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SHRI T. SHAM BHAT

v.

UNION OF INDIA AND ANR.

JULY 29, 1994

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[A.M. AHMADI AND N. VENKATACHALA, JJ.]

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Constitution of India—Articles 14 and 16—IAS (Appointment by Selection) Second Amendment Regulations 1989—Regulation 2 amending Regulation 3(1)(ii) of the IAS (Appointment by selection) Regulations 1956—AIS (Recruitment) Rules 1954—Rule 8(2)—Non-State Civil Service class I and class II officers classified together as belonging to common class of non-state Civil Service officers for deciding eligibility for selection to the IAS, whether constitutional—Held, such classification ex facie arbitrary, unreasonable and discriminatory and violates Articles 14 and 16—Further, Rules requiring persons of outstanding ability, holding substantive gazetted posts not lower than that of posts of Deputy Collectors (Assistant Commissioners) in State Civil Services, of outstanding merit and ability to be selected—Central Government exceeded parameters or authority conferred upon it in the matter of making regulations—Service law.

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Constitution of India—Article 14—IAS (Appointment by Selection) Second Amendment Regulations 1989—Regulation 2 amending Regulation 3(1)(ii) of the IAS (Appointment by Selection) Regulations 1956—Continuous period of service non-State Civil Service class I officers making them eligible for selection to the IAS increased from 8 years to 12 years—Whether

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constitutional—Held, since increase in number of years for eligibility was for no palpable reason, and deprived class I officers of the right to be considered for selection under regulations which held the field for 33 years, such increase unjust, arbitrary, unreasonable and affected legitimate expectations of non-State Civil Service class I officers and inhibited by Article 14—Held further, Regulation 2 unconstitutional—Administrative Law—Doctrine of legitimate expectation.

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Interpretation of Statutes—Severability—IAS (Appointment by Selection) Second Amendment Regulations 1989—Held, Regulation 2 being unconstitutional, the other provisions in the Amendment Regulations which are merely machinery provisions intended to give effect to Regulation 2 thereof,

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cannot stand—IAS (Appointment by Selection) Second Amendment Regulations 1989 as a whole , held, unconstitutional. A

The appellant was a class I officer holding a substantive gazetted post on the non-State Civil Service of the Government of Karnataka, and his service involved duties comparable in importance and responsibility to that of class I officers of the State Civil service. By unamended Regulation 3(1)(ii) of the Indian Administrative Service (Appointment by Selection) Regulations 1956, a non-State Civil Class I officer was required to complete 8 years of continuous service in a gazetted post involving duties comparable in importance and responsibility to that of class I officer in gazette post of State Civil Service. However, before the appellant could become eligible under the Regulation, the IAS Second Amendment Regulations 1989 came into force on 30 March, 1989 which made all non-State Civil Services class I Officers including the appellant ineligible for selection to the IAS until they completed 12 years of continuous service in substantive gazetted posts. B C D

The appellant challenged the constitutionality of Regulation 2 of the IAS Second Amendment Regulations before the Central Administrative Tribunal as being inhibited by Articles 14 and 16(1) of the Constitution. The Tribunal rejected the challenge holding that, since the IAS (Recruitment) Rules 1954 do not envisage selection of officers in non-State Service who fall below the standard of officers in State Civil Service, when class I and Class II officers of the non-state Civil Service are classified together for purposes of fixing the period of continuous service to make them eligible for selection to the IAS, such classification was reasonable and intended to achieve the object of selecting the officers of outstanding ability and merit for non-State Civil Service to the IAS. E F

In appeal before this Court, the increased requirement of continuous service from 8 years to 12 years was assailed, as also the relaxed eligibility that Regulation 2 of the IAS Second Amendment Regulations provided for class II officers of the non- State Civil Service for selection to the IAS on their completion of 12 years of continuous service in substantive gazetted posts, not necessarily involving duties comparable to that of similar posts held by class I officers of the State Civil Service. G H

A Allowing the appeal, this Court

B HELD : 1. the classification of officers brought about by Regulation 2 of the IAS Second Amendment Regulations 1989, which classifies non-State civil Service class I officers and non-State Civil Service class II officers together as belonging to common class on non-State Civil officers in the matter of deciding their eligibility for selection to the IAS, is *ex facie* arbitrary, unreasonable and discriminatory and violates Articles 14 and 16 of the Constitution. [368-C-D]

C *E.P. Royappa v. State of Tamil Nadu*, AIR (1974) SC 555, *General Manager, Sought Central Railway v. A.V.R. Siddhanti*, [1974] 3 SCR 207, *Roop Chand Adlakha v. DDA*, [1988] Supp. 3 SCR 253, *Venkateshwara Theatre v. State of A.P.*, [1993] 3 SCC 677 and *Food Corporation of India v. M/s. Kamdhenu Cattle Feed Industries*, [1993] 1 SCC 71, relied on.

D 2. The IAS Recruitment Rules on their very face do not permit non-State Civil Service officers who held substantive gazetted posts which were lower in rank than that of the posts of Deputy Collectors (Assistant Commissioners) in State Civil Service, that is, non-State Civil Service class II officers, to become eligible for selection to the IAS. This salient factual aspect required to be taken into consideration by the Tribunal. [368-B]

E *State of Sikkim v. Surendra Prasad Sharma*, [1994] 2 SCALE 609, followed.

F 3. Rule 8(2) of the IAS (Recruitment) Rules 1954 empowers the Central Government to make regulations for selection of persons of outstanding ability and merit from among non-State Civil Service officers of every State for appointment to the IAS. The IAS (Recruitment) Rules envisage the selection from non-State Civil Service officers who held posts comparable in importance and responsibility to that of the posts of Deputy Collector and above in the State Civil Service, that is, from non-State Civil Service class I officers and not from those holding positions inferior there-
G to. The Central Government, in making Regulation 2 of the IAS Second Amendment Regulations which makes eligible for selection and appointment to the IAS from non-State Civil Service class II officers, has clearly exceeded the parameters or authority conferred upon it. [371-H, 372-A-C]

H 4. Even otherwise, when in the service set up of non-State Civil

Service, non-State Civil Service class II officers are unequals when compared with non-State Civil Service class I officers in important matters such as the nature of posts held by them, their duties and responsibilities, and their scales of pay, it is difficult to comprehend how they can be put in a common class for appointment to the IAS. [372-H, 373-A]

5. No plausible reason was advanced for the increase in the number of years of continuous service of non-State Civil Service class I officers to make them eligible for selection to the IAS from 8 years to 12 years. Since such increase deprived the class I officers of the right to be considered for selection under the IAS Selection Regulations which held the field for over 33 years, for no palpable reason, Regulation 2 of the IAS Second Amendment regulations 1989 which brought about such deprivation has to be regarded as unjust, arbitrary, unreasonable and that which arbitrarily affected the legitimate and normal expectations of non-State Civil Service class I officers and was that inhibited by Article 14 of the Constitution.

[374-A-C]

6. Regulation 2 of the IAS Second Amendment Regulations 1989, being inhibited by Articles 14 and 16 of the Constitution, is unconstitutional. As Regulation 2 is the soul of the IAS Second Amendment Regulations 1989, and it is unconstitutional, the other provisions therein which are merely machinery provisions intended to give effect to Regulation 2 thereof, cannot stand apart from Regulation 2. Hence, the IAS Second Amendment Regulations 1989 as a whole are to be regarded as unconstitutional.

[374-D-E]

7. The IAS Selection Regulations, which had been amended by the IAS Second Amendment Regulations 1989 stand revived and continue to hold the field as before their amendment but anything done so far under the IAS Second Amendment Regulations 1989 which has already resulted in making the appointment to the IAS, shall stand saved. [374-F]

8. The claim of the appellant to the IAS be considered along with the claims of others similarly situated, according to the IAS (Appointment by Selection) Regulations 1956, as stood before their amendment by the IAS (Appointment by Selection) Second Amendment Regulations 1989, if no appointment is yet made to the post of the IAS in Karnataka State which was to fall vacant in 1994. [375-A-B]

A CIVIL APPELLATE JURISDICTION : Civil Appeal No. 106 of 1994.

From the Judgment and Order dated 28.7.93 of the Central Administrative Tribunal, Bangalore in A. No. 230 of 1993.

B Santosh Hegde, N.R. Nath, S.R. Bhat, Ms. Kiran and Ms. L.M.Bhat for the Appellants.

M. Veerappa for the Respondents.

The Judgment of the Court was delivered by

C **VENKATACHALA, J.** In this appeal by special leave directed against an Order dated 26.7.1993 made in Application No. 230 of 1993 by the Central Administrative Tribunal, Bangalore - 'the Tribunal', the constitutionality of Regulation 2 of the Indian Administrative Service (Appointment by Selection) Second Amendment Regulations, 1989 - the IAS Second Amendment Regulations, is raised for our consideration and decision.

E The appellant is a Class-I officer who holds a substantive gazetted post in the Government of Karnataka. He belongs to its non-State Civil Service and has been serving the State in connection with its affairs involving duties comparable in importance and responsibility to that of Class-I officers of the State Civil Service. Since unamended clause (ii) of sub-regulation (i) of Regulation 3 of the Indian Administrative Service (Appointment by Selection) Regulations, 1956 - 'the IAS Selection Regulations', required a non-state Civil Service Class-I officer to complete 8 years of continuous service in Gazetted post involving duties comparable in importance and responsibility to that of Class-I officer in gazetted post of State Civil Service, to make such officer eligible for the selection to the Indian Administrative Service, the appellant could have become eligible for selection to the Indian Administrative Service, the appellant could have become eligible for selection to the Indian Administrative Service from non-State Civil Service of Karnataka on completion of 8 years of his continuous service in the substantive post held by him. But before the appellant could become eligible for selection to the Indian Administrative Service Regulation 2 of the IAS Second Amendment Regulations which came into force on 30.3.1989 made all non-State Civil Service class-I officers including the appellant ineligible for selection to the Indian Administrative Service until they completed 12 years of continuous service in

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substantive gazetted posts.

Appellant being a Class-I officer of non-State Civil Service whose possible selection to Indian Administrative Service on completion of his 8 years of continuous service was foreclosed by Regulation 2 of the IAS Second Amendment Regulations, challenged its constitutionality before the Tribunal as that inhibited by Articles 14 and 16(1) of the Constitution of India, by filing an application therefor. Since the Tribunal rejected the appellant's challenge to the constitutionality of Regulation 2 of the IAS Second Amendment Regulations by its order dated 28.7.1993, the appellant has assailed the justness and correctness of that order of the Tribunal by filing the present appeal by special leave.

Class-I and Class-II officers on Non-State Civil Service holding substantive gazetted posts in Transport Department of Karnataka Government who have become eligible for selection to Indian Administrative Service under Regulation 2 of the IAS Second Amendment Regulations permits of their grouping with reference to their scales of pay thus :

CLASS-I OFFICERS

<i>POST</i>	<i>PAY SCALE</i>
Joint Commissioner for Transport	3650-100-5400
Deputy Commissioner for Transport	3170-75-100-4900
Regional Transport Officer	2200-75-100-4100

CLASS-II OFFICERS

<i>POST</i>	<i>PAY SCALE</i>
Assistant Regional Transport Officer	1950-75-3800
Senior Inspector of Motor Vehicles	1600-50-75-3500

The substantive gazetted posts of Transport Department held by Class-I officers of non-State Civil Service, to wit, the Joint Commissioner for Transport. Deputy Commissioner for Transport and Regional Transport officer are those which are regarded by State Government as equivalent to substantive gazetted posts of Administrative Service Depart-

- A ment held by Class-I officers of State Service, to wit. Special Deputy Commissioner. Senior Assistant Commissioner and Assistant Commissioner, respectively. Similarly, the substantive gazetted posts of Transport Department held by Class-II officers in non-State Civil Service, to wit. Assistant Regional Transport officer and Senior Inspector of Motor Vehicles are those which are treated by State Government as equivalent to substantive gazetted posts of Administrative Service Department held by Class-II officers of State Civil Service, to wit. Tahsildars and Deputy Tahsildars. Equivalence between officers in non-State Civil Service and officers in State Civil Service is based on the nature of posts held by them, the scales of pay carried by the posts and the duties and responsibilities involved in relation to the posts. Class II officers of non-State Civil Service are subordinates to Class-I officers in State Civil Service while Class-II officers in State Civil Service are subordinates to Class-I officers in State Civil Service, admits of no controversy.

- D 8 years of continuous service (whether officiating or substantive) in the post of Deputy Collector in any other post or posts declared equivalent thereto by the State Government was required of Class-I officers of State Civil Service to make them eligible for promotion to Indian Administrative Service under the Indian Administrative Service (Appointment by Promotion) Regulations 1955 - the IAS Promotion Regulations'. Similarly 8 years
- E of continuous service in substantive gazetted posts involving duties comparable in importance and responsibility to that of State Civil Service was required to Class-I officers of non-State Civil Service to make them eligible for selection to Indian Administrative Service under clause (ii) of sub-regulation (1) of Regulation 3 of the IAS Selection Regulations. Regulation
- F 2 of the IAS Second Amendment Regulations brought into force on 30.3.1989, which substitutes clause (ii) of sub-regulation (1) of Regulation 3 of the IAS Selection Regulations reads :

- G "(ii) have completed not less than 12 years of continuous service in a gazetted post under the State Government or in the case of Joint Cadre, under any one of the State Governments constituting the Joint Cadre, holding that post in a substantive capacity and propose the names of officers suitable for appointment to the service."

- H If the said Regulation 2 of the IAS Second Amendment Regulations

is seen in the context of the IAS Promotion Regulations and the IAS Selection Regulations bearing on the matter of eligibility for promotion or selection of officers in State Civil Service or non-State Civil Service based on the period of their continuous service, the changes it has brought about as to selection of officers to Indian Administrative Service from non-State Civil Service could be out thus :

(1) Class I officers in non-State Civil Service who would have become eligible for selection to the Indian Administrative Service on completion of 8 years of their continuous service according to unamended clause (ii) of sub-regulation (1) of Regulation 3 of the IAS Selection Regulations are deprived of such eligibility for 4 years, that is, until they completed 12 years of continuous service. (2) Class-II officers of non-State Civil Service, who might have completed 12 years continuous service are made eligible for selection to Indian Administrative Service, by relaxing the existed requirement under the unamended Regulation 3 of the IAS Selection Regulations that only officers of non-State Civil Service holding substantive gazetted posts involving duties comparable in importance and responsibility to that of posts held by Class-I officers of State Civil Service, were eligible for such selection.

The question which, therefore, needs our consideration and decision in this appeal is whether Regulation 2 of the IAS Second Amendment Regulations which has, as seen therefrom, deprived Class-I officers with 8 years continuous service in substantive gazetted posts of non-State Civil Service. Of their eligibility for selection to the Indian Administrative service by increasing the continuous service required of them in a substantive gazetted post from 8 years to 12 years and conferred on Class-II officers of non-State Civil Service, the subordinates of Class-I officers of non-State Civil Service, such eligibility for selection to the Indian Administrative Service, on their completion of 12 years of continuous service in substantive gazetted posts, not necessarily involving duties comparable in importance to that of the similar posts held by Class-I officers of State Civil Service, is unconstitutional being that inhibited by Articles 14 and 16(1) of the Constitution.

When the order of the Tribunal assailed in this appeal is seen, the Tribunal has not considered the said question involving the constitutionality of Regulation 2 of the IAS Second Amendment Regulations

- A from its right perspectives. In reaching its conclusion that Regulation 2 of the IAS Second Amendment Regulations was constitutional it has assumed that all that has been done by the Regulation was to treat the non-State Civil service officers in States rather stringently in the matter of their continuous service required to make them eligible for selection to the
- B Indian Administrative Service by fixing the same as 12 years as against 8 years of continuous service which was required of them to make them eligible for such selection, earlier. In its view, eligibility requirement of longer years of continuous service imposed by the Regulation on non-State Civil Service officers in the matter of their selection to the Indian Ad-
- C ministrative Service was not liable to challenge as not being in consonance with eligibility requirement of 8 years continuous service imposed on State Civil Service officers in the matter of their eligibility for promotion to the India Administrative Service under the IAS Promotion Regulations since the Indian Administrative (Recruitment) Rules, 1954 - 'the IAS Recruit-
- D ment Rules', do not envisage selection of officers in non-State Civil Service who fall below the standard of officers in State Civil Service eligible for promotion to the Indian Administrative Service. Therefore, according to the Tribunal, when Class-I officers and Class-II officers of non-State Civil officers are classified together for purposes of fixing the period of con-
- E tinuous service to make them eligible for selection to the Indian Administrative Service, such classification was reasonable and intended to achieve the object of selecting the officers of outstanding ability and merit from non-State Civil Service to the Indian Administrative Service as required by the IAS Recruitment Rules. It is how the Tribunal finds that
- F Regulation 2 of the IAS Second Amendment Regulations was not violative of Articles 14 and 16(1) of the Constitution.

- No doubt, as is held by the Tribunal, in our view, rightly that Regulation 8(2) Regulation 8(2) of the IAS Recruitment Rules empowers the Central Government in special circumstances and on the recommen-
- G dation of the State Government from time to time to recruit to the Indian Administrative Service only a person of outstanding ability and merit serving in connection with the affairs of the State selected from among officers of non-State Civil Service holding substantive gazetted posts, in accordance with Regulations to be made for the purpose by the Central
- H Government in consultation with State Governments. When in the year 1956, the Central Government made the IAS Selection Regulations in that

behalf, it is only non-State Civil Service officers holding substantive gazetted posts involving duties comparable in importance and responsibility to that of substantive gazetted posts held by officers of State Civil Service with not less than 8 Years continuous service. Who were made eligible for selection to the Indian administrative Service. Non-State Civil Service Officers were required to complete such 8 years of continuous service in substantive gazetted posts involving duties comparable in importance and responsibility to that of similar gazetted posts of State Civil Service was required of the non-State Civil Service officers to make them eligible for selection to Indian Administrative Service since State Civil officers were made eligible for their promotion to Indian Administrative Service under the IAS Recruitment Rules only if they had held for purposes of revenue and general administration change of posts involving sub-divisions of a district or posts of higher responsibility (see Rule 2(g) (ii) thereof) and the IAS Promotion Regulations required of the State Civil Service officer 8 years of continuous service in the posts of Deputy Collectors or in any other posts declared equivalent thereto by the State Government to make them eligible for promotion to Indian Administrative Service. (see third proviso to sub-regulation (2) of Regulation 5 thereof). Why it was only non-State Civil Service officers holding substantive gazetted posts involving duties comparable in importance and responsibility to that of similar gazetted posts of State Civil Service (Deputy Collectors' posts or equivalent post) who were made eligible for selection to Indian Administrative service is clearly answered by Rule 6 of the IAS Recruitment Rules when it says that the officer selected to the Indian Administrative Service, was to be initially appointed, as in the case of an officer promoted to the Indian Administrative Service from State Civil Service, on senior time-scale of pay of Rs. 3200- 100-125-4700 not on junior time-scale of pay of Rs. 2200-75-2800- EB-100-4000 (see Rule 3 of the IAS (Pay) Rules, 1954]. Thus it becomes obvious that the IAS Recruitment Rules clearly required of non-State Civil Service officers, to make them eligible for selection to the Indian Administrative gazetted posts which involve duties comparable in importance and responsibility to that of Deputy Collectors posts or higher posts of State Civil Service. Therefore, it can be said without any hesitation, whatsoever, that the IAS Recruitment Rules did not envisaged making eligible for selection to the Indian administrative Service officer of non-State Civil Service officers, if the substantive gazetted posts they held were posts which were lower than that the posts of deputy

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- A collectors or Assistant Commissioners in State Civil Service, such as posts of Tahsildars or of Deputy Tahsildars in State civil Service. To put it differently, the IAS Recruitment Rules on their very fact do not permit non-State Civil Service officers who held substantive gazetted posts which were lower in rank than that of the posts of Deputy Collectors (Assistant Commissioners) in State Civil Service, that is, no-State Civil Service Class-II officers to become eligible for selection to the Indian Administrative Service. This salient factual aspect of the matter required to be taken into consideration by the Tribunal, when it examined the constitutionality of Regulation 2 of the IAS Second Amendment Regulations which classifies non-State Civil Service Class-I officer and no-State Civil Service Class-II officers together as officers belonging to common class of no-State Civil Service officers in the matter of deciding their eligibility for selection to the Indian Administrative Service has since not been taken into consideration, as seen from its order, we have referred to the same, in as much as, this Court has, in its decision in *State of Sikkim v. Surendra Prasad Sharma & Ors.*, (1994) 2 SCALE 609, made it clear that in examining the challenge to constitutionality of State action based on violation of Articles 14 and 16 of the Constitution, the emphasis must not only be on '*de jure equality*' of persons grouped together but also on '*defacto equality*' of persons grouped together.
- E Under Regulation 2 of the IAS Second Amendment Regulations, as becomes apparent therefrom, non-State Civil Service class-I officers and non-State Civil Service Class-II officers, are pooled together to make them eligible for selection to the Indian Administrative Service. As we have pointed out earlier, if the IAS Recruitment Rules permitted only non-State
- F Civil Service Class-I officers to become eligible for selection to the Indian Administrative Service, can the pooling of State Civil Service Class-I officers and non-State Civil Service Class-II officers done by Regulation 2 of the IAS Second Amendment Regulations to make Class-II officers eligible for selection to the Indian Administrative Service and to make Class-I
- G officers to lose their eligibility for selection to Indian Administrative Service be upheld as that no inhibition by article 14 and 16 of the constitution.

- H What kind of classification resorted to in a State action, relating to matters of public employment is inhibited by Articles 14 and 16 of the

Constitution has since been well settled by several decisions of this Court, we would refer to some of them for deriving assistance therefrom in deciding the constitutional challenge directed against Regulation 2 of the IAS Second Amendment Regulations, in as much as they were relied upon on behalf of the appellant, to support the challenge.

E.P. Royappa v. State of Tamil Nadu and Anr., AIR (1974) SC 55, is a Constitution Bench decision of this Court where his Lordship Bhagwati, J. (as he then was) explains how in matters relating to public employment inequality and discrimination are inhibited by Articles 14 and 16 of the Constitution and again how those Articles strike at arbitrariness and ensure fairness and equality of treatment, thus :

"Article 14 is the genus while Article 16 is a species. Article 16 gives effect to the doctrine of equality in all matters relating to public employment. The basic principle which, therefore, informs both Articles 14 and 16 is equality and inhibition against discrimination.

"Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment. They require that State action must be based on valid relevant principles applicable alike to all similarly situate and it must not be guided by any extraneous or irrelevant considerations because that would be denial of equality. Where the operative reason for State action, as distinguished from motive inducing from the antechamber of the mind, is not legitimate and relevant but is extraneous and outside the area of permissible considerations. It would amount to *mala fide* exercise of power and that is hit by Articles 14 and 16. *Mala fide* exercise of power and arbitrariness are different lethal radiations emanating from the same vices in fact the latter comprehends the former. Both are inhibited by Articles 14 and 16."

General Manager, South Central Railway. Secundrabad and Anr. etc. v. A.V.R. Siddhanti and Ors, etc., [1974] 3 SCR 207, is a decision of this Court which deals with hostile discrimination and equality in matter relating to public employment, and says :

"So long as employees similarly circumstances in the same class of service are treated alike, - the question of hostile discrimination

- A does not arise. The equality of opportunity for purposes of seniority, promotion and like matters of employment is available only for persons who fall substantially, within the same class or unit of service. The guarantee of equality is not applicable as between members of distinct and different classes of the service.
- B The Constitution does not command that in all matters of employment absolute symmetry be maintained. A wooden equality as between all classes of employees regardless of qualifications, kind of jobs, nature of responsibility and performance of the employees is not intended, nor is it practicable if the administration is to run. Indeed, the maintenance of such a classless and undiscerning equality where, in reality, glaring inequalities and intelligible differentia exist, will deprive the guarantee of its practical content."
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Roop Chand Adlakha and Ors. v. Delhi Development Authority and Ors., [1988] Supp. 3 SCR 253, is a decision of this Court which deals with the process of classification and points out how classification itself could

D produce inequality and in that sense could be antithetical of equality, thus:

- "The process would be constitutionally valid if it recognises a pre-existing in quality and acts in aid of anchioration of the effects of such pre-existent inequality. But the process cannot in itself generate or aggravate the inequality. The process cannot merely blow-up or magnify in-substantial or microscopic differences on merely meretricious or plausible differences. The over-emphasis on the doctrine of classification or any anxious and sustained attempts to discover some basis for classification may gradually and imperceptibly deprive the article of its precious content and end in replacing Doctrine of equality by the doctrine of classification. The presumption of goods faiths in and of constitutionality of a classification cannot be pushed to the point of predicating some possible or hypothetical but undisclosed and unknown reason for a classification rendering the precious guarantee of equality a mere rope of sand."
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- G *Venkatashwara Theatre v. State of Andhra Pradesh and Ors.*, [1993] 3 SCC 677, is a decision of this Court which points out, as to how discrimination can arise, if persons who are unequals are treated as equals, thus :

- H "Just as a difference in the treatment of persons similarly situate leads to discrimination, so also discrimination can arise if persons

who are unequals, i.e... differently placed, are treated similarly.....
A law providing for equal treatment of unequal objects, transactions or persons would be condemned as discriminatory if there is absence of rational relation to the object intended to be achieved by the law."

Food Corporation of India v. M/s. Kamdhenu Cattle Feed Industries, [1993] 1 SCC 71, is a decision of this Court where it is pointed out that requirement of non-arbitrariness in a State action, if ought to conform to Article 14 of the Constitution, due weight must be given to reasonable or legitimate expectations of the persons likely to be affected by such action, thus:

"To satisfy this requirement of non arbitrariness in a State action, it is, therefore, necessary to consider and give due weight to the reasonable or legitimate expectations of the persons likely to be affected by the decision or else that unfairness in the exercise of the power may amount to an abuse or excess of power apart from affecting the *bonafides* of the decision in a given case. The decision so made would be exposed to challenge on the ground of arbitrariness."

We shall now turn to Regulation 2 of the IAS Second Amendment Regulations to examine whether the pooling of non-State Civil Service Class-I officers and non-State Civil Service Class-II officers, and treating them as officers belonging to common class to make all of them eligible for selection and appointment to Indian Administrative Service was ex-facie inhibited by Articles 14 and 16 as urged on behalf of the appellant - a non-State Civil Service Class-I officer or whether the classification so done was reasonable since it had nexus to the object to the IAS Recruitment Rules of selecting and appointing to Indian Administrative Service, non-State Civil Service officer of exceptional and outstanding ability and merit and hence Regulation 2 of the IAS Second Amendment Regulations was not inhibited. By Articles 14 and 16 of the Constitution, as urged on the behalf of the Central Government.

There can be no dispute that Rule 8(2) of the IAS Recruitment Rules empowers the Central Government to make Regulations for selection of persons of outstanding ability and merit from among non-State Civil Ser-

- A vice officers of every State for appointment to the Indian Administrative Service. But what needs to be seen in the said context is, whether the Central Government which had in its IAS Section Regulations permitted selection for appointment to the Indian Administrative Service, persons of outstanding ability and merit only from among non-State Civil Service class-I officers, if by enlarging such selection basis under Regulation 2 of the IAS Second Amendment Regulations by permitting selection for appointment to the Indian Administrative Service, persons from among non-State Civil Service Class-II officers, had out stepped the parameters fixed therefor by the IAS Recruitment Rules. The IAS Recruitment Rules, as
- C is specifically pointed out by us already, envisage selection for appointment to Indian Administrative Service, from non-State Civil Service officers who held posts comparable in importance and responsibility to that of the posts of Deputy Collectors and above in State Civil Service, that is, from non-State Civil Service class-I officers and not from non-State Civil Service officers who held posts of Assistant Regional Transport officers or Senior
- D Inspector of Motor Vehicles in Transport Department of a State, which were far inferior to that of the posts of Deputy Collectors in State Civil Service, such as, posts of Tehsildars or Deputy Tehsiladars. If that be so, it cannot admit of any doubt, that the Central Government which had made Regulation 2 of the IAS Second Amendment Regulations to make eligible for selection and appointment to the Indian Administrative Service from non-State Civil Service Class- II officers, has done so clearly exceeding the parameters or authority conferred upon it in the matter by Rule s.(2) of the IAS Recruitment Rules, itself. This circumstance and factual reality in
- E itself is sufficient to expose and demolish the myth that non-State Civil Service Class-II officers were brought into the pool of non-State Civil Service officers by the IAS Second Amendment Regulations by classifying them as officers belonging to common class along with non-State Civil Service Class-I officers, for achieving the object of the IAS Recruitment Rules'- the object of selecting the officers of outstanding ability and merit
- F for appointment to Indian Administrative Service. Even otherwise, when in the service set up of non-State Civil Service, Non-State Civil Service Class-II officers are unequals when compared with non-State Civil Service Class-I officers, in important matters such as nature of posts held by them, duties and responsibilities to be discharged by them in such posts, scales
- G of pay carried by such posts, it is difficult to comprehend how they can be
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put in a common class for judging their comparative ability and merit in their respective job performances in the context of their suitability for appointment to the Indian Administrative Service. What has been done by the IAS Second Amendment Regulation. If could be illustrated, is the same, as pooling together a Senior Collector in State Civil Service and a Deputy Tahsildar in State Civil Service and make them a common class State Civil Service officers and ask the State Government to recommend the cases of either of them for appointment to Indian Administrative Service. No doubt, doing of such a thing by the Central Government appears to have been attempted, although later on, fortunately, given up obviously realising that such thing, if done, could have the effect of demoralising Class-I officers in State Civil Service, since the same was bound to go against the accepted notions that it is only senior State Civil Service officers who could be considered for appointment to Indian Administrative Service and not officers in the lower rung. Hence, the classification of officers brought about by Regulation 2 of the IAS Second Amendment Regulation, is ex-facie, arbitrary, unreasonable and discriminatory and violates Articles 14 and 16 of the Constitution. Again Rule 6 of the IAS Recruitment Rules, when by making it clear that initial appointments to be made to Indian Administrative Service from both officers of State Civil Service and non-State Civil Service on senior time scale of pay and not junior time scale of pay on which persons directly recruited for that service would be appointed, demonstrates unequivocally that Class-I officers, in State Civil Service and in non-State Civil Service already in senior scales of pay or in closer scales of pay and not class-II officers in State Civil Service and in non-State Civil Service, drawing salaries failing below junior scales of pay, classification done under Regulations 2 of the IAS Second Amendment Regulations to provide eligibility to non-State Civil Service Class-II officers cannot but be arbitrary and unreasonable, as would attract the inhibition of Articles 14 and 16 of the Constitution.

Further, we are unable to see, any reason as to why the period of 8 years continuous service of non-State Civil Service Class-I officers which made them eligible for selection to the Indian Administrative Service under the IAS Selection Regulations should have been increased to 12 years of their continuous service by Regulation 2 of the IAS Second Amendment

- A Regulations. In fact, no plausible reason has been put forth as to why such increase was made. Since such increase in number of years of continuous service of non-State Civil Service Class-I officers to make them eligible for selection to the Indian Administrative service deprived them of the right to be considered for selection under the IAS Selection Regulations which held the field for over 33 years, with no palpable reason. Regulation 2 of the IAS Second Amendment Regulations which brought about such deprivation has to be regarded as unjust, arbitrary, unreasonable and that which arbitrarily affected the legitimate and normal expectations of non-State Civil Service Class-I officers and was that inhibited by Article 14 of the Constitution.

C

- For the foregoing reasons, we are impelled to take the view that regulation 2 of the IAS Second Amendment regulations being that inhibited by Articles 14 and 16 of the Constitution, is unconstitutional. As Regulation 2 is the soul of the IAS Second Amendment Regulations which provides for eligibility of non-State Civil Service officers, for their selection to the Indian Administrative Service and when it is unconstitutional, the other provisions in the IAS Second Amendment Regulations which are merely machinery provisions intended to give effect to Regulation 2 thereof, cannot stand apart from Regulation 2. Hence, the IAS Second Amendment Regulations, as a whole are to be regarded as unconstitutional. Accordingly, we strike down the IAS Second Amendment Regulations making it clear that IAS Selection Regulations which had been amended by the IAS Second Amendment Regulations stand revived and continue to hold the field as before their amendment but anything done so far under the IAS Second Amendment Regulations which has already resulted in making the appointments to Indian Administrative Service, shall stand saved.

F

- In the result, we allow this appeal, set aside the order of the Tribunal under appeal and allow the application of the Appellant made before the Tribunal, and quash the IAS (Appointment by Selection) Second Amendment Regulations, 1989 as unconstitutional and declare that the IAS (Appointment by Selection) Regulations, 1956, which were amended by the IAS (Appointment by Selection) Second Amendment Regulations, 1989 stand revived and operate to the extent indicated in the body of this Judgment. However, we direct that the claim of the Appellant for selection

G

H

to the Indian Administrative Service be considered along with the claims of others similarly situated, according to the IAS (Appointment by Selection) Regulations, 1956 as stood before their amendment by the IAS (Appointment by Selection) Second Amendment regulations, 1989, if no appointment is yet made to the post of the Indian Administration Service in the Karnataka which was to fall vacant in the year 1994.

A

B

No posts.

U.R.

Appeal allowed.