

SUPREME COURT OF INDIA

State of Karnataka

Vs.

K. Govindappa

C.A. No..... of 2008

(Altamas Kabir and Markandey Katju JJ.)

20.11.2008

JUDGMENT

Altamas Kabir, J.

1. Leave granted.

2. The respondent No.1, Shri K. Govindappa was appointed as a Lecturer in History in an aided private college owned and managed by the Vinayaka Rural Education Society, the respondent No.2 herein, with effect from 10th July, 1994. The said college, which was situated at Hegalavadi, Gubbi Taluk, Tumkur District, applied for approval of the appointment of the respondent No.1, but such prayer was refused by the Government of Karnataka on the ground that the appointment had been made in violation of the Roster Policy and that he had been appointed in a post which was reserved for a Scheduled Caste candidate. A review petition was filed by the respondent No.1 before the Government contending that since there was only a single post of Lecturer in History in the college, the reservation policy would not apply to the said post in which the respondent No.1 had been appointed. As the claim of the respondent No.1 was rejected by the Government, he filed a Writ Petition before the Karnataka High Court praying for quashing of the orders passed by the Government and for a direction upon the concerned authorities to approve his appointment with effect from 21st July, 1994, from which date he had joined his duties. Contesting the claim of the respondent No.1 the appellants contended before the Writ Court that even though the Management was running only one college, it had different disciplines for which there were several Lecturers. It was contended that the college had to maintain the Roster for the purpose of making appointments after taking into consideration the entire cadre of Lecturers, irrespective of subjects. It was also contended that in the college in question there were six posts of Lecturers and hence, the post of Lecturer in History could not be considered as a single post.

3. The submissions made on behalf of the appellants was rejected by the learned Single Judge upon holding that since the post of Lecturer in History was a single post, the reservation policy would not apply to the appointment made to the said post. The learned

Single Judge quashed the orders passed by the Government upon holding that the appointment of the respondent No.1 was just and legal and directed the appellants to give approval to his appointment.

4. The matter was taken up to the Division Bench of the High Court by the State of Karnataka and its officers, who are also the appellants in these proceedings. While considering the matter, the Division Bench posed the following two questions which it considered relevant for the purpose of deciding the appeal, namely :- "(1) Whether the post of lecturer in History to which the writ petitioner was appointed was a single post; and (2) If the said post was a single post whether the fourth respondent Management was bound to reserve the post for a member of the scheduled caste as contended by respondent No.1 to 3 in the writ petition."

5. The Division Bench confirmed the views expressed by the learned Single Judge and relying on the decision of this Court in the case of *Dr. Chakradhar Paswan vs. State of Bihar*¹, and the Full Bench decision of the *Karnataka High Court in Dr. Rajkumar vs. Gulbarga University*², held that the decision of the learned Single Judge did not require any interference.

6. The State of Karnataka and its authorities are in appeal against the decision of the Karnataka High Court in Writ Appeal No. 3125 of 2005 dated 27th January, 2006.

7. On behalf of the appellant, State of Karnataka, Mr. Sanjay Hegde, learned advocate, submitted that both the learned Single Judge and the Division Bench of the High Court erroneously applied the ratio of the decision in Chakradhar Paswan's case (supra) upon holding that each discipline in the college constituted a separate cadre within a service in which Lecturers were appointed and the isolated posts could not be taken together for applying the roster by rotation for reservations purposes. Mr. Hegde urged that the posts in the different disciplines were meant to be filled by Lecturers who formed a cadre and each discipline which consisted of a single post of Lecturer did not constitute a separate cadre in respect of the said discipline as otherwise without applying the principle of roster rotation, the said single post would always have to be filled up from amongst general candidates and a Scheduled Caste or Scheduled Tribe candidate would always have to compete against general candidate for such purpose which would destroy and/or negate the very object and purpose of Article 16(4) of the Constitution.

8. Mr. Hegde submitted that all the posts of Lecturers, irrespective of the subjects taught, were treated by the college as one cadre for the purpose of maintaining the roster system for reservation of posts. However, by applying the ratio in Chakradhar Paswan case (supra), the High Court had quite erroneously quashed the appointment of the respondent No.1 as Lecturer in History which, according to the roster, had been reserved for a Scheduled Caste candidate.

9. It was next urged by Mr. Hegde that the expression "cadre" could not be equated with the expression "post" as defined in Fundamental Rules 9 and 4, nor could the expression "cadre"

be understood as synonymous to the expression "service". Mr. Hegde submitted that "cadre" as defined in the Fundamental Rules refers to the strength of a service and has no concern with individual posts in a particular discipline which all form part of one cadre, particularly when all the posts in the cadre of Lecturer pertained to the same institution.

10. Referring to the decision in Chakradhar Paswan's case (supra) Mr. Hegde submitted that the facts of the said case were unique to that case as within the same Directorate three separate branches of indigenous medicines, namely, Homeopathy, Unani and Ayurvedic, were treated as isolated and separate posts, although, they carried the same scale of pay, and the three separate posts of Deputy Director of each branch could not be grouped together for the purpose of applying the 50 point roster. It is in that context that it was held by this Court that isolated and separate posts can exist in the same cadre without violating Article 16(1) and (4) of the Constitution.

11. On the other hand, Mr. Hegde referred to the Constitution Bench decision of this Court in the case of *Arati Ray Choudhary vs. Union of India*³, where the Rule of "carry forward" was applied in the case of a reserved vacancy which remained unfilled. The principle upheld in the said case was with regard to two posts which were by their nature isolated posts but belonging to the same cadre. Although, when the first post fell vacant it was meant to be reserved for a reserved candidate, it was filled by a general candidate, by applying the carry forward rule, the subsequent vacancy had to be for a reserved candidate even if it was a single post and would not amount to 100% reservation so as to offend Articles 14 and 16 of the Constitution.

12. Mr. Hegde also referred to the decision of this Court in *State of U.P. vs. Dr. Dina Nath Shukla & Another*⁴ where the principle of rotation was upheld with regard to isolated posts to give meaning to the provisions of reservations and Articles 15(2) to (4), 16(4) and 16(4-A) of the Constitution. In dealing with the matters, the learned Judge also took note of the decisions of this Court in i) *R.K. Sabharwal vs. State of Punjab*⁵, and ii) *Union of India vs. Madhav*⁶] where the same views were expressed and it was reiterated that application of the rule of rotation for filling up a single post did not offend Articles 14 and 16(1) of the Constitution.

13. Reference was lastly made to another Constitution Bench decision in the case of *Post Graduate Institute of Medical Education and Research vs. Faculty Association*⁷, wherein the views expressed in the earlier decisions relating to reservation in a single post again came up for consideration. Reversing the views expressed earlier in *Union of India vs. Madhav* (supra) and in other similar cases, the Constitution Bench held that there could be no reservation in respect of a single post cadre as by applying the rule of rotation, the single post could become a reserved post, which was contrary to the Constitutional scheme which did not permit 100% reservation in a single post. While trying to reconcile the view of the Constitution Bench in *Arati Ray Choudhary's* case (supra), it was explained that the decision rendered therein was in the context of the "carry forward" principle and did not support reservation in a single cadre post.

14. Mr. Hegde submitted that since the posts of Lecturers in the college constituted one single cadre, only the roster principle would apply, as had been made applicable in the instant case and the High Court had erred in treating each discipline as a separate unit for the purpose of reservation. It was submitted that the impugned orders passed by the learned Single Judge, as also the Division Bench, were liable to be set aside.

15. Responding to Mr. Hegde's submissions, Mr. P.P. Singh, learned advocate, reiterated the stand taken on behalf of the respondent No.1 before the High Court and submitted that the post of Lecturer in History being a single post, the question of reservation did not arise as that would amount to 100% reservation, which would offend the constitutional mandate of Articles 14 and 16(1) of the Constitution. Mr. Singh referred to the letter dated 28th July, 1994, addressed to the Joint Director, Department of Public Instruction, Bangalore Division, on behalf of the college seeking approval of the appointment of the respondent No.1 as permanent Lecturer in History, wherein it had been explained that no application for appointment had been received from any Scheduled Tribes candidate and that the respondent No.1 was the only candidate for the post.

16. Mr. Singh submitted that the judgment of the High Court was based on sound principles of law which did not warrant any interference in the appeal.

17. While adopting Mr. Singh's submissions, Ms. E.R. Sumathy, learned advocate appearing for the respondent No.2 college, urged that the decision in Arati Ray Choudhary's case involved two schools being run by the South Eastern Railways, where plurality of posts existed which made it possible to apply the rule of rotation since the bar of 100% reservation would not be applicable in the facts of the case. Mr. Sumathy submitted that the principle enunciated in Arati Ray Choudhary's case would not be applicable in the instant case where only one institution was involved and Lecturers of such separate discipline formed a single cadre.

18. We have carefully considered the submissions made on behalf of the respective parties and the decisions cited by learned counsel in support thereof. In dealing with the issue raised in this appeal, it has to be kept in mind that some of the earlier decisions in Madhavi's case (supra), in the case of *Suresh Chandra as J.B. Agarwal⁸ and Post Graduate Institute of Medical Education & Research vs. K.L. Narasimhan⁹*, in which reservation by rotation even in respect of a single post had been approved, was subsequently overruled in the Constitution Bench decision in the case of *Post Graduate Institute of Medical Education & Research vs. Faculty Association* (supra) and it was held that in no case could reservation be made applicable in respect of a single post. The Constitution Bench approved the views expressed in *Dr. Chakradhar Paswan's case* (supra) following those expressed by the earlier Constitution Bench in *Arati Roy Choudhary's case* (supra). In view of the above, the only question which we are called upon to consider is whether the High Court was right in treating the post of Lecturer in History in the respondent No.2 college as a single isolated post forming a separate cadre in itself and not part of the cadre of Lecturers comprising all the different disciplines taught in the college.

19. In this regard, Mr. Hegde has explained the difference between "post" and "cadre" and that the two expressions could not be equated with each other. He has also explained that the expression "cadre" was not synonymous with "service" and that merely because there were single posts in the different disciplines taught in the college, it did not mean that each post constituted a separate cadre within the cadre of Lecturers. While there can be no difference of opinion that the expressions "cadre", "post" and "service" cannot be equated with each other, at the same time the submission that single and isolated posts in respect of different disciplines cannot exist as a separate cadre cannot be accepted. In order to apply the rule of reservation within a cadre, there has to be plurality of posts. Since there is no scope of interchangeability of posts in the different disciplines, each single post in a particular discipline has to be treated as a single post for the purpose of reservation within the meaning of Article 16(4) of the Constitution. In the absence of duality of posts, if the rule of reservation is to be applied, it will offend the constitutional bar against 100% reservation as envisaged in Article 16(1) of the Constitution.

20. The decision in Dr. Chakradhar Paswan's case (*supra*), which has been subsequently approved by the Constitution Bench in the Post Graduate Institute of Medical Education & Research case (*supra*) makes it clear that isolated and separate posts can exist within a cadre and in case of such posts, if there was only one post, the same could not be set apart for a reserved candidate.

21. In our view, the present case falls within the category of single isolated posts within a cadre in respect whereof the rule of reservation is inapplicable and the said principle has been correctly applied by the High Court in the facts of this case. As indicated by the High Court, each discipline which consisted of a single post will have to be dealt with as a separate cadre for the said discipline and in view of the settled law that there can be no reservation in respect of a single post, the appointment of the respondent No.1 cannot be faulted. This is particularly so having regard to the fact that the several disciplines are confined to one College alone. That is what distinguishes the facts of this case from those of Arati Roy Choudhary's case (*supra*) in which the rule of rotation could be applied on account of the fact that two posts of Headmistress were available in two colleges run by the same management. Moreover, in Dr. Chakradhar Paswan's case (*supra*) on which reliance was placed by the High Court it was noticed that while upholding the rule of rotation the Constitution Bench in Arati Roy Choudhary's case (*supra*) did not support reservation in a single cadre post.

22. We, therefore, have no hesitation in upholding the decision of the Karnataka High Court, in the facts of this case. The appeal, therefore, must fail, and is dismissed without any order as to costs.

23. Since the question in issue in this appeal is the same as that in Civil Appeal No. _____ (@ Special Leave Petition (Civil) No.5353 of 2007- The Government of Karnataka and another vs. Bidarambika Vidya Samasthe Regd. & others), which is being heard along with this appeal, the same is also dismissed since the decision therein was rendered in the light of the decision in Writ Appeal No.3125 of 2005, out of which the present appeal arises. The same is, therefore, dismissed along with the instant appeal.

¹(1988) 2 SCC 214
⁵(1995) 2 SCC 745
⁹(1997) 6 SCC 283

²ILR 1990 Karnataka 2125
⁶(1997) 2 SCC 332

³(1974) 1 SCC 87
⁷(1998) 4 SCC 1

⁴(1997) 9 SCC 662
⁸(1997) 5 SCC 363