

State of Punjab and Others

Vs

G.S. Gill and Another

Civil Appeal No. 3005 of 1997

(K. Ramaswamy, G. B. Pattanaik JJ)

27.03.1997

ORDER

1. As per the Office Report dated 13-9-1996, notice sent to the first respondent was received back by the Registry with the postal endorsement "No such person" indicating avoidance thereof on his part. Consequently, he was set ex parte. The second respondent was directed to file counter-affidavit. Even today the first respondent is not appearing either in person or through counsel.
2. Leave granted. We have heard learned counsel for the appellant and the second respondent.
3. This appeal by special leave arises from the judgment passed by the High Court of Punjab and Haryana, Chandigarh on 22-11-1995 in LPA No. 351 of 1981.
4. The admitted facts are that the first respondent, a general candidate, was appointed as a Junior Technical Assistant in the Department of Industries of the State of Punjab. The post of Assistant Superintendent, Quality Marking Centre, (Textile), i.e., in the next promotional cadre, is the single post in that cadre. The said post was reserved for Scheduled Caste candidates as per the roster and in view of the judgment of this Court in Arati Ray Choudhury v. Union of India [(1974) 1 SCC 87 : 1974 SCC (L&S) 73]. Bhagat Ram, the second respondent who was a qualified candidate was considered and duly promoted to the said post. The first respondent, feeling aggrieved, filed writ petition in the High Court seeking relief in the form of a mandamus or direction to the Government to dereserve the carried-forward post and to consider his case for promotion as a general candidate. He contended that since it was the solitary post, reservation in favour of a Scheduled Caste would amount to 100% reservation violating Articles 16(1) and 14 of the Constitution. The learned Single Judge observed that he felt bound by the Division Bench judgment in Parminder Kaur (Dr.) v. State of Punjab [(1976) 1 SLR 502 (P&H)] wherein it was held that "a solitary vacancy in the relevant year cannot be treated as reserved one as that would amount to reservation of 100% in violation of Articles 14 and 16(1) of the Constitution". Thus though he was inclined to take the view that constitutionally it was permissible, in view of the Division Bench judgment in Dr. Parminder Kaur case [(1976) 1 SLR 502 (P&H)], he allowed the writ petition. On appeal, it was affirmed by the Division Bench. When the matter was carried to this Court, it set aside the order and remitted the matter to the High Court for reconsideration. The Division Bench by the impugned judgment held thus :

"Consequently, we are of the view that since it is a single post cadre, there could not be any reservation at all and the question of applicability of Parminder Kaur case [(1976) 1 SLR 502 (P&H)] also does not arise on the facts of the present case."

5. Thus this appeal by special leave.

6. The question for consideration, therefore, is whether the view taken by the High Court is correct in law. This Court in *Indra Sawhney v. Union of India* [1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385] has overruled the decision of the Constitution Bench in *T. Devadasan v. Union of India* [(1964) 4 SCR 680 : AIR 1964 SC 179 : (1965) 2 LLJ 560] declaring the carry-forward rule as unconstitutional. In paragraph 817 at page 739, it was held thus :

"We are of the respectful opinion that on its own reasoning, the decision insofar as it strikes down the rule is not sustainable. The most that could have been done in that case was to quash the appointments in excess of 50%, inasmuch as, as a matter of fact, more than 50% of the vacancies for the year 1960 came to be reserved by virtue of the said rule."

In paragraph 818, it was held thus :

"We may reiterate that a carry-forward rule need not necessarily be in the same terms as the one found in *Devadasan* [(1964) 4 SCR 680 : AIR 1964 SC 179 : (1965) 2 LLJ 560]. A given rule may say that the unfilled reserved vacancies shall not be filled by unreserved category candidates but shall be carried forward as such for a period of three years. In such a case, a contention may be raised that reserved posts remain a separate category altogether. In our opinion, however, the result of application of carry-forward rule, in whatever manner it is operated, should not result in breach of 50% rule."

7. Thus it could be seen that the carry-forward rule is constitutionally permissible. It is an extension of the principle of providing facility and opportunity to secure adequacy of the representation to Dalits and Tribes mandated by Article 335. It should be carried for three years. Even in the post when the vacancy as per roster was available, but candidates were not available, same could be carried forward for three years. However, in each recruitment year, the carry-forward rule cannot exceed 50% of the vacancies. That question does not arise in a situation where there is single post/cadre. In *S.S. Sharma v. Union of India* [(1981) 1 SCC 397 : 1981 SCC (L&S) 184 : AIR 1981 SC 588] in paragraph 8 at page 592, this Court had held that the limited departmental competitive examination for recruitment of the members of the Scheduled Castes and Scheduled Tribes for determination of eligibility for promotion is not invalid nor the Central Government be directed to de-reserve the vacancies meant for such members when it was found that suitable Scheduled Caste and Scheduled Tribe candidates were not available for inclusion within the field of selection. Whether or not reserved vacancies should be de-reserved is a matter falling primarily within the administrative discretion of the Government. There is no right in general candidates to seek filling up of the vacancies belonging to the reserved category and to insist on de-reservation of reserved vacancies so long as it is possible in law to fill the reserved vacancies. In other words, carried-forward (unfilled) vacancies reserved for Dalits and Tribes should be filled up only by the reserved candidates and general candidates have no right to seek direction for de-reservation thereof for filling up of the same by general candidates. It would thus be clear that carry-forward rule is a permissible constitutional rule. Carry forward would be done for three years. In this case, the Government issued orders to carry forward for "two years". Therefore, the direction or mandamus to de-reserve the solitary post was clearly unconstitutional. This Court in *U.P. Sales Tax Service Assn. v. Taxation Bar Assn.* [(1995) 5 SCC 716] had held that no mandamus could be issued to disobey the law or prohibit the authorities from discharging the functions. It would, therefore, be

manifestly illegal to seek a mandamus or direction; nor would the Court be justified to issue such mandamus or direction to the appropriate Government to de-reserve vacancy. It is common knowledge that selections are not objectively being made to select the candidates belonging to the Dalits and Tribes to fill up the vacancies reserved for them though qualified candidates are available to be promoted/appointed, with a view to see that reserved vacancies are not filled up and the same are passed off as eligible candidates being not available so as to ensure that carry-forward vacancies either exceed 50% of the accumulated total vacancies or that selection goes beyond three years so as to make the Government de-reserve the vacancies.

8. This Court in *Scheduled Castes and Scheduled Tribes Officers' Welfare Council v. State of U.P.* [(1997) 1 SCC 701 : 1997 SCC (L&S) 194] has considered the mandate of Article 261 of the Constitution which accords full faith and credit to the acts done by the executive and connects the Union and the States to further the goals set down in the Constitution. In para 12 this Court has pointed out in that behalf. It was held that administrator is primarily a citizen and the State wants him to always remember that his vision should be of national interest and to act in concert with the Government. It will do him good to know what that means. Nobody is born an administrator but nobody is always a good administrator. The primary responsibility of an administrator is to perform his functions in the service of the nation as an enlightened citizen to strengthen a new democratic State. A dynamic bureaucracy is one which discharges the functions to enrich the integration of the social structure by wise decisions. The State in a democratic society derives its strength from the cooperative and dispassionate will of all as its free and equal citizens. The public administration is responsible for the effective implication of the rule of law and constitutional commands which effectuate fairly the objective standard set for adjudging good administrative decisions. The public administrator should rid off all mental observations on narrow considerations of caste, religion - sectional or regional. He should have wider concern for society as a whole. Otherwise he is not worthy to be an administrator or enlightened citizen to work for others; and consequently "there is every chance of this enlightenment getting eroded and self-interest ruling supreme. And once this erosion takes place, they slide slowly down and join the third group (demons manavarakshasas) among whom are found all those who indulge in all sorts of social malpractices, like bribery, corruption, tax evasion, smuggling, food and drug adulteration ... and fourth category become sheer vandals". "God dwells in all - this great truth had never been translated into the wide social and economic fields or transformed into a social fact of human awareness affecting millions." "This should be made a reality in modern democracy, political, economic and social" quoted from "Eternal Values for a Changing Society" by Swamy Ranganathananda. In public administration, responsibility is of highly personal and moral quality and is not necessarily related to formal status or power, although it is probably true that greater power brings greater responsibility. The departmental head is responsible for the actions of his subordinates, although in actual fact, he is not responsible for their use of power which, he must, of necessity, delegate to them. Legitimacy is primarily a feature of the constitutional system. They possess this quality by virtue of general public support for their authority and may have it in greater or lesser degree. The bureaucracy shares the collective responsibility with political executive to effectuate the constitutional philosophy and public justice. The administrative responsibility lies in giving shape and content not only to the policies laid down in the Constitution and by the political executive but also applies them in a given set of facts. There, on the facts, it was found that the bureaucracy had by mala fide actions issued successive orders to deprive certain Dalit and Tribal doctors of their chances of promotion by colourable exercise of power depriving them of their right to promotion. Soon after the selection, they were withdrawn. Further orders were issued in favour of the general candidates with most favourable conditions. Thereby, the bureaucracy forfeited the full faith and credit which Article 261

trusted them with. Therefore, this Court set aside the action and directed reconsideration of their cases.

9. In *Superintending Engineer Public Health, U.T. Chandigarh v. Kuldeep Singh* [(1997) 9 SCC 199 : 1997 SCC (L&S) 1044 : (1997) 2 Scale 138], though reserved candidate was available, the post was dereserved and he was not selected. When he filed a petition in the Administrative Tribunal it was allowed and direction was given to consider his case in accordance with the rules. When the appeal was filed in this Court, it was held that the authorities have power coupled with duty.

"Every public servant is a trustee of the society and in all facets of public administration, every public servant has to exhibit honesty, integrity, sincerity and faithfulness in implementation of the political, social, economic and constitutional policies to integrate the nation, to achieve excellence and efficiency in the public administration. A public servant entrusted with duty and power to implement constitutional policy under Articles 16(4), 16(4-A), 15(4) and 335 and all interrelated directive principles should exhibit transparency in implementation and should be accountable for due effectuation of constitutional goals."

It was directed that the reservation and carry-forward rule should be implemented in true spirit. It is settled legal principle that when bureaucracy has power coupled with a duty to implement the law and constitutional goal. State should be envisaged as a canal through which the fruits of constitutional principles, philosophy and the backed-up law may flow, releasing its energy for the benefit of the people rather than as a dam to hold it back or cause breach thereof to frustrate the goals. After all, the basic task any philosophy of government is to figure out is what the State must do, not what it would be prohibited from doing. Nor is it to be forgotten that while tyrannical governments destroy the freedom, constitutional government would enlarge the freedom.

10. Many of the functions which the modern State undertakes are designed to make opportunities more nearly equal for everybody and to protect weaker individuals from the rapacity of the strong. In these days of fallen rectitude and honesty in the performance of public duty and the bureaucracy is too willing to sabotage public policy and constitutional philosophy. Judiciary/Tribunals should be astute in the declaration of law or in its solemn judicial review or dispensation of justice to issue directions or mandamus against the law, constitutional comments or public policy. In *Flag Officer Commanding-in-Chief v. M.A. Rajani* [(1997) 4 SCC 276 : JT (1997) 4 SC 212] this Court held that since the reservation was called for selection in a reserved vacancy and since the candidate was available, resort to de-reservation of the vacancy thereafter was clearly illegal. It would, therefore, be clear that the authorities are to implement the rule, executive/legislative/constitutional policy or principle in true spirit, honesty and sincerity to effectuate the policy; no mandamus or direction should be issued to de-reserve the carry-forward vacancies reserved for appointment of the Scheduled Castes and Tribes nor direction be given to fill up with general candidates.

11. The next question for consideration is whether reservation in promotion to a single post is unconstitutional being violative of Articles 16(1) and 14 of the Constitution. In *Arati Ray Choudhury case* [(1974) 1 SCC 87 : 1974 SCC (L&S) 73] a Constitution Bench had held that reservation in promotion to a single post is not unconstitutional. This Court had re-surveyed the case-law in *Union of India v. Madhav* [(1997) 2 SCC 332 : 1997 SCC (L&S) 503 : JT (1997) 9 SC 320]. In paragraph 10 at page 338, it has been held that :

"... we hold that even though there is a single post, if the Government have applied

the rule of rotation and the roster point to the vacancies that had arisen in the single point post and were sought to be filled up by the candidates belonging to the reserved categories at the point on which they are eligible to be considered, such a rule is not violative of Article 16(1) of the Constitution."

Same view has been reiterated in several subsequent judgments. In *Chakradhar Paswan (Dr.) v. State of Bihar* [(1988) 2 SCC 214 : 1988 SCC (L&S) 516 : (1988) 7 ATC 104] the ratio clearly is an authority for the proposition that two unequal posts carrying different scales of pay cannot be fused together for the purpose of applying the rule of reservation in promotion. That case stands on entirely a different footing but the ratio therein was misapplied to a case of reservation to a single post without following the Constitution Bench judgment in *Arati Ray Choudhury case* [(1974) 1 SCC 87 : 1974 SCC (L&S) 73]. That position was clarified in *Madhav case* [(1997) 2 SCC 332 : 1997 SCC (L&S) 503 : JT (1997) 9 SC 320]. Thus it is settled legal position that application of roster to single post cadre and appointment by promotion to carry-forward post is valid and constitutional. With a view to give adequate representation in public service to reserved category candidates, the opportunity given to them is not violative of Articles 14 and 16(1) of the Constitution. In *R.K. Sabharwal v. State of Punjab* [(1995) 2 SCC 745 : 1995 SCC (L&S) 548 : (1995) 29 ATC 481] it was held that promotions in accordance with roster are valid and constitutional. Even in *Indra Sawhney case* [1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385] this Court had reiterated the view that reservation for the Dalits and Tribes is as a class but not as individuals and, therefore, such a reservation is not violative of Article 14 or 16(1) of the Constitution. In *Ahmedabad St. Xavier's College Society v. State of Gujarat* [(1974) 1 SCC 717 : (1975) 1 SCR 173] a nine-Judge Bench had held that the fundamental rights should be broadly interpreted to enable the citizen to enjoy them. Same view was reiterated in *Pradeep Jain (Dr.) v. Union of India* [(1984) 3 SCC 654]; *Marri Chandra Shekhar Rao v. Dean, Seth G.S. Medical College* [(1990) 3 SCC 130 : (1990) 14 ATC 671] and *Ashok Kumar Gupta v. State of U.P.* [(1997) 5 SCC 201 : (1997) 3 Scale 289]. In *Union of India v. Brij Lal Thakur* [(1997) 4 SCC 278 : JT (1997) 4 SC 212] this Court following *Madhav case* [(1997) 2 SCC 332 : 1997 SCC (L&S) 503 : JT (1997) 9 SC 320] has held that reservation provided to single post on the basis of rule of rotation is not unconstitutional. The High Court, therefore, is clearly in error in holding that reservation in promotion to a single post and application of carry-forward rule and of roster is unconstitutional.

12. The appeal is accordingly allowed. The judgment of the Division Bench and of the learned Single Judge stand set aside. No costs.