

SUPREME COURT OF INDIA

Chairman & Managing Director Central Bank of India & Ors.

Vs.

Central Bank of India SC/ST Employees Welfare Association & Ors.

R.P.(Civil)No.891 of 2015

(Jasti Chelameswar and A.K.Sikri, JJ.)

08.01.2016

JUDGMENT

A.K. Sikri, J.

1. By our judgment dated January 09, 2015, we had decided batch of appeals which were preferred by the Union of India as well as certain banks. In these appeals, the validity of the judgment of the High Court of Madras was questioned which held that in the matter of promotions in the officer grades, there shall be reservation provided for the officers belonging to the Scheduled Caste (SC) and Scheduled Tribe (ST) categories working in these banks. This decision of the High Court was predicated on the interpretation to the provisions of Office Memorandum (OM) dated August 13, 1997 issued by the Central Government, along with certain other connected Office Memoranda. It was concluded by the High Court that the aforesaid OM dated August 13, 1997 provides for such a reservation in favour of the SC/ST employees. The plea of the appellant banks was that the said OM does not make any provisions for reservation in respect of SC/ST employees.

2. The question, therefore, that needed determination by this Court was as to whether there is any reservation in the promotions from one officer grade/scale to higher grade/scale, when such promotions are to be made on selection basis, i.e. on merits. The position taken by the appellant banks was that there is no rule of reservation for promotion in Class-A (Class-I) to the post/scales having basic salary of more than ^5,700 per month and OM dated August 13, 1997 at best provides only a concession in the manner officers belonging to SC/ST category are to be considered for promotion.

3. After hearing the counsel for the parties, judgment dated January 09, 2015 was rendered. Provisions of OM dated August 13, 1997 and other related Office Memoranda were considered by this Court in that judgment. This Court, after interpreting the said OM, came to the conclusion that this OM did not provide for any reservation. Operative portion of the judgment in arriving at the aforesaid conclusion reads as under:

“26. While considering this question, we have to keep in mind that reservation policy of the Central Government is applicable to the appellant Banks. It is the common case of both the parties. In fact, as already noted above, there is a specific provision to this effect in the promotion policies framed by the appellant Banks.

27. Next thing which is to be kept in mind is the two office memoranda, one dated 1.11.1990 and the other dated 13.8.1997, which are referred to by the counsel for the parties. We have already reproduced the aforesaid two office memoranda. Insofar as, Office Memorandum dated 1.11.1990 is concerned, a bare reading of this provision would reflect the following two aspects:

“(a) In promotion by selection within Class-I (Group-A) post, the sC/ST candidates are to be given 'concession'.

(b) This concession is available to those SC/ST employees who are senior enough in the zone of consideration for promotion so as to be within the number of vacancies for which select list has to be drawn up. Thus, first requirement is that such SC/ST candidates who come within the zone of consideration for promotion are senior enough to be within the number of vacancies. Once they come within the aforesaid zone of consideration, they have to be included in the list, provided they are not considered unfit for promotion. It clearly follows from the above that once they come under the zone of consideration for promotion so as to be within the number of vacancies for which select list has to be drawn up, for such SC/ST employees the only embargo to deprive them of promotion is when they are found unfit for promotion. For other officers in general category, depending upon the rule of promotion, there may be much stricter criteria based on comparative merit or selection by merit, etc. However, in case of such senior enough SC/ST candidates, the criteria appears to be seniority, subject to fitness.

(c) This OM specifically clears the doubt that the aforesaid provision is only a concession and not reservation in favour of SC/ST candidates, inasmuch as para 3 of the OM states that “It is hereby clarified that in promotion by selection within Group-A post, which carry ultimate salary of ^ 5,700/- per month, there is no reservation It is clear from the above that insofar as Office Memorandum dated 1.11.1990 is concerned, there was no provision for reservation made in favour of SC/ST candidates in promotion by selection within Group-A posts carrying an ultimate salary of ^5,700 per month.”

28. No doubt, this Office Memorandum was issued in the year 1990, that is much before amendment in Article 16 of the Constitution, which was carried out in the year 1995 by inserting Clause 4A. However, as already pointed out above, Clause 4A is an enabling provision which empowers the State to make reservations in the matter of promotions as well as in favour of SC/ST employees. There was no such provision till 1.11.1990 in the matter of promotion by selection within Group-A post which carry an ultimate salary of ^5,700/- per month.

29. Having understood this, we come to Office Memorandum dated 13.8.1997 to find out as to whether this Memorandum makes any provision for reservations in the matter of promotion in favour of SC/ST employees, inasmuch as no other Office Memorandum or Circular or Rule, etc. is produced on record for this purpose.

30. We have already noted above that a nine Judge Bench decision of this Court in Indra Sawhney (supra) held that Clause 4 of Article 16 does not cover the cases of promotion, meaning thereby, as per the said clause no reservation in favour of SC/ST persons in the matter of promotions is permissible. It is to nullify the effect of this dicta in the said judgment that Clause 4A was inserted in Article 16 by Constitution's Seventy-Seventh Amendment with effect from 17-06-1995. However, it is also a matter of record that in Indra Sawhney's case (supra), this Court had also clarified that reservation for SC/STs in promotion would continue for a period of five years from 16-11-1992. What it meant was that if there is a provision of reservation made in the matter of promotions, notwithstanding the dicta in the said case that such a reservation is not permissible, those provisions were allowed to continue for a period of five years from 16-11-1992. Thereafter, before the expiry of five years, constitutional provision was incorporated in the form of Clause 4A by making provision for reservation in the matter of promotions as well. These facts are taken note of in first two paras of Office Memorandum dated 13-08-1997. Thereafter, in the 3rd para of the said Memorandum, it is provided:

“3. In pursuance of Article 16(4A), it has been decided to continue the Reservation in promotion as at present, for the Scheduled Castes and the Scheduled Tribes in the services/posts under the Central Government beyond 15.11.1997 till such time as the representation of each of the above two categories in each cadre reaches the prescribed percentages of reservation where after, the reservation in promotion shall continue to maintain the representation to the extent of the prescribed percentages for the respective categories.”

31. What is decided is to continue the reservation in promotion, which was prevalent at that time, for the SC/ST employees, which was to continue in terms of the judgment of this Court in Indra Sawhney (supra) till 15-11-1997, even beyond 15-11-1997, till such time as the representation of each of the above two categories in each cadre reaches the prescribed percentages of reservation whereof. It is, thus, crystal clear from a bare reading of this para that the existing provision relating to reservation in promotion was allowed to continue beyond 15-11-1997. Thus, this Memorandum did not make any new provision for reservation in promotion in favor of SC/ST employees.

32. We have already noticed above that in matters of promotion within Group-A posts, which carry an ultimate salary of 5,700/- per month, there was no provision for any reservation. On a conjoint reading of these two Office Memorandums, in the absence of any other provision or Rule evidencing such a reservation in the matter of

promotions, it cannot be said that there was reservation in promotion within Group-A posts up to the ultimate salary of 5,700/- per month. The High Court in the impugned judgment has gone by the lofty ideals enshrined in Articles 15 and 16 of the Constitution as well as the fact that in these Banks there is no adequate representation of SC/ST category of officers in Group-IV and above. That may be so. It can only provide justification for making a provision of this nature. However, in the absence of such a provision, same cannot be read by overstretching the language of Office Memorandum dated 13-08-1997. It is for the State to take stock of the ground realities and take a decision as to whether it is necessary to make provision for reservation in promotions to the aforesaid post as well.”

4. As pointed out above, since the main issue that had arisen for consideration stood answered in favor of the appellant banks, in normal course, the appeals should have been allowed reversing the judgment dated December 09, 2009 rendered by the High Court. However, during the course of the arguments, the respondent employees had produced copy of OM dated November 08, 2004 issued by the Department of Enterprises, as per which the salary limit of ^5,700 mentioned in the OM dated August 13, 1997, was treated as equivalent to ^18,300 on the implementation of the Fifth Central Pay Commission Report in respect of those public sector undertakings which were following the Central Pay pattern and in the case of public sector undertakings following Industrial Dearness Allowance (IDA) pattern, monetary ceiling was fixed as ^20,800. On that basis, this Court proceeded further to discuss that aspect with the observation that the High Court had failed to consider the same. Discussing this aspect, this Court held that even when there was no policy of reservation for the post carrying pay-scale of more than ^5,700 per month, the reservation was there in respect of the post carrying basic pay of upto ^5,700 per month and with the implementation of the Fifth Central Pay Commission Report, it would follow that such reservation was applicable to the post carrying pay-scale of ^18,300. On that basis, it was held that since pay-scale of the posts upto Scale VI was ^18,300, insofar as promotions from Scale I to Scale II, Scale II to Scale III, Scale III to Scale IV, Scale IV to Scale V and Scale to Scale VI are concerned, reservation is to be provided. It is this direction/portion of the judgment in respect of which the instant review petitions are filed. Thus, it would be apt to reproduce the discussion touching upon this aspect in the judgment. The same reads as under:

“33. Having said so, one other aspect which has to be necessarily addressed to at this stage calls for our attention. This aspect, which we are going to point out now, has been totally glossed over by the learned Single Judge as well as the Division Bench of the High Court in their respective judgments.

34. It is provided in Office Memorandum dated 01-11-1990, and we have repeatedly stated above, that there is no reservation in promotion by selection within only those Group-A posts which carry an ultimate salary of ^5,700/- per month. In such cases, it is only concession that applies. We have accepted the contention of the appellant Banks in this behalf, as per the discussion contained hereinabove. Significantly, what follows is that reservation is provided in promotion by selection qua those posts which carry an ultimate salary of less than ^5,700/- per month (pre-revised).

35. The Department of Public Enterprises had issued an Office Memorandum dated 08-11-2004 as to the salary limit of ^5,700/- mentioned for the purposes of reservation as ^18,300/- (5th Central Pay Commission) and in the case of Public Sector Undertakings who are following Industrial Dearness Allowance (IDA) pattern, the monetary ceiling was fixed as ^20,800/- (from 01-01-1996, i.e. 5th Central Pay Commission). The said pay ceiling is achieved in the appellant Banks only when an officer reaches Scale-VII. As a fortiori, the policy of no reservation in the matter of promotion is applicable only from Scale-VII and above. It, therefore, clearly follows that insofar as promotion from Scale-I to Scale-II, Scale-II to Scale-III, Scale-III to Scale-IV, Scale-IV to Scale-V, Scale-V to Scale-VI are concerned, reservation is to be provided. The appellant Banks, therefore, cannot take umbrage under the aforesaid Memorandum and deny reservation in favour of SC/ST employees while carrying out promotions upto to Scale-VI.

36. Upshot of the aforesaid discussion would be to allow these appeals party. While setting aside the impugned judgment of the High Court to the extent it holds that Office Memorandum dated 13-08-1997 makes a provision for reservation, it is clarified that at present there is no provision for reservation in promotion by selection only in respect of those posts which carry an ultimate salary of ^5,700/- per month (revised to ^18,300/- by 5th Central Pay Commission and ^20,800/- per month in respect of those Public Sector Undertakings following IDA pattern). Qua appellant Banks, that would be in respect of Scale-VII and above. Therefore, to carry out promotions from Scale-I upwards upto Scale- VI, reservation in promotion in favour of SC/ST employees has to be given. It would have the effect of allowing the writ petitions filed by the respondents/unions partly with directions to the appellant Banks to make provision for reservations while carrying out promotions from Scale-I to to Scale-II and upward upto Scale-VI.”

(emphasis supplied)”

5. Review petitions are filed by the Union of India as well as certain banks which were parties to the appeals. In these review petitions, applications for intervention/impleadment are filed by Indian Banks' Association supporting the plea taken in the review petitions. On the other hand, All India Central Bank SC/ST/OBC Employees Association-Kolkata, Bank of Maharashtra SC/ST & OBC Employees' Association-Pune and State Bank of Travancore SCs & STs Welfare Association have also filed applications for intervention/impleadment with intent to oppose the review petitions.

6. Notice was issued to the respondent-employees/associations in these review petitions. They have filed their counter affidavits to the review petitions. We have heard counsel for all the parties before us. It was also pleaded by the counsel on either side that since the issue raised in the review petitions has bearing on the merits of the case, the issue raised itself be finally decided.

7. Mr. Mukul Rohatgi, learned Attorney General appearing for the Union of India, submitted that a fundamental error, which was an error apparent on the face of the record, had crept in in paragraph 34 of the judgment wherein it was observed that reservation is provided in promotion by selection qua those posts which carry an ultimate salary of less than ^5,700 (pre-revised). He pointed out that in the earlier portion of the same paragraph (which is reproduced and highlighted above), this Court had reiterated, after detailed discussion, that there is no reservation in promotion by selection in Group-A posts which carry an ultimate salary of ^5,700 per month and in such cases it is only the concession that applies. He further submitted that in such a situation, OM dated November 08, 2005 issued by the Department of Enterprises, that too at the fag end of the hearing of the appeals, had no relevance at all. He further submitted that promotions were only up to Scale VI in these banks as the hierarchical structure would reveal that Scale VII and above were in fact Board level posts which are filled up by the Government and not by the Departmental Promotion Committee of the concerned banks. In this manner, he argued that in spite of deciding the main issue against the respondents, because of the aforesaid error in the judgment, the said benefit was still bestowed by giving reservations to the officers belonging to SC/ST category from Scale I to Scale VI. He further demonstrated that in these banks, there were four categories of employees, namely, sub-staff (Class IV), clerical, officers and Board level posts. The promotions were provided from sub-staff to clerical as well as from clerical to junior management grade (Scale-I). However, there was no further promotion from Scale-I upward. The learned Attorney General further argued that the entire case of the respondent employees was based on OM dated August 13, 1997 and relying upon the same, the respondent employees had argued that this OM provides for reservation. However, this precise contention of the employees was specifically turned down and repelled by this Court by interpreting the said OM to mean that it does not provide for any reservation, but only gives certain concessions to the employees belonging to SC/ST categories while considering their cases for promotion. As a consequence, no further discussion was required.

8. We find adequate force in the aforesaid submission of the learned Attorney General. We have already reproduced those paragraphs of the judgment, i.e. paragraph Nos. 26 to 32, wherein after interpreting OM dated August 13, 1997, it is categorically held that this OM does not provide for any reservation. This is so stated in the opening lines of paragraph 34 as well by emphasizing that there is no reservation in promotion by selection within Group-A posts, which carry an ultimate salary of ^5,700 per month and it is only concession that applies. This conclusion is followed with the observation that contention of the banks in this behalf has been accepted. In spite thereof, in the very next line of paragraph 34, it is observed:

“34... Significantly, what follows is that reservation is provided in promotion by selection qua those posts which carry an ultimate salary of less than 5,700 per month (pre-revised).”

9. It is clearly an error on the face of the record inasmuch as no such consequence follows. In fact, the aforesaid quoted portion is directly in conflict with not only the earlier portion of paragraph 34, but the entire conclusion on the issue on which there is a detailed discussion from paragraph Nos. 26 to 32 and even in earlier paragraphs of the judgment. It is this error, which is apparent on the face of the record, viz. the reservation is provided in promotion by selection respect of posts carrying salary of less than ^5,700 per month, that has led to further error that such reservation in the matter of promotion is applicable from Scale I upward up to Scale VI. What constitutes an error apparent on the face of the record is explained in *State of Rajasthan & Anr. v. Surendra Mohnot & Ors*¹. , with the aid of an earlier judgment, in the following manner:

“25. To appreciate what constitutes an error apparent on the face of the record, the observations of the Court in *Satyanarayan Laxminarayan Hegde v. Mallikarjun Bhavanappa Tirumale*², are useful: (AIR p.137)

“An error which has to be established by a long-drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Where an alleged error is far from self-evident and if it can be established, it has to be established, by lengthy and complicated arguments, such an error cannot be cured by a writ of certiorari according to the rule governing the powers of the superior court to issue such a writ.”

26. In the case at hand, as the factual score has uncurtained, the application for review did not require a long-drawn process of reasoning. It did not require any advertence on merits which is in the province of the appellate court. Frankly speaking it was a manifest and palpable error. A wrong authority which had nothing to do with the lis was cited and that was conceded to. An already existing binding precedent was ignored. At a mere glance it would have been clear to the Writ Court that the decision was rendered on the basis of a wrong authority. The error was self-evident. When such self-evident errors come to the notice of the Court and they are not rectified in exercise of review jurisdiction or jurisdiction of recall which is a facet of plenary jurisdiction under Article 226 of the Constitution, a grave miscarriage of justice occurs...”

10. The Court also made the following pertinent observations:

“28. We have already stated the legal position with regard to legal impact as regards the concession pertaining to the position in law. That apart, we think that an act of the Court should not prejudice anyone and the maxim *actus curiae neminem gravabit* gets squarely applicable...”

11. Learned counsel appearing for the respondent employees could not dispute the aforesaid error having been occurred. It is for this reason, the main argument on the part of the counsel for the respondents was that insofar as Union of India is concerned, review petition was not maintainable as it had not challenged the judgment of the High Court. It was also argued that

the review petition filed by banks was against the public policy as there was no adequate representation of SC/ST employees in the higher posts and by not providing such a reservation, the Government was failing to subscribe to the Constitutional spirit behind reservation provisions. Counsel also endeavoured to argue that the appeals which were filed against the judgment of the High Court themselves were not maintainable as a circular was issued by the Union of India impressing upon the banks to follow the judgment of the High Court.

12. The aforesaid arguments of learned counsel for the respondent employees fail to cut any ice as there are not germane to the issue with which the Court is concerned with in these review petitions. Even if the review petition filed by the Union of India is to be discarded, that would be immaterial inasmuch as the banks, which were the appellants, have also filed the review petition on the same grounds and, therefore, this Court is necessarily called upon to decide the issue at hand. Further, when an error is pointed out and the Court also finds that there is an error apparent on the face of the record, it would not shy away from correcting that error.

13. We would be candid in our remarks that once an error is found in the order/judgment, which is apparent on the face of record and meets the test of review jurisdiction as laid down in Order XLVII Rule (1) of the Supreme Court Rules, 2013 read with Order XLVII Rule (1) of the Code of Civil Procedure, 1908, there is no reason to feel hesitant in accepting such a mistake and rectify the same. In fact, the reason for such a frank admission is to ensure that this mind of patent error from the record is removed which led to a wrong conclusion and consequently wrong is also remedied. For adopting such a course of action, the Court is guided by the doctrine of *ex debito justitiae* as well as the fundamental principle of the administration of justice that no one should suffer because of a mistake of the Court. These principles are discussed elaborately, though in a different context, in *A.R. Antulay v. R.S. Nayak*³.

14. We would also like to reproduce the following observations in *S. Nagaraj v. State of Karnataka*⁴:

“18. Justice is a virtue which transcends all barriers. Neither the rules of procedure nor technicalities of law can stand in its way. The order of the Court should not be prejudicial to anyone. Rule of *stare decisis* is adhered for consistency but it is not as inflexible in Administrative Law as in Public Law. Even the law bends before justice. Entire concept of writ jurisdiction exercised by the higher courts is founded on equity and fairness. If the Court finds that the order was passed under a mistake and it would not have exercised the jurisdiction but for the erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice then it cannot on any principle be precluded from rectifying the error. Mistake is accepted as valid reason to recall an order. Difference lies in the nature of mistake and scope of rectification, depending on if it is of fact or law. But the root from which the power flows is the anxiety to avoid injustice. It is either statutory or inherent. The latter is available where the mistake is of the Court. In Administrative Law the scope is still wider.

Technicalities apart if the Court is satisfied of the injustice then it is its constitutional and legal obligation to set it right by recalling its order. Here as explained, the Bench of which one of us (Sahai, J.) was a member did commit an error in placing all the stipendiary graduates in the scale of First Division Assistants due to State's failure to bring correct facts on record. But that obviously cannot stand in the way of the Court correcting its mistake. Such inequitable consequences as have surfaced now due to vague affidavit filed by the State cannot be permitted to continue.”

15. The argument of public policy pressed by the respondents is of no avail. We are conscious of the fervent plea raised by the respondent employees that employees belonging to SC/ST category should be made eligible for promotion by providing the reservation in the promotional posts as well, as their representation is abysmally minimal. However, whether there is any such justification in the demand or not is for the State to consider and make a provision in this behalf. This was so recorded in the judgment itself in the following manner:

“24. In the first instance, we make it clear that there is no dispute about the constitutional position envisaged in Articles 15 and 16, insofar as these provisions empower the State to take affirmative action in favour of SC/ST category persons by making reservations for them in the employment in the Union or the State (or for that matter, public sector/authorities which are treated as State under Article 12 of the Constitution). The laudable objective underlying these provisions is also to be kept in mind while undertaking any exercise pertaining to the issues touching upon the reservation of such SC/ST employees. Further, such a reservation can not only be made at the entry level but is permissible in the matters of promotions as wells. At the same time, it is also to be borne in mind that Clauses 4 and 4A of Article 16 of the Constitution are only the enabling provisions which permit the State to make provision for reservation of these category of persons. Insofar as making of provisions for reservation in matters of promotion to any class or classes of post is concerned, such a provision can be made in favour of SC/ST category employees if, in the opinion of the State, they are not adequately represented in services under the State. Thus, no doubt, power lies with the State to make a provision, but, at the same time, courts cannot issue any mandamus to the State to necessarily make such a provision. It is for the State to act, in a given situation, and to take such an affirmative action. Of course, whenever there exists such a provision for reservation in the matters of recruitment or the promotion, it would bestow an enforceable right in favour of persons belonging to SC/ST category and on failure on the part of any authority to reserve the posts, while making selections/promotions, the beneficiaries of these provisions can approach the Court to get their rights enforced. What is to be highlighted is that existence of provision for reservation in the matter of selection or promotion, as the case may be, is the sine qua non for seeking mandamus as it is only when such a provision is made by the State, a right shall accrue in favour of SC/ST candidates and not otherwise.”

16. Once we find an error apparent on the face of the record and to correct the said error, we have to necessarily allow these review petitions.

17. In view of the foregoing, the review petitions are allowed by deleting paragraph Nos. 33 to 36 of the judgment and the directions contained therein, as well as the directions contained in paragraph No. 37. Instead, after paragraph No. 32, following paragraph shall be inserted and numbered as 33, and paragraph No. 38 should be re-numbered as 34:

“33. Result of the aforesaid discussion would be to allow these appeals and set aside the judgment of the High Court. While doing so, we reiterate that it is for the State to take stock of the ground realities and take a decision as to whether it is necessary to make a provision for reservation in promotions from Scale I to Scale II and upward, and if so, up to which post. The contempt petition also stands disposed of.

34. In the peculiar facts of this case, we leave the parties to bear their own costs.”

18. All the interlocutory applications for impalement/intervention also stand disposed of.

19. Before we part with, we would like to observe that we have mentioned in para 15, which was also recorded in the main judgment, that the grievance of the employees belonging to SC/ST category is that there is negligible representation of employees belonging to their community in the officers' category at all levels. Keeping in view the statistical figures which have been placed on record showing their representation in officers' scales, it would be open to the concerned authority, namely, the State and the Banks to consider whether their demand is justified and it is feasible to provide reservation to SC/ST category persons in the matter of promotion in the officers' category and if so, up to which scale/level.

Judgment Referred.

¹(2014) 14 SCC 0077

²AIR 1960 SC 0137

³(1988) 2 SCC 0602

⁴(1993) Supp 4SCC 0595