

State of Haryana and Others

Vs.

Birkha Ram and Others

Sat Parkash Gupta and Others

Vs.

Birkha Ram and Others

Naurang Rai Kaushik and Others

Vs.

Om Parkash Goel and Others

Civil Appeals Nos. 2845-47, with Civil Appeals Nos. 2848-49 and 2850-51 of 1985.

(D. Chinnappa Reddy, V Balakrishna Eradi, V. Khalid JJ)

18.07.1985

JUDGMENT

CHINNAPPA REDDY, J. -

We grant special leave and having heard the learned counsel for the parties proceed to dispose of the appeals.

2. The appeals arise out of a judgment of the High Court of Punjab and Haryana which is an aftermath of two earlier judgments of that Court. The appeal preferred to this Court against one of the earlier decisions was dismissed by this Court by a speaking order while a special leave petition filed against the other decision was dismissed by a non-speaking order. It appears that the Government of Punjab by its memorandum dated July 23, 1957 decided to reserve a quota of 25% of posts of Masters for a category of teachers already in service familiarly known in their service parlance as "unadjusted B. A., B. T. /B. Ed. teachers". Notwithstanding the memorandum, these teachers were not given the benefits flowing from the reservation and therefore, a large number of them filed a writ petition in the High Court of Punjab and Haryana claiming the status and emoluments of Masters. A Single Judge of the High Court held as under :

The basis of their claim is the decision of the Director of Public Instruction, circularised vide letter dated November 7, 1958. According to that letter, the teachers already in service having B. A., B. T. of B. Ed. degrees were to be given the Master's grade Whenever the recruitment was to be made to the extent of 25% of vacancies while 75% of the vacancies had to be filled by direct recruitment. The petitioners could compete for that recruitment but none of them appears to have done so. They could only lay claim to the 25% of the vacancies on the basis of seniority-cum-merit. There was requirement of subject combination in B. A. and, therefore, the selection from amongst the teachers possessing the degrees in B.

A., B. T. or B. Ed. on the basis of subject combination was not in accordance with the rules and was in fact discriminatory which violated the fundamental rights of the petitioners under Articles 14 and 16 of the Constitution. The category was of B. A., B. T. /B. Ed. and no further selection could be made on the basis of subjects nor could the cases be referred to Punjab Subordinate service Selection Board for purposes of selection. The selection had to be made on seniority-cum-merit basis and not on merit-cum-seniority basis as seems to have been done. The petitioners were, therefore, discriminated against. It has also not been stated who issued the instructions with regard to subject combination formula, which has occasioned the discrimination complained of. But no relief can be granted to the petitioners in this behalf as they did not challenge their supersession promptly and the teachers already promoted have not been made parties to this petition so that no order to their prejudice can be made herein. They are entitled to the relief that they should be considered for promotion to the 25% quota in accordance with seniority-cum-merit formula, whenever vacancies arise in future ignoring the subject combination formula.

The matter was carried in appeal to a Division Bench and in further appeal to the Supreme Court. The appeals were futile. The supreme Court upheld the decision of the High Court in State of Punjab v. Kirpal Singh Bhatia [(1976) 1 SCR 529 : (1975) 4 SCC 740 : 1975 SCC (L&S) 438 : AIR 1976 Sc 2459]. It was observed by the Supreme Court : (SCC p. 744, para 19)

The third conclusion which the High Court arrived is correct that the teachers were to be considered for appointment to the posts of masters to the extent of 25% quota as recognised for their category of teachers on the basis of seniority-cum-merit without being subjected to the condition of subject combination.

Later another group of teachers also filed similar writ petitions (Nirmaljeet Kaur v. Union of India [1972 SLR 809]) and the High Court of Punjab and Haryana following the general principle laid down in the earlier decision in Kirpal Singh Bhatia case found that the petitioners were entitled to the reliefs which were given to Kirpal Singh Bhatia and granted the reliefs in the following terms :

- (i) The petitioners and other members of their Class (Unadjusted B. A., B. T. /B. ED. teachers) shall be appointed to the posts of Masters in the regular cadre to the extent of 25% quota reserved for them for each year in accordance with the Memorandum dated November 7, 1958 (Annexure 'B' to the writ petition) and after adjusting them in the cadre their salary and inter se seniority shall be fixed along with the other members of the service in accordance with the service rules, without affecting the rights of the members of the Service who have already been promoted;
- (ii) The petitioners are entitled to the higher grade of Masters Rs. 110-250 from the day they acquired the B. T. of B. Ed. degree or with effect from May 1, 1957, whichever is later, and
- (iii) The petitioners shall be paid the arrears of pay in the higher grade for a period up to three years and two months prior to the filing of their respective writ petitions in accordance with their entitlement.

It appears there were abortive appeals to a Division Bench of the High Court and petitions for special leave to the Supreme Court.

3. Despite the directions in Nirmaljeet Kaur case, a proper seniority list incorporating the names of the teachers who should have been promoted as Masters, at the appropriate places, on the dates when they acquired the requisite qualifications was not prepared by the Government of Punjab. The 'unadjusted teachers' had once again to approach the High Court for relief. A Single Judge of the High Court gave a direction to the authorities to "re-frame the seniority list in accordance with the directions in Nirmaljeet Kaur case without reference to any other judgment". We are informed that an appeal preferred to a Division Bench of the High Court was dismissed in limine and that petition to this Court for grant of special leave was also dismissed. Thus the direction given by the Single Judge and the High Court in regard to 'unadjusted teachers' in the State of Punjab became final.

4. In the State of Haryana, the Government, of its own motion, gave full effect to the directions in Nirmaljeet Kaur case, though in the actual order (date February 15, 1979) which was issued, reference was made to Kirpal Singh Bhatia case instead of Nirmaljeet Kaur case perhaps for the reason that Nirmaljeet Kaur case purported to follow the general principle laid down in Kirpal Singh Bhatia case. The fresh seniority list affected some of the directly recruited Masters who as a result of the effect given to the directions contained in Nirmaljeet Kaur case were placed below the teachers who were deemed to be appointed as Masters in the quota of 25% reserved for those teachers who acquired the B. T. /B. Ed. qualification subsequent to their original appointments as teachers, and were given the status of Masters from the date of acquisition of such qualification. They filed writ petitions in the High Court of Punjab and Haryana and their writ petitions were accepted by the High Court on the ground that the action of the authorities was not in conformity with the directions contained in Nirmaljeet Kaur case and that it introduced the rotational principle into the rules without any express provision for the same. According to the writ petitioners (who are respondents herein), it was expressly made clear in Kirpal Singh Bhatia case that retrospective effect was not to be given to the quota rule and therefore, the seniority of those who had been appointed by direct recruitment prior to the date of the decision in Kirpal Singh Bhatia case could not be touched. This was the argument which was accepted by the High Court who observed that there was nothing in Nirmaljeet Kaur case which departed from what had been said in Kirpal Singh Bhatia case about retrospectivity. The State of Haryana as well as the 'unadjusted teachers' have appealed to this Court.

5. The decision of the appeals really turns of the interpretation to be placed upon the judgments in Kirpal Singh Bhatia case and Nirmaljeet Kaur case and the direction therein given. In Kirpal Singh Bhatia case, the Court laid down the broad general principle that the teachers who acquired the requisite qualification were entitled to the Master's status and grade with effect from the date of the acquisition of their qualification provided they came within the 25% quota reserved for them. While doing so, the Court, in exercise of its discretion denied relief in regard to the past vacancies on the ground that they had come to the Court late. In Nirmaljeet Kaur case, however, the Court accepted without qualification the broad general principle laid down in Kirpal Singh Bhatia case regarding the eligibility of those who had acquired to qualification to be appointed to the 25% of the posts from the date of the acquisition of their qualification and did not refuse to grant relief on any ground in the exercise of their discretionary powers. The Government of Haryana has now accepted the broad general principle laid down in Kirpal Singh Bhatia case as adopted in Nirmaljeet Kaur case and they cannot, therefore, be found fault with for so doing. The learned counsel for the respondents tried to reopen the issue whether there was any reservation of 25% quota at all on the ground that the rule itself did not provide for such a reservations. But in view of the earlier decisions, all of which have accepted the position that there was a 25% quota reserved for those acquiring the requisite qualification, we do not think that we would be justified in permitting the counsel to reargue the question. The learned counsel also urged that in effect the principle of rotation was

being introduced by the backdoor as it were and that this was in the teeth of the decisions of this Court in *A. K. Subraman v. Union of India*, *N. K. Chauhan v. State of Gujarat* and *B. S. Yadav v. State of Haryana*. In the first place, it is wrong to say that the rotational principle can never be read into the rules. There can be no dogmatic assertion as a matter of abstract law on that question as pointed out in *Yadav* case itself. In the second place, the question does not really arise in this case as we are only concerned with the question whether the Government of Haryana was giving effect to what was decided in *Kirpal Singh Bhatia* case and *Nirmaljeet Kaur* case or whether it was proceeding contrariwise. We do not have any doubt that the Government of Haryana acted in accordance with principles laid down in *Kirpal Singh Bhatia* case and *Nirmaljeet Kaur* case. The appeals are, therefore, allowed and the writ petitions filed in High Court are dismissed with no order as to costs.

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