

C. A. Rajendran

Vs

Union of India & Ors.

Writ Petition No. 11 of 1967

(CJI K. N. Wanchoo, K. S. Hegde, R. S. Bachawat, G. K. Mitter, V. Ramaswami JJ)

29.09.1957

JUDGMENT

RAMASWAMI, J. -

In this case the petitioner, C.A. Rajendran has obtained rule from this Court calling upon the respondents to show case why a writ in the nature of mandamus under Art. 32 of the Constitution should not be issued for quashing the office Memorandum dated November 8, 1963 which is Annexure 'C' to the Writ Petition, and for directing respondent No. 1 to restore the orders passed by it in Office Memorandum No. 2/11/55-RPS dated May 7, 1955 and No. 5/4/55-SCT-(1) dated January 4, 1957. Cause has been shown by the Attorney-General on behalf of the respondents to whom notice of the rule was ordered to be given.

The petitioner is a permanent Assistant in Grade IV (Class III, non-gazetted-ministerial) of the Railway Board Secretariat Service. He was initially appointed as Accounts Clerk on February 6, 1953 in Southern Railway. He was appointed as an Assistant on October 22, 1956 in the Railway Board and confirmed as Assistant on April 1, 1960. The pay-scale of the Assistant's grade is Rs. 210 - 530. The next post to which the petitioner claims promotions is that of the section Officer in the same service. The post of Section Office is classified as Class II, Grade III, Gazetted and it carries a pay-scale of Rs. 350 - 900. The Railway Board Secretariat Service (Reorganisation and Reinforcement) Scheme was drawn up in consultation with the Ministry of Home Affairs and introduced with effect from December 1, 1954 with the approval of the Union Public Service Commission. According to the new Scheme the Railway Board Secretariat Service consists of the following grades :

"Grade IV - Assistants in the scale of Rs. 210 - 530 (Class III non-gazetted) (to which Petitioner belongs).

Grade III - Section Officers in the scale of Rs. 350 - 900 (Class II gazetted) - with effect from 1-7-1959. (Section Officers grade).

Grade II - Amalgamated with effect from 1-7-1959 as Section Officers grade.

Grade I - Assistant Directors/Under Secretaries in the scale of Rs. 900 - 1,250. (Grade III was called, before 1-7-59, Assistant Superintendent in the scale of Rs. 275 - 500 and the scale of Grade II Superintendents was Rs. 530 - 800)".

Recruitment to permanent vacancies of Grade III of the Railway Board Secretariat Service are made

by the following three methods as per para 18 of the Railway Board Secretariat Service Scheme :

"(a) 33-1/3% by direct recruitment on the results of the combined Examinations held by the UPSC for the IAS, IPS & other Central Services class I and Class II.

(b) 31-1/3% by promotion on the basis of seniority subject to the rejection of the unfit.

(c) 33-1/3% by limited competitive examination on the basis of a test to be prescribed and conducted by the UPSC for Assistants/Stenographers Grade II between 5 years and 10 years of service in the grade in the Board's Office.

Note - for the years 1961-65 only 1/4 of the substantive vacancies were to be filled by direct recruitment on the results of the competitive examination under item (a) above."

In 1955 the Government issued Office Memorandum dated May 7, 1955 (Annexure 'E' to the Writ Petition) whereby it reaffirmed its decision that there will be no reservation for Scheduled Castes and Scheduled Tribes in posts filled by promotion, but that certain concessions were to be given to Scheduled Castes and Scheduled Tribes in the matter of promotion. The concessions were as follows :

"(i) while there would be no reservation for Scheduled Castes and Scheduled Tribes in regard to vacancies filled by promotion, where the passing of tests or examinations had been laid down as a condition for promotion, the authority prescribing the rules for the tests or examinations might issue suitable instructions to ensure that the standard of qualification in respect of members of Scheduled Castes and Scheduled Tribes was not unduly high.

(ii) Where promotions were made on the basis of seniority subject to fitness, cases of persons belonging to Scheduled Castes and Scheduled Tribes were to be judged in a sympathetic manner without applying too rigid a standard and cases of supersession of Scheduled Castes and Scheduled Tribes employees reviewed at a high level viz., if a Scheduled Caste/Scheduled Tribes employee was superseded in the matter of promotion to Class I and II posts filled on the basis of seniority subject to fitness, the prior orders of the Minister or Deputy Minister concerned were to be taken. If, however, the supersession was in a Class III or IV post filled on the basis of seniority subject to fitness, the matter was to be reported to the Minister or Deputy Minister concerned within a month of the decision. (Ministries were given powers to modify this procedure to suit their requirements with the approval of the Minister in charge.)"

In 1957 the Government decided that there should be provision for reservations for Scheduled Castes and Scheduled Tribes in all grades of services filled by promotion through competitive examination limited to departmental candidates, the quantum of reservation being 12 1/2% for Scheduled Castes and 5% for Scheduled Tribes. The order of the Government is contained in Office Memorandum dated January 4, 1957, Annexure 'D' to the Writ Petition. In April, 1959 the Ministry of Railways issued an order laying down that in the case of any promotion from Class IV to Class III and from Class III to Class II and for any promotion from one grade to another in Class III,

where such promotions were made by "selection" and not on the basis of "seniority-cum-fitness" there should be reservation for the Scheduled Castes and Scheduled Tribes on the same scale as in the direct recruitment. This order was challenged by Rangachari by a Writ Petition under Art. 226 of the Constitution which was allowed by the Madras High Court and a writ in the nature of mandamus was granted restraining the Railway Authorities from giving effect to the order of the Railway Board directing reservation of selection posts in Class III of the Railway service in favour of the members of the Scheduled Castes and Scheduled Tribes. An appeal was brought to this Court by the General Manager, Southern Railway (The General Manager, Southern Railway v. Rangachari) ([1962] 2 S.C.R. 586) against the judgment of the Madras High Court and it was held in the majority judgment of this Court that the impugned circulars of the Railway Board were within the ambit of Art. 16(4) of the Constitution and the appeal must succeed. Consequent upon the judgment in this case the matter was reviewed by the Union Government and it was advised that there was no constitutional compulsion to make reservation for Scheduled Castes and Scheduled Tribes in posts filled by promotion and the question whether the reservation should be continued or withdrawn was entirely a matter of public policy. The Union Government came to the conclusion that there should not be any special treatment of Government servants belonging to Scheduled Castes and Scheduled Tribes in the matter of promotions particularly in promotion to Class I and Class II services which require higher degree of efficiency and responsibility. As a result of this review of the matter the Central Government issued a memorandum dated November 8, 1963 (Annexure 'C' to the Writ Petition) which reads as follows :

"In posts filled by promotion through competitive examinations limited to departmental candidates, reservation at 12 1/2 per cent. and 5 1/2 per cent. of vacancies were provided for Scheduled Castes and Scheduled tribes respectively vide this Ministry's O. M. No. 5/4/55-SCT(I) dated 4th January, 1957 and para 3(iii) of the Brochure issued with O.M. No. 1/2/61-SCT(I) dated 27th April, 1962. In regard to promotions on the basis of seniority subject to fitness, and those by selection no reservation were provided, but certain concessions were allowed to persons belonging to scheduled castes and scheduled tribes vide Ministry of Home Affairs Office Memorandum No. 2/11/55-RPS dated 7th May, 1955 (as amended from time to time), No. 1/1/59-RPS dated 17th March, 1958 and No. 1/4/60-RPS dated 5th March 1960 and paras 20 and 21 of the aforesaid brochure.

2. The Government of India have reviewed their policy in regard to reservation and other concessions granted to scheduled castes and scheduled tribes in posts filled by promotion and have, in supersession of all previous orders in this regard, decided as follows :-

(1) Class I and class II appointments :

(a) There will be no reservation for Scheduled Castes and Scheduled Tribes in appointments made by promotion to a Class II or a higher service of post whether on the basis of seniority-cum-fitness, selection, or competitive examination limited to departmental candidates.

(b) In the case of promotions made in or to Class I or Class II on the basis of seniority subject to fitness, cases involving supersession of Scheduled Castes and Scheduled Tribe Officers, will however, continue to be submitted for prior approval of the Minister or Dy. Minister concerned.

(2) Class III and class IV appointments :

(a) In the cases of Class III and class IV appointments, in grades or services to which there is no direct recruitment whatever, there will be reservation at 12 1/2 and 5 per cent. vacancies for Scheduled Castes and Scheduled tribes respectively in promotions made by (i) selection or (ii) on the results of competitive examination limited to departmental candidates

(b) Lists of Scheduled Castes and Scheduled Tribes Officers should be drawn up separately to fill the reserved vacancies; Officers belonging to these classes will be adjudged separately and not along with other officers and if they should be included in the list irrespective of their merit as compared to that of the other officers. Promotions against reserved vacancies will continue to be subject to the candidates satisfying the prescribed minimum standards.

(c) There will be no reservation in appointments made by promotion on the basis of seniority subject to fitness; but cases involving supersession of Scheduled Castes and Scheduled Tribe Officers, if any, will as at present be reported within a month to the Minister or Deputy Minister concerned for information.

3. The above decisions take effect from the date of issue of these orders except where selections by the Departmental Promotion Committee under the old orders have already been made, or rules for a competitive examination published.

The contention of the petitioner is that this Office Memorandum (Annexure 'C' to the Writ Petition) violates the guarantee given to backward classes under Art. 16(4) of the Constitution and is illegal and ultra vires. It was alleged that the impugned Office Memorandum (Annexure 'C') made a discrimination by making provision for reservations in certain types of Class III and IV Services only and not in Class II and I Services, and the classification was discriminatory and there was no rational nexus sought to be achieved by the impugned Office Memorandum. The argument was also stressed that Art. 16(4) was not an exception engrafted on Art. 16, but was in itself a fundamental right granted to Scheduled Castes and Scheduled Tribes and backward classes and as such it was untrammelled by any other provision of the Constitution. The petitioner accordingly prays for the grant of a writ in the nature of mandamus quashing the Office Memorandum (Annexure 'C') and directing respondent No. 1 to restore retrospectively the orders made in its Office Memoranda No. 2/11/55- RPS dated May 7, 1955 and No. 5/4/55-SCT-I dated January 4, 1957 and to consider the claim of the petitioner as member of the Scheduled Caste for promotion as Section Officer in the Railway Board Secretariat Service.

Article 14 of the Constitution states :

"The State shall not deny to any person equality before the law or the equal protection of the laws with in the territory of India."

Article 15 provides :

"(1). The State shall not discriminate against any citizen on ground only of religion, race, caste, sex, place of birth or any of them.

(2).....

(3).....

(4) Nothing in this article or in clause (2) of Article 29 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.

Article 16 is to the following effect :

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

(2) 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.

(3).....

(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.

(5).....

Article 335 reads as follows :

"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."

The first question to be considered in this case is whether there is a constitutional duty or obligation imposed upon the Union Government to make reservations for Scheduled Caste and Scheduled Tribes either at the initial stage of recruitment and at the stage of promotion in the Railway Board Secretariat Service Scheme.

The relevant law on the subject is well-settled. Under Art. 16 of the Constitution, there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State or to promotion from one office to a higher office thereunder. Articles 14, 15 and 16 form part of the same constitutional code of guarantees and supplement each other. In other words, Art. 16 of the Constitution is only an incident of the application of the concept of equality enshrined in Art. 14 thereof. It gives effect to the doctrine of equality in the matter of appointment and promotion. It follows therefore that there can be a reasonable classification of the employees for the purpose of appointment and promotion. To put it differently, the equality of opportunity guaranteed by Art. 16(1) means equality as between members of the same class of employees, and not equality between members of separate independent classes. Dealing with the extent of protection of Art. 16(1) of the Constitution, this Court stated in *General Manager, Southern Railway v. Rangachari* ([1962] 2 S.C.R. 586) at pages 596-597 of the Report as follows :

"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 matter 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 Article 16(1). What Article 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. The three provisions Article 16(1), Art. 14 and Art. 15(1) from 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 from part of the terms and conditions of such employment".

The Court further observed in that case :

"Article 16(2) prohibits discrimination and thus assures the effective enforcement of the fundamental right of equality of opportunity guaranteed by Article 16(1). The words, in respect of any employment used in Article 16(2) must, therefore, include all matters relating to employment as specified in Article 16(1). Therefore, we are satisfied that promotion to selection posts is included both under Article 16(1) and (2)".

It is manifest that the scope of cl. (4) of Art. 16 is not co-extensive with the guarantee of equality offered to all citizens by cl. (1) of that Article. In other words, cl. (4) of Art. 16 does not cover the entire field covered by cls. (1) and (2) of that Article. For instance, some of the matters relating to employment in respect of which equality of opportunity has been guaranteed by cls. (1) and (2) do not fall within the mischief of the exception cl. (4). As regards the conditions of service relating to employment such as salary, increment, gratuity, pension and age of superannuation, there can be no exception even in regard to the backward classes of citizens. The Only matter which cl. (4) cover is a provision for the reservation of appointments in favour of a backward class of citizens. It is well-settled that cl. (4) of Art. 16 is an exception clause and is not an independent provision and it has to be strictly construed (See the judgment of this Court in *General Manager, Southern Railway v. Rangachari*). It is also apparent that the language of Art. 16(4) has to be interpreted in the context and background of Art. 335 of the Constitution. In other words, in making a provision for reservation of appointments or posts the Government has to take into consideration not only the claims of the members of the backward classes but also the maintenance of efficiency of administration which is a matter of paramount importance. In this connection, *Gajendragadkar, J.*, as he then was, speaking for the majority in *General Manager Southern Railway v. Rangachari*, ([1962] 2 S.C.R. 586) observed at page 606 of the Report as follows :

"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 conceivable 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.

The same view has been reiterated in a later case, *M. R. Balaji and Others v. State of Mysore* ([1963] Supp. 1 S.C.R. 439), in which Gajendragadkar, J., as he then was, speaking for the unanimous Court stated as follows :

"Whilst we are dealing with this question, it would be relevant to add that the provisions of Art. 15(4) are similar to those of Art. 16(4) which fell to be considered in the case of *The General Manager, Southern Railway v. Rangachari* ([1962] 2 S.C.R. 586). In that case, the majority decision of this Court held 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 conclusion was reached on the basis that it served to give effect to the intention of the Constitution-makers to make adequate safeguards for the advancement of Backward Classes and to secure their adequate representation in the Services. The judgment shows that the only point which was raised for the decision of this Court in that case was whether the reservation made was outside Art. 16(4) and that posed the bare question about the construction of Art. 16(4). The propriety, the reasonableness or the wisdom of the impugned order was not questioned because it was not the respondent's case that if the order was justified under Art. 16(4), it was a fraud on the Constitution. Even so, it was pointed out in the judgment that the efficiency of administration is of such a paramount importance that it would be unwise and intermissible to make any reservation at the cost of efficiency of administration; that, it was stated, was undoubtedly the effect of Art. 335. Therefore, what is true in regard to Art. 15(4) is equally true in regard to Art. 16(4). There can be no doubt that the Constitution-makers assumed, as they were entitled to, that while making adequate reservation under Art. 16(4), care would be taken not to provide for unreasonable, excessive or extravagant reservation, for that would, by eliminating general competition in a large field and by creating wide-spread dissatisfaction amongst the employees, materially affect efficiency. Therefore, like the special provision improperly made under Art. 15(4), reservation made under Art. 16(4) beyond the permissible and legitimate limits would be liable to be challenged as a fraud on the Constitution."

In the present case the respondents have alleged in the counter affidavit that the decision of Rangachari's ([1962] 2 S.C.R. 586) case the Union Government reviewed the whole position and decided that there should not be any special treatment to Government servants belonging to the Scheduled Castes and Scheduled Tribes in the matter of promotion to Class I and II Services which require higher degree of efficiency and responsibility. It was stated in the counter- affidavit that the Union Government was satisfied that reservation quotas of promotion were harmful from the point

of view of efficiency of Railway Service and therefore the Government issued the memorandum dated November 8, 1963 withdrawing the reservation quotas for Scheduled Castes and Scheduled Tribes officers made in the previous Government Orders. On behalf of the petitioner Mr. N. C. Chatterjee submitted the argument that the provision contained in Art. 16(4) of the Constitution was in itself a fundamental right of Scheduled Castes and Scheduled Tribes and it was not open to the Government to withdraw the benefits conferred on Scheduled Castes and Scheduled Tribes by the Government orders dated May 7, 1955 and January 4, 1957. The learned Counsel based his argument on the following observations of Subba Rao, J., as he then was, in the minority judgment of this Court in *T. Devadasan v. The Union of India and Another* ([1964] 4 S.C.R. 680, at page 700) :

"The expression 'nothing in this article' is a legislative device to express its intention in a most emphatic way that the power conferred thereunder is not limited in any way by the main provision but falls outside it. It has not really carved out an exception, but has preserved a power untrammelled by the other provisions of the Article."

But the majority judgment of this Court in that case took the view that Art. 16(4) was an exception and it could not be so construed as to render nugatory or illusory the guarantee conferred by Art. 16(1). It was pointed out that though under Art. 16(4) of the Constitution a reservation of a reasonable percentage of posts for members of the Scheduled Castes and Tribes was within the competence of the State, the method evolved by the Government must be such as to strike a reasonable balance between the claims of the backward classes and claims of other employees, in order to effectuate the guarantee contained in Art. 16(1), and for this purpose each year of recruitment would have to be considered by itself. Accordingly, the Court struck down the "Carry forward rule" on the ground that it contravened Arts. 14, 16 and 335 of the Constitution. In any case, even the minority judgment of Subba Rao, J. does not support the contention of Mr. N. C. Chatterjee that Art. 16(4) confers a right on the backward classes and not merely a power to be exercised at the discretion of the Government for making a provision for reservation of appointments for backward classes which, in its opinion, are not adequately represented in the Services of the State. Our conclusion therefore is that Art. 16(4) does not confer any right on the petitioner and there is no constitutional duty imposed on the Government to make a reservation for Scheduled Castes and Scheduled Tribes, either at the initial stage of recruitment or at the stage of promotion. In other words, Art. 16(4) is an enabling provision and confers a discretionary power on the State to make a reservation of appointments in favour of backward class of citizens which, in its opinion, is not adequately represented in the Services of the State. We are accordingly of the opinion that the petitioner is unable to make good his submission on this aspect of the case.

We shall next deal with the contention of the petitioner that there is discrimination between the employees belonging to Scheduled Castes and Scheduled Tribes in the Railway Service and similar employees in the Central Secretariat Service. It was said that the competitive departmental examination for promotion to the grade of Section Officers was not held by the Railway Board for the years 1955 - 1963. On the contrary, such examinations were held for the Central Secretariat Service and 74 employees belonging to Scheduled Castes and Scheduled Tribes secured the benefit of the provisions of reservation. In our opinion, there is no substance in this contention. The petitioner being an employee of the Railway Board is governed by the rules applicable to the officers in the Service to which he belongs. The employees of the Central Secretariat Service belong to a different class and it is not possible to accept the argument that there is any discrimination against the petitioner and violation of the guarantee under Art. 14 of the Constitution.

It was also contended by Mr. N. C. Chatterjee that the impugned order, Annexure 'C', arbitrarily discriminates among Class III employees themselves and Class IV employees themselves. Under the impugned order reservation is kept for appointments for which there is direct recruitment and for promotions made by (1) selection, or (2) on the result of a competitive examination limited to departmental candidates. There is no reservation for appointments made by promotion on the basis of seniority-cum-fitness. In our opinion, there is no justification for this argument as it is well-established that there can be a reasonable classification of employees for the purpose of appointment by promotion and the classification as between direct recruits and promotees is reasonable (See the decisions of this Court in *Mervyn Coutindo v. Collector of Customs* ([1966] 3 S.C.R. 600) Bombay, and in *S. G. Jaisinghani v. Union of India*).

A grievance was also made by Mr. N. C. Chatterjee that there is discrimination as between Classes I and II where there is no reservation and Classes III and IV where reservation has been made for Scheduled Castes and Scheduled Tribes. The respondent stated in the counter-affidavit that in Classes I and II posts a higher degree of efficiency and responsibility was required and therefore reservation was considered harmful so far as Classes I and II were concerned. In view of the requirement of efficiency in the higher echelons of Service it is obvious that the classification made in the impugned order is reasonable and the argument of Mr. Chatterjee on this point must also be rejected as untenable.

For the reasons expressed we hold that the petitioner has made out no case for the grant of a writ under Art. 32 of the Constitution. The application accordingly fails but, in the circumstances of the case, we do not propose to make any order as to costs.

R.K.P.S

Appeal dismissed.

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