

Municipal Corporation of Greater Bombay and Others

Vs

Mrs. Kalpana Sadhu Kamble and Others

Civil Appeal No. 2616 of 1983

(E. S. Vankataramiah, N. D. Ojha JJ)

30.08.1988

JUDGMENT

VANKATARAMIAH, J. -

1. The Municipal Corporation of Greater Bombay (hereinafter referred to as 'the Corporation') and some of its officers have filed this appeal by special leave against the judgment and order dated December 20, 1982 passed in Appeal No. 709 of 1982 on the file the High Court of Bombay affirming the Judgment dated November 23, 1982 of the learned Single Judge in Writ Petition No. 579 of 1981 in which the learned Single Judge had issued a writ in the nature of mandamus directing the Corporation to implement its Resolution No. 567 dated September 12, 1975 directing reservation of certain vacancies while making promotions from a lower cadre to a higher cadre for the employees of the Corporation belonging to certain sections of backward classes with effect from May 23, 1974.

2. The Government of Maharashtra passed a resolution on May 23, 1974 providing for reservation for certain sections of backward classes at the stage of promotion in the services under the State. Under that resolution the government provided that in Class I, Class II and Class III posts in which the element of direct recruitment did not exceed 50 per cent where promotion was to be made on the basis of seniority subject to fitness, 13 per cent of vacancies should be reserved for the Scheduled Castes and the Scheduled Castes converts into Buddhism, 7 per cent for the Scheduled Tribes including those living outside the specified areas and 4 per cent for Denotified Tribes and Nomadic Tribes. In order to implement the above scheme the government directed the maintenance of a roster of 50 vacancies in which Sl. Nos. 1, 9, 17, 25, 33, 41 and 49 were to be reserved for the Scheduled Castes and the Scheduled Castes converts into Buddhism, Sl. Nos. 2, 16 and 30 were to be reserved for the Scheduled Tribes including those living outside the specified areas and Sl. Nos. 3 and 28 were to be reserved for Denotified Tribes and Nomadic Tribes. The State Government's resolution was not applicable to the services under the Corporation on its own force. The Corporation, therefore, passed the resolution bearing No. 567 dated September 12, 1975 Which read as follows :

That in partial modification of the orders passed under the Corporation Resolution No. 364 dated the August 11, 1966 sanction be given to the policy, regarding reservation of posts for Backward Community as adopted by the Government of Maharashtra and explained in the letter, being adopted by the Corporation and reservation of posts being made in the matter of direct recruitment except those filled in by the Corporation and other individual specified posts of officers whose number in any category is not more than three as well as in promotion posts, as proposed and the Commissioner be authorised to inform the government accordingly.

3. Although the above resolution was passed on September 12, 1975 it was not brought into force immediately as it is alleged that the Corporation had to collect statistics to ascertain the number of vacancies that were available at the promotional stage since May 23, 1974. The Corporation passed another resolution being Resolution No. 1652 on March 4, 1977 which read as follows :

That in modification of the orders passed under the Corporation Resolution No. 567 dated the September 12, 1975, sanction be given to the policy regarding reservation of posts for Backward Classes in the matter of direct recruitment and at the stage of promotion, as adopted by the Government of Maharashtra under their Resolution, General Administration Department No. BCC. 1072-ECR/J dated the May 23, 1974 so far as it relates to reservation of the posts in the matter of promotion for certain sections of Backward Classes being given from the date of passing of Government Resolution dated May 23, 1974 referred to above, as proposed;

4. Pursuant to the said Respondent 1 Mrs. Kalpana Sadhu Kamble, who belonged to one of the Backward Classes, was promoted from the cadre of Assistant Teacher to the higher post of Deputy Head Mistress on March 21, 1977. Feeling aggrieved by the Corporation not giving effect to her promotion with effect from May 23, 1974, on which date the government resolution was passed, she instituted Writ Petition No. 579 of 1981 on the file of the High Court of Bombay requesting the High Court to issue a direction to the Corporation to promote her with effect from May 23, 1974. The learned Single Judge, who heard the case, issued a writ as prayed for. Against the judgment of the learned Single Judge the Corporation went up in appeal before the Division Bench of the High Court in Appeal No. 709 of 1982 which was dismissed at the stage of preliminary hearing. This appeal by special leave is filed against the judgment of the Division Bench of the High Court.

5. It is urged on behalf of the Corporation (i) that the High Court was wrong in issuing a direction to the Corporation to promote the respondent 1 with effect from May 23, 1974 since the direction would have the effect of disturbing the promotions made between May 23, 1974 and March 21, 1977, on which date respondent 1 was actually promoted and (ii) that in any event the promotions made prior to September 12, 1975, on which date the Corporation passed there resolution giving effect to the government resolution dated May 23, 1974, could not be disturbed and that respondent 1 could not be promoted from a date earlier than September 12, 1975.

6. It is not in dispute that the Government resolution dated May 23, 1974 did not come into force as far as the services under the Corporation were concerned on the date on which it was passed by the government. It could only come into effect after the Corporation passed its resolution on September 12, 1975. When once the Corporation passed the resolution dated September 12, 1975 any promotion made thereafter in the services of the Corporation could only be made subject to the reservation policy adopted by the Corporation. No doubt, the Corporation took some time to give effect to the said resolution and it gave effect to it in the case of respondent 1 and others only after it passed its resolution dated March 4, 1977. The mere fact that there was some delay in the collection of statistics and other particulars necessary for giving effect to the resolution dated September 12, 1975 could not have the effect of denying the benefit of the reservation to the employees belonging to the backward classes concerned with effect from September 12, 1975. We are, therefore, of opinion that all promotions made subsequent to September 12, 1975 in the services of the Corporation would be subject to the reservation policy adopted by the Corporation on September 12, 1975.

7. The next question is whether the respondent 1 is entitled to claim that her promotion should be

treated as one made on May 23, 1974 when the government passed the resolution and that she should be accorded seniority over and above those promoted between May 23, 1974 and September 12, 1975. It is no doubt true that in the resolution of the Corporation dated September 12, 1975 it is proposed to give effect to the policy of reservation with effect from May 23, 1974 but the said resolution cannot have any effect on the promotions which had already been made by May 23, 1974 because those promotions had been made in accordance with the prevailing rules and were not made subject to any future resolution which the Corporation would make. In the circumstances, it would be wholly unjust to disturb the promotions made prior to September 12, 1975 only because the government had passed the resolution on May 23, 1974 and the Corporation had passed the resolution on September 12, 1975 to give effect to the policy of reservation adopted by it with effect from May 23, 1974. It is true that the Corporation cannot ordinarily take a plea which will be inconsistent with its own resolution by which it proposed to give effect to the policy of reservation with effect from May 23, 1974. But having regard to the fact that a large number of innocent employees who had been lawfully promoted between May 23, 1974 to September 12, 1975 would be affected prejudicially, if retrospective effect is given to the resolution of the Corporation with effect from May 23, 1974, we feel that it would be unjust to issue a direction to review all promotions made between May 23, 1974 and September 12, 1975. The rights acquired by them cannot be taken away merely by the passing of a resolution as it has been done in this case. While it may be true that service conditions of employees may be modified retrospectively, no modification which would have the effect of depriving them of their vested rights can be made retrospectively except under a valid law. No such law is placed before us in this case. The seniority of those who had been promoted during that period cannot also be disturbed. In the circumstances the writ issued by the High Court has to be modified by directing the Corporation to give effect to the promotion of the respondent 1 from September 12, 1975. Respondent 1 shall, therefore, be deemed to have been promoted with effect from September 12, 1975 and not from May 23, 1974 as directed by the High Court.

8. The appeal is allowed to the above extent. There will, however, be no order as to costs.

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