

P & T Scheduled Caste/Tribe Employees' Welfare Association (Regd.) and Others

Vs

Union of India and Others

Writ Petitions (Civil) Nos. 1003-1005 of 1984

(E. S. Venkataramiah, S. Natarajan JJ)

29.08.1988

JUDGMENT

VENKATARAMIAH, J. –

1. People belonging to the Scheduled Castes and the Scheduled Tribes and to other weaker sections of society in India are the zealously protected children of the Indian Constitution. Article 46 of the Constitution provides that the State shall promote with special care the educational and economic interests of the weaker sections of the people, and in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation. While clause (1) of Article 15 of the Constitution provides that the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them, clause (4) of that article provides that nothing in the said article or in clause (2) of Article 29 of the constitution 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, while clause (1) of Article 16 of the Constitution provides that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State and clause (2) of the said article 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 officer under the State, clause (4) of the said article provides that nothing in that 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. Article 330 and Article 332 of the Constitution provide for reservation of seats for the Scheduled Castes and the Scheduled Tribes in the Lok Sabha and in the Legislative Assemblies of the States till such period as is provided in Article 334 of the constitution. Article 335 of the Constitution, which is relevant for purposes of this case, 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.

2. The present case is, however, one in which a concession which had been extended to the employees belonging to the Scheduled Castes and the Scheduled tribes by way of reservation of vacancies at the stage of promotion has been withdrawn in a rather concealed way. Petitioners 1 and 2 in this writ petition are the P & T Scheduled Caste/Tribes Employees welfare Association (Regd.) Delhi and the Federation of All India Scheduled Castes and Scheduled Tribes, Employees P & T Department, New Delhi and petitioner 3 is an employee in the Posts and Telegraphs Department, by the letter bearing No. 27/2/71 Estt. (SCT) dated November 27, 1972 issued by the Department of

Personnel, the government communicated its policy regarding the reservation for the Scheduled Castes and the Scheduled Tribes in posts filled by promotion/promotions on the basis of seniority subject to fitness. The said policy was adopted by the government in supersession of the orders contained in an earlier Government Order dated July 11, 1968. Under the said policy a reservation of 15 per cent of vacancies was made for the scheduled Castes and 7 1/2 per cent for the Scheduled Tribes wherever promotions were to be made on the basis of seniority subject to fitness, in appointments to all Class I, Class II Class III and Class IV posts in grades or services in which the element of direct recruitment, if any did not exceed 50 per cent. In order to implement the above reservation the government directed the appointing authorities to maintain a separate 40 point roster to determine the number of reserved vacancies in a year in which points 1, 8, 14, 22, 28 and 36 had to be reserved for the Scheduled Castes and points 4, 17 and 31 had to be reserved for the Scheduled Tribes. Detailed instructions were issued to the appointing authorities to make promotions in accordance with the directions contained therein so that members belonging to the Scheduled Castes and the Scheduled Tribes could have an advantage of getting promotion to a higher cadre much earlier than the employees who did not belong to the Scheduled Castes and the Scheduled Tribes. By the letter of the Department of Personnel and Administrative Reforms bearing O. M. No. 8/11/73-Estt (SCT) dated September 12, 1974 addressed to all the ministries further instructions were issued with regard to the reservation of the Schedules Caste and the Scheduled Tribes in posts filled by promotion/appointments to Selection Grade posts directing reservation of 15 per cent of vacancies for Scheduled Castes and 7 1/2 per cent for Scheduled Tribes. As regards the Posts and Telegraphs employees working under the P & T Board, the Ministry of Communication by its letter No. 31-19/74-PE-I dated June 15, 1974 gave certain further directions with regard to the filling up of posts by promotion conferring certain other advantages on persons belonging to the Scheduled Castes and the Scheduled Tribes. The policy of reservation contained in the above three government letters was continued till the year 1983 in the Posts and Telegraphs Department. It would appear that in the year 1983 an agreement was arrived at between the Ministry of communications and certain associations of employees working in the Posts and Telegraphs Department and as a consequence of the said agreement a fresh order relating to the policy of promotion to be adopted in the Posts and Telegraphs Department was issued in suppression of the Scheme of reservation, which was being followed till then. The said new policy, the validity of which is challenged before us, is contained in the letter bearing No. 31-26/83-PE-I dated December 17, 1983 addressed to all heads of circles. Under this new policy it was decided that with effect from November 30, 1983 all officials belonging to basic grades in Group C and Group D to which there was direct recruitment either from outside and/or by means of limited competitive examination from lower cadres, and who had completed 16 years of service in that grade would be placed in the next higher grade. This policy, it is alleged, was introduced in order to remove the effects of stagnation of employees in a particular grade for nearly 20 to 23 years without being promoted to higher grade. It would appear that under the scheme which was prevailing prior to November 30, 1983 it was possible for members belonging to the Scheduled Castes and the Scheduled Tribes to secure promotion to the higher cadre within a period of 10 to 12 years while the other employees had to wait for nearly 20 to 23 years. Thus an advantage had been conferred on the employees belonging to the Scheduled Castes and the Scheduled Tribes since they could secure promotion within a shorter period. Under the new policy irrespective of the fact whether an employee belonged to the general category or to the category of the Scheduled Castes and the Scheduled Tribes he would be able to get promotion to the higher cadre on the completion of 16 years. Thereby the comparative advantage which the members belonging to the Scheduled Castes and the Scheduled Tribes were enjoying was taken away and all the employees, namely, the employees belonging to the Scheduled Castes, the Scheduled Tribes and to the other categories were placed at par. However Clause 6 of the said letter dated December 17,

1983 which contained the new policy reads thus :

6. For promotions under the time-beyond one promotion scheme the normal orders relating to reservation for SC/ST communities will not apply unless any specific order in this regard is subsequently issued.

3. It is admitted that no specific order has been issued by the government pursuant to Clause 6 so far. But the earlier orders providing for reservation in favour of the Scheduled Castes and the Schedule Tribes were made inapplicable. Aggrieved by the action taken by the government in implementing the policy contained in letter dated December 23, 1983, which had the effect of depriving the members belonging to the Scheduled Castes and the Scheduled Tribes of the advantage which they were enjoying, the petitioners have filed this petition questioning the said action. The petition is resisted by the respondents. It is urged on behalf of the government that the 'time-bound one promotion scheme' contained in the letter dated December 23, 1983 was advantageous to all the employee since all of them would get automatically promoted to a higher cadre on completing 16 years of service in a cadre and that it had been issued with the consent of the Federation of Employees of the posts and Telegraphs Department.

4. It is not disputed that in many of the other departments of the Union Government the scheme of reservation of posts for the Scheduled Castes and the Scheduled Tribes is in vogue in cases of promotions from the lower grades to the higher grade when they are done on the basis of seniority subject to fitness and under the said policy the persons belonging to the Scheduled Castes and the Scheduled Tribes working in the other departments have been conferred an extra advantage which was not available to the candidates belonging to other categories and that in the Posts and Telegraphs Department also the employees belonging to the Scheduled Castes and the Scheduled Tribes were enjoying a similar advantage before November 30, 1983 on which date the policy contained in the letter dated December 23, 1983 came into force. Even the letter dated December 23, 1983 while it sets at naught the normal orders relating to reservation for the Scheduled Castes and the Scheduled Tribes in the Posts and Telegraphs Department in force in the other departments provides for the issue of specific orders by the government under which the members belonging to the Scheduled castes and the Scheduled Tribes could gain some extra advantage. Admittedly no such order has been issued till today. The petitioners have prayed that a direction should be issued to the government to issue specific orders conferring on them such an extra advantage. We feel that the claim made by the petitioners is fully justified in view of the fact that similar advantage is being enjoyed by persons belonging to the scheduled Castes and the Scheduled Tribes in other departments and only they have been deprived of it. Such deprivation violates the equality clause of the Constitution. while it may be true that no writ can be issued ordinarily compelling the government to make reservation under Article 16 (4) which is only an enabling clause, the circumstances in which the members belonging to the Scheduled Castes and the Scheduled Tribes in the Posts & telegraphs Department are deprived of indirectly the advance of such reservation which they were enjoying earlier while others who are similarly situated in the other departments are allowed to enjoy it make the action of government discriminatory and invite intervention by this Court.

5. One of the methods by which the government can confer some extra advantage on the employees belonging to the Scheduled Castes and the Scheduled tribes in cases of this nature where promotion to higher cadre is a time-bound one is to direct that the employees belonging to the Scheduled Castes and the Scheduled tribes may be promoted to the higher cadre on completion of a shorter period of service than what is prescribed for others. In this particular case it is open to the

government to direct that while all others would be entitled to be promoted to the higher cadre on completion of 16 years of service, the members belonging to the Scheduled Castes and the Scheduled Tribes may be promoted to the higher cadre on completion of, say 12 or 13 years of service. There may be other methods of achieving the same result. The claim for conferment of some extra advantage on the Scheduled Castes and the Scheduled tribes employees working in the Posts & telegraphs Department which may be commensurate with the extra advantage which members belonging to the Scheduled Castes and the Scheduled Tribes are enjoying in the other departments of the Governments of India without detriment to the maintenance of efficiency in the service appears to be a reasonable one. In what way it should be done is a matter left to the discretion of the government. This should be decided by the government taking into consideration all aspects of the case.

6. We therefore, issue a direction to the Government of India to issue an order under Clause 6 of the letter dated November 23, 1983 conferring some additional advantage on the employees belonging to the Scheduled Castes and the Scheduled tribes in the Posts & Telegraphs Department commensurate with similar advantage which are being enjoyed by the employees belonging to the Scheduled Castes and the Scheduled Tribes in the other departments of the government of India. The government shall issue such an order accordingly within four months from today. Any order that may be issued by the government shall operate prospectively. All promotions that have been made so far pursuant to the policy contained in the letter dated December 23, 1983 and that may be made hereafter till the date on which the direction to be issued by the government under Clause 6 comes into operation, shall however remain undisturbed.

7. This petition is accordingly allowed. No costs.

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