SUPREME COURT OF INDIA

Vijay Lakshmi

Vs.

Punjab University

C.A.No.13393 of 1996

(M. B. Shah and Dr. A. R. Lakshmanan, JJ.)

23.09.2003

JUDGEMENT

SHAH, J.:-

1. Preference given to a woman for being appointed as a Principal of the Government College for Girls is held to be violative of Arts. 14, 15 and 16 of the Constitution of India.- On the face of it, it appears that such reservation in favour of a woman for being appointed as Principal of exclusive Girls College cannot be held to be violative of right to equality.

2. However, this question is required to be decided in view of the judgment rendered by the High Court of Punjab and Haryana in Writ Petition No. 11694 of 1994 holding that Rules providing reservation/preference in favour of a woman is violative of Arts. 15 and 16 of the Constitution. That judgment is challenged by filing this appeal. reported in AIR 1997 Punj and Har 87

3. For this purpose, the High Court interpreted Rules 5, 8 and 10 of the Punjab University Calendar Volume III, which are as under :-

"Rule 5. The Principal of a women's college shall be lady who shall possess at least Master's Degree in 1st or 2nd Class or an equivalent degree with experience of teaching in a college. This rule shall not apply to Women's Colleges whose men or women Principals have already been approved. Provided that on their retirement, a qualified lady Principal shall be appointed.

Rule 8. As far as possible, ladies shall be appointed as teachers. In case a qualified lady teacher in a particular subject is not available, the college authorities may appoint a man teacher with the prior approval of the Vice-Chancellor. A man teacher so appointed shall not be confirmed by the management in his post and he shall be replaced as soon as a suitable qualified lady teacher is available.

Rule 10. The College shall have a hostel in or near the premises of the college. It shall be under the charge of a whole time Woman Superintendent. There shall be a part time or whole time woman Medical Officer."

4. For deciding the issue, we would refer to established propositions of law interpreting Arts. 14 to 16, which are :-

Article 14 does not bar rational classification;

Reasonable discrimination between female and male for an object sought to be achieved is permissible;

Question of unequal treatment does not arise if there are different sets of circumstances;

Equality of opportunity for unequals can only mean aggravation of inequality;

Equality of opportunity admits discrimination, with reasons and prohibits discrimination without reason.- Discrimination with reasons means rational classification for differential treatment having nexus with constitutionally permissible objects.- It is now an accepted jurisprudence and practice

that the concept of equality before the law and the prohibition of certain kinds of discrimination do not require identical treatment. The equality means the relative equality, namely the principle to treat equally what are equal and unequally what are unequal. To treat unequals differently according to their inequality is not only permitted but required (Re : St. Stephen's College v. University of Delhi (1992) 1 SCC 559). AIR 1992 SC 1630 : 1992 AIR SCW 1792

l Sex is a sound basis for classification;

l Article 15(3) categorically empowers the State to make special provision for women and children;

l Articles 14, 15 and 16 are to be read conjointly.

5. In the light of the aforesaid principles, on the concept of equality enshrined in the Constitution, it can be stated that there could be classification between male and female for certain posts. Such classification cannot be said to be arbitrary or unjustified. If separate colleges or schools for girls are justifiable, rules providing appointment of lady principal or teacher would also be justified. The object sought to be achieved is a precautionary, preventive and protective measure based on public morals and particularly in view of the young age of the girl students to be taught. One may believe in absolute freedom, one may not believe in such freedom but in such case when a policy decision is taken by the State and rules are framed accordingly, it cannot be termed to be arbitrary or unjustified. Hence, it would be difficult to hold that rules empowering the authority to appoint only a lady Principal or a lady teacher or a lady doctor or a woman Superintendent are violative of Art. 14 or 16 of the Constitution.

6. Secondly, such reservation by the State is permissible in exercise of powers conferred under Art. 15(3), which provides thus :-

"15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.- (3) Nothing in this article shall prevent the State from making any special provision for women and children."

POLICY DECISION OF RESERVATION FOR FEMALES AND RIGHT TO EQUALITY:

7. In the judgment per majority, the High Court after considering the duties which are required to be

performed by the Principal of School observed thus :-

"Keeping in view the nature of the duties which are required to be performed by the Principal in relation to the girl students it cannot be deduced that such students could be subjected to any sort of exploitation. For dealing with the students, the Head of the Department has equal and similar powers as are conferred upon the Principal, which if misused may result in disastrous consequences."

8. It is difficult to agree to the aforesaid reasoning because as stated above, it is not for the Court to sit in appeal against the policy decision taken by the State Government. It is for the State to decide whether such rule is a preventive or precautionary measure so that young fallible students may not be subjected to any sort of exploitation.

a) For the policy decision of classification, we would straightway refer to the decision rendered by this Court in State of Jammu and Kashmir v. Triloki Nath Khosa ((1974) 1 SCC 19) wherein the Court (Chandrachud, J. (as he then was)) (in para 20) succinctly held thus :- AIR 1974 SC 1 : 1974 Lab IC 1

". . . . . .The challenge, at best, reflects the respondent's opinion on promotional opportunities in public services and one may assume that if the roles were reversed, respondents would be interested in implementing their point of view. But we cannot sit in appeal over the legislative judgment with a view to finding out whether on a comparative evaluation of rival theories touching the question of promotion, the theory advocated by the respondents is not to be preferred. Classification is primarily for the legislature or for the statutory authority charged with the duty of framing the terms and conditions of service; and if, looked at from the standpoint of the authority making it, the classification is found to rest on a reasonable basis, it has to be upheld."

9. It was also observed that discrimination is the essence of classification and does violence to the constitutional guarantee of equality only if it rests on an unreasonable basis and it was for the respondents to establish that classification was unreasonable and bears no rational nexus with its purported object. Further, dealing with the right to equality, the Court (in paras 29 and 30) held thus :-

"But the concept of equality has an inherent limitation arising from the very nature of the constitutional guarantee. Equality is for equals. That is to say that those who are similarly circumstanced are entitled to an equal treatment.

Since the constitutional code of equality and equal opportunity is a charter for equals, equality of opportunity in matters of promotion means an equal promotional opportunity for persons who fall, substantially, within the same class."

b) Now, we would next refer to the decision in Air India v. Nergesh Meerza and others ((1981) 4 SCC 335), which propounds the right of equality under Art. 14 after considering various decisions. In that case, constitutional validity of Regulation 46(i)(c) of Air India Employees' Service Regulations was challenged, which provides for retiring age of an Air-Hostess. The Court (in paragraph 39) summarized thus :- AIR 1981 SC 1829 : 1981 Lab IC 1313

"Thus, from a detailed analysis and close examination of the cases of this Court starting from 1952 till today, the following propositions emerge :

(1) In considering the fundamental right of equality of opportunity a technical, pedantic or doctrinaire approach should not be made and the doctrine should not be invoked even if different scales of pay, service terms, leave, etc., are introduced in different or dissimilar posts.

Thus, where the class or categories of service are essentially different in purport and spirit, Art. 14 cannot be attracted.

(2) Article 14 forbids, hostile discrimination but not reasonable classification. Thus, where persons belonging to a particular class in view of their special attributes, qualities, mode of recruitment and the like, are differently treated in public interest to advance and boost members belonging to backward classes, such a classification would not amount to discrimination having a close nexus with the objects sought to be achieved so that in such cases Art. 14 will be completely out of the way.

(3) Article 14 certainly applies where equals are treated differently without any reasonable basis.

(4) Where equals and unequals are treated differently, Art. 14 would have no application.

(5) Even if there be one class of service having several categories with different attributes and incidents, such a category becomes a separate class by itself and no difference or discrimination between such category and the general members of the other class would amount to any

discrimination or to denial of equality of opportunity.

(6) In order to judge whether a separate category has been carved out of a class of service, the following circumstances have generally to be examined :

(a) the nature, the mode and the manner of recruitment of a particular category from the very start,

(b) the classifications of the particular category,

(c) the terms and conditions of service of the members of the category,

(d) the nature and character of the posts and promotional avenues,

(e) the special attributes that the particular category possess which are not to be found in other classes, and the like."

10. Apart from various other decisions, the Court referred to Western U. P. Electric Power and Supply Co. Ltd. v. State of U. P. ((1969) 1 SCC 817) wherein this Court held thus :- AIR 1970 SC 21 (para 7)

"Article 14 of the Constitution ensures equality among equals : its aim is to protect persons similarly placed against discrimination treatment. It does not however operate against rational classification. A person setting up a grievance of denial of equal treatment by law must establish that between persons similarly circumstanced, some were treated to their prejudice and the differential treatment had no reasonable relation to the object sought to be achieved by the law."

DECISIONS DEALING WITH SIMILAR SPECIAL PROVISIONS FOR WOMEN.

a) Under S. 497 of the Indian Penal Code, the offence of adultery can only be committed by a man and wife woman is not punishable as abettor. It was contended that the said section was violative of Arts. 14 and 15 of the Constitution. This Court negatived the said contention of Yusuf Abdul Aziz v.

The State of Bombay and Husseinbhoy Laljee (1954 SCR 930) and referred to Art. 15(3) which provides that nothing in the Article shall prevent the State from making special provisions for women and held thus :- AIR 1954 SC 321 : 1954 Cri LJ886

Paras 5 ans 6

"It was argued that Cl. (3) should be confined to provisions which are beneficial to women and cannot be used to give them a licence to commit and abet crimes. We are unable to read any such restriction into the clause; nor are we able to agree that a provision which prohibits punishment is tantamount to a licence to commit the offence of which punishment has been prohibited.

Article 14 is general and must be read with the other provisions, which set out the ambit of fundamental rights. Sex is a sound classification and although there can be no discrimination in general on that ground, the Constitution itself provides for special provisions in the case of women and children. The two articles read together validate the impugned clause in S. 497 of the Indian Penal Code."

b) In Dattatraya Motiram More v. State of Bombay (AIR 1953 Bom 311) provisions of the Bombay Municipal Boroughs Act, 1925 which reserved seats for women in the election were challenged on the ground that they offended Arts. 14, 15 and 16 of the Constitution. That contention was negatived by the Court and explaining the scope of Art. 15, the Court (Chagla, C.J.) observed that it must always be borne in mind that the discrimination which is not permissible under Art. 15(1) is a discrimination which is only on one of the grounds mentioned in Art. 15(1). If there is a discrimination in favour of a particular sex, that discrimination would be permissible provided it is not only on the ground of sex, or, in other words, the classification on the ground of sex is permissible provided that classification is the result of other considerations besides the fact that the persons belonging to that class are of a particular sex. The Court further held thus:-

". . . . . .Article 15(3) is obviously a proviso to Art. 15(1) and proper effect must be given to the proviso. It is true that in construing a proviso one must not nullify the section itself. A proviso merely carves out something from the section itself, but it does not and cannot destroy the whole section. The proper way to construe Art. 15(3), in our opinion, is that whereas under Art. 15(1) discrimination in favour of men only on the ground of sex is not permissible, by reason of Art. 15(3) discrimination in favour of women is permissible, and when the State does discriminate in favour of women, it does not offend against Art. 15(1). Therefore, as a result of the joint operation of Art. 15(1) and Art. 15(3) the State may discriminate in favour of women against men, but it may not discriminate in favour of men against women. . . . . ."

c) Dealing with the similar contentions, in B. R. Acharya and another v. State of Gujarat and another (1988 Lab IC 1465), the learned single Judge of the Gujarat High Court (R. C. Mankad, J.)

observed thus :-

"It is clear from the affidavit-in-reply filed on behalf of the respondent-State that there are certain posts which are meant only for lady officers. The institutions, where destitute women, unmarried mothers, etc. are kept, are headed by lady Superintendent. Since the post is of lady Superintendent, only lady officers are considered eligible for such posts. The petitioners, however, contend that they should not be discriminated only on the ground of sex. They should also be considered eligible for promotion to such post. This claim made by the petitioners cannot be accepted.

The institutions which are headed by Lady Superintendents are exclusively for women, and it is for the Government to decide as a matter of policy whether or not such institutions should be headed by only lady officers. Merely because at some stage there is a common cadre in which the officers of both the sexes are appointed, does not mean that all posts in the higher cadre must also be filled in by persons belonging to both the sexes. Having regard to the nature of duties to be performed, it is open to the State Government to decide that the institutions which are exclusively meant for women should be headed by only women or lady officers. The Government cannot be compelled to appoint male officers to head such institutions, if it does not consider it advisable to do so. If a special provision is made for women, the petitioners cannot made grievance that they have been discriminated against. Incidentally it may be pointed out that Art. 15 of the Constitution of India prohibits discrimination on grounds of religion, race, caste, sex or place of birth. Clause (3) of the said article however, provides "nothing in this article shall prevent the State from making any special provision for women and children." I, therefore, do not find any substance in the petitioners' contention that they should be considered to be eligible for promotion to the post of Lady Superintendent."

d) In Union of India v. K. P. Prabhakaran ((1997) 11 SCC 638), this Court held that the circular providing appointment on the post of Inquiry-cum-Reservation Clerks in four metropolitan cities of Madras, Bombay, Calcutta and Delhi to be manned only by women was not violative of Art. 14 or 16 of the Constitution.

e) Further, in Government of A. P. v. P. B. Vijaykumar ((1995) 4 SCC 520) the Court dealt with the similar question regarding validity of R. 22(a) of the Andhra Pradesh State and Subordinate Service Rules providing reservation to the extent of 30% for women in the matter of direct recruitment to the post-governed by the said Rules. The Andhra Pradesh High Court declared the said Rules to be invalid. This Court while reversing the decision of the High Court held thus:- AIR 1995 SC 1648 : 1995 AIR SCW 2586 : 1995 Lab IC 2236

para 6

". . . . . .Article 15 deals with every kind of State action in relation to the citizen of this country and

every sphere of the activity of the State is controlled by Art. 15(1) and, therefore, there was no reason to exclude from the ambit of Art. 15(1) employment under the State. At the same time Art. 15(3) permits special provisions for women. Both Arts. 15(1) and 15(3) go together. . . . . This power conferred by Art. 15(3) is wide enough to cover the entire range of State activity including employment under the State.

This Court further held thus :-

An important limb of this concept of gender equality is creating job opportunity for women. To say that under Art. 15(3), job opportunities for women cannot be created would be to cut at the very root of the underlying inspiration behind this article. Making special provisions for women in respect of employment or posts under the State is an integral part of Art. 15(3). This power conferred under Art. 15(3), is not whittled down in any manner by Art. 16."

f) Further, this Court in Toguru Sudhakar Reddy and another v. Government of A. P. and others (1993 Supp (4) SCC 439) approved the reasoning of the High Court of Andhra Pradesh wherein it was held that reservation beyond 50% for the women was permissible under Art. 15(3) of the Constitution and that ratio in M. R. Balaji v. State of Mysore (1963 Supp (1) SCR 439) was only confined to the reservation under Arts. 15(4) and 16(4) of the Constitution of India. AIR 1994 SC 544 : 1993 AIR SCW 3994, AIR 1963 SC 649

RESULT:

11. In view of the aforesaid established law interpreting Arts. 14 to 16, Rules 5 and 8 of Punjab University Calendar Volume III providing for appointment of lady Principal in Women's College or a lady teacher therein cannot be held to be violative either of Art. 14 or Art. 16 of the Constitution, because classification is reasonable and it has a nexus with the object sought to be achieved. In addition, the State Government is empowered to make such special provisions under Art. 15(3) of the Constitution. This power is not restricted in any manner by Art. 16.

12. In the result, appeal is allowed. The impugned judgment rendered by the majority striking down the Rules 5, 8 and 10 of the Punjab University Calendar Volume III as violative of Art. 14 or 16 is set aside. Minority view holding that the said Rules are not violative of Art. 14 or 16 is upheld. There shall be no order as to costs.

Appeal allowed.