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CHINMOY MOULIK AND ORS.

v.

DAMODAR VALLEY CORPORATION AND ORS.

FEBRUARY 10, 1998

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[S.C. AGARWAL, K. VENKATASWAMI AND V.N. KHARE, JJ.]

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Service Law—Qualification—Damodar valley corporation (DVC)—Recruitment during 1969-1977—Science graduates and engineering diploma holders appointed as Asst. Operators/Operators in DVC—Civil engineering diploma holders appointed as Asst. Controllers—Policy decision of management—Mechanical and electrical diploma holders Asst. Operators/Operators—Upgraded and brought at par with Asst. controller civil engineering diploma holders—Creation of separate cadre consisting of all diploma holders—Classification of degree holders and diploma holders whether amounts to discrimination. Held—No.

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Respondent Corporation (DVC) initially recruited I. Sc./School Final/Matriculate for the post of Asst. Operators. Seniority, experience and departmental examination was the policy of promotion from Asst. Operators to Operators. During 1969-1977 due to urgent need of more Operators, degree holders in Science (degree holders) and diploma holders in Electrical and Mechanical engineering (diploma holders) were recruited as Asst. Operators and Operators. In civil department of DVC the diploma holders were recruited as Asst. Controllers equivalent to Junior Engineers post which was next stage of promotion from Operators post.

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The Management of DVC took a policy decision that the diploma holders in engineering would be directly recruited at the level of Asst. Controllers or equivalent thereto and all existing diploma holder Asst. Operators/ Operators would be upgraded as Asst. Controller and no fresh recruitment of diploma holders would be made till all the diploma holders are so upgraded.

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Due to delay in implementation of the said policy the dipolma holder Operators moved the High Court for implementation of the said policy. The degree holders were not made party in the Writ Petition. The High Court directed DVC management to implement its policy decision. Accordingly diploma holders were upgraded in various ex-cadre posts and separate sub-

ordinate Engineering Service Cadre of diploma holders was created. A

The degree holders challenged before High Court, such creation of separate cadre on the grounds that the degree holders and diploma holders were recruited simultaneously on the basis of same advertisement and hence creation of separate cadre of diploma holder and their upgradation will amount to discrimination, due to which the degree holders would be prejudiced seriously. B

The diploma holders engineers and DVC resisted the plea of degree holders on the grounds that diploma in engineering is technical or professional qualification whereas B. Sc is general academic qualification. The diploma holders during their studies are comparatively more exposed to industrial applications. The diploma holders if intend to study engineer degree, certain exemptions and advantages are given to them. Also as a matter of policy of DVC diploma holders were not recruited to the post of Asst. Operators from 1978. Single Judge of the High Court directed DVC to restrain from discrimination of degree holders and diploma holders . C D

On appeal by DVC to Division Bench of High Court against the order of Single Judge, the Division Bench of High Court found that classification made by DVC between the degree holders and diploma holders was permissible and did not amount to discrimination and directed DVC to find ways and means by setting up a committee of experts to examine the case of degree holders and diploma holders who had been separated from Operational pool and placed in separate cadre and to improve the service conditions of degree holders. Hence this appeal. E

Dismissing the appeal, this Court F

HELD : 1. Classification made by DVC between degree holders and diploma holders is permissible. [777-F]

2. Authority and power of DVC to create a separate service cadre can not be questioned and it does not amount to discrimination against degree holders. Out of 349 appellants only 7/8 are recruited simultaneously to the post of Asst. Operators/Operators through same advertisement and rest all were recruited subsequently as the respondent Corporation stopped recruiting diploma holders engineers. Also due to creation of a separate cadre of diploma holders the promotion chances of degree holders in their cadre have increased. [779-A] G H

A 3. Both on facts and in law the degree holders have not made out a case to challenge benefits given to the diploma holder engineers. Therefore, the directions given by the High Court to examine the case of the science graduates vis-a-vis diploma holders are valid. [779-C]

B CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5678 of 1994.

From the Judgment and Order dated 9.12.92 of the Calcutta High Court in F.M.A. T. No. 2296 of 1991.

G.L. Sanghi and G.S. Chatterjee for the Appellants.

C J. Gupta, Ms. Kum Kum Sen, Dr. Sumant Bharadwaj, Ms. Mridula Ray Bharadwaj, V.S. Raju and Swapan Dutta for the Respondents.

The Judgment of the Court was delivered by

D **K. VENKATASWAMI, J.** This appeal by special leave is directed against the judgment of the Calcutta High Court dated 9.12.92 in FMAT No. 2296/91.

The appellants were the writ petitioners in Civil Order No. 7028 (W) of 1988. The circumstances, which made them to approach the High Court, are briefly given below:-

E Damodar Valley Corporation (for short "DVC") during its initial stage recruited holders of I.Sc/School Final/Matric Certificate for entry level operatives, i.e., Assistant Operator. For the next level of operatives, i.e., Operators, the Assistant Operators were given promotion as Operators based on Seniority, experience and result of departmental examination. Due to acute shortage of operatives for newly commissioned Power Plants, the Operators were recruited directly in electrical and mechanical discipline to meet the urgent requirements. Later on, the minimum qualification for the post of Assistant Operator (Electrical/ Mechanical) was fixed as B.Sc and during the period 1969-77, the diploma holders in Electrical/Mechanical Engineering were also recruited along with the B.Sc candidates for the post of Assistant Operator.

G It was brought to the knowledge of the DVC Management that in civil discipline the diploma holder engineers were being recruited at the level of Assistant Controller equivalent to the Junior Engineer and on that basis the diploma holders, who were recruited as Assistant Operators, were pressing their case to upgrade them directly to the rank of Assistant Controller or

equivalent in line with Civil Engineering Cadres. The next stage of promotion for the Operators was to that of Assistant Controller. The Corporation Management, after going through the representations of the Diploma Holder Engineers, accepted their demand in principle and the Director of Personnel, DVC by his letter dated 21.8.79 conveyed the decision of the DVC Management to the General Secretary, DVC Diploma Holders Engineers' Association. The decision so conveyed was to the effect that the diploma holders in engineering would be directly recruited at the level of Assistant Controller or equivalent thereto; that the Corporation would upgrade all the existing diploma holders in engineering serving as Assistant Operators/Operators to the level of Assistant Controller within three months and that no recruitment of fresh diploma holders will be made till all the existing diploma holders are so upgraded.

Though the DVC took such a policy decision, it could not implement the same for administrative reasons. As there was delay on the part of DVC to implement the policy decision taken in favour of diploma holders, they moved the High Court for implementation of the same. The Calcutta High Court by an order dated 11.2.82 directed the DVC to give effect to their policy decision without further loss of time. When the Writ Petition was pending before the Calcutta High Court, the appellants herein, who belonged to the category of degree holders, did not take the trouble of impleading themselves in the said Writ Petition filed by the diploma holders as they were not made parties. On account of non-implementation of the High Court directions, the diploma holders again moved the High Court on the contempt side. The High Court again gave a direction on 13.1.83 to the DVC to give the diploma holder engineers the designation of Assistant Controller or equivalent thereto on or before 31.12.83 with consequential benefits from 11.2.82. Pursuant thereto, the DVC upgraded the diploma holders on operative side in various ex-cadre posts. Subsequently, a Sub-ordinate Engineering Service Cadre of Diploma Engineers in the Engineering Service of the Corporation was created w.e.f. 1.4.88.

The appellants, aggrieved by the creation of Sub-ordinate Engineering Service in the Cadre of Diploma Engineers, filed C.O. No. 7028 (W) of 1988 challenging the creation of that cadre.

The grounds of attack in the said Writ Petition were that the degree holders and diploma holder engineers were recruited simultaneously on the basis of the same advertisement and the upgradation of diploma holder engineers alone amounted to discrimination; that the B.Sc degree holders and

A the diploma holder engineers worked together and were subjected to same departmental examination for promotion whereas by the impugned action of the DVC the diploma holder engineers were upgraded to the level of Assistant Controller without any examination, which action amounted to discrimination; that the upgradation of diploma holder engineers affected the promotional avenue of the B.Sc degree holders and the impugned action of the DVC
B amounted to treating equals as unequals. The DVC failed to challenge the order of the High Court made in favour of the diploma holder engineers by bringing to the notice of the Appellate Court that the degree holders would be seriously prejudiced if the order of the Calcutta High Court at the instance of the diploma holder engineers was to be given effect to.

C The DVC as well as the diploma holders resisted the plea put forward by the degree holders and justified the decision of the DVC in creating a separate engineering service for the diploma holders. It was brought to the notice of the High Court (learned Single Judge) that the diploma holders were not recruited to the post of Assistant Operators/Operators trainees from the
D year 1978 pursuant to the policy decision taken by the DVC and those who were recruited along with the degree holders prior to 1978, except 7 or 8 degree holders, all were promoted to the position of Assistant Controller and, therefore, the question of discrimination as pleaded by the degree holder writ petitioners will have no force. The DVC had valid reasons for creating a
E separate engineering service for diploma holders and there was no question of equals being treated unequally. It was specifically pointed out that the B.Sc degree holders on the one hand and the diploma holder engineers of Civil, Mechanical and Electrical on the other are essentially different from each other so far as the job descriptions of the ex-cadre posts created in 1982 onwards. Diploma in engineering is a technical or professional qualification
F whereas the degree in science is a general academic qualification. Diploma in engineering is a three year integrated course covering study of engineering subjects in addition to study of science subjects like physics, Chemistry and Mathematics. Diploma engineering students undergo vocational training and other allied engineering practicals whereas the science graduate pursue the general study of science subjects and are given no such exposure through
G vocational or industrial practical or practicals related to industrial applications. Diploma in engineering is given two years' weightage for obtaining engineering degree whereas there is no such weightage given to the science graduates. A.M.I.E., which is considered equivalent to an engineering degree, is completed in two sections - Section A and Section B and both consist of nine
H papers each. Diploma holder in engineering get exemption in six papers of

Section B, graduates or even post-graduates in general stream of science do not get such exemption. Therefore, according to the DVC, the two streams are not the same and they are essentially different in various aspects. According to the DVC Management, the upgradation of diploma holder engineers en masse in 1982 was not only in compliance with the judgment of the Calcutta High Court, but also in implementation of a policy decision of the Corporation adopted even before the judgment of the High Court. Likewise, the formation of sub-ordinate engineering service was as a result of a policy decision expedited by the judgment of the Calcutta High Court.

The learned Single Judge was of the view that the action of the DVC in giving special treatment to the diploma holders amounted to discrimination so far as the science graduates were concerned and, therefore, issued a writ of mandamus directing the DVC to treat the degree holders equally in the matter of promotion to the next higher post for higher salary w.e.f. June 11, 1982 as was done in the case of diploma holder engineers, with protection of pay, who were appointed initially along with the science graduates in the same post. The learned Single Judge further directed the DVC to maintain inter se seniority of the petitioners vis-a-vis diploma holder engineers as it existed before June 11, 1982. The learned Single Judge also restrained the DVC from giving effect to the scheme of upgradation of the diploma holder engineers any further. The learned Judge also gave three months' time to pay to the degree holders arrears of pay which might accrue owing to re orientation of the position and to give effect to the other directions by him.

Aggrieved by the judgment of the learned Single Judge, the DVC preferred an appeal to the Division Bench and the learned Judges after considering the rival submissions found that the classification made by the DVC between the degree holders and the diploma holders was permissible and that the conclusion of the learned Single Judge that it amounted to discrimination against the degree holders, was not right and on that basis allowed the appeal. However, the Division Bench found that the science graduates stood relegated to an inferior position for no fault of theirs. Therefore, it directed that the authorities should find ways and means by setting up a Committee of Experts to examine the case of the science graduates vis-a-vis the diploma holder engineers, who have been ex-cadred from operational pool and have been placed in a separate channel of service with accelerated promotion to improve the service conditions of the degree holders.

The degree holders, aggrieved by the judgment of the Division Bench, have come up to this Court in this appeal by way of special leave.

A Mr. Sanghi, learned senior counsel appearing for the appellants, reiterated the same contentions that were raised before the High Court on the side of the appellants. Learned counsel appearing for the contesting respondents and the DVC reiterated also the same contentions that were advanced before the High Court on their side. Now, to avoid repetition, they are not set out in detail as we have already set out in detail earlier.

B We have carefully gone through the judgments of the learned Single Judge and also the Division Bench of the High Court. The main thrust of the appellants before the High Court as well as before us was that the degree holders and diploma holder engineers were recruited simultaneously on the basis of the same advertisement and the upgradation of diploma holder engineers alone amounted to discrimination. Before deciding the said issue from the legal angle, we would like to place the factual position. On facts, it was the definite stand of the DVC that since 1978 the DVC ceased to appoint diploma holder engineers in the post of Assistant Operators/Operator trainees. No doubt for the period 1969 to 1977, the DVC was recruiting simultaneously both the degree holders and the diploma holder engineers to the post of Assistant Operators/Operator trainees. It is pointed out in more than one place by the DVC in the Counter Affidavit that out of 349 appellants only 7/8 of them were recruited simultaneously, who joined the service of the DVC with the diploma holder engineers in response to the same advertisement and rest of them were all recruited subsequently not along with the diploma holder engineers as by then, as a policy, the DVC stopped recruiting them as Assistant Operators/Operator trainees. Therefore, the Division Bench directed the DVC to appoint a Committee to look into the matter to protect the interest of the degree holders. It is also brought to our notice that pursuant to the order of the High Court the DVC has formed a Committee and before the said Committee, the appellants appeared and participated in the deliberations and the Committee has also submitted its Report.

Bearing the above factual position in mind, we can also consider the issue on the legal side. In the earlier part of the judgment while setting out the contentions of the respective parties, we have noticed in detail the difference between the degree holders and the diploma holders engineers in the matter of technical and professional qualification. We have also noticed the treatment given to diploma holders in other civil disciplines. When these factors were brought to the notice of the DVC by the Diploma Holder Engineers' Association, the DVC decided to create ex-cadre posts initially and subsequently, created a separate service cadre, namely, a Sub-ordinate

Engineering Service Cadre of Diploma Holder Engineers. The authority and power of the DVC to create/from such a separate service cadre cannot be questioned. It is also to be noted that as a result of creation of a separate cadre for diploma holder engineers the promotion chances of degree holders in their cadre had increased. All these factors were taken note of by the Division Bench and it also noticed at the same time that the diploma holders had not been given their due, but that does not mean the creation of a separate cadre for diploma holders is liable to be questioned by the degree holders.

We are satisfied that both factually as well as in law the degree holders have not made out a case to challenge the benefit given to the diploma holder engineers in this case. We agree with the conclusions reached by the Division Bench of the High Court and accordingly we find no merit in this appeal. The appeal is dismissed with no order as to costs.

S.S.

Appeal dismissed.