

Bihar State Harijan Kalyan Parishad

Vs

Union of India and Others

Civil Appeal No. 680 of 1985

(O. Chinnappa Reddy, E. S. Venkataramiah JJ)

01.03.1985

JUDGMENT

O. NNAPPA REDDY, J. -

1. Special leave granted.

2. The Bihar State Harijan Kalyan Parishad whose writ petition against the Steel Authority of India Ltd., the Union of India and others, was dismissed in limine is the appellant before us in this appeal. We are afraid, notwithstanding the summary dismissal of the writ petition by the High Court, this appeal has to be allowed. The appellant is rightly aggrieved with letter No. 18(12)/81-SAIL-II/Coord dated April 8, 1982 from the Ministry of Steel and Mines addressed to the Chairman of the Steel Authority of India Limited and letter No. PER/7949/(pi) dated August 19, 1982 from the Steel Authority of India Limited to the Chief Personnel Manager, Bokaro Steel Plant, Bokaro. The effect of the two letters, which we will extract in full later at an appropriate stage, is to deny to the Scheduled Castes and Scheduled Tribes the benefit of reservation in the matter of promotion to selection posts within Group 'A'. The Bokaro Steel Plant, we may mention here, is a unit of the Steel Authority of India Limited which in turn is a public limited company entirely owned, controlled and supervised by the Central Government. It is not dispute that the Steel Authority of India Limited is an instrumentally of the State and is an authority within the meaning of Article 12 of the Constitution of India.

3. The Government of India, Ministry of Finance, Bureau of Public Enterprises, issued a directive to the Chief Executives of all Public Sector Enterprises on the subject of reservation for Scheduled Castes and Scheduled Tribes in appointments in public enterprises. While 15 per cent and 7 1/2 per cent of post are generally to be reserved for Scheduled Castes and Scheduled Tribes respectively, in the case of promotion of members of the Scheduled Tribes to posts, promotion to which are by the selection method, a special procedure is devised by Para 9 of the directive. In the case of promotions within Group 'A', it is laid down :

In promotions by selection to posts within Group 'A' which carry an ultimate salary of Rs. 2250 per month, or less the Scheduled Caste Scheduled Tribe officers who are senior enough in the zone of consideration for promotion so as to be within the number of vacancies for which the select list has to be drawn up, would be included in that list provided they are not considered unit for promotion. Their position in the select list would, however, be the same as assigned to them by the Department Promotion Committee on the basis of their record of service. They would not be given for this purpose one grading higher than the grading otherwise assignable to them on the basis of their record of service.

A close perusal of the directive and particular paragraph 9 which deals with "concessions to employees of Scheduled Castes and Scheduled Tribes its promotions by selection method" makes it abundantly clear that the rule of reservation is also applicable to promotions by selection to posts within Group 'A' which carry an ultimate salary of Rs. 2250 per month or less, but that the procedure is slightly different than in the case of other posts. While the rule of reservation applies to promotions by selection to posts within Group 'A' carrying a salary of Rs. 2250 per month or less, it is prescribed that only those officers belonging to the Scheduled Castes and Scheduled Tribes will be considered for promotion, who are senior enough to be within the zone of consideration. Thereafter a Select List depending upon the number of vacancies would be drawn up in which would also be included those officers belonging to the Scheduled Castes and Scheduled Tribes who are not considered units for promotion. Their position in the Select List would be that assigned to them by the Departmental Promotion Committee on the basis of the record of service. In other words, their inclusion in the Select List would not give them seniority, merely by virtue of their belonging to the Scheduled Castes and Scheduled Tribes over other officers placed above them in the Select List by the Departmental Promotion Committee. This appears to us to be the only possible interpretation of paragraph 9 of the directive. However, by letter No. 18(12)/81-SAIL-II/Coord dated April 8, 1982 from the Ministry of Steel and Mines, Department of Steel, addressed to the Chairman of the Steel Authority of India Limited, the above mentioned paragraph 9 of the directive appears to have been totally misinterpreted. The letter runs as follows :

Sir,

I am directed to refer to your letter No. PER/IR/1914 (pt) dated November 12, 1981 on the above subject and to say that in accordance with para 9 of the Presidential Directive on the subject there is no reservation for SC/ST in promotion by selection to posts within Group 'A' which carry an ultimate salary of Rs. 2250 per month or less.

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Yours faithfully,

Sd/- (T. V. NAYAR)

Deputy Secretary to the Government of India

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This letter in turn was followed by a communication dated August 19, 1982 from the Steel Authority of India to the Chief Personnel manager of Bokaro Steel Plant to the following effect :

Dear Sir,

Kindly refer to your letter No. BCL-PER/(OP) 5/57/3251 dated July 19, 1982, on the above subject.

2. No reservation for Scheduled Caste/Scheduled Tribe Candidates in matters of promotions to any grade within Group-A posts are to be provided, since promotions within Group-A posts in the company are based on selection method. The principle of seniority subject to fitness does not apply in the case of our promotion policy since the employees have first to be found suitable for promotion through selection process, and only thereafter, at certain levels, are the promotions made in the order of seniority of those selected.

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Yours faithfully, Sd/-

(P. N. Singh) Deputy Director (IR)

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4. It is at once seen that the two letters are contrary to paragraph 9 of the Presidential Directive on which they purport to place reliance. Paragraph 9 of the Presidential Directive nowhere says that the rule of reservation does not apply to promotion by selection to posts within Group A which carry an ultimate salary of Rs. 2250 per month or less. On the other hand paragraph 9 of the Presidential Directive proceeds on the basic assumption that the rule of reservation does apply but prescribes a certain procedure to be followed, a procedure different from the usual procedure adopted in filling up posts reserved for Scheduled Castes and Scheduled Tribes. It is indeed a matter of surprise to us that the Ministry of Steel and Mines has chosen to place such an interpretation on paragraph 9 of the Presidential Directive. The stand taken by them in the letter dated April 8, 1981 is reiterated in paragraph 3 of the counter-affidavit filed on behalf of the Union of India. No explanation has been given in the counter-affidavit for what appears to us to be a plain volte face. We have no opinion, but to quash the letters dated April 8, 1982 and August 19, 1982 above us and to direct the respondents to give effect to paragraph 9 Directive with effect from the date of the Directive. We have set out our interpretation of the Presidential Directive and will be given to the Presidential Directive in the manner interpreted to us. We also wish to make it clear that the classification of posts will be on the same lines as mentioned in paragraph 2 of the Presidential Directives. The writ petition is allowed with costs.

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