

State Bank of India Scheduled Caste / Tribe Employees Welfare Association

Vs

State Bank of India and Others

Writ Petn. (C) Nos. 13671-72 of 1984 with Civil Appeal Nos. 3937-39 of 1986

(CJI A.M. Ahmadi, Sujata V. Manohar, B.N. Kirpal JJ)

24.04.1996

JUDGEMENT

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Mrs. SUJATA V. MANOHAR, J. :-

1. Writ Petition Nos. 13671-72 of 1984 are filed by the State Bank of India Scheduled Caste/Tribe Employees' Welfare Association, Chandigarh challenging the reservation policy framed by the State Bank of India reserving certain posts for employees belonging to Scheduled Castes and Scheduled Tribes on promotion at the stage of from "Award Cadre" to the Junior Management Grade Cadre. The same policy was challenged before the Andhra Pradesh High Court by some of the employees of the State Bank of India working with the Hyderabad Circle in Writ Petition bearing Nos. 7237 / 82, 10149/84 and 1786/86 filed in the Andhra Pradesh High Court. Civil Appeal Nos. 3937-39 of 1986 are from the decision of the Andhra Pradesh High Court in these writ petitions.

2. Since all these matters raise certain common questions they have been heard together. Prior to 1974 there was no provision for reservation of vacancies for the Scheduled Castes and Scheduled Tribes in the matter of internal promotion in the State Bank of India. In 1974, it was decided to grant a concession to the Scheduled Caste and Scheduled Tribe employees in the matter of promotions. When such promotions were to be made on the basis of a selection procedure by way of written tests and interview, it was decided that a concession to the extent of 5% in qualifying marks in the written test and 10% in the interviews would be given to the Scheduled Caste and Scheduled Tribe employees. It was also decided that interviews of the Scheduled Caste and Scheduled Tribe employees would be taken in separate sittings in order to avoid a comparison of their standards with the standard of general candidates.

3. In January 1978 , the Government of India decided to extend the policy or reservations to Scheduled Caste and Scheduled Tribe employees in the Nationalised Bank in the matter of promotions. The Government of India advised each of the Nationalised Bank to formulate its own policy of such reservation on the basis of a scheme already formulated by the Reserve Bank of India for its own employees and on the basis of various guidelines issued by the Government in this regard in the past from time to time, with such modifications as each bank may consider necessary. Accordingly, the State Bank of India issued a Circular dated 3-4-1978 setting out its scheme of reservation in favour of its Scheduled Caste and Scheduled Tribe employees in the matter of promotion. The scheme was to be operated with effect from 1st of March, 1978. We are concerned with this scheme insofar as it deals with promotions made from the Award Cadre to the Supervising Cadres.

4. Under the scheme so framed, a reservation to the extent of 15% is made in favour of Scheduled Caste employees and 7 1/2 in favour of Scheduled Tribe employees (Paragraph 1.3). Paragraph 1.6 states that the number of reserved vacancies which cannot be filled should be carried forward from one year to the next year up to a period of three years. If at the end of the third year, such vacancies reserved for Scheduled Caste and Scheduled Tribe employees cannot be filled by suitable employees belonging to these categories, such reservations will be treated as having lapsed. Under Paragraph 2.3, if an adequate number of SC/ST employees with normal length of service are not available, service norms will be relaxed in the case of SC/ST employees by two years where such service norms for general candidates is eight years' or above. Where the norm is less than eight years' service of general candidates, the norm shall be relaxed by one year in the case of SC/ST employees. Under Paragraph 3.3 a common written test will be held for all the candidates including Scheduled Caste and Scheduled Tribe candidates. The SC/ST employees will be granted relaxation to the extent 5% of the required qualifying marks. Under Paragraph 3.4, interviews of SC/ST employees who qualify at the written test will be held in separate sittings in order to avoid comparison of their standard with the standard of general candidates. The SC/ST employees will be granted relaxation to the extent of 10% of the required qualifying marks in the interviews.

5. For the purpose of these promotions, the number of candidates who are required to be considered is in the ratio of 3:1 bearing in mind the number of vacancies. In order to decide the norm of number of years of service for being eligible for consideration, the number of candidates in the zone of consideration is first decided on the basis of anticipated vacancies multiplied by three. In the order of seniority, the requisite number of candidates in the zone of consideration are decided upon. The service put in by the last eligible candidates is the minimum service norm. On the basis of the this service norm, relaxation is given to SC/ST employees as per paragraph 2.3 of the scheme.

6. The reservation policy was applied by the State Bank of India from 1-3-1978. In the year 1978, in the Hyderabad Circle, the posts to be filled in the promotional cadre were 371, out of which 83 posts were reserved for SC/ST candidates. The minimum service requirement for eligibility in that year for general candidates was 7 years. The norm for SC/ST candidates was, therefore, 6 years. In that year no candidate belonging to the Scheduled Caste and Schedule Tribes was found available. In the year 1979, 547 posts became available out of which 123 posts were reserved for Scheduled Caste and Scheduled Tribe candidates. The minimum service fixed for general candidates in that year was 7 years and 8 months. The service norm for Scheduled Caste and Scheduled Tribe candidates was accordingly 6 years and 8 months. Yet only 20 employees belonging to Scheduled Castes and Scheduled Tribes could be promoted. Similarly problems continued up to the year 1982. The main reason for the difficulty in implementing the circular of 3-4-1978 appears to be non-availability of a sufficient number of Scheduled Caste and Scheduled Tribe candidates with the required years of service for promotion. This may be because reservation for Scheduled Caste and Scheduled Tribe candidates in recruitment were made in the State Bank of India only in the year 1974. Whatever may be the reason, by 1982-83, the State Bank of India took remedial measures to correct this non-selection of Scheduled Caste and Scheduled Tribe employees in the promotional posts.

7. State Bank of India, Central Office, issued a circular dated 28th of July, 1983 to its Chief General Managers in all parts of the country pointing out that there were backlogs in promotions with regard to Scheduled Caste and Scheduled Tribe employees. The Government of India had urged that efforts should be made to ensure that reservations of 15% and 7 1/2% for SC/ST employees were adhered to. However, the maximum reservation in any year should not exceed 50% of the vacancies/promotions. The circular urged that the backlog should be cleared expeditiously. It stated

"one possible reason for this shortfall in promotion is the high cut-off point (for service norm) arrived at by the circles even taking into account the relaxation involved at present." It had, therefore, been decided (a) (sic) to relax the service limit in the case of SC/ST candidates to the extent that enough candidates were available to satisfy the ratio of 1:3 . However, if it became absolutely essential to reduce the service criterion below 5 years, the matter should be referred to the Central Officer with full particulars. The circular also stated that where considered necessary, exclusive tests for SC/ST candidates should be conducted to clear the backlog of promotions in this category.

8. In February 1984, it was decided to hold a special test exclusively for Scheduled Caste and Scheduled Tribe employees for promotion to the Junior Management Grade Cadre by relaxing the service norms. In view of the special test being proposed for Scheduled Caste and Scheduled Tribe employees, it was also announced that in the general test which was proposed to be held immediately afterwards, only the candidates belonging to the general category would be eligible to participate. This led to the boycott of the special test by most of the Scheduled Caste and Scheduled Tribe employees.

9. The employees of the Hyderabad Circle filed three writ petitions in the Andhra Pradesh High Court. These challenged the service norms fixed for Scheduled Caste and Scheduled Tribe employees as too high, resulting in frustration of the reservation policy. They also challenged the circular of 28th of July, 1983 insofar as it provided that only 50% of the vacancies could be made available in any given year for being filled by Scheduled Caste and Scheduled Tribe employees. The petitions also prayed for retrospective relaxation of service norms from 1978 onwards in order that all lapsed vacancies could be retrospectively filled. The same contentions have been raised in the writ petitions, filed by the Chandigarh Circle SC/ST Employees' Welfare Association. The Andhra Pradesh High Court upheld the provision in the Circular of 28-7-1983 which provided that a maximum of 50% of vacancies in any year should be made available for being filled by Scheduled Caste/Scheduled Tribe employees, to reduce the backlog of reserved vacancies. The High Court further held that the service norms for Scheduled Caste and Scheduled Tribe employees should be reduced to five years so that sufficient number of candidates would be available in the zone of consideration for filling up the reserved vacancies. The High Court correspondingly fixed the service norms for general candidates at six years. The State Bank of India has come in appeal before us under a certificate of fitness granted by the High Court.

10. During the pendency of these matters, under an interim order of this Court dated 22-11-1985, it was directed that no posts meant for Scheduled Caste and Scheduled Tribe categories should be allowed to lapse. As a result, all vacancies which are reserved for Scheduled Caste and Scheduled Tribe candidate are now being duly filled in. In fact, at one stage it seems to have been the grievances of the Scheduled Caste and Scheduled Tribe employees that by reduction of service norms (as per the High Court's order) now far too many Scheduled Caste and Scheduled Tribe employees are within the zone of consideration for promotions. Directions were sought from the Andhra Pradesh High Court to keep the ratio of eligible Scheduled Caste and Scheduled Tribe candidates at 3:1 depending upon the number of vacancies and fix service norms accordingly. This seems to indicate that the anomalies in working out the reduced norms for selection of Scheduled Caste and Scheduled Tribe employees in the matter of promotion to JMC cadre have been ironed out.

11. Ms. Jaising, learned counsel for the employees contends that from 1978 onwards and until a further relaxation of service norms was provided for under the circular of 28-7-1983, various

unfilled vacancies reserved for Scheduled Caste/Scheduled Tribe employees lapsed after the expiry of three years. She contends that these vacancies should not be allowed to lapse. These lapsed vacancies should be filled in retrospectively on the basis of subsequent relaxation granted by the circular of 28-7-1983. It is also contended on behalf of the employees that the direction in the circular, that in any given year, not more than 50% of the vacancies should be available for being filled in by Scheduled Caste/Scheduled Tribe candidates, is violative of Article 16. Both these contentions, namely, about the carrying forward of reserved vacancies for a period of three years at the end of which they lapse, and the provision that in any given year not more than 50% of the available vacancies should be reserved, have been negated by this Court in the case of *Akhil Bharatiya Soshit Karmachari Sangh (Railway) Represented by its Assistant General Secretary on behalf of the Association v. Union of India*, (1981) 2 SCR 185 : (AIR 1981 SC 298). In that case a similar provision for carrying forward of reserved vacancies for Scheduled Caste and Scheduled Tribes for a period of three years was upheld by this Court. This Court also upheld the instructions issued by the Railway Board in that case to the effect that in any given year not more than 50% of the promotional posts should be made available to the reserved category of Scheduled Caste and Scheduled Tribe candidates; holding that the carry-forward rule should not result in any given year in the selection or appointment of Scheduled Caste and Scheduled Tribe candidates in excess of 50% (p. 242). In the light of this judgment, the scheme formulated by the State Bank of India under the two circulars of 3rd of April, 1978 and 28th of July, 1983, thus cannot be faulted.

12. It is contended on behalf of the employees that in the light of the subsequent relaxation in service norms granted by the circular of 28-7-1983, which was in excess of the relaxation originally granted under the circular of 3-4-1978, the lapsed vacancies should be retrospectively filled. We find it difficult to accept this contention. In the first place any relaxation granted in favour of Scheduled Caste and Scheduled Tribe employees in respect of service norms is a matter of policy. Undoubtedly, Article 16 (4) enables the Government to make reservations for Scheduled Castes and Scheduled Tribes either at the initial stage of recruitment or at the stage of promotion. This Court in the case of *C. A. Rajendran v. Union of India*, (1968) 1 SCR 721 : (AIR 1968 SC 507), has stated that Article 16 (4) does not confer any right on the petitioner and there is no constitutional duty imposed on the Government to make such a reservation. Article 16 (4) is an enabling provision and confers a discretionary power on the State to make reservation either at the stage of the initial recruitment or at the stage of promotion in favour of a backward class of citizens which in its opinion, is not adequately represented in the service of the State. The same view has been reiterated by this Court in the case of *P & T Scheduled Caste/Tribe Employees' Welfare Association (Regd.) v. Union of India*, (1988) 4 SCC 147 : (AIR 1989 SC 139).

13. In the present case, such reservation has been made by the State Bank of India at the promotional stage in the manner which is set out in the two circulars. These circulars have been applied at the relevant times. The circular of 28-7-1983 gave a further relaxation in service norms exceeding the relaxation prescribed in the first circular of 3-4-1978. As a result, service norms for the reserved category could be relaxed to 5 years of service. The circular also gave the power to relax the service norms even further, but with the sanction of the Central Office of the State Bank of India. This is not a relaxation which can be applied retrospectively. It becomes available from the date when it is granted and is not a matter of right. It would, therefore, be very difficult to relate back the relief on the basis of the second circular of 28-7-1983 to the years 1978 to 1983. The reserved vacancies in the promotional posts during this period, if not filled, lapsed after three years as per the scheme framed under the earlier circular of 3-4-1978. We do not see how these lapsed vacancies can now be revived. Our attention in this connection has been drawn to a recent decision of this Court in the case of *National Federation of S. B. I. v. Union of India*, (1995) 3 SCC 532 :

(1995 AIR SCW 2162). In that case, one of the prayers was for a direction to fill up the backlog of unfilled vacancies since 1978 by applying the carrying forward rule in all grades and scales with consequential benefits. This Court said that in the absence of a rule providing for retrospective grant of concession such a relief could not be granted. This judgment which is of a Bench of three Judges of this Court has been different from the decision of a Bench of two Judges of this Court in Syndicate Bank Scheduled Castes and Scheduled Tribes Employees Association (Regd.) v. Union of India, The judgment in the Syndicate Bank's case (supra) has been relied upon by learned counsel for the employees in support of her contention that retrospective relief should be granted in the present case. In view of the observations in the later judgment of a larger Bench of this Court in the case of National Federation of S. B. I. (supra), we prefer to follow the ratio laid down in the case of the National Federation of S. B. I. v. Union of India (1995 AIR SCW 2162) (supra). In the present case, in view of the interim orders of this Court referred to earlier, as also in view of the further relaxation in service norms which was granted by the circular of 28-7-1983, most of the grievances of the employees relating to the filling up of posts reserved for SC/ST employees have now been met. Even earlier, the State Bank of India, on realising the difficulties in implementing the norms laid down by it in the circular dated 3-4-1978, had given directions for holding of special tests only for Scheduled Caste and Scheduled Tribe employees to fill up the backlog after further relaxing service norms to five years' service or even less with the sanction of the Central Office, so that the ratio of three candidates for every vacancy became available in respect of reserved vacancies also. This opportunity, however, was not availed of by the Scheduled Caste and Scheduled Tribe employees for reasons which we need not go into. Subsequently, in the general tests also, they have been allowed to compete. They have been considered for promotion to the reserved vacancies on the basis of relaxed service norms as set out in the subsequently circular of 28-7-1983. From the applications which have been made to the Andhra Pradesh High Court for interim orders during the pendency of these matters before us, it clear that adequate number of SC/ST candidates are now available for filling promotional vacancies under the further relaxed service norms set out in the circular of 28-7-1983. In view thereof, the directions given by the Andhra Pradesh High Court to the effect that for filling up of reserved vacancies the service norms for Scheduled Caste and Scheduled Tribe candidates should be five years' service and for general category candidates, six years' service appears to have become unnecessary. The circular of 28-7-1983 clearly provides that service norms set out in the circular of 3-4-1978 can be further relaxed to the extent required up to five years so as to obtain three candidates for every reserved vacancy. Even a further relaxation is permissible with the approval of the Central Officer. The provision for relaxation under circular of 28-7-1983 thus adequately safeguards the interests of Scheduled Caste and Scheduled Tribe employees and provides a fair opportunity to them for filling up reserved vacancies as they arise. The further direction, therefore, given by the Andhra Pradesh High Court can now be ignored.

14. In the premises, the writ petitions are dismissed. The appeals from the judgment of the Andhra Pradesh High Court are also dismissed with the above observations. In the circumstances, however, there will be no order as to costs. Order accordingly.