DILIP KUMAR GARG AND ANOTHER A

v.

STATE OF U.P. AND OTHERS

(Civil Appeal No. 5122 of 2007)

MARCH 3, 2009 B

[R. V. RAVEENDRAN AND MARKANDEY KATJU, JJ.]

U.P. Public works Department Group-B Civil Engineering Service Rules, 2004:

C

r.5(ii) – Recruitment to post of Assistant Engineer – Rule providing fifty percent by promotion through the Commission from amongst substantively appointed Junior Engineers with seven years service – HELD: There is no unconstitutionality/ illegality in the provision – Decision to treat all Junior D *Engineers, whether degree holders or diploma holders as equals for the purpose of promotion is a policy decision not to be ordinarily interfered by court – Administrative authorities are in the best position to decide requisite qualification for promotion and it is not for court to sit over their decision like* E *a court of appeal – Administrative Law – Policy decision – Constitution of India, 1950 – Article 14.*

In the instant appeal the dispute related to validity of Rule 5(ii) of the U.P. Public works Department Group-B Civil Engineering Service Rules 2004. It was contended F **for the appellants-degree holders that under the U.P. Service of Engineers (Building and Road Branch) (Class II) Rules, 1936, as amended in the year 1966, a diploma holder Junior Engineer could be promoted as Assistant Engineer provided he either acquired the requisite** G **qualification or passed the qualifying examination, but r.5(ii) of the 2004 Rules having done away with the requisite technical qualification or passing a qualifying examination, and providing for promotion of a diploma**

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A **holder Junior Engineer who completed seven years service as such, was violative of Article 14 of the Constitution because it makes unequal, as equals.**

Dismissing the appeal, the Court

B **HELD: 1.1. There is no unconstitutionality or illegality in r.5(ii) of the U.P. Public works Department Group-B Civil Engineering Service Rules 2004. It is entirely for the authorities to decide whether the degree holders and diploma-holders should be treated at par or not for the** C **purpose of promotion from the post of Junior Engineer to the post of Assistant Engineer. Merely because in the past degree holder Junior Engineers and diploma holder Junior Engineers have been treated differently does not mean that they cannot be treated identically** D **subsequently. [Para 15 and 16] [962-A-E]**

Mohammad Shujat Ali & others vs. Union of India & others **AIR 1974 SC 1631 and** *P. Murugesan and others vs. State of Tamil Nadu and others* **(1993) 2 SCC 340, relied on.**

E *Roop Chand Adlakha & others vs. Delhi Development Authority & others,* **AIR 1989 SC 307 and** *State of Jammu & Kashmir vs. Triloki Nath Khosa & others* **AIR 1974 SC 1, referred to.**

1.2. Article 14 of the Constitution of India should not F **be stretched too far, otherwise it will make the functioning of the administration impossible. The administrative authorities are in the best position to decide the requisite qualifications for promotion. The decision to treat all Junior Engineers, whether degree holders or diploma** G **holders, as equals for the purpose of promotion is a policy decision, and that this Court would not ordinarily interfere in policy decisions unless there is clear violation of some constitutional provision or the statute. There is no such violation in the instant case. [Para 17 and 19]** H **[962-E, F, H; 963-A]**

Union of India vs. Pushpa Rani and others **2008 (9) SCC 242;** *Official Liquidator vs. Dayanand and others* **2008 (10) SCC 1;** *J. Ranga Swamy vs. Govenrment of Andhra Pradesh and others*, **AIR 1990 SC 535;** *State of Rajasthan and others vs. Lata Arun*, **AIR 2002 SC 2642 and** *Tata Cellular vs. Union of India* **AIR 1996 SC 11, relied on.**

Case Law Reference:

AIR 1974 SC 1	**referred to**	**para 10**
1974 SC 1631	**relied on**	**para 11**
AIR 1989 SC 307	**referred to**	**para 12**
(1993) 2 SCC 340	**relied on**	**para 13**
1990 SC 535	**relied on**	**para 14**
2002 SC 2642	**relied on**	**para 14**
2008 (9) SCC 242	**relied on**	**para 17**
2008 (10) SCC 1	**relied on**	**para 17**
AIR 1996 SC 11	**relied on**	**para 19**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5122 of 2007.

From the Judgment and Order dated 03.11.2006 of the High Court of Judicature at Allahabad in Civil Misc. in W.P. No. 78513 of 2005.

B.A. Bobde, D.K. Singh, Pradeep Shukla and Abhijit Sengupta for the Appellant.

Ramesh P. Bhatt, Rakesh Uttamchandra Upadhyay, Ajay Kumar Rai, Vijay Hansaria, Mahendra Anand, Kuldeep S. Parihar and H.S. Parihar for the Respondents.

The Judgment of the Court was delivered by

A **MARKANDEY KATJU, J.**1. This appeal by special leave has been filed against the judgment and order dated 3.11.2006 in Civil Misc. Writ Petition No. 78513 of 2005 of the High Court of Judicature at Allahabad.

B 2. Heard learned counsel for the parties and perused the record.

3. The dispute in this appeal is regarding the validity of Rule 5(ii) of the U.P. Public works Department Group-B Civil Engineering Service Rules 2004 (in short 'the 2004 Rules').

C 4. Rule 5 of the 2004 Rules states :

"5. Recruitment to the posts in the service shall be made from the following sources:

D (i) Fifty percent by direct recruitment through the Commission.

(ii) Fifty percent by promotion through the Commission from amongst the substantively appointed Junior
E Engineers (Civil) and Junior Engineers (Technical) who have completed seven years service as such on the first day of the year of recruitment.

Provided that the promotion shall be made in such a manner that ninety percent posts shall be filled up
F by Junior Engineers (Civil) and ten percent posts shall be filled up by Junior Engineers (Technical)."

5. The dispute is between the Junior Engineers of the PWD department of the U.P. Government who are degree
G holders and those who are only diploma holders.

6. The submission of Shri B.A. Bobde, learned counsel for the appellants (the degree holders) is that while the U.P. Service of Engineers (Building and Road Branch) (Class II) Rules, 1936 (in short 'the 1936 Rules) provided in Rule 9(ii) thereof that no
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Junior Engineer who was only diploma holder would be promoted as Assistant Engineer unless he has passed the qualifying examination that the Government may prescribe, this requirement has been done away with by rule 5 of the 2004 Rules.

7. It may be mentioned that in 1966 there was an amendment to the 1936 Rules which provided that a Junior Engineer who is a diploma holder could be promoted as Assistant Engineer provided he *either* acquired the qualification prescribed in Rule 9(1) or he passed the qualifying examination.

8. Thereafter certain amendments were made to the Rules, but in our opinion they are not relevant in the present case.

9. The submission of Shri Bobde is that Rule 5(ii) of the 2004 Rules violates Article 14 of the Constitution, because it makes unequals as equals by completely divesting the requirement for the Junior Engineers who are only diploma holders either of acquiring the requisite technical qualification or passing a qualifying examination for promotion as Assistant Engineer. It is submitted that Article 14 can be violated not only by treating equals as unequals, but also by treating unequals as equals.

10. In *State of Jammu & Kashmir vs. Triloki Nath Khosa & others* AIR 1974 SC 1, the rule which provided that only degree holders in the cadre of Assistant Engineers shall be entitled to be considered for promotion to the next higher cadre of Executive Engineers while the diploma holder Assistant Engineers were not eligible for such promotion was challenged as violative of Article 14. However, the Constitution Bench of this Court repelled this challenge and observed that though the persons appointed directly and by promotion were integrated into a common class of Assistant Engineers, they could, for the purpose of promotion to the cadre of Executive Engineers, be classified on the basis of educational qualifications.

A 11. However, in *Mohammad Shujat Ali & others vs. Union of India & others,* AIR 1974 SC 1631, another Constitution Bench of this Court struck a different note and observed that for promotion to a higher post, discrimination based on educational qualifications not obligated by the nature of duties B or responsibilities of the higher post would be violative of Article 14 of the Constitution.

12. In *Roop Chand Adlakha & others vs. Delhi Development Authority & others,* AIR 1989 SC 307, this Court while taking note of *T.N. Khosa's* case (supra) and *Mohd.* C *Shujat Ali's* case (supra) observed in para 7 as under:

> " 7. .....If the differences in the qualification has a reasonable relation to the nature of duties and responsibilities, that go with and are attendant upon the D promotional-post, the more advantageous treatment of those who possess higher technical qualifications can be legitimized on the doctrine of classification. There may, conceivably, be cases where the differences in the educational qualifications may not be sufficient to give any E preferential treatment to one class of candidates as against another. Whether the classification is reasonable or not must, therefore, necessarily depend upon facts of each case and the circumstances obtaining at the relevant time. When the state makes a classification between two F sources, unless the vice of the classification is writ large on the face of it, the person assailing the classification must show that it is unreasonable and violative of Article 14. A wooden equality as between all classes of employees irrespective of all distinctions or qualifications, or job-G requirements is neither constitutionally compelled nor practically meaningful. This Court in *General Manager, South Central Railway vs. A.V.R. Siddhanti,* (1974) 3 SC 207 at p. 214 : (AIR 1974 SC 1755 at p. 1`760 observed:
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> "....A wooden equality as between all classes of H employees regardless of qualifications, kind of jobs,

> nature of responsibility and performance of the employees is not intended, nor is it practicable if the administration is to run. Indeed, the maintenance of such a 'classless' and undiscerning 'equality' where, in reality, glaring inequalities and intelligible differentia exist, will deprive the guarantee of its practical content. Broad classification based on reason, executive pragmatism and experience having a direct relation with the achievement of efficiency in administration, is permissible...."

13. In *P. Murugesan and others vs. State of Tamil Nadu and others,* (1993) 2 SCC 340, this Court upheld the validity of the rule prescribing the ratio of 3:1 between graduates and diploma holders in promotion as also the longer qualifying period for service for diploma holders. While noting the earlier decisions a three-Judge Bench of this Court observed:

> "14. This decision clearly supports the appellant's contention and goes to sustain the validity of the impugned amendment. If the diploma holders can be barred altogether from promotion, it is difficult to appreciate how and why is the rule-making authority precluded from restricting the promotion. The rule-making authority may be of the opinion, having regard to the efficiency of the administration and other relevant circumstances that while it is not necessary to bar the diploma holders from promotion altogether, their chances of promotion should be restricted. On principle, there is no basis for the contention that only two options are open to a rule-making authority – either bar the diploma holders altogether or allow them unrestricted promotion on par with the graduates."

14. In *J. Ranga Swamy vs. Govenrment of Andhra Pradesh and others*, AIR 1990 SC 535 and in *State of Rajasthan and others vs. Lata Arun,* AIR 2002 SC 2642, this Court observed that the eligibility qualification for admission to

A a course or for recruitment or promotion in service are matters to be considered by the appropriate authority, and not by the Courts.

15. In the present case, what we find is that Rule 5(ii) of the 2004 Rules has done away with the requirement of passing a qualifying examination for the diploma holder Junior Engineers for promotion as Assistant Engineers, and they have been placed at par with degree holder Junior Engineer for this purpose. We see no unconstitutionality or illegality in the same. It is entirely for the authorities to decide whether the degree holders and diploma holders should be treated at par or not for the purpose of promotion from the post of Junior Engineer to the post of Assistant Engineer.

16. Shri Bobde, learned counsel for the appellants submitted that degree holders Junior Engineers have always been treated differently from Junior Engineers who are only diploma holders for the purpose of promotion, and that the latter have always been required either to get the requisite qualification or pass the qualifying examination. In our opinion, merely because in the past they have been treated differently does not mean that they cannot be treated identically subsequently.

17. In our opinion Article 14 should not be stretched too far, otherwise it will make the functioning of the administration impossible. The administrative authorities are in the best position to decide the requisite qualifications for promotion from Junior Engineer to Assistant Engineer, and it is not for this Court to sit over their decision like a Court of Appeal. The administrative authorities have experience in administration, and the Court must respect this, and should not interfere readily with administrative decisions. (See *Union of India vs. Pushpa Rani and others* 2008 (9) SCC 242 and *Official Liquidator vs. Dayanand and others* 2008 (10) SCC 1).

18. The decision to treat all Junior Engineers, whether

degree holders or diploma holders, as equals for the purpose of promotion is a policy decision, and it is well-settled that this Court should not ordinarily interfere in policy decisions unless there is clear violation of some constitutional provision or the statute. We find no such violation in this case. A

19. In *Tata Cellular vs Union of India,* AIR 1996 SC 11 SC, it has been held that there should be judicial restraint in administrative decision. This principle will apply all the more to a Rule under Article 309 of the Constitution. B

20. For the reasons afore-mentioned, this appeal fails and is hereby dismissed. There shall be no order as to costs. C

21. The Interlocutory Application for intervention stands dismissed as the same becomes infructuous in view of our decision given in Civil Appeal No. 5122/2007. D

R.P. Appeal dismissed.