

T. VENKATESWARULU

v.

EXECUTIVE OFFICER, TIRUMALA TIRUPATHI
DEVASTHANAMS & ORS.

(Civil Appeal Nos. 6583-6584 of 2008)

NOVEMBER 7, 2008

[C.K. THAKKER AND D.K. JAIN, JJ.]

Service Law – Parity in posts – Determination of – Promotional avenues provided to the post of ‘Supervisor’ – Draughtsman Grade I claiming promotion – Denial of since he was not entitled under existing Rules – Subsequently promotion granted on the basis of subsequent Rules w.e.f. the date the Rules came into force – Claim for promotion from anterior date i.e. from the date he attained eligibility for the promotional post-Denial of – Challenged as discriminatory claiming parity with the post of ‘Supervisor’ – Held: Plea of discrimination not sustainable – The posts were different – Claimant also failed to establish discrimination on the part of the State – In order to determine discrimination, not only the functional parity, but also mode of recruitment, qualification and responsibilities attached to the two offices have to be established – The burden to establish the discrimination is on the claimant – Claimant was not entitled to all the Government orders available to graduate supervisors – The decision to promote graduate supervisors, was a policy decision – Courts should ordinarily not interfere with Equation of posts and determination of pay scales unless it is absolutely necessary to undo injustice being caused – Tirumala Tirupathi Devasthanam Service Rules, 1978 – Tirumala Tirupathi Devasthanam Employees Service Rules, 1989 – Constitution of India, 1950 – Articles 14 and 16.

Appellant was appointed as a ‘Draughtsman’ Grade-I, with respondent No.1. The post was lower to the post

A of 'Supervisor'. State Government by G.O. 563 dated
17.3.1978 provided that Supervisors who acquire
graduate qualification could be promoted temporarily to
the post of Junior Engineers which was later re-
designated as Asstt. Executive Engineer. Under Tirumala
B Tirupathi Devasthanam Service Rules, 1978, there was no
provision for promotion of Supervisors as Junior
Engineers. In the meantime, appellant acquired
Graduation degree on 28.8.1983. He sought benefit of
G.O. 563, but the same was denied. In writ petition
C challenging the same, High Court directed to consider the
appellant for promotion sought, if he was eligible
according to Rules. Respondent No. 1 found him not
suitable under 1978 Rules. Writ petition challenging the
order resulted in direction to respondent No. 1 to
D consider his case on the basis of rules existing on the
date the order was passed. In the meantime Tirumala
Tirupati Devasthanams Employees Service Rules, 1989
came into force w.e.f. 24.10.1989. Respondent No.1,
therefore, considered the case of appellant under 1989
E Rules and appointed him on the post w.e.f. 26.10.1989 i.e.
the date the 1989 Rules were enforced. Appellant filed
another writ petition seeking his promotion w.e.f. the date
of his qualifying degree examination i.e. 28.8.1983. He
contended that denial of the benefit to the appellant since
28.8.1983 was discriminatory and violative of Articles 14
F and 16 of the Constitution as the same benefit was given
to the Supervisors. Single Judge of High Court allowed
the writ petition. Cross Writ Appeals were filed. Division
Bench of High Court set aside the order of the Single
Judge. Hence the present appeals.

G **Dismissing the appeals, the Court**

H **HELD: 1.1. Single Judge of High Court fell into an
error in accepting the plea of discrimination, for which
there was no factual basis. Since the plea of parity of**

Draughtsmen Grade-I with the Supervisors had to be examined on the touchstone of Articles 14 and 16 of the Constitution, the burden was upon the appellants to establish discrimination by placing on record cogent materials. For this purpose, the crucial factor to be established is not only the functional parity of the two cadres, but also the mode of recruitment, qualification and the responsibilities attached to the two offices. All this information is necessary to analyse the rationale behind the State action in giving different treatment to two classes of its employees and then determine whether or not an invidious discrimination has been practised. [Para 15] [875-E-G]

1.2. In the instant case, there is not even a whisper in the pleadings on the aspect of discrimination. On the contrary, the Division Bench found that the two posts did not carry the same scale of pay initially. Moreover, indubitably all the Government Orders, starting 17th March, 1978, giving certain benefits to graduate Supervisors did not refer to Draughtsman Grade-I. Even the decision taken by the respondent on 16th March, 1981, adopting G.O. Ms. No.563 dated 17th March, 1978, did not refer to the Draughtsman Grade-I and applied only to the Supervisors working in the TTD (civil/electrical/mechanical) who had acquired graduate qualification in engineering for appointment by transfer as Junior Engineers. No one from the cadre of Draughtsman raised any demand for extending similar benefit to them. It has also been noted by the Division Bench that it was the policy of the Government to appoint only Supervisors in Public Works (Irrigation Department), who had acquired graduate qualification as Junior Engineers. Under these circumstances, the appellants were not entitled to all the benefits under the Government Orders available to the graduate Supervisors. [Para 16] [875-G; 876-B-F]

A 1.3. Equation of posts and determination of pay
scales is the primary function of the executive and not
the judiciary and, therefore, ordinarily courts do not enter
upon the task of job evaluation which is generally left to
expert bodies as several factors have to be kept in view
B while evolving a pay structure. Being a complex matter,
the court will interfere only if there is cogent material on
record to come to a firm conclusion that a grave error has
crept in such an exercise and court's interference is
absolutely necessary to undo the injustice being caused.
C [Para 17] [876-G-H]

*Secretary, Finance Department and Ors. vs. West Bengal
Registration Service Association and Ors. 1993 Supp (1)
SCC 153 and Devi Prasad and Ors. vs. Government of
Andhra Pradesh and Ors. 1980 Supp SCC 206, relied on.*

D 1.4. In the instant case, prior to 1989, the cadre of
Draughtsman Grade-I was treated as a distinct class
inasmuch as they even did not figure in the feeder cadre
for recruitment to the post of Assistant Executive
E Engineer. It was only on 24th October, 1989, by virtue of
G.O. Ms. No.1660, a channel of promotion of
Draughtsman Grade-I to the category of Assistant
F Executive Engineer, on acquisition of graduate
qualification was created. Though the appellant had been
pursuing his remedy for promotion as Assistant
Executive Engineer under the TTD Service Rules, 1978
but he always got limited relief to the extent that direction
was issued by the High Court for consideration of his
case, in terms of the rules existing at that relevant time.
Evidently, when his writ petition was disposed of on 30th
G March, 1990 with a direction to the respondent
Management to consider his case on the basis of the
rules, which were in force at that relevant point of time,
he felt satisfied and did not challenge the said order
further. For all these reasons, there is no infirmity in the
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decision of the Division Bench warranting interference in the exercise of discretionary and equitable jurisdiction under Article 136 of the Constitution. [Para 19] [877-E-H; 878-A]

Case Law Reference:

1993 Supp (1) SCC 153 Relied on. Para 17

1980 Supp SCC 206 Relied on. Para 18

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 6583-6584 of 2008.

From the final Judgment and Order dated 8.7.2004 of the High Court of Judicature of Andhra Pradesh at Hyderabad in W.P. Nos. 767 & 846 of 2000.

L. Negeswara Rao, Roy Abraham, Seema Jain and Himinder Lal for the Appellant.

K. Rajendra Chowdhary, Guntur Prabhakar and Rakesh K. Sharma for the Respondents.

The Judgment of the Court was delivered by

D.K. JAIN, J. 1. Special leave granted.

*2. These appeals are directed against a common judgment and order dated 8th July, 2004 passed by the High Court of Judicature, Andhra Pradesh at Hyderabad in Cross Writ Appeals No.767 and 846 of 2000. By the impugned judgment, the Division Bench while reversing the decision of the learned Single Judge has held that the appellant is eligible for conversion as Assistant Executive Engineer only with effect from 26th October, 1989 and not from an anterior date when he passed the qualifying graduate examination i.e. 28th August, 1983.

3. To understand the controversy involved, a few material facts may be stated, which are as under:

A The appellant, a diploma holder, who was initially
sponsored by the Employment Exchange for the post of
"Supervisor", was considered and appointed as a
"Draughtsman Grade-I" in Tirumala Tirupathi Devasthanams (for
short 'TTD') on 3rd August, 1977. The post of Draughtsman
B Grade-I was considered to be lower to the post of "Supervisor".
On 17th March, 1978, by G.O. 563, the State of Andhra
Pradesh provided some promotional opportunities to the
Supervisors. It was ordered that Supervisors who acquire
engineering graduate qualification may be promoted
C temporarily to the post of Junior Engineers. The TTD Rules,
1978 came into force on 2nd August, 1978. Under these Rules,
the only method of recruitment to the post of Junior Engineer
was by direct recruitment and, therefore, under the 1978 Rules,
there was no provision for promotion of Supervisors as Junior
D Engineers. It was only by virtue of G.O. 563, Supervisors, who
had acquired BE qualification could be promoted as a Junior
Engineer. By G.O. No.173 dated 8th April, 1981, the post of
Junior Engineer was re-designated as Assistant Executive
Engineer and the post of Supervisor was re-designated as
Assistant Engineer.
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4. The appellant acquired BE Degree on 28th August,
1983. Aggrieved by the denial of the same benefit as was
extended to the Supervisors, the appellant filed a writ petition
in the High Court. By judgment dated 22nd August, 1986, TTD
F was directed to consider the appellant's case for promotion
as Junior Engineer, re-designated as Assistant Executive
Engineer, if he was otherwise eligible according to the rules.

5. Pursuant to and in furtherance of the said direction by
the High Court, the appellant made a representation to the
G authorities concerned, which was rejected on 19th April, 1987
for the reason that he was found to be not eligible for promotion
as Assistant Executive Engineer under the TTD Service Rules,
1978. The appellant challenged the said order by filing another
writ petition, which was again disposed of on 30th March,
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1990, with a direction to the TTD Management to consider the appellant's case taking into consideration the promotional channels set out for Category 5 employees in the engineering department, meaning thereby the appellant was to be considered for promotion on the basis of the rules existing as on the date of the order. It may be noted that on 24th October, 1989, TTD Employees Service Rules, 1989 (for short 'the 1989 Rules') had come into force. Pursuant to the said direction, the case of the appellant was considered under 1989 Rules and he was appointed, on conversion, as an Assistant Executive Engineer with effect from 26th October, 1989, i.e. the date with effect wherefrom the 1989 Rules were enforced vide G.O. Ms. No.1060.

6. Still being dissatisfied with the treatment meted out to him, the appellant preferred yet another writ petition in the High Court. The grievance of the appellant before the High Court, sans unnecessary details, was that:- (i) he was entitled to appointment by conversion as Assistant Executive Engineer from the date next to the last date of his qualifying degree examination viz. 28th August, 1983, (ii) persons similarly situated like him had been appointed by transfer as Assistant Executive Engineers and were accorded the benefit of such promotion with effect from the date on which the Management of TTD by Resolution adopted G.O. Ms. No.563 dated 17th March, 1978 (order of the Government granting promotional benefits in the category of Assistant Executive Engineers to graduate qualified Supervisors) and, therefore, the action of the Management in not extending a similar benefit to the appellant amounts to hostile discrimination, violative of Article 14 and 16 of the Constitution and (iii) on representation by the Supervisors, the TTD Management had granted benefit in the promotional post of Assistant Executive Engineer to them with effect from the date of their acquiring graduate qualification in Engineering, which benefit has been denied to him.

7. Refuting the allegations made by the appellant, the TTD

A Management stated that the benefit of conversion under G.O.
Ms. No. 563 dated 17th March, 1978, was granted by the State
Government only to the category of graduate Supervisors for
B promotion to the post of Assistant Executive Engineers and not
to Draughtsman Grade-I, which benefit continued to be
available only to the Supervisors till a provision was made in
the 1989 Rules vide G.O. Ms. No.1060 dated 24th October,
1989, creating a channel of promotion for Draughtsman Grade-
I also to the category of Assistant Executive Engineers on
C acquisition of graduate qualification. It was, thus, pleaded that
it was on account of the said amendment that the appellant
became eligible for the said promotion with effect from 26th
October, 1989 and was given promotion accordingly and that
the two cadres of "Supervisors" and "Draughtsman Grade-I"
being distinct, no element of discrimination was involved in not
D extending the same benefit to the two cadres.

8. On consideration of the material on record, the learned
Single Judge finally concluded as under:

E "It is admitted by the TTD that though the Supervisors who
were given the benefit initially from the date of resolution
of the Board adopting the orders of the Government, they
were subsequently given the benefit with effect from the
date of their acquisition of graduate qualification. In so far
as the petitioner is concerned, it is stated that the
F Government has been addressed to clarify whether the
case of the petitioner could also be considered for
appointment as an Assistant Executive Engineer with
effect from 29.08.1983, the date on which he acquired the
graduate qualification. At the same time, it is averred that
G the petitioner is not eligible for conversion as Assistant
Executive Engineer with retrospective effect from
29.08.1983. Genuine reasons are not advanced by the
respondent in support of this contention. In the
circumstances above, this court is of the considered view
H that the respondent TTD is obligated to consider the case

of the petitioner for extension of the benefit of conversion to the category of Assistant Executive Engineer with effect from the date next to the date he acquired graduate qualification on par with similarly situated persons who were extended the said benefit viz. Supervisors who had acquired graduate qualification. Draughtsman Grade-I are entitled to the benefits of conversion consequent on acquisition of graduate qualification, and they should be treated similar to the category of supervisors who have been extended the said benefit. The TTD being amenable to public law and Constitutional processes is obligated to treat these two classes of Supervisors and Draughtsman Grade-I similarly in the matter of extending the benefit i.e. the date from which the conversion is to be accorded viz. the date next to the date of acquisition of graduate qualification."

9. Accordingly, the learned Single Judge directed the TTD Management to consider the case of the appellants for promotion as Assistant Executive Engineer with effect from 29th August, 1983, the date on which he had acquired the graduate qualification, within four months.

10. Being aggrieved by the decision and direction of the learned Single Judge, the TTD Management preferred an intra-court appeal to the Division Bench. As noted hereinabove, the Division Bench reversed the decision of the learned Single Judge and consequently dismissed the writ petition. It appears that the appellants filed an application before the High Court seeking review of judgment dated 8th July, 2004 but it was also dismissed on 1st October, 2004. The appellants, feeling aggrieved by the judgment rendered by the Division Bench of the High Court, is before us in these appeals.

11. We have heard learned counsel for the parties.

12. Mr. L. Nageswara Rao, learned senior counsel appearing on behalf of the appellants submitted that the pay

A scales of the "Draughtsman Grade-I" and "Supervisor" being one and the same, the incumbents in the said post were to be treated equally and, therefore, the appellant was also entitled to the benefits extended to the Supervisors under Government Orders, issued from time to time. It was urged that on his
B acquiring BE Degree, the appellant was eligible for promotion to the post of Junior Engineer by conversion in terms of G.O. 563 dated 17th March, 1978 and then for re-designation under G.O.173 dated 8th April, 1981, as in the case of Supervisors. It was argued that the appellant was praying for parity in rank
C with the Supervisors and not equality with them.

13. *Per contra*, Mr. K. Rajendra Chowdhary, learned counsel appearing on behalf of the TTD Management, supporting the view taken by the Division Bench, submitted that neither prior to the enforcement of 1989 Rules nor thereafter
D the posts of Supervisors and Draughtsman Grade-I were equivalent posts and/or there was any functional or pay scale parity. It was only by virtue of G.O.1060 dated 24th October, 1989, that the employees in the cadre of Draughtsman Grade-I, with BE Degree, became eligible for recruitment to the post
E of Assistant Executive Engineers. It was, thus, submitted that in the absence of any rules, regulations or Government Orders in that behalf, the appellant could not be appointed as Junior Engineer (now Assistant Executive Engineer) prior to 24th October, 1989. Learned counsel asserted that the cadres of
F Draughtsman Grade-I and Supervisor being different, the appellant could not claim any parity with the Supervisors prior to 26th October, 1989, when they were placed at par with the Supervisors only as a feeder cadre for recruitment to the post of Assistant Executive Engineer. Relying on the decision of this
G Court in *State of Andhra Pradesh & Anr. Vs. K.S. Muralidhar & Ors.*¹, learned counsel argued that the crucial date for all intents and purposes is to be reckoned on the basis of the actual date of appointment and not on the date of acquiring the

H 1. (1992) 2 SCC 241

degree qualification.

14. Having bestowed our anxious consideration to the rival submissions, in our view, there is no scope for interference with the reasoning and the conclusion reached by the Division Bench. It is evident from the afore-extracted order of the learned Single Judge that he accepted the stand of the appellant to the effect that the Draughtsman Grade-I was at par with the Supervisor and, therefore, could not be treated differently. According to the learned Judge, being amenable to public law and constitutional processes, TTD was obligated to treat the two classes of Supervisors and Draughtsmen Grade-I similarly in the matter of extending the benefit of conversion consequent to the acquisition of graduation qualification by the Draughtsman Grade-I, as in the case of Supervisors. We feel that in the light of the factual position as emerging from the material on record, the learned Single Judge fell into an error in accepting the plea of discrimination, for which there was no factual basis.

15. Since the plea of parity of Draughtsmen Grade-I with the Supervisors had to be examined on the touchstone of Articles 14 and 16 of the Constitution, the burden was upon the appellant to establish discrimination by placing on record cogent materials. For this purpose, the crucial factor to be established is not only the functional parity of the two cadres, but also the mode of recruitment, qualification and the responsibilities attached to the two offices. All this information is necessary to analyse the rationale behind the State action in giving different treatment to two classes of its employees and then determine whether or not an invidious discrimination has been practised.

16. In the instant case, there is not even a whisper in the pleadings on that aspect. On the contrary, it is pointed out by the Division Bench that initially the scale of pay of Draughtsman Grade-I was lower to the scale of pay of Supervisor. The scale of pay of Supervisor was 430-20-650-25-800 whereas the

A scale of pay of Draughtsman Grade-I was 400-18-590-20-715. The revised pay scale of the Supervisor was 700-1200 and Draughtsman Grade-I was 650-1100. In 1986 when pay scales were revised, the scale of pay for the post of Draughtsman Grade-I and Supervisor (Assistant Engineer) were made equal i.e. 1300-60-1930-70-2630. Thus, the Division Bench found that the two posts did not carry the same scale of pay initially. Moreover, indubitably all the aforementioned Government Orders, starting 17th March, 1978, giving certain benefits to graduate Supervisors did not refer to Draughtsman Grade-I. Even the decision taken by the TTD on 16th March, 1981, adopting G.O. Ms. No.563 dated 17th March, 1978, did not refer to the Draughtsman Grade-I and applied only to the Supervisors working in the TTD (civil/electrical/mechanical) who had acquired graduate qualification in engineering for appointment by transfer as Junior Engineers in TTD. No one from the cadre of Draughtsman raised any demand for extending similar benefit to them. It has also been noted by the Division Bench that it was the policy of the Government to appoint only Supervisors in Public Works (Irrigation Department), who had acquired graduate qualification as Junior Engineers. Under these circumstances, the Division Bench found it difficult and in our opinion rightly, to accept the submission of the appellant that being at par with the Supervisors, he was entitled to all the benefits under the Government Orders available to the graduate Supervisors.

17. It is well settled that equation of posts and determination of pay scales is the primary function of the executive and not the judiciary and, therefore, ordinarily courts do not enter upon the task of job evaluation which is generally left to expert bodies as several factors have to be kept in view while evolving a pay structure. Being a complex matter, the court will interfere only if there is cogent material on record to come to a firm conclusion that a grave error has crept in such an exercise and court's interference is absolutely necessary to undo the injustice being caused. (See: *Secretary, Finance*

*Department & Ors. Vs. West Bengal Registration Service Association & Ors.*²⁾ A

18. In *Devi Prasad & Ors. Vs. Government of Andhra Pradesh & Ors.*³, a Government order was questioned on the ground of unreasonableness in the matter of giving weightage for promotion between two categories of servants inducted from different sources on the ground that the weightage rule was violative of Article 14 of the Constitution. Rejecting the challenge, this Court had said that ultimately it is a matter of Government policy to decide what weightage should be given as between two categories of Government servants rendering somewhat similar kind of service. There may be that one group would suffer from hardship consequent to this rule and the weightage conferred thereby. But mere hardship without anything arbitrary in the rule does not call for judicial intervention, especially when it flows out of a policy which is not basically illegal. B
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19. From a resume of facts set out hereinabove, it clearly emerges that prior to 1989 the cadre of Draughtsman Grade-I was treated as a distinct class inasmuch as they even did not figure in the feeder cadre for recruitment to the post of Assistant Executive Engineer. It was only on 24th October, 1989, by virtue of G.O. Ms. No.1660, a channel of promotion of Draughtsman Grade-I to the category of Assistant Executive Engineer, on acquisition of graduate qualification was created. Though it does appear that the appellant had been pursuing his remedy for promotion as Assistant Executive Engineer under the TTD Service Rules, 1978 but he always got limited relief to the extent that direction was issued by the High Court for consideration of his case, in terms of the rules existing at that relevant time. Evidently, when his writ petition was disposed of on 30th March, 1990 with a direction to the TTD Management to consider his case on the basis of the rules, which were in force at that F
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2. 1993 Supp (1) SCC 153.

3. 1980 Supp SCC 206.

A relevant point of time, he felt satisfied and did not challenge the said order further.

B 20. For all these reasons, we do not see any infirmity in the decision of the Division Bench warranting our interference in the exercise of discretionary and equitable jurisdiction under Article 136 of the Constitution. In our judgment, the appeals have no substance and, therefore, deserve to be dismissed.

C 21. For the reasons aforesaid, the appeals must fail and are accordingly dismissed. There will, however, be no order as to costs.

K.K.T.

Appeals dismissed.