and both the decisions have been noticed and distinguished in Murugesan and the other decision on which the learned Single Judge has relied upon namely Shujat Ali, has also been explained away in the aforesaid three Judge Judgment in Murugesan. It is no doubt true that in Trilokinath, Chandrachud, J had observed that the classification should not be carried too far lest it may subvert, perhaps submerge the precious guarantee of equality, but such word of caution will have no application to the facts of the present case, where under the Regulation itself, both the technically qualified direct recruits and non-technical promotees were entitled to 35% quota in the cadre of Junior Engineer and the amendment of the year 1982 merely provided a ratio between them namely 1:1 and this amendment was brought about in the Regulation itself to ameliorate the stagnation of the unqualified promotees in the cadre. That apart, it is not correct to hold that there has been a complete fusion in the combined cadre inasmuch as the Regulation did provide for promotion at different percentage for in service personnel, possessing diploma qualification, then diploma holders from amongst the combined cadre namely Operator, Meter Reader, Overseers and Assistant Store Keepers and 5% by promotion of Mechanics with five years service. Thus, 60% of the posts in the cadre of Junior Engineers were meant to be filled up by different ratio from amongst the persons in the so-called combined cadre and 35% quota, which was available for promotion for such common cadre people was further bifurcated between qualified direct recruits, who are the appellants and technically unqualified promotees, who are the private respondents in the ratio 1:1. Such a classification, in our considered opinion, cannot be held to be discriminatory, if the object sought to be achieved, as indicated by the Board in its counter affidavit is looked into. The decision of this Court in the case of Punjab State Electricity Board, Patiala and Anr. vs. Ravinder Kumar Sharma and Ors., 1986(4) SCC 617, on which the learned Single Judge had relied upon and Mr. Rama Jois, appearing for the appellants had strongly relied upon was over-ruled by the three Judge Bench Judgment in P. Murugesan and Ors. Vs. State of Tamil Nadu and Ors., 1993(2) SCC, 340. The decision of this Court in N. Abdul Basheer and Ors. Vs. K.K.Karunakaran and Ors., 1989 Supp.(2) SCC 344, on which also, the learned Single Judge had relied upon and Mr. Rama Jois, also strongly relied upon, has been distinguished in the aforesaid case of Murugesan. The decision of this Court

in Mohammad Shujat Ali and Ors. Vs. Union of India and Ors., 1975(3) SCC 76, which was followed in the Punjab State Electricity Board case, has been explained in the aforesaid three Judge Bench Judgment. The decision of Mervyn Coutindo, 1966(3)SCC 600, as well as Roshan Lal Tandon vs. Union of India, 1968(1) SCR 185, has also been noticed in Murugesan, and not followed, but in the later case of Shamkant Narayan Deshpande vs. Maharashtra Industrial Development Corpn. & anr., 1993 Supp.(2) SCC 194, both these decisions have been distinguished, in view of the law laid down in Triloki Nath Khosas case, 1974(1) SCC 19. In the aforesaid premises and in view of the judgment of this Court in Triloki Nath Khosa, in P.Murugesan and in Shamkant Narayan Deshpande, the Division Bench of the Karnataka High Court was fully justified in setting aside the judgment of the learned Single Judge and in coming to the conclusion that by providing a ratio of 1:1 in the matter of promotion to the post of Junior Engineer between directly recruited technically qualified people and promotee technically not qualified people, there has been no violation of Article 14 of the Constitution and we see no infirmity with the aforesaid conclusion of the Division Bench of Karnataka High Court. Accordingly, these appeals fail and are dismissed, but there will be no order as to costs.