

Ram Bhagat Singh and Another

Vs

State of Haryana and Another

Writ Petition No. 1147 of 1988

(CJI Sabyasachi Mukharji, K. N. Saikia, K. Ramaswamy JJ)

04.04.1990

JUDGMENT

SABYASACHI MUKHARJI, C.J. –

1. The petitioners are law graduates. They state that they belong to Scheduled Caste and Scheduled Tribe segments of the community. They are seeking enforcement of the right to equality of opportunity in the matter of appointment to posts in the subordinate judiciary in the State of Haryana. The State of Haryana has reserved 20 per cent of the posts in the Haryana Civil Service (Judicial Branch) for the Scheduled Castes and Scheduled Tribes. It is the case of the petitioners that though 20 per cent of the posts in the Haryana Civil Service (Judicial Branch) have been reserved for Scheduled Castes and Scheduled Tribes, the strength of the appointments made since 1969 onwards reveals that hardly 8 per cent of the total posts i.e. 40 to 45 per cent only of the cadre strength have been allotted to the Scheduled Castes and Scheduled Tribes. The petitioners contend that in other States of India different percentages of marks have been prescribed for Scheduled Castes, Scheduled Tribes and general candidates.

2. In this connection, it may be appropriate to refer to the fact that under the Punjab Civil Services (Judicial Branch) Rules framed in exercise of a powers conferred by Article 234 read with proviso to Article 309 of the Constitution of India, rules have been framed and are prevalent. Part 'C' of the rules deals with the rules and instructions for the examination of the candidates for admission to the judicial branch of the Haryana Civil Service. Part 'C' of the said rules was brought into force by the Haryana Adaptation Laws (State and Concurrent Subjects) Order, 1968. Rules 7 and 8 of the said rules, inter alia, provide as follows :

"7. No candidate shall be called for the viva voce test unless he obtains at least 45 per cent of marks in the aggregate in all the written papers and 33 per cent marks in the language paper; Hindi (in Devanagri script).

8. No candidate shall be considered to have qualified in the examination unless he obtains at least 55 per cent marks in the aggregate of all papers including the viva voce test."

3. It is the case of the petitioners that fixation of the standard of marks which the petitioners describe as high standard, has resulted in denial of opportunity to the Scheduled Castes and Scheduled Tribes thus amounting to denial of equality of opportunity in the jobs which, the petitioners contend, the State otherwise sought to achieve and ought to achieve in favour of Scheduled Castes and Scheduled Tribes.

4. We are of the opinion that equality of opportunity should be Striven for and ensured in public employment. Steps should be taken to see where unequals are competing, conditions must be created by relaxation or otherwise so that unequals compete in terms of equality with others in respect of jobs and employments of the State. Our Constitution so enjoins it. Article 38 of the Constitution read with Articles 14, 15 and 16 50 mandates it. In order; therefore, to give those who are unequals, and it is accepted that Scheduled Castes and Scheduled Tribes for reasons historical or otherwise, are unequal with the general members of the community in respect of ability and qualification for public employment. Hence, in order to make the unequals compete on conditions of equality certain relaxations and other factors ensuring equality are imperative. Those groups or segments of society which are by reasons of history or otherwise unable to compete in terms of absolute equality with the members of other communities or groups in the society, should be ensured and assured chances of competing in terms of equality. They must be helped to compete equally but it is important to emphasise that equality of opportunity is sought to be achieved for the public services or employment. The efficacy and efficiency of that service is of prime consideration. Equality must be there for all to compete for the public services. Public services and public employment do not exist for providing jobs in terms of equality or otherwise to all. Public services and public employment must serve only public purpose and anything that hampers or impairs the efficiency or efficacy of public services cannot and should not be permitted in ensuring conditions of constitutional equality. These should be done objectively, rationally and reasonably. As is often said, it may be that need to ensure equality for Scheduled Castes and Scheduled a Tribes should not be surrendered on the facile and value-based perception of efficiency. Yet efficiency must be ensured. Real equality must be accorded.

5. As mentioned hereinbefore, the contention of the petitioners is that 55 per cent marks in aggregate in all papers including viva voce constitute rather a high standard for qualification and eligibility. They contend that for most of the Scheduled Caste and Scheduled Tribe aspirants for the job it is difficult to achieve that standard. It is said that in other parts of this vast land of ours the standard is not as high as that. Shri Venkatramani, advocate for the petitioners, contended that in other States on an all-India basis such a high standard of marks is not envisaged. Shri Mahabir Singh, learned advocate appearing for the State of Haryana and Shri C. M. Nayar; learned advocate for the Public Service Commission, contend that it must be presumed that the minimum percentage desirable for the purpose of efficiency has been prescribed. It was further submitted by Shri Nayar that in respect of candidates other than Scheduled Castes and Scheduled Tribes, normally those obtaining far higher than 55 per

6. In that view of the matter, in our opinion, in the interest of justice and our constitutional mandates and in the light of the efficiency of the services and with a view to create a sense of justice, it is necessary for the Government concerned to consider this question as to what should be the minimum percentage of marks necessary for the administration. We direct that the Government will make a conscious decision objectively before the next selections for the posts in Haryana Judicial Service take plade, and determine a minimum percentage of marks consistent with efficiency and a the need for ensuring equality of opportunity to Scheduled Castes and Scheduled Tribes.

7. It was also contended by Shri Venkataramani that some of the candidates belonging to the Scheduled Castes and Scheduled Tribes have become overaged, therefore, the Government should also consider whether further relaxation in age in favour of Scheduled Castes and Scheduled Tribes can be made; and if so, to what extent without hampering efficiency of the administration. This should also be considered before the next selections for appointment to the post are made.

8. In the aforesaid light, special leave is granted in Civil Appeal No. 15000 (sic) of 1988 and the judgment and order of the High Court of Punjab and Haryana, dated 5-6-1987 are modified to the extent indicated above. The writ petition and the appeals are disposed of accordingly without any order as to costs.

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