

another, and; Het Ram and others' cases (supra) are not tenable and the same are hereby over-ruled.

(17) To conclude, the answer to the question posed at the very out-set is rendered in the negative and it is held that in proceedings under Sections 21 and 42 of the Act, it is not necessary that all the co-sharers must first be impleaded and then served individually. It is held that an adequate hearing given to one or some of the co-sharers is in the eye of law a hearing of all the body of co-sharers in the absence of fraud or collusion or the failure of any fair and real trial of the issue.

(18) It is not in dispute that apart from the aforesaid significant question, other issues may also well arise in this appeal. The case would, therefore, go back for a decision on merits in the light of the aforesaid answer to the referred legal question.

Sukhdev Singh Kang, J.—I agree.

Gokal Chand Mital, J.—I also agree.

N.K.S.

FULL BENCH

Before S. S. Sandhawalia, C.J., J. M. Tandon and G. C. Mital, JJ.

STATE OF PUNJAB,—Appellant.

versus

GURCHARAN SINGH, Respondent.

Regular Second Appeal No. 1712 of 1973.

March 29, 1983.

Constitution of India 1950—Articles 14 and 16—Grant of higher pay scale within the same service—Higher educational qualifications made the basis of such grant—Classification so made—Whether valid and constitutional.

Held, that the classification on the basis of educational qualifications in the same service for purposes of promotion is sustainable on the anvil of the equality clause. Once it is held that it is so, it matters not whether it is made for purposes of a higher pay scale or

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for purposes of promotional avenues. Indeed, promotion to higher rank is more significant and vital to an employee than a mere marginal difference of pay scale. Consequently, if educational qualifications can provide a valid foundation for classification for purposes of promotion, it must equally be so for the purposes of the grant of a higher scale of pay. It must, therefore, be held that higher educational qualifications are a valid basis of classification for the purposes of grant of a higher pay scale within the same service.

(Paras 7 and 9).

State of Punjab and another vs. Lekh Raj Bowry and others, 1967 S.L.R. 816.

J. K. Pritam Singh and others vs. The State of Punjab and others, 1967 S.L.R. 251.

OVERRULED.

Case referred by Hon'ble Mr. Justice Gokal Chand Mital to a larger Bench for decision of an important question of law involved in the case,—vide order dated 17th September, 1982. The full Bench consisting Hon'ble the Chief Justice Mr. S. S. Sandhawalia, Hon'ble Mr. Justice J. M. Tandon and Hon'ble Mr. Justice Gokal Chand Mital on 29th March, 1983, after deciding the question referred to, again sent to the case back to the respective Benches for a decision on merits.

Regular Second Appeal from the order of the Court of Shri Amrit Lal Bahri, Additional District Judge, Patiala, dated 7th August, 1973 reversing that of Shri Amjad Ali Khan LL.M. P.C.S., Subordinate Judge 1st Class, Patiala, dated 20th August, 1980 decreeing the suit of the plaintiff-appellant, as prayed for. With no order as to costs.

Amar Singh Sandhu, Additional A. G. Punjab, for the appellant.

K. P. Bhandari, Advocate with Parmodh Singh, Advocate, for the respondents.

S. S. Sandhawalia, C.J.

(1) Whether higher educational qualifications are a valid basis of classification for the purpose of the grant of a higher pay scale within the same service is the significant common question which arises in these five connected cases before the Full Bench.

(2) The bare matrix of facts necessary for the consideration of the pristinely legal issue may be picked from R.S.A. No. 1712 of 1973 (*State of Punjab v. Gurcharan Singh*). Gurcharan Singh was an employee of the erstwhile State of Pepsu as a Library Restorer in the Central State Library, Patiala, in the grade of Rs. 42½-2-62. On the subsequent merger of Pepsu with Punjab, he became an employee of the Punjab Government in the same scale. Later, on the formation of the new States of Punjab and Haryana with effect from November 1, 1966, he was allocated to the State of Punjab in the Grade of 45-2-75. However, the Punjab Government revised the grade of Library Restorers from 45-2-75 to 100-4-140-5-180, but imposed a specific condition that an employee who was Matriculate with a certificate of Library Science would alone be entitled to the revised grade. Since Gurcharan Singh respondent was only a Matriculate, he was denied the revised grade and, therefore, filed a suit to claim a declaration that he was entitled thereto because the classification made by the State Government in the revised grade was arbitrary, illegal and violative of Articles 14 and 16 of the Constitution of India. The trial Court dismissed the suit, but on appeal, the lower appellate Court allowed the appeal and decreed the same primarily on the basis of the Division Bench judgment of this Court in *The State of Punjab and another v. Lekh Raj Bowry and others*, (1). The State of Punjab then preferred the Second Appeal which originally came up before my learned brother G. C. Mital, J. Noticing a conflict of precedent within this Court and also that the observations in *Lekh Raj Bowry's case* (supra) may no longer be tenable in view of the subsequent decision of the final Court, he proposed the consideration of the case by a larger Bench,—*vide* his lucid reference order. In the connected set of four Civil Writ Petitions it was argued before the Division Bench in CWP No. 493 of 1982—*Om Parkash v. State of Haryana* that the view expressed in *State of Haryana v. Jagdish Singh and others*, (2), was in conflict, with the earlier one in *Lekh Raj Bowry's case* (supra) and, therefore, the matter was admitted for hearing by a Full Bench.

(3) Perhaps at the very threshold, we may pointedly notice that the issue herein appears to us as so squarely covered by a catena of binding precedent and an equally massive weight of persuasive judgments that it would be a sheer exercise in futility to examine the matter on first principles. However, there is no

(1) 1967 SLR 816.

(2) 1983 SLR 60.

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gainsaying the fact that there did appear earlier a few discordant notes within this jurisdiction as also in other High Courts till the matter was settled beyond cavil by the final Court itself.

(4) In view of the above, it seems futile for our purposes to delve beyond the locus classicus on the point which directly governs the issue in *State of Mysore v. P. Narasinga Rao* (3). Therein the pointed question that arose before their Lordships and stands so formulated in terms was (in para 3 of the report) "whether the creation of two pay scales of Tracers in the new Mysore State who were doing the same kind of work amounted to a discrimination and violative of Articles 14 and 16 of the Constitution." After a consideration on principle as also on reference to existing precedents, the answer to the said question was rendered as follows whilst reversing the contrary view of the High Court of Mysore :—

"In our opinion, therefore, higher educational qualifications such as success in the S.S.L.C. examination are relevant considerations for fixing a higher pay scale for Tracers who have passed the S.S.L.C. examination and the classification of two grades of Tracers in the new Mysore State, one for matriculate Tracers with a higher pay scale and the other for non-matriculate Tracers with a lower pay scale is not violative of Articles 14 or 16 of the Constitution."

It would be plain from the above that the classification on the basis of educational qualifications (betwixt Matriculate and non-Matriculate Tracers) as also the fixing of a higher pay scale within the same service was specifically upheld. This rationale was reiterated in *The Union of India and others v. Dr (Mrs) S. B. Kohli and another* (4), wherein, it was observed that for the purposes of promotion to the post of a Professor, the classification based on the higher educational qualification of a post-graduate degree in Orthopaedics could in no sense be termed as discriminatory.

(5) In *The State of Jammu & Kashmir v. Triloki Nath Khosa and others*, (5), the issue posed in terms was — if persons drawn from different sources are integrated into one class, can they be classified for the purposes of promotion on the basis of their

(3) AIR 1969 S.C. 349.

(4) AIR 1973 S.C. 811.

(5) AIR 1974 S.C. 1.

educational qualifications. Reversing the High Court view to the contrary, the answer to this question was rendered as follows :—

“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.”

The aforesaid string of three cases was then considered at length by Bhagwati, J., speaking for the Court in *Mohammad Shujat Ali and others v. Union of India and others* (6). Far from there being any hint of dissent, the Court affirmed, approved and accepted the statement of the law in the abovesaid cases. In view of the somewhat vehement reliance by the learned counsel for the writ petitioners, we may observe that *Shujat Ali's case* is in no way discordant with the earlier view but only elaborates and qualifies the same to the effect that once the members of the same service are held eligible for promotion to higher rank then it is not permissible for the State to fix any arbitrary quotas for promotion *inter se* on the supposed basis of educational qualifications.

(6) It is manifest that the catena of aforesaid four judgments of the final Court be conclusive on the point. However, there is an equally massive weight of precedent in almost all the other High Courts either following the said view or arriving at the same conclusion independently. It is unnecessary to advert to these cases individually and it suffices to say that in *B Simhadri Raju and others, v. V. Markandeya and others*, (7) (reversing the view of the learned Single Judge in *P. Satyanarayana Raju and others v. The State of Andhra Pradesh and others*, (8), *Prabhakar Ganpatrao Pokale v. The State of Maharashtra and others* (9). *The State of Karnataka by its Secretary D.H.P.C. v. M. Shivanna and others* 10, *B. C. K. Murthy and others v. The State of Mysore and others*

(6) AIR 1974 S.C. 1631.

(7) 1975 Lab. I.C. 518.

(8) AIR 1974 A.P. 65.

(9) 1979 Lab. I.C. 490.

(10) 1978 (2) SLR 38.

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(11), *Ghanshyam Lal Soni v. The State of Madhya Pradesh and others* (12), *Dr. Rai Nandan Prasad Singh v. The State of Bihar and others* (13), it has been held in a wide variety of services that higher educational qualifications may be a sound foundation for a higher scale of pay in the same service. Within this jurisdiction, a Division Bench of this Court in *Shri Ishar Singh and others v. The State of Punjab and others*, (14), has in terms held that differentiation in scales of pay on the basis of educational qualifications in the same service is neither discriminatory nor violative of Articles 14 and 16. To the same effect is the judgment of the Letters Patent Bench in *the State of Haryana and another v. Jagdish Singh and others* (15).

(7) Faced with the aforesaid stone-wall of precedent, Mr. Pradeep Kumar Gupta, the learned counsel for the writ petitioners had attempted to tenuously distinguish some of the Supreme Court cases on the ground that these pertained to a classification in the realm of promotion and not for higher scales of pay in the same service. This submission has only to be noticed and rejected. What deserves reiteration is the fact that *P. Narshinga Rao's case* was specifically one of the grant of a higher scale of pay to Matriculate Tracers against non-Matriculate ones in the same service. No question of any promotional classification arose in the said case. Even otherwise, the distinction sought to be drawn betwixt a classification for purposes of promotion and that for higher pay scales is one without any legal difference. The core of the issue is whether the classification on the basis of educational qualifications in the same service is sustainable on the anvil of the equality clause or not? Once it is held that it is so, it matters not whether it is made for purposes of a higher pay scale or for purposes of promotional avenues. Indeed it was argued with considerable plausibility by the other side that promotion to higher rank is more significant and vital to an employee than a mere marginal difference of pay scale. Consequently if educational qualifications can provide a valid foundation for classification for purposes of promotion, it must equally be so for the purposes of the grant of a higher scale of pay.

(11) AIR 1972 Mysore 88.

(12) 1971 Lab. I.C. 1043.

(13) 1975 (I) SLR 258.

(14) 1977 S.L.W.R. 319.

(15) 1983 (1) SLR 60.

(8) One must now inevitably turn to *Lekh Rai Bowry's case* (supra), which has necessitated the consideration of these cases by this full Bench. Therein *inter alia*, it was observed as follows :—

“* * *. Once this had happened, some members of the unified cadre could not be treated dissimilarly as against others of the same cadre in the matter of their pay and other relevant conditions of service on the ground that some of them possessed higher or better qualifications. It is settled law that the equality of opportunity guaranteed by clause (1) of Article 16 of the Constitution does not end with the stage of initial appointment, but would inevitably govern all matters relating to employment including questions of emoluments, chances of promotion etc.”

The aforesaid observations undoubtedly support the stand taken

JUDGMENT

S. S. Sandhawalia, C.J.—

1. The true scope and ambit of clause (b) (read with the proviso thereto), of sub-section (2) of section 33 of the Industrial Disputes Act, 1947 is the somewhat meaningful question which has come to the fore in this appeal under Clause X of the Letters Patent.

2. The respondent-Dev Dayal Sharma, was engaged as a workman by the appellant-Company. For acts of grave misconduct of abusing the factory Manager, Shri H. S. Malik, in a most indecent manner and also violently threatening him on March 5, 1969, he was charge-sheeted on March, 11, 1969. His explanation, duly called, was found to be wholly unsatisfactory and a domestic enquiry was held against him. The factory manager, Shri H. S. Malik, who was the complainant in the case had appeared as a witness along with others in the said enquiry proceedings. The enquiry officer came to the firm conclusion that the aforesaid charge was conclusively established.

3. The respondent-workman was again charge-sheeted for the multiple charges of (i) assaulting Shri S. K. Bhalla; (ii) loitering