

Swati and Others

Vs

Damodar Anant Karandikar and Others

Civil Appeal No. 1794 of 1989

(CJI A. M. Ahmadi, B. L. Hansaria JJ)

08.05.1996

JUDGEMENT

HANSARIA, J.: -

1. The short point which we are called upon to decide in this appeal is relatable to the percentage of reservation for the members of Scheduled Castes/Scheduled Tribes in the promotional posts of Bombay Port Trust. Though the point is short, it is undoubtedly important.

2. There is no dispute regarding the applicability of the policy of reservation even in promotional posts. This is so because of the view taken by the majority in the nine-Judge Bench decision of this Court in Indra Sawhney's case, commonly known as Mandal Commission's case. 1992 Supp (3) SCC 210(217) : (1992 AIR SCW 3682). The only question is regarding the extent of reservation; the period of reservation shall, of course, be as indicated by the majority in Mandal case.

3. The aforesaid question was agitated before the High Court of Judicature at Bombay, inter alia, by the Bombay Port Trust non-Scheduled Castes/Scheduled Tribes Employees Association. Its case was that the percentage of reservation in promotion was required to be as at the time of initial recruitment, for which purpose the population of the Scheduled Castes/Scheduled Tribes in the State of Maharashtra was required to be taken note of. To put it differently, it was contended that the percentage of reservation could not be as fixed by the Union of India which, at the relevant time, was 15% for the Scheduled Castes and 7 1/2 per cent, for Scheduled Tribes. As against this, the percentage of reservation as fixed by the State of Maharashtra then was 7% for Scheduled Castes and 9% for Scheduled Tribes. The Association also made a grievance about non-framing of any regulation qua Class I and Class II employees by the Port Trust of Bombay.

4. The High Court accepted the case of the Association and directed the Board of Trustees of the Port of Bombay to frame necessary regulation for Class I and Class II employees. It also took the view that as the Port of Trust had been following the reservation policy, along with the ratio as fixed by the State Government, at the time of initial appointment, it was not open to the Port Trust to depart from the same while considering the reservation ratio in the promotional posts. The Court further observed that by following All - India percentage, the Port Trust was definitely doing injustice to the Scheduled Tribes inasmuch as the reservation ratio for Scheduled Tribes as per All India policy was 7 1/2% while this percentage was 9 in the State of Maharashtra.

5. The appellants, who are members of the reserved categories, have challenged the legality of the

aforesaid view taken by the High Court in this appeal by special leave.

6. We may first advert to the statutory provisions holding the field. These are to be found in Sections 28 and 126 of the Major Port Trust Act, 1963, hereinafter the Act. Section 28 has conferred the power of making regulation on a Board, which, as defined in the act, means the Board of Trustees. Section 126 has conferred the power of making the first regulation on the Central Government, notwithstanding anything contained in the Act. In exercise of this power, the Central Government made the first regulation styled as the Bombay Port Trust Employees (Recruitment, Seniority and Promotion) Regulations, 1977 for short, the Regulations. Regulation 13 deals with the question of reservation and is in the following language.

"(a) Order issued by the Central Government from time to time for the reservation of appointments, whether by direct recruitment or promotion, to posts under the Central Government in favour of Scheduled Castes and Scheduled Tribes shall apply mutatis mutandis to all appointments covered by these regulations.

(b) \* \* \* \* \*

7. The aforesaid regulation has left nothing to doubt that the orders issued by the Central Government regarding the reservation to posts under it in favour of Scheduled Castes and Scheduled Tribes are to apply, with appropriate changes, to all appointments to be made by the Port Trust. The High Court, however, thought, and with respect wrongly, that the regulations apply to recruitment to Class III and IV Posts, because of which a direction was given to make regulations for Class I and Class II posts. This, however, is not so, as would appear from the sub-regulation of the Board styled as Memorandum explanatory of the Regulations, which is a part of the Volume containing the Regulations. Part 2 of this Memorandum has specifically stated that the regulations apply to all posts, except those covered by Section 24(1)(a) of the Act i.e., the posts of Heads of Departments and posts the maximum of the pay scale of which exceeds Rs.2,000.

8. The graver error committed by the High Court lies in holding that what applies qua initial appointment has to apply to promotion also. This view is not sustainable for the reason that insofar as direct recruitment in Class III and Class IV posts is concerned, the policy of the Central Government itself, of which mentioned has been made in Para 2.1 (ii) of Chapter 2 of the broucher on 'Reservation for Scheduled Castes and Scheduled Tribes in Services', is that the percentage shall be as shown in Appendix 3, which generally would be in proportion to the population of Scheduled Castes and the Scheduled Tribes in the respective States/Territories. But qua the posts to be filled by promotion, what has been stated in sub-para (iii) is that the percentage shall be 15 for Scheduled Castes and 7 1/2 for Scheduled Tribes. This clearly shows that what is required to be kept in mind at the time of initial recruitment is not required to be adopted for promotion. It would be apposite to mention that the percentage of reservation is varied by the Central Government itself depending upon the population figure of the listed categories, as would appear from the Office Memoranda of 12th March, 1973 and 24th May, 1985 issued by the Department of Personnel and Administrative Reforms, copis of which are at pages 19 to 21 of the Volume containing the documents filed on behalf of respondents Nos. 1 and 2.

9. As to the observation by the High Court regarding injustice to the Scheduled Tribes, may we state that acceptance of the percentage as required by the impugned judgment, would cause injustice to the members of the Scheduled Castes, because as against 15% reservation as per All India Policy, this percentage would be 7 to go by the State ratio. According to us, in a matter like one at hand, a

general view is required to be taken, and not what is due to Scheduled Tribes or to Scheduled Castes separately or segmentwise.

10. The High Court has given another reason to accept the State ratio - the same is non transferability of Class III and Class IV employees, because of which their's was taken as "a local cadre". This is not a relevant consideration while deciding about the contours of reservation policy. Further, it seems that even Class I and Class II employees of the Bombay Port Trust are not transferable.

11. We, therefore, hold that the impugned judgment suffers from legal infirmity inasmuch as it violates what has been provided in Regulation 13 of the Regulations and it has also misconceived the reservation policy of the Central Government. So, we set aside the judgment and require the Bombay Port of Trust to act, while filling up promotional posts, as per the percentage of reservation fixed by the Central Government for posts under it, which ratio, as already indicated, was 15% for Scheduled Castes and 7 1/2% for Scheduled Tribes at the relevant time.

12. On the facts and circumstances of the case, we leave the parties to bear their own costs throughout. Appeal allowed.