

**The Executive Engineer Vs. The Deputy Labour**

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**Court :** Chennai

**Decided On :** Dec-15-2014

**Judge :** M.Jaichandren

**Appellant :** The Executive Engineer

**Respondent :** The Deputy Labour

**Judgement :**

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED : 05.10.2009  
CORAM THE HONOURABLE MR.JUSTICE K.CHANDRU W.P.NO.33771  
OF2006(O.A.NO.6730 OF1998 1.K.Karupaiah 2.M.Muniyasamy  
3.S.Balasubramanian .Petitioners versus 1.The Commissioner and Secretary,  
Government of Tamil Nadu, Social Welfare and Nutritious Meal Programme  
Department, Chennai-9.

2.The Director of Social Welfare, Chepauk, Chennai-5.

3.The Project Co-ordinator, Tamil Nadu Integrated Nutrition Project, No.48,  
L.B.Road, Adyar, Chennai-20.Respondents This writ petition has been preferred  
under Article 226 of the Constitution of India praying for the issue of a writ of  
certiorari to quash clause (b) of G.O.Ms.No.1251, Social Welfare Department,  
dated 24.7.87 and consequently, promote the applicant as C.D.P.O./T.P.N.O.For  
Petitioner : Mr.S.M.Subramaniam For Respondents: Mr.R.Neelakantan, GA - - - -

ORDER

Heard both sides.

2.The fiRs.two petitioners are working as Assistants and the third petitioner is a Junior Assistant in the third respondent office, which is coming under the control of the second respondent, the Director of Social Welfare.

3.According to the petitioneRs.apart from Ministerial service, there are also posts of Child Development Project Officer (CDPO) and Taluk Project Nutrition Officer (TPNO).The adhoc rules were framed for the said posts, which were filled up 25% by direct recruitment, 70% by recruitment by transfer from the category of Assistant District Social Welfare Officer/Superintendents, working hostel and 5% by recruitment by transfer from among the holders of the posts of Superintendents in the Tamil Nadu Ministerial Service in the Social Welfare Department.

Since 5% were not given to the Ministerial service because the adhoc rule provides that only women can be eligible for appointment to the posts of CDPO and TPNo.4.The petitioners stated that the women who joined the service subsequently were able to get recruited because of gender bias and it is a clear case of discrimination based upon sex and violation of constitutional provisions.

Therefore, the petitioners filed OA No.6730 of 1998 before the Tribunal, seeking to challenge the adhoc rules framed by the Government vide G.O.Ms.No.1251, Social Welfare Department, dated 24.7.87.

Rule 6 of Special Rules reads as follows: "6.Sex.-Women alone shall be eligible for appointment to the post of District Social Welfare Officer, Child Development Project Officer, Taluk Project Nutrition Officer and Superintendent Sheltered Workshop for the Blind."

5.It must be stated that these rules were made by virtue of power under Article 309 vested on the State Government by the Constitution.

They are legislative in character.

These rules can be challenged only on grounds of violation of Articles 14 and 16 of the Constitution.

In the present case, the petitioners are in Ministerial service and only 5% of posts were reserved to be filled up by transfer from the said service.

Even there, the impugned rule clearly states that these posts will have to be operated by women candidates by taking into account the nature of duty attached to those posts.

It is a policy decision of the Government to reserve posts exclusively for women in view of special nature of those posts.

The petitioners cannot make a grievance about the same and contend that it violates Articles 14 and 16 of the Constitution.

6. In this context, the Supreme Court has laid down the parameters for challenging rules, which makes special provisions in favour of women based upon certain criteria.

The Supreme Court in *Air India versus Nergesh Meerza* reported in 1981 (4) SCC 335 propounds the right of equality under Article 14 after considering various decisions.

In that case, the constitutional validity of Regulation 46(i)(c) of the Air India Employees' Service Regulations was challenged, which provides for retiring age of an air hostess.

The Supreme Court in paragraph 39 observed as follows: "39. Thus, from a detailed analysis and close examination of the cases of this Court starting from 1952 till today, the following propositions emerge: (1) In considering the fundamental right of equality of opportunity a technical, pedantic or doctrinaire approach should not be made and the doctrine should not be invoked even if different scales of pay, service terms, leave, etc., are introduced in different or dissimilar posts.

Thus, where the class or categories of service are essentially different in purport and spirit, Article 14 cannot be attracted.

(2) Article 14 forbids hostile discrimination but not reasonable classification.

Thus, where persons belonging to a particular class in view of their special attributes, qualities, mode of recruitment and the like, are differently treated in public interest to advance and boost members belonging to backward classes, such a classification would not amount to discrimination having a close nexus with the objects sought to be achieved so that in such cases Article 14 will be completely out of the way.

(3) Article 14 certainly applies where equals are treated differently without any reasonable basis.

(4) Where equals and unequals are treated differently, Article 14 would have no application.

(5) Even if there be one class of service having several categories with different attributes and incidents, such a category becomes a separate class by itself and no difference or discrimination between such category and the general members of the other class would amount to any discrimination or to denial of equality of opportunity.

(6) In order to judge whether a separate category has been carved out of a class of service, the following circumstances have generally to be examined: (a) the nature, the mode and the manner of recruitment of a particular category from the very start, (b) the classifications of the particular category, (c) the terms and conditions of service of the members of the category, (d) the nature and character of the posts and promotional avenues, (e) the special attributes that the particular category possesses which are not to be found in other classes, and the like."

7. The Supreme Court in *Western U.P. Electric Power & Supply Co. LTD. versus State of U.P.* reported in 1969 (1) SCC 817 observed in paragraph 7 of the said judgment as follows: "7. Article 14 of the Constitution ensures equality among equals: its aim is to protect persons similarly placed against discriminatory treatment.

It does not however operate against rational classification.

A person setting up a grievance of denial of equal treatment by law must establish that between persons similarly circumstances, some were treated to their prejudice and the differential treatment had no reasonable relation to the object sought to be achieved by the law."

8.The Gujarat High Court in B.R.Acharya versus State of Gujarat reported in 1988 Lab IC1465observed in paragraphs 4 and 5 as follows: "4.It is clear from the affidavit-in-reply filed on behalf of the respondent State that there are certain posts which are meant only for lady officeRs.The institutions, where destitute women, unmarried mothers etc.are kept, are headed by lady Superintendents.

Since the post is of lady Superintendent, only lady officers are considered eligible for such posts.

The petitioneRs.however, contend that they should not be discriminated only on the ground of sex.

They should also be considered eligible for promotion to such post.

This claim made by the petitioners cannot be accepted.

5.The institutions which are headed by lady Superintendents are exclusively for women, and it is for the Government to decide as a matter of policy whether or not such institutions should be headed by only lady officeRs.Merely because at some stage there is a common cadre in which officers of both the sexes are appointed, does not mean that all posts in the higher cadre must also be filled in by persons belonging to both the sexes.

Having regard to the nature of duties to be performed, it is open to the State Government to decide that the institutions which are exclusively meant for women should be headed by only women or lady officeRs.The Government cannot be compelled to appoint male officers to head such institutions, if it does not consider it advisable to do so.

If a special provision is made for women, the petitioners cannot make grievance that they have been discriminated against.

Incidentally, it may be pointed out that Article 15 of the Constitution of India prohibits discrimination on grounds of religion, race, caste, sex or place of birth.

Clause (3) of the said article however, provides 'nothing in this article shall prevent the State from making any special provision for women and children'.

I, therefore, do not find any substance in the petitioners' contention that they should be considered to be eligible for promotion to the post of lady Superintendent."

9. The Supreme Court in *Union of India versus K.P. Prabhakaran* reported in 1997 (II) SCC 638 held that the circular providing appointment for the post of Inquiry-cum-Reservation Clerks in four metropolitan cities of Madras, Bombay, Calcutta and Delhi to be manned only by women was not violative of Article 14 or 16 of the Constitution.

10. The Supreme Court subsequently in *Vijay Lakshmi versus Punjab University and others* reported in 2003 (8) SCC 440 after reviewing all the decisions cited above approved those decisions including the decision of the Gujarat High Court.

In paragraph 10 it had observed as follows: "10. In view of the aforesaid established law interpreting Articles 14 to 16, Rules 5 and 8 of the Punjab University Calendar, Vol. III providing for appointment of a lady Principal in a women's college or a lady teacher therein cannot be held to be violative either of Article 14 or Article 16 of the Constitution, because the classification is reasonable and it has a nexus with the object sought to be achieved.

In addition, the State Government is empowered to make such special provisions under Article 15(3) of the Constitution.

This power is not restricted in any manner by Article 16."

The petitioners have not proved that the discrimination found in the impugned rule is solely based upon sex.

On the contrary, there are other reasons for making such exclusive reservation.

11. In the light of the above, the contentions raised by the petitioners that the posts of CDPO and TPNO which were exclusively reserved for women, cannot be challenged on any constitutional ground in view of the special nature of the said posts.

Hence the writ petition stands dismissed.

However, there will be no order as to costs.

vvk To 1. The Commissioner and Secretary, Government of Tamil Nadu, Social Welfare and Nutritious Meal Programme Department, Chennai-9.

2. The Director of Social Welfare, Chepauk, Chennai-5.

3. The Project Co-ordinator, Tamil Nadu Integrated Nutrition Project, No.48, L.B.Road, Adyar, Chennai 20

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