The General Manager, Southern Railway

Vs

Rangachari

Civil Appeal No. 341 of 1960

(P. B. Gajendragadkar, K. C. Das Gupta, A. K. Sarkar, N. Rajgopala Ayyangar, K. N. Wanchoo JJ)

28.04.1961

JUDGMENT

GAJENDRAGADKAR, J. -

On a writ petition filed by the respondent K. Rangachari in the Madras High Court under Art. 226 of the Constitution a writ of mandamus has been issued by the said High Court restraining the appellants, the General Manager, Southern Railway, and the Personnel Officer (Reservation), Southern Railway, from giving effect to the directions of the Railway Board ordering reservation of selection posts in Class III of the railway service in favour of the members of the Scheduled Castes and Scheduled Tribes and in particular the reservation of selection posts among the Court Inspectors in Class III one of which is held by the respondent. After the writ was thus issued the appellant applied for and obtained a certificate from the said High Court under Art. 132(1) of the Constitution as it involved a substantial question of law, namely, the scope of Art. 16(4) of the Constitution. It is with this certificate that the appeal has been brought to this court, and the only question which it raises for our decision is about the scope and effect of Art. 16(4). This question is of considerable public importance though the dispute raised by it lies within a very narrow compass.

In the railway services there are four grades of Court Inspectors included in Class III, (1) Court Inspectors on Rs. 200 - 300, (2) Court Inspectors on Rs. 260 - 350, (3) Chief Court Inspectors on Rs. 300 - 400, and (4) Chief Court Inspectors on Rs. 360 - 500. It appears that Inspectors of the first category are recruited partly directly and partly by selection from other categories of railway services. To the remaining three grades appointments are made by promotion and they are classified as selection posts. Selection to these grades is made by a committee of officers constituted for the purpose. In respect of non-selection posts seniority in service is the qualification but in regard to selection posts seniority is only one of the qualifications for promotion to such posts; suitability to promotion is considered on other relevant grounds as well.

The respondent was initially recruited to the grade of Rs. 200 - 300 and was confirmed in that grade on November 21, 1956. Between May 23, 1958, and August 22, 1958 as well as between December 8, 1958 and December 31, 1958, he was promoted to officiate in the grade of Rs. 260 - 350. He got a chance of another similar promotion to officiate on April 8, 1959. These promotions were in the nature of ad hoc promotions and were consequently of temporary duration. Later, on June 16, 1959, he was interviewed by the selection committee and his promotion to the said higher grade was regularised and an order was passed in that behalf on June 30, 1959. By this order he was allowed to continue to officiate in the said grade. Since then he has been officiating in that grade.

On April 27, 1959, and on June 12, 1959, the two impugned circulars were issued by the Railway

Board and addressed to the General Managers. As a result of the said circulars the selection committee decided to consider the case of Hiriyanna for promotion to the grade of Rs. 260 - 350, Hiriyanna being a member of the Scheduled Castes. The record shows that at the time when the respondent was interviewed and selected he was placed as Number One by the selection committee and one Parthasarathy was placed as Number Two. On the said occasion Hiriyanna was not selected and put in the panel. The selection committee desired to examine the case of Hiriyanna in order to decide whether he was suitable for promotion to higher grade in the light of the two directives issued by the Railway Board and so a meeting of the selection committee was called on November 18, 1959. The respondent thought that the proceedings of the said proposed meeting may result prejudicially to his interest and so on November 16, 1959, he filed the present Writ Petition No. 1051 of 1959. In this petition he applied for a writ in the nature of mandamus and also prayed for an interim injunction restraining the holding of the meeting of the selection committee proposed to be held on November 18, 1959. An interim injunction as prayed for by the respondent was issued by the High Court and in consequence the proposed meeting has not been held.

According to the respondent the two directives issued by the appellants under the two impugned circulars were ultra vires, illegal, inoperative and unconstitutional in that they were not justified by Art. 16(4). He alleged that a reading of Arts. 16, 335, 338 and 339 would show that the Constitution draws a clear distinction between Scheduled Castes or Tribes on the one hand and backward classes on the other and so it was urged by him that the impugned circulars were illegal. The petition further urged that the safeguard provided by Art. 16(4) applied only to reservation of posts at the stage of appointment and not for reservation of posts for promotion after appointment and so the circulars were outside the provisions of Art. 16(4) and as such contravened Art. 16(1). The petition expressed the apprehension that if the circulars are implemented the respondent would be reverted and that would cause great loss both financially and in status to him. It is on these allegations that the respondent prayed for the issue of a writ in the nature of mandamus directing the appellants to forbear from implementing the two impugned circulars.

These pleas were denied by the appellants. It was alleged by them that the expression "backward class" appearing in Art. 16(4) would include not only the Scheduled Castes and Scheduled Tribes but all backward communities who could not stand on their own legs. Therefore the reservations made by the impugned circulars were fully covered by Art. 16(4). The appellants' case was that the safeguards provided by Art. 16(4) would extend not only to initial appointment but also to promotions made by selection and that clearly brought the impugned circulars within the protection of Art. 16(4). The appellants categorically denied that the respondent would suffer any loss or prejudice because persons who had already been promoted on the basis of earlier regular selections were not intended to be reverted as a consequence of the implementation of the impugned circulars. According to the appellants the petition filed by the respondent was permature and on the merits no case had been made out for the issue of a writ of mandamus.

At this stage it would be material to set out the relevant portions of the impugned circulars. The circular issued by the Railway Board on April 27, 1959, contained, inter alia, the following directions.

"There are different grades of Class III posts. Some of these posts are 'non-selection' posts, promotion to which is made on 'seniority-cum-suitability' basis, while, in the case of others which are 'Selection' posts, promotion is made by a positive act of selection. There will be no quota for Scheduled Castes and Scheduled Tribes candidates in respect of promotion to 'non-selection' posts.

For promotion to 'Selection' posts, however, there will be the prescribed quota of reservation. The field of consideration in the case of Scheduled Castes and Scheduled Tribes candidates should be four times the number of posts reserved without any condition of qualifying period of service in their case, subject to the condition that consideration should not normally extend to such staff beyond two grades immediately below the grade for which selection is held."

There is one more direction given by the said circular which must be read. The decision of the Railway Board providing reservation for Scheduled Castes and Scheduled Tribes in promotion vacancies as laid down above comes into effect from January 4, 1957. It will, therefore, be necessary to calculate the number of posts that should have been made available to the Scheduled Castes and Scheduled Tribes during 1957 and 1958 and these should be carried forward to be filled in 1959. Thus it would be noticed that the effect of this circular was to prescribe a quota of reservation for selection posts and to give effect to this reservation retrospectively from January 4, 1957. In a sense it is this retrospective operation of the circular which appears to be the main cause of the present dispute.

On June 12, 1959, another circular was issued giving guidance and directions as to how the earlier circular should be implemented. This circular directed, inter alia, by paragraphs 2(ii) and 2(iii) as follows :

> "2(ii). The Special Rosters in force for S.C. & S.T. in direct recruitment categories are to be followed to work out the number of posts to be reserved for S.C. & S.T. in promotions made in Selection Grades and for promotion from Class IV to Class III.
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> 2(iii). As the Board's orders have retrospective effect from 4th January, 1957, it is necessary that the promotions made in each selection grade on your Division/Office from 4th January, 1957, are reviewed and the number of posts due to S.C. & S.T. worked out applying the Roster referred to in item (ii) above."

It appears certain doubts were raised in regard to the manner in which the reservation circulars had to be implemented and so on September 11, 1959, the Railway Board issued a letter clarifying the doubts raised. One of the points thus clarified was whether the instructions issued in the Board's letter contemplated reversion of staff already promoted to selection posts after January 4, 1957, to accommodate S.Cs. and S.Ts. (which stand for Scheduled Castes and Scheduled Tribes) according to percentage basis. The clarification issued was that the said orders did not contemplate such reversion. It was, however, desired that the shortfalls should be made good against the existing as well as the future vacancies. It is by virtue of this clarification that the respondent was assured by the appellants during the proceedings before the High Court that he need not entertain any apprehension of reversion as a result of the implementation of the impugned circulars.

We would now briefly summarise the findings and conclusions of the High Court on the points raised before it by the contentions of the parties in the present writ proceedings. The High Court has found that the equality of opportunity guaranteed by Art. 16(1) and the prohibition against discrimination embodied in Art. 16(2) apply also to promotions of civil servants from one post to another when both are included in the same service. It was clearly of opinion that promotions are within the ambit of cls. (1) and (2) of Art. 16. The High Court rejected the respondent's contention that the Scheduled Castes and Tribes did not belong to backward classes and so it held that the expression "backward class" in Art. 16(4) includes members of the Scheduled Castes and Scheduled Tribes. The High Court, however, was inclined to take the view that the expressions "appointments"

or "posts" are virtually terms of art which have to be interpreted and understood in the light of the legislative history of the constitutional enactments that preceded the Constitution, and thus construed it came to the conclusion that "posts" in Art. 16(4) are confined to civil posts other than civil posts included in any of the civil services. Appointment to a specified service, according to the High Court, can take place only once in the case of every person and so promotions could not be denoted by the word "appointments" and "posts" were outside service posts, and so promotion to posts inside the service could not be said to be covered by Art. 16(4). It appears from the judgment of the High Court that if the word "posts" had been construed by the High Court as including posts in civil services then it might have come to a different conclusion on the question about the validity of the impugned circulars. It, however, held that the word "posts" was a term of art and it definitely excluded the posts in civil services. That is how the High Court felt that the impugned circulars which authorised reservation of posts falling inside civil services were not covered by Art. 16(4). Since they were not covered by Art. 16(4) they clearly contravened Art. 16(1) and (2) and as such ultra vires. That in brief is the result of the findings recorded by the High Court.

The first question which falls to be considered is whether Art. 16(1) and (2) refer to promotion or whether they are confined to the initial appointment to any post in civil service. In the appeal before us the appellants and the respondent both conceded that cases of promotion fell within Art. 16(1) and (2) though they differed as to whether they were included in Art. 16(4). It would be immediately noticed that the respondent's petition postulates the inclusion of promotion in Art. 16(1) and (2) for it is on that assumption that he challenges the validity of the impugned circulars. Similarly, the appellants' defence postulates that Art. 16(1) and (2) as well as Art. 16(4) refer to cases of promotion for it is on the basis that Art. 16(4) includes promotion that they seek to support the validity of the impugned circulars. When this appeal was argued before the Constitution Bench on the first occasion it became clear that neither party was interested in contending that the guarantee afforded by Art. 16(1) and (2) is confined only to initial appointment and does not extend to promotion, and so notice was ordered to be issued to the Attorney-General. In response to the notice the Attorney-General has appeared and is represented by Mr. Sen. He has also taken the same stand as the appellants have done and so in the result nobody before us is interested in challenging the inclusion of promotion within Art. 16(1) and (2). However, we would briefly indicate our reasons for accepting the concession made by the parties that promotion is included in Art. 16(1) and (2).

Article 16(1) reads thus :

> "There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State."

In deciding the scope and ambit of the fundamental right of equality of opportunity guaranteed by this Article it is necessary to bear in mind that in construing the relevant Article a technical or pedantic approach must be avoided. We must have regard to the nature of the fundamental right guaranteed and we must seek to ascertain the intention of the Constitution by construing the material words in a broad and general way. If the words used in the Article are wide in their import they must be liberally construed in all their amplitude. Thus construed it would be clear that matters relating to employment cannot be confined only to the initial matters prior to the act of employment. The narrow construction would confine the application of Art. 16(1) to the initial employment and nothing else; but that clearly is only one of the matters relating to employment. The other matters relating to employment would inevitably be the provision as to the salary and periodical increments therein, terms as to leave, as to gratuity, as to pension and as to the age of superannuation. These are

all matters relating to employment and they are, and must be, deemed to be included in the expression "matters relating to employment" in Art. 16(1). Similarly, appointment to any office which means appointment to an office like that of the Attorney-General or Comptroller and Auditor-General must mean not only the initial appointment to such an office but all the terms and conditions of service pertaining to the said office. What Art. 16(1) guarantees is equality of opportunity to all citizens in respect of all the matters relating to employment illustrated by us as well as to an appointment to any office as explained by us.

This equality of opportunity need not be confused with absolute equality as such. What is guaranteed is the equality of opportunity and nothing more. Article 16(1) or (2) does not prohibit the prescription of reasonable rules for selection to any employment or appointment to any office. Any provision as to the qualifications for the employment or the appointment to office reasonably fixed and applicable to all citizens would certainly be consistent with the doctrine of the equality of opportunity; but in regard to employment, like other terms and conditions associated with and incidental to it, the promotion to a selection post is also included in the matters relating to employment, and even in regard to such a promotion to a selection post all that Art. 16(1) guarantees is equality of opportunity to all citizens who enter service.

If the narrow construction of the expression "matters relating to employment" is accepted it would make the fundamental right guaranteed by Art. 16(1) illusory. In that case it would be open to the State to comply with the formal requirements of Art. 16(1) by affording equality of opportunity to all citizens in the matter of initial employment and then to defeat its very aim and object any introducing discriminatory provisions in respect of employees soon after their employment. Would it, for instance, be open to the State to prescribe different scales of salary for the same or similar posts, different terms of leave or superannuation for the same or similar post ? On the narrow construction of Art. 16(1) even if such a discriminatory course is adopted by the State in respect of its employees that would not be violative of the equality of opportunity guaranteed by Art. 16(1). Such a result could not obviously have been intended by the Constitution. In this connection it may be relevant to remember that Art. 16(1) and (2) really give effect to the equality before law guaranteed by Art. 14 and to the prohibition of discrimination guaranteed by Art. 15(1). The three provisions form part of the same constitutional code of guarantees and supplement each other. If that be so, there would be no difficulty in holding that the matters relating to employment must include all matters in relation to employment both prior, and subsequent, to the employment which are incidental to the employment and form part of the terms and conditions of such employment.

Article 16(2) provides that no citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State. This sub-Article emphatically brings out in a negative form what is guaranteed affirmatively by Art. 16(1). Discrimination is a double-edged weapon; it would operate in favour of some persons and against others; and Art. 16(2) prohibits discrimination and thus assures the effective enforcement of the fundamental right of equality of opportunity guaranteed by Art. 16(1). The words "in respect of any employment" used in Art. 16(2) must, therefore, include all matters relating to employment as specified in Art. 16(1). Therefore, we are satisfied that Mr. Sen is right when on behalf of the Attorney-General he conceded that promotion to selection posts is included both under Art. 16(1) and (2). Broadly stated the Bombay and the Patna High Courts support the concession made by Mr. Sen (Vide : Pandurang Kashinath More v. The Union of India [I.L.R. [1958] Bom. 1266.]; Sukhnandan v. State [(1956) I.L.R. 35 Pat. 1.]) whereas the Allahabad High Court is against it (vide : Moinuddin v. State of Uttar Pradesh [A.I.R. 1960 All. 484.]).

In this connection we ought to add that Civil Appeal No. 579 of 1960 [Union of India v. Pandurang Kashinath More.] in which the Union of India challenged the correctness of the Bombay decision was set down for hearing along with this appeal, and in the judgment which we are pronouncing in the said appeal today we are accepting the appellants' contention that the question about the invasion of the fundamental right guaranteed by Art. 16(1) was not properly raised by the respondent in his plaint in that case and had in fact not been proved; accordingly we are holding that the High Court was in error in proceeding to deal with the dispute on the basis that violation of Art. 16(1) had been admitted by the Union. In the result we are allowing the said appeal and setting aside the decision of the High Court on this narrow ground.

Article 16(3) provides for one exception to the provisions of Art. 16(1) and (2) in that it authorises Parliament to make any law prescribing, in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory prior to such employment or appointment. We are not concerned with this provision in the present appeal.

That takes us to Art. 16(4). It reads thus :

> "Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State."

In construing Art. 16(4) the respondent is no doubt entitled to contend that this sub-Article in substance provides for an exception to the fundamental rights guaranteed by Art. 16(1) and (2) and as such it must be strictly construed. On the other hand, the appellants may well urge that in construing its provisions the Court should not lose sight of the fact that the Constitution has, if we may say so wisely, showed very great solicitude for the advancement of socially and educationally backward classes of citizens. Article 15(4) which provides, inter alia, for an exception to the prohibition of discrimination on grounds specified in Art. 15(1) lays down that nothing contained in the said Article shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes. Similarly, Art. 335 requires that the claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State. For historical reasons which are well known the advancement of socially and educationally backward classes has been treated by the Constitution as a matter of paramount importance and that may have to be borne in mind in construing Art. 16(4).

On one point in relation to the construction of Art. 16(4) the parties are in agreement. It is common ground that Art. 16(4) does not cover the entire field covered by Art. 16(1) and (2). Some of the matters relating to employment in respect of which equality of opportunity has been guaranteed by Art. 16(1) and (2) do not fall within the mischief of non-obstantive clause in Art. 16(4). For instance, it is not denied by the appellants that the conditions of service relating to employment such as salary, increment, gratuity, pension and the age of superannuation there can be no exception even in regard to the backward classes of citizens. In other words, these matters relating to employment are absolutely protected by the doctrine of equality of opportunity and they do not form the subject-matter of Art. 16(4). That is why we have just observed that part of the ground covered by Art. 16(1) and (2) is admittedly outside the scope of Art. 16(4). The point in dispute is : Is promotion to

a selection post which is included in Art. 16(1) and (2) covered by Art. 16(4) or is it not ? It is on this point that there is a sharp controversy between the parties.

Before construing Art. 16(4) it would be convenient to deal with the question as to whether posts specified by it are posts inside the services or outside them. As we have already seen the High Court has taken the view that the posts in the context must necessarily mean posts outside the services and that in fact is the sole basis of the decision of the High Court against the appellants. The High Court has held that the legislative history of the words "appointments" and "posts" justifies the conclusion that "posts" are ex-cadre posts. Is that really so ? In our opinion, the answer to this question must be in the negative. The argument that legislative history about the use of the relevant words is decisively in favour of excluding service posts from the purview of Art. 16(4) ignores the fact that there can be no legislative history for the provisions of Art. 16(4) which have found a place in the Constitution for the first time. Besides, it is not correct to assume that even the legislative history shows that "posts" always and inevitably meant posts outside services though it may be conceded that in the majority of corresponding constitutional provisions they do refer to ex-service posts.

Let us look at the relevant provisions of the Constitution itself. Article 309 empowers the appropriate Legislature to regulate the recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State. In the context "posts" means posts outside services. Similarly Art. 310(1) refers to every person who is a member of a defence service or of a civil service of the Union or of an all-India service or holds any post connected with defence or any civil post under the Union. The word "post" in the context means an ex-cadre post. Likewise the expression "civil post" in Art. 311(1) means a civil post outside the services. Article 335 to which we have referred uses the word "posts" in the same sense. But, when we go to Art. 336 the word "posts" in the context means posts in the services therein enumerated. The position disclosed by the corresponding provisions of the Constitution Act of 1935 is substantially the same. Sections 240 and 241 for instance use the word "posts" in the sense of ex-service posts; whereas s. 246 refers to civil posts in the sense of posts inside the services. In our opinion, it would, therefore, be unreasonable to treat the word "posts" as a term of art and to clothe it inexorably with the meaning of excadre posts. It is the context in which the word "posts" is used which must determine its denotation.

What does the context of Art. 16(4) indicate ? That is the next question which we must consider. Article 16(4) clearly shows that the power conferred by it can be exercised in cases where the State is of the opinion that any backward class of citizens is not adequately represented in the services under it. In other words, the opinion formed by the State that the representation available to the backward class of citizens in any of the services is inadequate is a condition precedent for the exercise of the power conferred by Art. 16(4), and so the power to make reservation as contemplated by Art. 16(4) can be exercised only to make the inadequate representation in the services adequate. If that be so, both "appointments" and "posts" to which the operative part of Art. 16(4) refers and in respect of which the power to make reservation has been conferred on the State must necessarily be appointments and posts in the service. It would be illogical and unreasonable to assume that for making the representation adequate in the services under the State a power should be given to the State to reserve posts outside the cadre of services. If the word "posts" means excadre posts reservation of such posts cannot possibly cure the imbalance which according to the State is disclosed in the representation in services under it. Therefore, in our opinion, the key clause of Art. 16(4) which prescribes a condition precedent for invoking the power conferred by it itself unambiguously indicates that the word "posts" cannot mean ex-cadre posts in the context. In fairness to Mr. Kumaramangalam, who appeared for the respondent, we ought to add that he did not resist

the contention of Mr. Chatterjee, for the appellants, that the context requires that "posts" should be deemed to be posts inside services and not outside them. Therefore, the main, if not the sole, reason given by the High Court in support of its conclusion does not appear to us to be well founded, and so Art. 16(4) must be construed on the basis that both "appointments" and "posts" to which its operative clause refers are appointments and posts in the services under the State. Incidentally, we may repeat what we have already pointed out that the tenor of the judgment under appeal shows that if the High Court had construed the word "posts" as posts inside the services it would not have issued the writ in favour of the respondent.

Having in substance conceded that "posts" does not mean posts outside services Mr. Kumaramangalam presented a very plausible argument in support of his case that the impugned circulars fall outside Art. 16(4). He contends that the key clause on which Mr. Chatterjee relies in construing the word "posts" as meaning posts in the services itself shows that direct promotion to selection posts by reservation is not permissible under Art. 16(4). His argument is that if it is discovered that any backward class of citizens is not adequately represented in the services under the State the State may no doubt seek to introduce the balance by giving adequate representation to the backward class by making reservations for initial appointment. It may decide the proportion of the said reservation in order to introduce the balance and then give effect to it by making adequate number of appointments by reservation at the initial stage. If this process by itself appears to the State to be slow and tardy it may even reserve selection posts but this reservation can be given effect to again by promoting suitable backward candidates to the said posts after they fall vacant and making a proportionately larger number of appointments at the initial stage. In any case reservation must work from the bottom and reservation cannot be permitted to allow direct appointment to selection posts as the impugned circulars seek to do. It may be conceded that reservation of appointments or posts may be made in the manner suggested by Mr. Kumaramangalam. It may also be assumed that giving retrospective effect to reservations may well cause heart-burning or dissatisfaction amongst the general class of employees and in that sense it would be an act of wisdom not to give effect to reservation retrospectively. But, with the propriety or the wisdom of the policy underlying the circulars we are not directly concerned. Even if it be assumed that it would be open to the State to adopt the method suggested by Mr. Kumaramangalam to give effect to the power of reservation in order to make the representation of the backward classes adequate in its services does it follow that it is the only method permissible under Art. 16(4) ? We are inclined to hold that the answer to this question cannot be in favour of the respondent. If it is conceded that selection posts can be reserved it is difficult to see how it would be open to the respondent to contend that these reserved selection posts must be filled only prospectively and not retrospectively. The concession that selection posts can be reserved on which the argument is based itself provides the answer to the argument that it the said posts can be reserved the reserved posts can be filled either prospectively or retrospectively. In adopting the latter course there can be no violation of the constitutional provision contained in Art. 16(4).

The condition precedent for the exercise of the powers conferred by Art. 16(4) is that the state ought to be satisfied that any backward class of citizens is not adequately represented in its services. This condition precedent may refer either to the numerical inadequacy of representation in the services or even to the qualitative inadequacy of representation. The advancement of the socially and educationally backward classes requires not only that they should have adequate representation in the lowest rung of services but that they should aspire to secure adequate representation in selection posts in the services as well. In the context the expression 'adequately represented' imports considerations of "size" as well as "values", numbers as well as the nature of appointments held and so it involves not merely the numerical test but also the qualitative one. It is thus by the operation of

the numerical and a qualitative test that the adequacy or otherwise of the representation of backward classes in any service has to be judged; and if that be so, it would not be reasonable to hold that the inadequacy of representation can and must be cured only by reserving a proportionately higher percentage of appointments at the initial stage. In a given case the state may well take the view that a certain percentage of selection posts should also be reserved, for reservation of such posts may make the representation of backward classes in the services adequate, the adequacy of such representation being considered qualitatively. If it is conceded that "posts" in the context refer to posts in the services and that selection posts may be reserved but should be filled only in the manner suggested by the respondent then we see no reason for holding that the reservation of selection posts cannot be implemented by promoting suitable members of backward class of citizens to such posts as the circulars intend to do.

We must in this connection consider an alternative argument that the word "posts" must refer not to selection posts but to posts filled by initial appointments. On this argument reservation of appointments means reservation of certain percentage in the initial appointments and reservation of posts means reservation of initial posts which may be adopted in order to expedite and make more effective the reservation of appointments themselves. On this construction the use of the word "posts" appears to be wholly redundant. In our opinion, having regard to the fact that we are construing the relevant expression "reservation of appointments" in a constitutional provision it would be unreasonable to assume that the reservation of appointments would not include both the methods of reservation, namely, reservation of appointments by fixing a certain percentage in that behalf as well as reservation of certain initial posts in order to make the reservation of appointments more effective. That being so, this alternative argument which confines the word "posts" to initial posts seems to us to be entirely unreasonable. On the other hand, under the construction by which the word "posts" includes selection posts the use of the word "posts" is not superfluous but serves a very important purpose. It shows that reservation can be made not only in regard to appointments which are initial appointments but also in regard to selection posts which may fall to be filed by employees after their employment. This construction has the merit of interpreting the words "appointments" and "posts" in their broad and liberal sense and giving effect to the policy which is obviously the basis of the provisions of Art. 16(4). Therefore, we are disposed to take the view that the power of reservation which is conferred on the State under Art. 16(4) can be exercised by the State in a proper case not only by providing for reservation of appointments but also by providing for reservation of selection posts. This construction, in our opinion, would serve to give effect to the intention of the Constitution-makers to make adequate safeguard for the advancement of backward classes and to secure for their adequate representation in the services. Our conclusion, therefore, is that the High Court was in error in holding that the impugned circulars do not fall within Art. 16(4).

It is true that in providing for the reservation of appointments or posts under Art. 16(4) the State has to take into consideration the claims of the members of the backward classes consistently with the maintenance of the efficiency of administration. It must not be forgotten that the efficiency of administration is of such paramount importance that it would be unwise and impermissible to make any reservation at the cost of efficiency of administration. That undoubtedly is the effect of Art. 335. Reservation of appointments or posts may theoretically and conceivably mean some impairment of efficiency; but the risk involved in sacrificing efficiency of administration must always be borne in mind when any State sets about making a provision for reservation of appointments or posts. It is also true that the reservation which can be made under Art. 16(4) is intended merely to give adequate representation to backward communities. It cannot be used for creating monopolies or for unduly or illegitimately disturbing the legitimate interests of other employees. In exercising the powers under Art. 16(4) the problem of adequate representation of the

backward class of citizens must be fairly and objectively considered and an attempt must always be made to strike a reasonable balance between the claims of backward classes and the claims of other employees as well as the important consideration of the efficiency of administration; but, in the present case, as we have already seen, the challenge to the validity of the impugned circulars is based on the assumption that the said circulars are outside Art. 16(4) because the posts referred to in the said Article are posts outside the cadre of services and in any case, do not include selection posts. Since, in our opinion, this assumption is not wellfounded we must hold that the impugned circulars are not unconstitutional.

In the result the decision of the High Court under appeal is reversed and the respondent's application for a writ is dismissed. There would be no order as to costs.

WANCHOO, J. -

I have read the judgment just delivered by my learned brother Gajendragadkar J., and I agree with him as to the scope of Art. 16(1) of the Constitution. I also agree with him that the scheduled castes and the scheduled tribes are included in the words "backward class of citizens" in Art. 16(4) and that the word "post" in that Article refers to posts in the services and not to posts outside the services. I regret however that I have not been able to persuade myself that Art. 16(4) permits reservation even in grades within a particular service in case the service has various grades in its cadre, and proceed to give my reasons for the same.

Before I construe the words of Art. 16(4), I may state that I am not unmindful of the fact that Art. 16(4) is a constitutional provision and that constitutional provisions are not to be interpreted in any narrow or pedantic sense. At the same time it cannot be forgotten that Art. 16(4) is in the nature of an exception or a proviso to Art. 16(1), which is a fundamental right providing equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. This aspect of Art. 16(4) in my opinion inevitably requires that the proviso or the exception should not be interpreted so liberally as to destroy the fundamental right itself to which it is a proviso or exception. The construction therefore of Art. 16(4) cannot ignore this aspect of the matter.

I now read Art. 16(4) :

> "Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State."

Before I turn to the actual words used in the Article I must refer to what I consider is implicit in that Article. The Article provides for reservation of appointments or posts and it seems to me obvious that it is implicit in the Article that the reservation of appointments or posts cannot go to the length of reserving all appointments or posts or even to the length of reserving a majority of them. The reason why I say that all appointments or posts cannot be reserved under Art. 16(4) - (though that would be the result if the widest possible interpretation is given to the words used in the Article) - is that if all appointments or posts could be reserved under Art. 16(4) it would mean complete destruction of the fundamental right guaranteed under Art. 16(1). It could not be the intention of the Constitution-makers that the proviso or exception in Art. 16(4) should be so used as to destroy completely the fundamental right enshrined in Art. 16(1). Nor do I think that it is permissible under

Art. 16(4) to reserve a majority of appointments or posts, for that again, in my opinion, though it may not completely destroy the fundamental right guaranteed under Art. 16(1) will certainly make it practically illusory. Again it could not be the intention of the Constitution-makers that Art. 16(4) should be so interpreted as to make the fundamental right guaranteed under Art. 16(1) illusory. I may in this connection refer to Art. 335, which occurs in Part XVI dealing with Special Provisions relating to certain Classes, which reinforces what I have said above. That Article provides that "the claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State." Now the scheduled tribes and the scheduled castes are included in the words "backward class of citizens" used in Art. 16(4). Therefore in considering the claims of, at any rate, a part of, those included in Art. 16(4) - (and I presume the same will apply to the whole) the maintenance of efficiency of administration must be kept in mind, for the reservation provided in Art. 16(4) is to meet the claims of the members of the scheduled castes and the scheduled tribes. Reservation, therefore, of all appointments or posts or even a majority of them is certain to result in the impairment of efficiency of administration and therefore what I consider as implicit in Art. 16(4) is borne out also by the provision in Art. 335. It is in this background that the interpretation of Art. 16(4) falls to be considered.

Turning now to the words in Art. 16(4), it appears to me that the key words in that Article are "not adequately represented in the services under the State." Obviously, reservation can be made under this Article only if the State comes to the conclusion that may backward class of citizens is not adequately represented in the services under it. If, for example, the State is of opinion that backward classes are adequately represented in the services it can make no reservation under Art. 16(4). What then is the meaning of these key words in this Article ? What these words require is that reservation may be made in order to make the representation of any backward class of citizens adequate in the services. Does the word "adequate" imply only numerical representation in the services or does it imply something more than that ? The three meanings of the word "adequate" given in the Shorter Oxford English Dictionary are (i) equal in magnitude and extent; (ii) commensurate in fitness, sufficient, suitable; and (iii) fully representing (logic). It seems to me that it is the second meaning (namely, sufficient) which properly applies to the words "adequately represented" as used in this Article. "Sufficient" has two meanings : (i) Sufficing, adequate, esp. in amount or number to the need, (ii) enough, adequate quantity. Therefore, when Art. 16(4) says that reservation may be made in order that any backward class of citizens may be adequately represented in the services it means that reservation may be made in order to make the number of any backward class sufficient in the services under the State. These words do not in my opinion covey any idea of quality and can only mean sufficient quantitative representation in the services under the State. If the intention of the Constitution-makers was that there may also be reservation in various grades in a particular service where there are grades in the service, I should have expected different words being used in Art. 16(4) to convey that meaning. These key words used in this Article further convey the idea of representation in the services as a whole, for there are not words which suggest that the service should be broken up in case there are grades in it for the purposes of adequate representation. The conclusion therefore at which I arrive is that these key words convey the idea of adequate numerical representation for any backward class of citizens in a particular service as a whole and it is of this purpose alone that reservation can be made of appointments or posts in the services.

This brings me to the question as to how the reservation is to be made. Art. 16(4) tells us that it may be made either by reserving appointments to the services or reserving posts in the services. Appointments in my opinion clearly mean the initial appointments to a service, for a person is

appointed only once in a service and thereafter there is no further appointment. Therefore, when the Article speaks of reservation of appointments it means reservation of a percentage of initial appointments to the service. Posts refer to the total number of posts in the service and when reservation is by reference to posts it means reservation of a certain percentage of posts out of the total number of posts in the service. The reason why these two methods are mentioned in this Article is also to my mind plain. The method of reservation of appointments would mean that the goal of adequate representation may be reached in a long time. Therefore, in order that the goal may be reached in a comparatively shorter period of time, the Article also provides for the method of reservation of posts. This will be clear from an example which I may give. Suppose there are 1,000 posts in a particular service and the backward classes have no representation at all in that service. The State considers it necessary that they should have adequate representation in that service. Suppose also that the annual appointments to be made to the service in order to keep it at full strength is thirty. Now the State if it chooses the method of reservation of appointments will reserve a percentage of appointments each year for backward classes. Now suppose that that percentage is fixed at ten per centum. In order therefore to reach the ten per centum of the total number of posts in the service by the method of reservation of appointments, the period taken would be roughly 34 years. This period may be considered too long and therefore the State may decide to adopt the other way, i.e., the reservation of posts; and suppose it is decided to reserve ten per centum of the posts, i.e., 100 in all. It will then be open to the State having reserved 100 posts in this particular service for backward classes to say that till these 100 posts are filled up by backward classes all appointments will go to them provided the minimum qualifications that may be prescribed are fulfilled. Suppose further that it is possible to get annually the requisite number of qualified members of backward classes equal to the annual appointments, the representation of the backward classes will be made adequate in about four years. Once the representation is adequate there will be no power left for making further reservation. Thus by the method of reservation of appointments the representation is made adequate in a long period of time while by the method of reserving posts the representation is made adequate in a much shorter period. That seems to be the reason why the Article speaks of reservation of appointments as well as of posts.

It is however said that this construction of Art. 16(4) makes the use of the word "posts" therein superfluous, and that the same result of making the representation adequate quickly could have been achieved if the word "appointments" only had been used therein. I am of opinion that this is not so and the use of the word "appointments" only in Art. 16(4) would not have made it possible for the State to make the representation of backward classes adequate in a short space of time. In the example I have given the representation of backward classes was made adequate in four years by the method of reservation of posts; it would however not have been possible to make the representation adequate in this hypothetical case in such a short time if the Article only provided for reservation of appointments. I have already said that it is implicit in the Article that reservation cannot be of all appointments or even of a majority of them, for that would completely destroy the fundamental right enshrined in Art. 16(1) to which Art. 16(4) is in the nature of a proviso or an exception or at any rate make it practically illusory. Therefore, it would not be open to the State to reserve all or even a majority of the appointments for backward classes, if the word "appointments" only had been used in Art. 16(4). Even if a larger percentage than ten per centum were reserved for backward classes in the matter of appointments in the hypothetical case given by me it would not be possible to reach the total of 100 posts for the backward classes in the service in less than twice or thrice the time taken by the method of reservation of posts, for the State could not reserve all or even the majority of appointments in any particular year, in view of what is implicit in Art. 16(4), if the word "appointments" only had been there. It seems to me therefore that the use of the word "posts" in that

Article was with a purpose, namely, that by the method of reservation of posts the inadequate representation may be made adequate within a short space of time and the objection that could be raised to the reservation of all appointments, if only the word "appointments" had been used in the Article, would no longer be available. It cannot therefore be said that on the interpretation I have placed on Art. 16(4) the use of the word "posts" therein becomes superfluous.

I have already said that if the intention was not only to make reservation in the service as a whole whether by the method of reserving appointments or by the method of reserving posts but also to include reservation in various grades in which a service may be divided, the words of Art. 16(4) would have been different. I may in this connection refer to Art. 335 again, which lays down that the claims of the scheduled castes and the scheduled tribes (which are part of backward classes of citizens) shall be considered consistently with the maintenance of efficiency of administration. It seems to me that reservation of posts in various grades in the same service is bound to result, for obvious reasons, in deterioration in the efficiency of administration; and reading Art. 335 along with Art. 16(4) which to my mind is permissible on the principle of harmonious construction (see Pandit M.S.M. Sharma v. Shri Sri Krishna Sinha [[1959] Supp. 1 S.C.R. 806, 859-60.]), it could not be the intention of the Constitution-makers that reservation in Art. 16(4), for at any rate a part of those comprised therein, should result in the impairment of the efficiency of administration. It also seems to me equally obvious that what applies to a part of those comprised in the words "any backward class of citizens" also applies to the whole. Therefore, in the absence of clear words in Art. 16(4) which would compel one to hold that reservation was meant to apply not only to the service taken as a whole but also to various grades in which the service might be divided, I feel that an interpretation should not be given which would result in the impairment of efficiency of administration, which is jealously safeguarded even when considering the claims of the scheduled castes and the scheduled tribes. I am therefore of opinion that giving the words used in Art. 16(4) as liberal an interpretation as is possible without destroying or making illusory the fundamental right guaranteed in Art. 16(1) to which Art. 16(4) is in the nature of an exception or a proviso, Art. 16(4) can only mean that the State has the power thereunder to reserve numerically a certain percentage of appointments or posts in the manner I have indicated above and it has no power to split the service into various grades which might exist in it and make reservation in each grade because of the use of the word "posts" therein. I would therefore dismiss the appeal but for different reasons.

AYYANGAR, J. -

I regret that I cannot share the view of my learned brethren expressed by Gajendragadkar, J. that the appeal should be allowed and I agree with Wanchoo, J. that the appeal should be dismissed and the order of the High Court maintained.

The facts of the case have been set out in great detail in the judgments already delivered and it is unnecessary to repeat them.

Mr. Chatterji when he opened the appeal appeared to claim that the scope and content of Art. 16(1) and of sub-Art. (4) thereof were identical and that if Art. 16(1) guaranteed by the use of the wide expression "matters relating to employment", "equality of opportunity" in relation to promotions also, Art. 16(4) should be construed to have the same width. But this argument however he abandoned at a later stage. The point therefore does not call for any consideration and the judgments now delivered proceed on the basis that the scope of the limitation on the equality of opportunity which is provided in Art. 16(4) is not co-extensive with the freedom guaranteed by Art. 16(1). The only question therefore is in what respect is Art. 16(4) narrower than Art. 16(1). In considering this

the rule of construction should be borne in mind that a restriction on a guaranteed freedom should be narrowly construed so as to afford sufficient scope for the freedom guaranteed.

The judgment of the learned Judge now under appeal proceeds on the basis that the expression "posts" in Art. 16(4) was a reference to what are termed in service parlance 'ex-cadre posts' and not posts in the service. Mr. Chatterji's submission was that the learned Judge had no basis for importing the nomenclature and the classifications to be found in Part XIV into Part III dealing with fundamental rights. In particular, Mr. Chatterji quarrelled with the statement by the learned Judge that the expression 'appointments and posts' occurring in Art. 16(4) were "virtually terms of art which had to be interpreted and understood in the light of the legislative history of the constitutional enactments that preceded the Constitution, and in consonance with the scheme that underlies the provisions of the Constitution, which have reference to the civil services and civil servants in this country." Mr. Chatterji further pointed out that the learned Judge went wrong in observing that "The expressions appointments and posts in Art. 16(4) have really to be read as appointments to services and appointments to posts" on the ground that the words used in Art. 16(4) were merely "appointments and posts" and not "appointments to services" etc., the latter occurring only in Part XIV. It was, however, common ground that if the learned Judge was right in considering that "appointments" in Art. 16(4) meant "appointments to services," the notification now impugned should be held to be unconstitutional.

Mr. Chatterji did not dispute that when the expressions 'appointments to services and appointments to posts' occurred in Ch. XIV vide for instance in Arts. 309, 311, etc., being phrases borrowed from statutory provisions of the Government of India Act, 1935, the expression 'appointment to a post' designated an 'ex-cadre post'. The submission, however, of learned Counsel was that there was no justification for importing the phraseology employed in Part XIV in Art. 16(4), notwithstanding that Art. 16 dealt with equality of opportunity for employment in the services of the State and sub-Art. (4) was concerned with the reservation of appointments in Services under the State. His submission was that Art. 16(4) had no legislative precedent in the previous constitutional enactments to justify the importation of service rules and service jargon as an aid to its construction.

My learned Brothers have acceded to this submission of Mr. Chatterji. With great respect to them I consider that the view of the learned Judge of the High Court is correct. In the first place, the Article being one concerning the right to be employed in the Services of the State, one has necessarily to turn on the relevant provisions in relation to the Services to discover the precise import of the expressions used in relation to the Services. Besides, we are not left in doubt as to the inter-connection between Art. 16 and Part XIV dealing with Services, because Art. 335 forms, as it were, the link between Part XIV and the provisions for reservation in favour of the backward communities in Art. 16(4) setting out as it does the principles that should guide the State in the matter of reservation in the Services which could obviously be only a reference to that provided for by Art. 16(4). Art. 335 runs :

> "The claims of the members of the Scheduled Castes and Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State."

In this Article, at any rate, it cannot be contended, and I did not understand Mr. Chatterji to contend, that 'posts' had any reference to 'posts in the services'. If it were so then in my judgment it would follow that the phraseology employed in this Article which deals with the same subject as that dealt

with by Art. 16(4) throws light on and explains the meaning of the expression 'posts' in Art. 16(4). It is only necessary to add that Art. 320(4) which runs :

> "Nothing in clause (3) shall require a Public Service Commission to be consulted as respects the manner in which any provision referred to in clause (4) of article 16 may be made or as respects the manner in which effect may be given to the provisions of article 335."

to which learned Counsel for the respondent drew our attention indicates, if other indication were necessary, that Arts. 16(4) and 335 have to be read together and not as if the 'posts' referred to in Art. 335 indicated a different idea or connoted a different concept from the came word used in Art. 16(4).

Even if the above view were wrong and the expression 'posts' were intended to designate not 'ex-cadre posts' but 'posts in the service', I am unable to hold that the appellant derives any advantage. As my learned Brother Wanchoo, J. has pointed out, the crucial words in Art. 16(4), and which form as it were the key to its interpretation, from which the power of the State to make the reservation stems, are that a class of citizens "is not adequately represented in the Services of the State." The action permitted to be taken to redress this inadequacy is by reservation of appointments and posts. If by the expression 'posts' are meant 'posts in the service itself' I feel unable to attribute to the expression 'posts' any special significance beyond an appointment to the service. Every appointment in a service must be to "a post" in a service, because there cannot be an appointment in the air but can only be to a "post" in a service. In that sense, in my view, the expression 'post' would be really redundant unless, of course, as I have said earlier, it meant not posts in a service but ex-cadre posts.

There is also one other aspect to which I might advert. In some of the top grades there are single posts in the Service. If at any point of time the incumbent is not a member of the backward class, it would certainly be a case of inadequate representation as regards that post which would mean that such posts which are single may be reserved for all time to be held by members of the backward classes, because if at any moment such a person ceases to hold the post there would be inadequate representation in regard to that post. I have drawn attention to this because it pointedly demonstrates that the correct view is that when "inadequacy of representation" is referred to in Art. 16(4) as justifying a reservation, the only rational and reasonable construction of the words are that it refers to a quantitative deficiency in the representation of the backward classes in the service taken as a whole and not to an inadequate representation at each grade of service or in respect of each post in the service.

Besides, even on the footing that "posts" mean posts in the Services, Art. 16(4) properly construed in the light of Art. 335 of the Constitution whose interaction has been discussed in great detail by Wanchoo, J. in the judgment just now pronounced with which I entirely agree, contemplates and permits reservation only in respect of appointments to Services at the initial stage and not at each stage even after the appointment has taken place.

There is one other matter also which I consider relevant in this context. Under Art. 16(4) the State is enabled to make provision for the reservation of appointments if in their opinion certain backward classes of citizens are not adequately represented in the Service. The Article therefore contemplates action in relation to and having effect in the future when once the State forms the opinion about the inadequacy of the Service. If an inadequacy exists today, to give retrospective effect to the reservation, as the impugned notification has done, would be to redress an inadequate representation

which took place in the past by an order issued today. In my judgment that is not contemplated by the power conferred to reserve which can only mean for the future. As this point however has not been argued I do not desire to rest my judgment on it, have mentioned it to draw attention to another feature of the notification which deserves consideration.

I would therefore dismiss the appeal with costs.

BY COURT :

In accordance with the opinion of the majority the appeal is allowed; the decision of the High Court under appeal is reversed and the respondent's application for a writ is dismissed. Three will be no order as to costs.

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