

SUPREME COURT OF INDIA

G.S.I.C. Karmachari Union

Vs.

Gujarat Small Industries Corpn.

Writ Petn.Civil No. 986 of 1989

(K. Ramaswamy, S. B. Majmudar and G. T. Nanavati JJ.)

12.12.1996

ORDER

1. This writ petition under Article 32 of the Constitution has been filed challenging the validity of the Resolution dated August 29, 1987 whereunder the respondent-Corporation had resolved to implement the roster system and promotion of Scheduled Castes and tribes employees as per the directives and Resolution of the Gujarat Government on January 31, 1976 to give effect to the policy or reservation in promotions in all Class-I, Class II and Class-III posts in grades or services in which the element of direct recruitment, if any, does not exceed 50%. The decision on the fitness or unfitness of an Officer would be taken by the Departmental Promotion Committee which would be constituted by the Departments. A 100 point roster as per percentages of reservation for Scheduled Castes and Scheduled Tribes, to determine the number of vacancies reserved in a year would be followed. According to the points in the roster, if there are any vacancies reserved for each of the two classes mentioned, separate lists would be drawn up of the eligible candidates for each of these categories and general candidates and arranged in order of their inter se seniority in the main list. The Scheduled Castes and Scheduled Tribes employees should be, adjudged by the Departmental Promotion Committee separately in regard to their fitness. In paragraph 4 of the Resolution, it was stated that these orders would take effect from January 1, 1976.

2. On April 30, 1984, the respondent-Board passed a Resolution that in Article 16(4) and Article 335 of the Constitution provision has been made for backward classes for appointment and, therefore, there should be no difficulty in providing reservation in appointment to posts to give the benefit to the backward classes; and that the percentage of reservation as is kept. In the Government service would be applicable to the Corporation. As per the orders of the Board for every type of recruitment at every stage or service or place, a separate roster register, as per the prescribed format is to be kept. The Board had given orders for filling up the posts as per the percentage for Scheduled Castes and Scheduled Tribes. But for introduction of roster system in the direct recruitment or promotion the Corporation had not yet issued any order. The Corporation, therefore, resolved to give effect to the objectives of the Government and authorised the Managing Director to follow the roster system scrupulously as per the directions of the Government in IMPD, vide letter dated September 29, 1983 for class-I to class-IV employees which are as under :

" 1) For SC/ST

i) For direct recruitment

Class I upto Sr. Executive's level and Class II, III and IV employees.

ii) For promotion

Class I upto Executive level and Class II, III and IV employees.

2) For Socially and Educationally Backward Class and Physically handicapped

i) For direct recruitment only

Class I, Class II, Class III and Class IV employees."

Subsequently, they passed the impugned Resolution giving effect to the policy of reservation and the roster system w.e .f. 1-1-1976. The question is : from what date the Corporation would give effect to the system.

3. It is true, as contended by Shri P. S. Poti, learned senior counsel for the State, that when the policy of the Government envisaged under Article 16(4) read with Articles 14 and 16(1) and 335 is given effect to the reservation in initial requirement and promotion can be made. But the question of retrospectivity of the policy does not arise; what is being done is to give effect to the constitutional policy of providing adequate representation to the members of Scheduled Castes and Scheduled Tribes in all classes of service or posts where they are not adequately represented. Therefore, the arbitrariness does not arise since it is part of the scheme of the Constitution. Unless adequate representation is given to the employees belonging to Scheduled Castes and Scheduled Tribes in promotions also, the adequacy of representation in all classes and grades of service, where there is no element of direct recruitment cannot be achieved. Obvious, therefore, Article 16(4-A) was brought on the Constitution by Constitution (77th Amendment) Act, after the majority Judgment of this Court by a Bench of 9 Judges in, *Indira Sawhney v. Union of India*, (1992) Supp (3) SCC 210 : (1992 AIR SCW 3682). The Preamble of the Constitution and Article 38 accord social and economic justice as fundamental rights to all people in all institution of national level. Article 46 enjoins the State to accord social and economic justice to the Scheduled Castes and Scheduled Tribes. Article 51A enjoins every citizen to improve excellence individually and collectively that the nation constantly rises to higher levels, socially, economically and culturally. Right to development assured by the Constitution is held to be a fundamental right. So the policy of reservation in the Preamble of the Constitution, the fundamental rights under Articles 14, 15(1), 15(4), 16(1), 16(4), 16(4A) 46 and 335 and the other related articles is to give effect to the above constitutional objectives.

4. On the facts, it is not necessary for us to go into the question of retrospectivity for the reason that after the aforesaid Resolution and similar other Resolutions by other institutions came to be passed, followed by agitation carried on by the anti-reservationists in the State, the Gujarat State Government had constituted an Expert Committee to go into the question which had made 11 recommendations for implementation. One of the recommendation made by the said committee was to give effect to the policy of reservation prospectively. The Government had accepted the recommendation and agreed thus :

"Orders for implementation of the recommendations of the Sadhwani Committee No.5, 6, 9, 10 and 11 will have prospective effect."

5. Item 11 relates to giving effect to the roster system prospectively. In that view of the matter the Government having conceded to the claims of anti-reservationists and passed the resolution to give effect to the policy of reservation in promotions, prospectively, the respondent-Corporation was justified in passing the Resolution for giving effect to the policy of reservation in all posts of classes I to IV from April 30, 1984. The subsequent impugned Resolution giving effect to the roster from January 1, 1976, therefore, would not be justified in the light of the Resolution passed by the Government on August 18, 1985 referred to earlier.

6. It is seen that pending writ petition some officers belonging to Scheduled Castes and Scheduled Tribes have come to be promoted. Since they are only marginal promotions, we do not like to interfere with the promotions already made. Subject to sustaining the promotions given to them there shall be a direction that the Corporation would keep operating the roster w.e.f. April 30, 1984 and onwards.

7. The writ petition is disposed of accordingly. No costs.

Order accordingly.