

İ»¿CASE NO.:
Appeal (civil) 3354 of 2000

PETITIONER:
BIHAR STATE SUBORDINATE INDUSTRIES FIELD OFFICERS' ASSN.

RESPONDENT:
KAPILDEO PRASAD SINGH AND ORS. ETC.

DATE OF JUDGMENT: 10/05/2000

BENCH:
M. JAGANNADHA RAO & Y.K. SABHARWAL

JUDGMENT:
JUDGMENT

2000 Supp(1) SCR 185

The Judgment of the Court was delivered by

M. JAGANNADHA RAO, J. Leave granted in both the special leave petitions. These two appeals arise out of the judgment in LPA 73/91 dated 9.9.1998 rendered by the Patna High Court. The appellants in the Civil Appeal arising out of SLP No.21041 of 1998 are members of the Bihar State Subordinate Industries Filed Officers' Association (hereinafter called the "Field Employees") while the appellants in the Civil Appeal arising out of SLP 1133/99 are members of the Industrial Department Statistical Employees Association (hereinafter called the 'Statistics Employees'). Both groups belong to the Non-gazetted Service in Bihar and the dispute is between these two groups on the one hand and Sri Kapildeo Prasad Singh and others who belong to the Gazetted Service on the other. The learned Single Judge of the High Court of Patna Held that the Rule contained in Annexure-I and in particular in Schedule IV of me Bihar Industries Service Rules, 1987 is Ultra vires inasmuch as under that rule, the above said non-gazetted category of officers i.e. field employees and statistical employees of Senior scales were included alongwith the gazetted categories, for promotion to the posts of Manager/ Assistant-Director etc, in the then scale of Rs.1000-1820. The said decision of the learned Single Judge was upheld by the Division Bench. Aggrieved by me consequent exclusion from the channel of promotion, these two sets of non gazetted employees have filed these appeals.

We have to point out that the Statistics Employees have filed their SLP seeking leave as they were not parties in LPA 73/91. What happened was that the gazetted category of employees who were aggrieved by the inclusion of the field employees in the promotional channel filed writ petition CWJC 5352 of 1987 in the High Court. The learned Single Judge struck down the relevant rule not only in so far as the field officers were concerned but also in relation to Statistics employees. The Statistics Employees in Grade 880-1510 were not heard. They therefore filed LPA No. 82 of 1991. It was clarified by a separate judgment dated 20.5.1993 in LPA 82 of 1991 by a Division Bench that the judgment of the learned Single Judge would not affect the statistics employees in grade 880-1510 who belonged to the Economic Investigating group. But unfortunately, this order was not noticed by the Division Bench which disposed of LPA 73/91 filed by the Field Employees against the judgment of the learned Single judge. The Division Bench in its order dated 9.9.98 affirmed the entire judgment of the learned Single Judge i.e. even that part which struck down the promotion channel for the statistics employees. Apprehending mat this judgment dated 9.9.98 amounted to striking down the rule in so far as the statistics employees were also concerned, - in spite of what was said in LPA 82 of 1991-the Statistics Employees filed SLP 1133/99, with leave. Having regard to the fact that issues are pending from 1987, and that the striking down of the entire rule remained stayed and both Field Employees and Statistics

Employees were given promotions under the impugned rule, we are deciding the matter on merits both in respect of the Field Employees and the Statistics Employees.

We may refer to a few facts : In letter dated 24.12.86, the State of Bihar (Industries Department) wrote to the Accountant General, Bihar that in the light of the judgment of the High Court (Ranchi Bench) in CWJC 739/80(R) and 740/80 (R), the State had taken a decision for sanctioning the following scales of Pay in Selection Grade and Senior Selection Grade for 'promotion' and grant of higher scale of pay of Industries Extension Officers. The scale of pay which was Rs. 310-490 would stand revised as Rs. 400-660. Similarly pay of the said officers in Selection Grade would stand revised as Rs. 415-745. Along with this, the State took a decision to create 20% out of the total strength of 270 posts i.e. 54 posts in the Selection Grade Scale of Rs. 415-745 and a further 20% on the same 270 strength i.e. 54 posts of Senior Selection Grade scale of Rs. 570-1155. This order was to be effective from 1.1.1971. Thereafter the State issued the Bihar Industries Service Cadre Rules, 1987. Rule 3 deals with constitution of the service. Rule 4 states that there will be direct recruitment as stated in Part III and promotion as stated in Part IV. Rule 5 deals with notifying vacancies to the Public Service Commission.

Part IV contain Rules 11 to 15. Rule 11(a) states that promotions shall be made from amongst the officers holding posts "Just below". Rule 11(c) states that promotion to the initial rung of the cadre shall normally be made from amongst the officers listed in Schedule IV appended to these Rules on the basis of seniority-cum-merit. Rule 12 lays down the ratio between direct recruitment and promotion. Sub-clause (a) of Rule 12 states that on all posts in the scale of Rs. 1000-1820 or its corresponding revised scale to be ordered by the Government from time to time, the percentage of direct recruitment and promotees will normally be in the ratio of 50% each, provided that if the Government is satisfied that sufficient suitable and eligible officers listed in Schedule IV of these rules are available for promotion, the Government may increase the quota of promotion in the first year of the commencement of those rules which shall not exceed 75% in any case. Sub-clause (b) states that all superior posts above the scale of Rs. 1000-1820 save and except those posts which are earmarked for other services, shall be filled in by promotion from the eligible officers of the cadre who have filed requisite 'Kalawadhi' (qualifying service) on the basis of seniority-cum-merit. Rule 13 refers to the Kalawadhi as specified in Schedule III appended to the Rules. Rule 15 states that procedure for promotion is to be through the DPC, to be headed by the Chairman of the Service Commission or a member of the said Commission.

Schedule 1 to the Rules deals with sanctioned strength to the Bihar Industries Service, There are 3 posts of Additional Director in scale of Rs. 2325-2850, 11 posts of Joint Director in scale of Rs. 1900-2500, 67 posts of Dy. Director (& other equivalent posts) in scale of Rs. 1575-2300, 121 posts of functional Manager (& other equivalent posts) in scale of Rs. 1350-2200 and 187 posts of project Manager (and other equivalent posts, Assistant Director, etc.) in scale of Rs. 1000-1820

Schedule II refers to the essential qualification for Direct Recruitment in the Initial Rung (Entry-Point), i.e. posts in scale of Rs. 1000-1820. Candidates are to have II class degree in Engineering or Technology or Degree in Arts etc. with experience of 2 years in a reputed industrial concern.

Schedule III refers to the Kalawadhi (qualifying service) for promotions beyond Managers posts, Rs. 1000-1820 to Rs. 1350-2000, it is 5 years and for promotion for Rs. 1350-2000 to Rs. 1575-2300, from Rs. 1575-2300 to Rs. 1900-2500, from Rs. 1900-2500 to Rs. 2325-2850, Rs. 2325-2850 to Rs. 2600-3200 it is 3 years.

Then we come to the impugned provisions in Schedule IV. It refers to the list of officers in 'Subordinate Service' who shall be eligible for 'promotion' to the posts of Manager/Assistant Director and others in the scale of Rs. 1000-1820 These are in 3 group A, B and C.

The A group is a gazetted category from which promotion is to the posts of Manager in scale of Rs. 1000-1820, It consists of Assistant Manager, Superintendent, Dy. Information Officer, Project Officer & other posts-all in scale of Rs. 880-1510. (These Officers are the writ petitioners and respondents before us).

Then come the groups B and C - the non-gazetted category where those holding senior scale are made eligible under these 1987 Rules for promotion as Managers in the scale of Rs. 1000-1820. These officers in the group B and C are as follows:

"(B) Industrial Extension Officer Rs. 940-1660

(Senior scale)

(C) Economic Investigators/ Rs.880-1510

(Senior scale)

Statistical Assistant/Supervisors Rs.850-1360

(Lower scale)

Note: 8 (eight) posts of Assistant Directors (or equivalent) in pay-scale of Rs. 1000-1820 shall be earmarked for the ministerial staff of the department."

(The Industrial Extension Officers are the field Employees referred to by us who filed the appeal arising out of SLP 21041/98. The Economy Investigators/etc, are those who have filed the appeal arising out of SLP 1133/ 99.)

Now the channel of promotion to Manager in Rs. 1000-1820 is confined to and includes Group B senior scale in Rs. 940-1660 and Group C in Rs.880-1510 scale. This channel given to these non-gazetted employees was questioned by the Group A gazetted category which was also in the feeder channel. The learned Single Judge and the Division Bench have struck down the inclusion of these employees in groups B and C in senior scale in the Schedule IV for promotion as Managers on the ground that they cannot be clubbed with the gazetted category in Group A viz. Assistant Managers, Superintendents, Dy. Information Officers, Project Officers etc, in scales of Rs.880-1510 since the latter group belonged to gazetted category of officers while the former were in non gazetted category. In other words, the grouping of certain non-gazetted categories with certain gazetted categories-even if they were drawing equivalent or higher scale-was held to be irrational and arbitrary and violative of Articles 14 and 16(1) of the Constitution of India,

Learned senior counsel, Sri Chandrashekhar for the Field employees and Sri P.S. Mishra for the Statistics employees have contended that this Court has held that such grouping of officers is not violative of Article 14 when it is substantiated by the State that there are good reasons for doing so. Cases in which promotions are from post X to post Y and from post Y to Z and were re-grouped by permitting groups X and Y to be clubbed together for promotion to group Z and where such a grouping was upheld were cited in this connection for the appellants.

On the other hand, learned counsel for the respondents Sri S, Mukherjee tried to support the judgment of the High Court.

Counsel for the State of Bihar, Sri B.B. Singh supported the case of the

appellants.

The point for consideration is: whether the grouping together of employees in group B in scale 940-1660 and in Group C in scale 880-1510 Schedule IV belonging to the non-gazetted category with Group A gazetted officers in Schedule IV in scale 880-1510 for promotion as Manager etc. in the scale of Rs. 1000-1820 is violative of Articles 14 and 16(1) as being irrational?

We may state that there is also a quota fixed by the State for promotion from groups A, B and C but we are not concerned here with the quota as such. We are also not concerned with the Kalawadhi or qualifying service of different groups of officers.

Before we advert to the reasons given by the State for clubbing the senior scale in the non-gazetted groups B and C with the gazetted group A for promotion, we shall refer to few rulings of this Court which, in our view, are quite relevant.

The earliest of these decisions is the one in *Md, Usman and Ors, v. State of A.P.*, [1971] 2 SCC 188. In that case, the High Court of Andhra Pradesh struck down Rule 5 of the A.P, Registration Subordinate Service Special Rules but this Court set aside the said judgment and upheld the Rule. Under Rule 5, promotion was to the post of sub-Registrar. There Grade I posts would be filled from Grade II Sub-Registrars. The Grade II Sub-Registrar category was to be filled from (i) Reserve Sub-Registrars and (ii) "Clerks", by transfer from the Registration/Stamp Department including office of Registrar General and Registrar of Firms. It was contended for Upper Division Clerks that among "clerks", there were Upper Division as well as Lower Division Clerks and that initially, Lower Division Clerk had to be promoted as Upper Division Clerks and that clubbing an inferior feeder category and a superior category for purposes of further promotion was violative of Article 14 in the sense that unequals were treated as equals. This Court reversed the High Court and held that the policy of the Government was based upon the fact that promotion as Upper Division Clerk was District wise and in some districts promotions of Lower Division Clerks as Upper Division Clerks were faster than in other districts due to fortuitous circumstances in one district and that with a view to remove this inequity, the Government took a policy decision to club the LDCs and UDCs into one group. This policy was held valid.

The facts of the case in *State of Rajasthan v. Rajendra Kumar Godika*, [1993] Supp. 3 SCC 150, are also similar. The High Court struck down the relevant Rule but this Court again reversed the judgment. In that case, group E Headmasters who were in charge of Higher Secondary Schools objected to be clubbed with Group F Headmasters in charge of Secondary Schools, for promotion into Group D as Principals, Higher Secondary Schools. They raised objection on the ground that Group F posts were themselves feeder posts for filling upto Group E posts. The plea was that this amounted to treating unequals as equals. The High Court accepted this contention. But this Court rejected the said contention on the ground that the nature of duties and functions were same and the policy there was to give only the remaining vacancies of Group D to the Group F and on merit. *Md. Usman v. State of A.P.* was followed.

More recently, in *Union of India v. N, Y. Apte*, [1998] 6 SCC 741, a similar situation arose. The Central Administrative Tribunal's decision striking down the rule was set aside by this Court. In that case, the posts in Meteorological posts of MG I and MG II were class I gazetted posts whereas posts of A.M. were Class II gazetted posts. In 1969, the posts of MG I were to be filled from MG II. Fifty percent of posts in MG II were to be filled by promotion from A.M. and equivalent posts (posts of A.M. were to be filled from posts of Professional Assistant, Super-Intendent etc.) In 1978, the rules were modified. Posts in MG II were to be filled only by direct recruitment. The impugned provision however stated that posts in MG I were to be filled from MG II with 5 years experience or from A.M. with 10 years

approved service or with combined 8 years service of MG II and A.M. Later, in 1983, the 10 years qualifying service referred to above was reduced to 8 years. The direct recruits of MG II of 1981-82 challenged the rule and the Central Administrative Tribunal held that 1978 and 1983 Rules were bad because the post of A.M. had been equated with MG II for promotional purposes and thereby unequals were treated as equals. This Court set aside the judgment of the Tribunal. Apart from the educational qualification and scales, being same, it was held that the fact that certain persons with equal qualification, joined a lower grade would not keep him permanently inferior or unequal to a person who had entered a higher grade so as to prevent them from being placed on a par with the latter after gaining sufficient experience in the service. A mere chance of promotion was not a right nor a condition of service. If the rule making authority thought it fit to equate these persons with persons having longer experience, there was nothing wrong.

Thus, there may be varied reasons or situations or considerations that may be the basis for a decision by Government in clubbing two groups together to improve the chances of promotion, even though one was a feeder channel for the other. In the present case, it is also important to note that under Rule 12, Government stated that the quota for promotees could extend from 50% to 75% if suitable promotees were available. This increase in promotional quota was indeed intended to accommodate the Groups B and C also in the channel to the promotion category. Secondly, the Group A officers were in the Scale of Rs. 880-1510, Once in the Group B, the Senior Selection grade officers were put in the scale of Rs. 940-1660, it was not permissible - even though they were in non-gazetted category - to bring them down to the scale of Rs. 880-1510 in the gazetted category by reducing their grade and then to promote them as Managers etc. in Rs. 1000-1820. That was indeed the implication of the contention of the gazetted category. Once these officers in Group B were getting a higher scale than those in Group A, and if Government felt that they should be brought into the feeder group, the same could not be treated as irrational. Similarly, on the same considerations, Group C officers drawing Rs. 880-1510, which was a scale equivalent to the scale of Group A officers, were also included in the feeder category, this could not by itself be treated as irrational. One other important consideration, - as stated in the Government's counter - was that among Managers, it was felt that there must be more persons having experience in Extension posts and Statistical/Investigator posts in the Groups B and C categories. Those who might have reached through an intermediate post, if any, were not found sufficient, even assuming that those from B and C group could have first gone to Group A and then as Managers. The promotion quota could go beyond 50% to 75% if suitable persons were available. In addition to this the State Government explained in their counter affidavit filed in the High Court that, in respect of the inclusion of the senior scale officers of Groups B and C, the Public Service Commission was consulted and it concurred with the policy of inclusion of these groups in the feeder channel. Industrial Extension Officers posts were created in all the Districts and they have their importance in preparation and industrial planning. In Manager cadre, people with such experience were considered necessary. Most of the posts in the scale of Rs. 1000-1820 were also created at District level. If Government kept these facts and the scales of pay in mind when they made the provision creating the avenue of promotion from Group B and Group C employees, it cannot, in our opinion, be held to be irrational. The use of the words "just below" in Rule 11(a) did not mean just below in the gazetted category.

The learned Single Judge relied upon *Lalit Mohan Deb v. Union of India*, [1973] 3 SCC 862 and on *Dayaram Asanand Gursahani v. State of Maharashtra and Ors.*, [1984] 3 SCC 36 for holding that appointment to a higher grade was not a promotion. But, in *State of Rajasthan v. Fateh Chand Soni*, [1996] 1 SCC 562, the same passages were relied upon by this Court to hold that the appointment was in the nature of a promotion. But, we fail to see any relevance of this aspect in the present case. Whether the grant of a senior

scale amounted to a promotion or not is not relevant. The question here is whether there was some rational basis for including these posts in the feeder categories. Two or three reasons have been given. One was that those in senior scale in Group B were drawing higher scale than Group A. Those in higher scale in Group C were drawing same scale as Group A. The posts of Manager in Rs. 1000-1820 were mostly in Districts and those working in same or higher scales in certain lower posts were included because in the promotional post of Managers those having experience in these areas where these Group B and Group C employees were having experience, were felt necessary. In other words, more posts of Managers were to be manned by those having experience in some other areas as well and that is why the quota in the Manager's posts as per Rule 12 could go beyond 50% upto 75% for promotees, if suitable bands were available. The considerations in our view cannot be ignored nor characterised as irrational.

For the aforesaid reasons, we set aside the judgment of the High Court and dismiss the writ petition filed by the respondents.

The appeals are allowed accordingly.