

SUPREME COURT OF INDIA

B.S. Gaur

Vs.

Union of India (Uoi)

C.A. No. 4681 of 1996

(V.N. Khare and D Raju JJ.)

28.03.2000

ORDER

1. The appellant has laid claim for promotion on the basis that he is a member of the Scheduled Caste. During the pendency of the matter, the Scheduled Caste certificate issued in favour of the appellant, was revoked by the competent authority on the ground that the appellant was not a member of the Scheduled Caste. It is alleged that the appellant has challenged the aforesaid order by filing a writ petition under Article 226 of the Constitution in the High Court of Judicature at Bombay and has also obtained a stay order. Therefore, the appellant's case may be heard on merits.

2. After we heard the matter, we are of the view that once the certificate is sued in favour of the appellant has been revoked, the status of the appellant of being a Scheduled Caste has come under cloud. Merely because the appellant has obtained a stay order does not conclude the dispute. We are, therefore, not inclined to go into this appeal. However, it will be open to the appellant, if he ultimately succeeds in the writ petition, to take such remedy as may be available to him under law.

3. The appeal is dismissed. There shall be no order as to costs.

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4. There is a cadre consisting of posts of Senior Technical Assistant (Publication). It is alleged that the strength of the said cadre is of three posts. The said posts are filled in by 100% promotion through Departmental Promotion Committee from the cadre of Junior Technical Assistants (Publication) with five years service in that cadre. In the year 1993, one of the posts of Senior Technical Assistant (Publication) fell vacant. Respondent No. 1 treating the said post to be reserved for Scheduled Caste candidate on the ground that it was a carried forward vacancy, appointed the appellant herein to the said post. Aggrieved, Mrs. Indira Shridhar Nair, who happens to be senior to the appellant filed petition before the Central Administrative Tribunal challenging the promotion of the appellant. It was brought to the notice of the Tribunal that one post of the three posts is occupied by a general candidate and second by a Scheduled Caste candidate and, therefore, the third post could not be reserved for the member of the Scheduled Caste. Presumably on that basis of the said contention the promotion of the appellant to the post of Senior Technical Assistant (Publication) was set aside. Against the said judgment, the appellant is in appeal.

5. There is no dispute that there are only three posts and one of the three posts is occupied by the general candidate and second by a member of the Scheduled Castes and, therefore, the third post could not be allowed to go to the reserved candidate.

6. It is on this short ground the appeal fails and is accordingly dismissed. There shall be no order as to costs.