

A MAHARASHTRA FOREST GUARDS AND FORESTERS  
UNION

v.

THE STATE OF MAHARASHTRA AND OTHERS

B (Civil Appeal No. 17974 of 2017)

NOVEMBER 03, 2017

**[KURIAN JOSEPH AND R. BANUMATHI, JJ.]**

C *Forester, Forest Guard, Ranger-Surveyor, Surveyor, Head Clerk, Accountant and Clerk-cum-Typist (Recruitment) Rules, 1987 – r.7 – Constitutionality of – On touchstone of Arts. 14 and 16 of the Constitution of India – Educational qualification for appointment to the post of Forest Guard as per rules is Higher Secondary School Certificate – It is a feeder category for promotion to the post of Forester – By the amendment introduced in the Recruitment Rules*

D *in 2013, 75% of the posts in the category of Foresters to be filled up on the basis of seniority-cum-fitness [r.7(1)(a)] and remaining 25% is to be filled up on the basis of the Limited Departmental Competitive Examination (LDCE) [r.7(1)(b)] – As per r.7(2), two conditions prescribed to participate in the LDCE (i) the candidate*

E *should have completed 5 years of service as Forest Guard and (ii) the candidate should be graduate – Whether the restriction introduced on the basis of educational qualification for participating in the LDCE violated Arts. 14 and 16 – Held: LDCE is meant for selection for promotion from the entire lot of Forest Guards irrespective of seniority but subject to minimum five years of service*

F *– In that situation, introducing an additional restriction of graduation for participation in the LDCE without there being any quota reserved for graduates will be discriminatory and violative of Arts. 14 and 16 of the Constitution of India since it creates a class within a class – It violates the equality and equal opportunity guarantees – Forest Guards, irrespective of educational*

G *qualifications, have formed one class for the purpose of participation in the LDCE – A further classification between graduates and non-graduates for participating in the LDCE is unreasonable – It is a case of equals being treated unequally – r.7(2) to the extent that it imposes the requirement of being a graduate*

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*is unconstitutional – Constitution of India – Arts. 14 and 16 – Service Law – Promotion – Restriction on the basis of educational qualification.* A

Allowing the appeal, the Court

**HELD:** 1. There is no quota reserved for the graduate Forest Guard for promotion to the post of Forester. Seventy-five per cent of the posts are to be filled through the regular promotion channel based on seniority and twenty-five per cent is “by selection of suitable persons from amongst the persons holding the post of Forest Guard, on the basis of common merit list prepared by the Additional Principal Chief Conservator of Forests (Administration Subordinate Cadre), Maharashtra State, Nagpur, on the basis of result of the “Limited Departmental Competitive Examination. ...”. C  
[Para 16][454-F-G] B

2. The challenge is on the further rigor put on the eligibility to appear in the LDCE. The whole purpose of the LDCE is to encourage and facilitate the Forest Guards to get accelerated promotion on the basis of merit. Since seniority is the criterion for promotion to three-fourth of the posts, one-fourth is given a chance to compete in a competitive examination. It is also to be noted that there is no quota prescribed on the basis of higher educational qualification. The situation would have been different if, in the first place, there had been a classification wherein 75 per cent of the posts have to be filled based on seniority and 25 per cent reserved for graduates and again subject to *inter-se* merit in the competitive examination. That is not the situation in the present case. The LDCE is meant for selection for promotion from the entire lot of Forest Guards irrespective of seniority but subject to minimum five years of service. In that situation, introducing an additional restriction of graduation for participation in the LDCE without there being any quota reserved for graduates will be discriminatory and violative of Articles 14 and 16 of the Constitution of India since it creates a class within a class. The merit of the 25 per cent cannot be prejudged by a sub-classification. It violates the equality and equal opportunity guarantees. The Forest Guards, irrespective of educational qualifications, having formed one class for the purpose of participation in the LDCE, a further classification between D E F G H

A graduates and non-graduates for participating in the LDCE is unreasonable. It is a case of equals being treated unequally. [Para 17][454-H; 455-A-D]

B 3. Rule 7(2) of the Recruitment Rules to the extent that it imposes the requirement of being a graduate is declared unconstitutional. However this judgment shall not affect the promotions already made. But for further promotions, the LDCE shall be held afresh granting opportunity to all eligible Forest Guards. [Para 18][455-E]

C *Roshan Lal Tandon v. Union of India* [1968] 1 SCR 185; *State of Mysore and another v. P. Narasing Rao* [1968] 1 SCR 407; *The State of Jammu and Kashmir v. Shri Triloki Nath Khosa and others* (1974) 1 SCC 19 : [1974] 1 SCR 771; *T.R. Kothandaraman and others v. Tamil Nadu Water Supply and Drainage BD and others* (1994) 6 SCC 282 : [1994] 3 Suppl. SCR 513 – referred to.

#### Case Law Reference

	[1968] 1 SCR 185	referred to	Para 8
	[1968] 1 SCR 407	referred to	Para 9
E	[1974] 1 SCR 771	referred to	Para 10
	[1994] 3 Suppl. SCR 513	referred to	Para 13

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 17974 of 2017.

F From the Judgment and Order dated 01.07.2016 of the High Court of Judicature at Bombay at Nagpur in Writ Petition No. 2464 of 2016.

Satyajit A. Desai and Ms. Anagha S. Desai, Advs. for the Appellant.

G Shekhar Naphade, Sr. Adv., Nishant Ramakantrao Katneshwarkar, K. Parameshwar, Shivaji M. Jadhav, Abhay Sambre, Amit B. (For M/s. S. M. Jadhav And Company), Somiran Sharma and Sandeep Dere, Advs. for the Respondents.

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The Judgment of the Court was delivered by

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**KURIAN, J.** 1. Leave granted.

2. The short but complex question arising for consideration in this case is whether the restriction introduced on the basis of educational qualification for participating in a Limited Departmental Competitive Examination (hereinafter referred to as "LDCE") violates Articles 14 and 16 of the Constitution of India.

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3. Undisputed facts of the case: The educational qualification for appointment to the post of Forest Guard in the Forester, Forest Guard, Ranger-Surveyor, Surveyor, Head Clerk, Accountant and Clerk-cum-Typist (Recruitment) Rules, 1987 (hereinafter referred to as "the Recruitment Rules") is Higher Secondary School Certificate (hereinafter referred to as "HSSC"). It is a feeder category for promotion to the post of Forester. The relevant part of the Recruitment Rules, as amended in 2013, read as follows :

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"Rule -7. (1) Appointment to the post of Forester in the Forest Department shall be made either:-

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(a) by promotion of a suitable person from amongst the persons holding the post of Forest Guard on the basis of seniority as per the circle gradation list and subject to fitness, having not less than three years regular service in that post; or

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(b) By selection of a suitable person from amongst the persons holding the post of Forest Guard, on the basis of common merit list prepared by the Additional Principal Chief Conservator of Forests (Administration Subordinate Cadre), Maharashtra State, Nagpur, on the basis of result of the "Limited Departmental Competitive Examination", conducted by the Chief Conservator of Forests (Education and Training), Pune on the basis of rules made for the Limited Departmental Competitive Examination by the Government, from time to time.

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(2) For appearing in the examination the candidates shall, —

(a) have completed five years of regular service as Forest Guard in the Forest Department;

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(b) possess a degree of a statutory university or any other qualification declared by the Government to be equivalent thereto;"

(Emphasis supplied)

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A           4. By the amendment introduced in the Recruitment Rules, 75 per cent of the posts in the category of Forester are to be filled up on the basis of seniority-cum-fitness (Rule 7(1)(a)). The remaining 25 per cent is to be filled up on the basis of the LDCE (Rule 7(1)(b)).

B           5. Two main conditions have been prescribed to participate in the competitive examination – (i) the candidate should have completed minimum five years of service as Forest Guard and (ii) the candidate should be a graduate. It is the contention of the appellant that as far as the first condition is concerned, the Department is well within its competence to prescribe eligibility of minimum experience for a Forest Guard to get promoted as Forester even on the basis of the competitive examination since the post of Forester requires experience in service and exposure in the field. However, introducing a further restriction on the basis of educational qualification to participate in the LDCE is discriminatory.

C           6. The contention of Shri Shekhar Naphade, learned Senior Counsel appearing for the State is that the whole purpose behind the amendment was to introduce young blood in the post of Forester where they have to undertake physically challenging responsibilities as well, and that is why preference is sought to be given to graduates. Laudable may be the object but the implementation of the policy behind the object can only be in accordance with law. If the young graduates are otherwise intellectually sharp and educationally proficient, they would prove to be more meritorious in the competitive LDCE. As the Rules now stand, opportunity has to be thrown open to the youngsters who are non-graduates also in the seniority list but who have completed the required number of years of service and yet are otherwise alert, efficient and proficient. Denial of the same would certainly be violative of Articles 14 and 16 of the Constitution.

D           7. We are afraid, the reference made by the learned Senior Counsel to the Constitution Bench decisions of this Court is of no avail. There is no quarrel with the well-settled proposition that there can be a classification based on the educational qualification if so warranted by the circumstances. But that is not what has been done in the present case. Based on the educational qualification, a class within a class has been created violating the guarantee of equality by restricting the participation in the LDCE only to graduates.

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8. The Constitution Bench Judgment of this Court in **Roshan Lal Tandon v. Union of India**<sup>1</sup>, is a case where direct recruits i.e. apprentice train examiner, and promotees i.e. skilled artisans were integrated into one group as Grade-‘D’. Thereafter, 80 per cent vacancies in Grade-‘C’ were to be filled up from class of apprentice train examiners and the remaining 20 per cent from among the train examiners on the basis of selection. That was held to be bad on the ground that “*once the direct recruits and promotees are absorbed in one cadre, they form one class and they cannot be discriminated for the purpose of further promotion to the higher grade-‘C’*”.

9. In **State of Mysore and another v. P. Narasing Rao**<sup>2</sup>, the same Constitution Bench held the higher qualification of S.S.L.C. to be a relevant consideration for fixing higher pay-scale than that of non-matriculate tracers. That classification, on the basis of higher qualification, was upheld.

10. **The State of Jammu and Kashmir v. Shri Triloki Nath Khosa and others**<sup>3</sup> is a later Constitution Bench decision of 1973 where **Roshan Lal** (supra) and **Narsing Rao** (supra) have been discussed. The question posed in **Triloki Nath Khosa** (supra) is as follows – “*if persons drawn from different sources are integrated into one class, can they be classified for purposes of promotion on the basis of their educational qualifications?*”. That was answered in the affirmative. This was a case where promotion from the integrated cadre of Assistant Engineers to Executive Engineers was limited to persons possessing a Bachelors Degree in Engineering or equivalent with seven years service. It was held :

“31. Classification, however, is fraught with the danger that it may produce artificial inequalities and therefore, the right to classify is hedged in with salient restraints; or else, the guarantee of equality will be submerged in class legislation masquerading as laws meant to govern well marked classes characterized by different and distinct attainments. Classification, therefore, must be truly founded on substantial differences which distinguish persons grouped together from those left out of the group and such differential attributes must bear a just and rational relation to the object sought to be achieved.

<sup>1</sup> (1968) 1 SCR 185

<sup>2</sup> (1968) 1 SCR 407

<sup>3</sup> (1974) 1 SCC 19

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50. We are therefore of the opinion that though persons appointed directly and by promotion were integrated into a common class of Assistant Engineers, they could, for purposes of promotion to the cadre of Executive Engineers, be classified on the basis of educational qualifications. The Rule providing that graduates shall be eligible for such promotion to the exclusion of diploma-holders does not violate Articles 14 and 16 of the Constitution and must be upheld.”

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11. There was also no sub-classification as in the instant case. Having upheld the Rule, it was further held at paragraph-51 as follows:

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“51. But we hope that this judgment will not be construed as a charter for making minute and microcosmic classifications. Excellence is, or ought to be, the goal of all good governments and excellence and equality are not friendly bed-fellows. A pragmatic approach has therefore to be adopted in order to harmonize the requirements of public services with the aspirations of public servants. But let us not evolve, through imperceptible extensions, a theory of classification which may subvert, perhaps submerge, the precious guarantee of equality. The eminent spirit of an ideal society is equality and so we must not be left to ask in wonderment: What after all is the operational residue of equality and equal opportunity?”

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(Emphasis supplied)

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12. The concurring words of Krishna Iyer, J. at paragraphs-57 and 58 are also relevant:

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“57. Mini-classifications based on micro-distinctions are false to our egalitarian faith and only substantial and straightforward classifications plainly promoting relevant goals can have constitutional validity. To overdo classification is to undo equality. If in this case Government had prescribed that only those degree holders who had secured over 70 per cent marks could become Chief Engineers and those with 60 per cent alone be eligible to be Superintending Engineers or that foreign degrees would be preferred we would have unhesitatingly voided it.

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“58. The role of classification may well recede in the long run, and the finer emphasis on broader equalities implicit in the concluding thought of the leading judgment will abide. The decision in this case should not — and does not — imply that by an undue accent on qualifications the Administration can cut back on the larger tryst of equalitarianism or may hijack the founding and fighting faith of social justice into the enemy camp of intellectual domination by an elite. The Court, in extreme cases, has to be the sentinel on the *qui-vive*.”

(Emphasis supplied)

It may be seen that it is a case where promotion to the post of Executive Engineer and above was wholly assigned to graduates, a classification based on educational qualification. There is no such reservation or even a quota reserved for graduates in the instant case.

13. T.R. Kothandaraman and others v. Tamil Nadu Water Supply and Drainage BD and others<sup>4</sup> discussed all the previous judgments on classification and held at paragraph-13 as follows:

“13. The aforesaid bird’s-eye view of important decisions of this Court on the question of prescribing quota in promotion to higher post based on the educational qualification makes it clear that such a qualification can in certain cases be a valid basis of classification; and the classification need not be relatable only to the eligibility criteria, but to restrictions in promotion as well. Further, even if in a case the classification would not be acceptable to the court on principle, it would, before pronouncing its judgment, bear in mind the historical background. It is apparent that while judging the validity of the classification, the court shall have to be conscious about the need for maintaining efficiency in service and also whether the required qualification is necessary for the discharge of duties in the higher post.”

14. Having held so, the legal position was summarised at paragraph-16, which reads as follows:

“16. From what has been stated above, the following legal propositions emerge regarding educational qualification being a basis of classification relating to promotion in public service:

<sup>4</sup>(1994) 6 SCC 282

- A (1) Higher educational qualification is a permissible basis of classification, acceptability of which will depend on the facts and circumstances of each case.
- B (2) Higher educational qualification can be the basis not only for barring promotion, but also for restricting the scope of promotion.
- C (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.”

(Emphasis supplied)

D 15. It was a case where the validity of the Rule which prescribed ratio of 3:2 for direct recruits and promotees - the former being degree holders and latter being diploma holders was challenged as violative of Articles 14 and 16 of the Constitution of India. It was held that higher educational qualification has relevance in so far as holding of higher promotional post is concerned in view of the nature of function and duties attached to the post. Still further, this Court held that prescribing a lesser quota for diploma holders does not suffer from such an infirmity as to make a diploma holder totally unfit for holding the post and hence the ratio was not “inequitable so as to mock at the guarantee of equality”.

F 16. The factual and legal position in the instant case is entirely different. There is no quota reserved for the graduate Forest Guard for promotion to the post of Forester. Seventy-five per cent of the posts are to be filled through the regular promotion channel based on seniority and twenty-five per cent is “by selection of suitable persons from amongst the persons holding the post of Forest Guard, on the basis of common merit list prepared by the Additional Principal Chief Conservator of Forests (Administration Subordinate Cadre), Maharashtra State, Nagpur, on the basis of result of the “Limited Departmental Competitive Examination. ....”

H 17. The challenge is on the further rigor put on the eligibility to appear in the LDCE. The whole purpose of the LDCE is to encourage and facilitate the Forest Guards to get accelerated promotion on the basis of merit. Since seniority is the criterion for promotion to three-

fourth of the posts, one-fourth is given a chance to compete in a competitive examination. It is also to be noted that there is no quota prescribed on the basis of higher educational qualification. The situation would have been different if, in the first place, there had been a classification wherein 75 per cent of the posts have to be filled based on seniority and 25 per cent reserved for graduates and again subject to *inter-se* merit in the competitive examination. That is not the situation in the present case. The LDCE is meant for selection for promotion from the entire lot of Forest Guards irrespective of seniority but subject to minimum five years of service. In that situation, introducing an additional restriction of graduation for participation in the LDCE without there being any quota reserved for graduates will be discriminatory and violative of Articles 14 and 16 of the Constitution of India since it creates a class within a class. The merit of the 25 per cent cannot be prejudged by a sub-classification. It violates the equality and equal opportunity guarantees. The Forest Guards, irrespective of educational qualifications, having formed one class for the purpose of participation in the LDCE, a further classification between graduates and non-graduates for participating in the LDCE is unreasonable. It is a case of equals being treated unequally.

18. Rule 7(2) of the Recruitment Rules to the extent that it imposes the requirement of being a graduate is declared unconstitutional. However this judgment shall not affect the promotions already made. But for further promotions, the LDCE shall be held afresh granting opportunity to all eligible Forest Guards.

19. The appeal is allowed as above. There shall be no order as to costs.