

SUPREME COURT OF INDIA

Akhilesh Kumar Singh

Vs.

Ram Dawan & Ors.

C.A.No.1931 of 2010

(Dipak Misra and Prafulla C. Pant, JJ.)

23.09.2015

JUDGMENT

Dipak Misra. J.

1. A deep rooted desire strongly planted in unsatisfied ambition has compelled the appellant to paint a picture with the color of ‘reservation’ on a constitutional foundation eventually with immense aspiration that he can achieve it by sheer assertion and repeated asseveration of the proposition that a singular post in a cadre cannot be reserved, totally ostracizing the contrary perception that the principle of reservation, as is understood in the constitutional bedrock, is absolutely foreign to the concept.

2. Presently to the factual expose. The first respondent was appointed as Daftari on 1.7.1975 in Kisan Uchcharat Madhyamic Vidyalaya, Hidra, Kanwar, Basti, a recognized Intermediate College governed by the U.P. Intermediate Education Act, 1921 (for short, “the 1921 Act”) and he became a permanent employee with effect from 13.10.1981. He passed the High School education in the year 1997 and thereafter the intermediate examination in the year 2000 as a consequence of which he became eligible for consideration of promotion for the post of Clerk. On 30.6.2003, Roop Narain Singh who was working as a Clerk, on attaining the age of superannuation stood superannuated and one Assistant Teacher remained incharge. After retirement of Roop Narain Singh, the first respondent submitted an application to the District Inspector of Schools, through the Principal for his promotion to the post of Clerk. The concerned Principal forwarded the said application on 14.7.2003 to the District Inspector of Schools along with the seniority list. As no response was received from the District Inspector of Schools relating to the promotion of the first respondent, the Principal sent a reminder. It needs to be stated that as there was no Committee of Management in the Institute, the Assistant District Inspector of Schools was functioning as the Management Controller and despite his best efforts he could not hold the elections. The authorities advertised in a newspaper for filling up of the post of Clerk and because of the said advertisement, the approval for the post of promotion as far as first respondent is concerned was not given and he felt grieved thereby.

3. As the factual narration would unveil, the first respondent submitted a representation to the Joint Director of Education on 22.6.2006, but nothing affirmative ensued and in the meantime the present appellant Akhilesh Kumar Singh was appointed. Being dissatisfied with the same, the first respondent invoked the jurisdiction of High Court in Writ Petition No. 39738 of 2006. The learned Single Judge taking note of the fact that the claim of the writ petitioner seeking promotion to the post of Clerk was untenable inasmuch as there was a singular post in the cadre of Clerk duly sanctioned and created in the institution and in such circumstances the said post could not be reserved for promotion from amongst the Class IV employees. However, the learned single Judge observed that if the writ petitioner felt that the appointment of the selected candidate by direct recruitment was patently illegal and de hors the rules, he could submit a representation to the District Inspector of Schools and, in that event, the authority concerned shall pass a reasoned and speaking order keeping in view the various provisions of the 1921 Act.

4. Being dissatisfied with the said order, the 1st respondent herein preferred Special Appeal No. 648 of 2006. The Division Bench encapsulated the controversy in a short compass, that is, whether a single post of Class III available in an intermediate college governed by the Act could be filled up only by promotion or by direct recruitment. The Division Bench referred to an earlier Division Bench judgment in Jai Bhagwan Singh v. District Inspector of Schools, Gautambudh Nagar & Ors. and came to hold that a single post of Class III available in intermediate college governed by the 1921 Act can be filled up by promotion and the earlier decision in Palak Dhari YadaV was not legally sound. On the base of the said reasoning, the Division Bench annulled the decision rendered by the learned Single Judge. The said judgment and order passed by the Division Bench is under assail in this appeal by special leave.

5. We have heard Mr. Parmanand Gaur, learned counsel for the appellant and Mr. Hariom Yaduvanshi, Mr. Gagan Gupta and Mr. Vivek Vishnoi, learned counsel for the respondents.

6. It is imperative to note at the outset that there is no dispute with regard to the factual score. The institution is covered by the 1921 Act. A set of Regulations has been framed under the said Act providing for promotion from Class IV to Class III. Regulation 2 which is relevant for the present purpose is reproduced below:-

“2. (1) For the purpose of appointments of clerks and Fourth class employees the minimum educational qualification would be the same as has been fixed from time to time for the equivalent employees of Government Higher Secondary Schools.

(2) Fifty percent of the total number of sanctioned posts of head clerk and clerks shall be filled among the serving clerks and employees through promotion. If employee possesses prescribed eligibility and he has served continuously for 5 years on his substantive post and his service record is good, then promotion shall be made on the

basis of seniority, subject to rejection of the unfit. If any employee is aggrieved by any decision or order of the management committee in this respect then he can make representation against it to the Inspector within two weeks from the date of such decision or order. Inspector on such representation can make such orders as he thinks fit. Decision of the Inspector would be final and promptly executed by the management.

Note:- In calculating fifty percent of posts parts less than half would be left and half or more that half post would be deemed as one.”

7. On a plain reading of the aforesaid Regulation, it is quite luminous that the “Note” appended to it makes it abundantly clear that there is a singular post. The Regulation lays down the postulates for filling up of the post. The crux of the matter is whether in the instant case a cadre that constitutes of a single post has been reserved. In *Post Graduate Institute of Medical Education & Research, Chandigarh v. Faculty Association and others*¹, the Constitution Bench was considering the correctness of the decision rendered in *Union of India v. Madhav*². Apart from many a contention, it was also submitted before this Court that for implementing 50-point roster, isolated and separate posts in different specialities cannot be clubbed together and reservation of posts by applying the roster can be made only where there are more than one post and reservation of only one post cannot be made because such reservation would amount to 100% reservation which would violate Article 16(1) and Article 16(4) of the Constitution. The Constitution Bench after discussing the law at length has held:-

“34. In a single post cadre, reservation at any point of time on account of rotation of roster is bound to bring about a situation where such a single post in the cadre will be kept reserved exclusively for the members of the backward classes and in total exclusion of the general members of the public. Such total exclusion of general members of the public and cent per cent reservation for the backward classes is not permissible within the constitutional framework. The decisions of this Court to this effect over the decades have been consistent.

35. Hence, until there is plurality of posts in a cadre, the question of reservation will not arise because any attempt of reservation by whatever means and even with the device of rotation of roster in a single post cadre is bound to create 100% reservation of such post whenever such reservation is to be implemented. The device of rotation of roster in respect of single post cadre will only mean that on some occasions there will be complete reservation and the appointment to such post is kept out of bounds to the members of a large segment of the community who do not belong to any reserved class, but on some other occasions the post will be available for open competition when in fact on all such occasions, a single post cadre should have been filled only by open competition amongst all segments of the society.”

8. From the aforesaid enunciation of law, it is eminently explicit that reservation for a single post in a cadre will keep the general members of the public in total exclusion and the question of reservation will arise when there is plurality of post in the cadre. Needless to say that the Constitution Bench has been stating about the reservation with regard to the Scheduled Castes, Scheduled Tribes and Other Backward Classes. It does not lay down that if a post is meant to be filled up by promotion from amongst the employees working in the feeder cadre, it would tantamount to reservation. Reservation is only restricted to the Scheduled Castes, Scheduled Tribes and Other Backward Classes. It does not relate to the persons serving in the feeder cadre.

9. In *State of Punjab and others v. R.N. Bhatnagar and Another*³, it has been laid down that when posts in a cadre are to be filled in from two sources, whether the candidate comes from the source of departmental promotees or by way of direct recruitment, once both of them enter a common cadre, their birthmarks disappear and they get completely integrated in the common cadre and it is in consonance with the thrust of Article 16(1) of the Constitution of India. The Court further observed that no question of exception to the said general thrust of the constitutional provision would survive as Article 16(4) would be out of the picture in such a case.

10. In this context, a reference to a two-Judge Bench decision in *Kuldeep Kumar Gupta and others v. H.P. State Electricity Board and others*⁴ is apposite. In the said case, a contention was advanced that providing a quota tantamounts to reservation. Repelling the said submission, it was ruled:-

“Article 16 deals with equality of opportunity in matters of public employment and Article 16(4) enables the State in making any provision for reservation of appointments or posts in favor of any backward class of citizens which in the opinion of the State is not adequately represented in the services under the State. This Court in *Indra Sawhney case*⁵ has held that no such reservation is permissible in the promotional posts and to get over the said decision Article 16(4-A) has been inserted by the Constitution (Seventy-seventh Amendment) Act. But we fail to understand as to how providing a quota for a specified category of personnel in the promotional post can be held to be a reservation within the ambit of Article 16(4). Providing a quota is not new in the service jurisprudence and whenever the feeder category itself consists of different category of persons and when they are considered for any promotion, the employer fixes a quota for each category so that the promotional cadre would be equibalanced and at the same time each category of persons in the feeder category would get the opportunity of being considered for promotion. This is also in a sense in the larger interest of the administration when it is the employer, who is best suited to decide the percentage of posts in the promotional cadre, which can be earmarked for different category of persons. In other words this provision actually effectuates the constitutional mandate engrafted in Article 16(1), as it would offer equality of opportunity in the matters relating to employment and it would not be the monopoly

of a specified category of persons in the feeder category to get promotions. We, therefore, do not find any infraction of the constitutional provision engrafted in Article 16(4) while providing a quota in the promotional cadre, as in our view it does not tantamount to reservation”.

11. The purpose of referring to the aforesaid decisions is that the concept of reservation finds place in Article 16(4) and does not apply to the concept of quota from the feeder cadre. In the instant case, the Regulation provides for 50% of the total number of posts to be promoted through promotion. The “Note” appended is an inseparable part of the Regulation and it lays down that in calculation of the 50% of the post less than half would be left and half or more than half post would be deemed as one. Therefore, if a singular post in the clerical cadre is there, it would be filled up by promotion from amongst the eligible candidates from the feeder cadre. Adopting such a method or taking such route does not remotely touch the idea of reservation. Hence, the submission put forth by the learned counsel for the appellant sans substance.

12. In view of the aforesaid premises, we do not perceive any merit in this appeal and accordingly, the same stands dismissed without any order as to costs.

Cases Referred.

1(1998) 4 SCC 0001

2(1997) 2 SCC 0332

3(1999) 2 SCC 0330

4(2001) 1 SCC 0475

5(1992) Supp.3 SCC 0217