

Commissioner of Commercial Taxes, A.P. Hyderabad and Another

Vs

G. Sethumadhava Rao Others

Civil Appeal No. 2523 of 1996

(K. Ramaswamy, B.L. Hansaria, S.B. Majmudar JJ)

17.01.1996

JUDGMENT

1. Leave granted.

2. Though the respondents have been served with notice they are not appearing either in person or through counsel.

3. We have heard Shri Ram Kumar, learned counsel for the appellants.

4. This appeal by special leave arises from the order of the Administrative Tribunal of Andhra Pradesh passed on December 2, 1992, in O.A. No. 5158/92. The Tribunal in the impugned order has held that though the posts of Assistant Commercial Tax Officers etc. are governed by rules made under proviso to Article 309 of the Constitution issued in G.O.Ms. No.107 dated January 30, 1962 and G.O.Ms. No. 81-Revenue, dated February 3, 1990, Rule 22 of the A.P. State and Subordinate Service Rules is not applicable to the recruitment by transfer and promotion. Consequently, the Government was not justified in applying the rule to the above services. The view taken by the Tribunal is not correct in view of special rules holding the field.

5. Rule 5 of the A.P. Commercial Tax Subordinate Service Rules (the special Rules) reads thus :

"Special Representation :- Except in so far as it relates to physically handicapped persons the rule of special representation (General Rule 22) shall apply separately to the appointment of Commercial Tax Officers by direct recruitment and to their appointment by transfer."

6. Rule 22 of the State and Subordinate Service Rules, which is the general rule, which alone is relevant for the purpose of this case reads thus:

"22. Special representation; All appointment to a service, class or category-

(i) by direct recruitment, except where the Government by a general or special order made in this behalf except such service, class or category;

(ii) otherwise than by direct recruitment, where the special rules lay down that the principle of reservation of appointments shall apply to such service, class or category; shall be made on the following basis;

"Provided further that the carry forward vacancies and current reserved vacancies in a recruitment year shall be available for utilisation even where the total number of such reserved vacancies exceeds (52%) of the vacancies filled that year in case the overall representation of the Scheduled Castes and Scheduled Tribes in the total strength of the concerned grade or cadre, has not reached the prescribed percentage of reservation of (15%) for the Scheduled Castes and (6%) for the Scheduled Tribes respectively."

7. Rule 5 of the Special Rules envisages applicability of Rule 22 of the State and Subordinate Service Rules (General Rules) for appointments to the above service. The relevant proviso to rule 22 extracted hereinbefore postulates that the carry forward vacancies and current reserved vacancies in a recruitment year shall be available for utilisation even where the total number of such reserved vacancies exceeds 52% of the vacancies filled that year in case the overall representation of the Scheduled Castes and Scheduled Tribes in the total strength of the concerned grade or cadre has not reached the prescribed percentage of reservation of 15% (subsequently increased to 16%) and for the Scheduled Tribes 6% (subsequently increased to 7%), as the case may be.

8. In *General Manager, Southern Railway v. Rangachari*, (1962)2 SCR 586 :(AIR 1962 SC 36), the Constitution Bench per Majority had held that the matters relating to employment cannot mean merely matters prior to the act of appointment nor can appointment to an office mean merely the initial appointment but must include all matters relating to employment whether prior or subsequent to the employment that are either incidental to such employment or form part of its terms and conditions and also include promotion to a selection post. This principle was reiterated by a bench of 7 Judges of this Court in *State of Kerala v. N. M. Thomas*, (1976)1 SCR 906 : (AIR 1976 SC 490). The same was followed per majority in *Akhil Bharatiya Soshit Karmachari Sangh (Railway) v. Union of India*, (1981)1 SCC 246 :(AIR 1981 SC 298). It was thus interpreted by this Court that appointment would include promotion.

9. The reservation for Scheduled castes and Scheduled Tribes in contradistinction to the rest of the Indian community and others are classified to accord fundamental right of equality of opportunity to the Scheduled Castes and Scheduled Tribes for the purpose of adequate representation in the services under the State. In *Indra Sawhney v. Union of India*, (1992) Supp (3) SCR 217 : (1992 AIR SCW 3682), a larger bench of nine Judges per majority, in which Justice A. M. Ahmadi, J.(as he then was) did not participate on the issue since it did not directly arise for decision therein, held that reservation of appointment or post under Art. 16(4) is confined to initial appointment only and cannot extend to provide reservation in matters of promotion. However, this Court upheld the promotions made until the date of the judgment, namely, November 16, 1992, and held that wherever special rules have not provided reservation in appointment by promotion, the same was permitted to be done within 5 years from that date. The Parliament amended Article 16 by 77th Constitution (Amendment Act) 1995 which came into force from June 17, 1995, incorporating clause 4A to Art. 16 which reads thus :

"Nothing in this Article shall prevent the State from making any provision for reservation in matters of promotion to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the States, are not adequately represented in the services under the State."

10. The Parliament by amending the Constitution and introducing Art. 16(4A) has removed the base

as interpreted by this Court in Indra Sawhney's case, (1992 AIR SCW 3682), that appointment does not include promotion by making express provisions that when the State forms an opinion that members of the Scheduled Castes or Scheduled Tribes are not adequately represented in any service or to any class or classes of base in the service under the State, the State is empowered to make provisions for reservation by promotion. Article 16(1) does not prevent the State from making such a provision. In Indra Sawhney's case also, this Court reiterated that right to equality under Article 16(1) is equally applicable to the Scheduled Castes and Scheduled Tribes and Article 16(4) is not an exception. Reservation is part of the scheme of equality under Article 16(1). Article 16(4A) would establish that the interpretation put up in Rangachari's Thomas (AIR 1962 SC 36) : (AIR 1976 SC 490) and Karamchari Sangh's, cases, (AIR 1981 SC 298), received parliamentary approval. It would thus be clear that as a principle of law, rule of reservation can apply not only to initial recruitment but also in promotions where the State is of the opinion that Scheduled Castes and Scheduled Tribes are not adequately represented in promotional posts in class or classes of service under the State. It is seen that Rule 22 of the general rules provides reservation for appointment by direct recruitment. By Constitutional parameters and interpretation of law by this Court, reservation under Articles 141B, 16(1) and 16(4) would include reservation in promotion as well.

11. In view of the above, the stand taken by the Tribunal that Rule 22 would apply only for direct recruitment and not for appointment by promotion is illegal.

12. The appeal is accordingly allowed, but in the circumstances, without costs.

Appeal allowed.