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G.S.I.C. KARMACHARI UNION AND ORS.

v.

GUJARAT SMALL INDUSTRIES CORPORATION AND ORS.

DECEMBER 12, 1996

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[K. RAMASWAMY, S.B. MAJMUDAR AND G.T. NANAVATI, JJ.]

Constitution of India, 1950 : Articles 14, 15, 16, 38, 46, 51-A and 335.

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Scheduled Caste—Scheduled Tribe—Reservation in service—Retrospectivity—Validity of—Reservation in promotions—Resolution dated 30.4.1984 providing for reservation—Resolution dated 29.8.1987 by Respondent-Corporation deciding to implement the roster system and promotion of Scheduled Caste and Scheduled Tribes employees as per the directives and Resolution of the Gujarat Government on January 31, 1976 to give effect to the policy of reservation in promotion in all Class-I, Class-II and Class-III posts in grades or services in which the element of direct recruitment, if any, does not exceed 50%—Writ challenging validity—Held in view of the decision of Government of Gujarat the respondent-Corporation was justified in passing the Resolution for giving effect to the policy of reservation in all posts of classes I to IV from April 30, 1984—The subsequent impugned Resolution giving effect to the roster from January 1, 1976, therefore, would not be justified in the light of the Resolution passed by the Governments on August 18, 1985—The Corporation shall keep operating the roster w.e.f. April 30, 1984 onwards.

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Indra Sawhney v. Union of India & Ors., [1992] Supp. 3 SCC 210, referred to.

CIVIL ORIGINAL JURISDICTION : Writ Petition (C) No. 986 of 1989.

(Under Article 32 of the Constitution of India.)

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P.K. Manohar for the Petitioners.

P.S. Poti, Mrs. Neetu Singh, Mrs. H. Wahi, (Sunil Kumar Jain), for Jain Hansaria & Co., M.N. Shroff and S. Bhowmick for the Respondents.

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The following Order of the Court was delivered :

This writ petition under Article 32 of the Constitution has been filed A
 challenging the validity of the Resolution dated August 29, 1987
 whereunder the respondent-Corporation had resolved to implement the
 roster system and promotion of Scheduled Caste and Tribes employees as
 per the directives and Resolution of the Gujarat Government on January B
 31, 1976 to give effect to the policy of reservation in promotions in all
 Class-I, Class-II and Class-III posts in grades or services in which the
 element of direct recruitment, if any, does not exceed 50%. The decision
 on the fitness or unfitness of an officer would be taken by the Departmental
 Promotion Committee which would be constituted by the Departments. A
 100 point roster as per percentages of reservation for Scheduled Castes
 and Scheduled Tribes, to determine the number of vacancies reserved in a C
 year would be followed. According to the points in the roster, if there are
 any vacancies reserved for each of the two classes mentioned, separate lists
 would be drawn up of the eligible candidates for each of these categories
 and general candidates and arranged in order of their *inter-se* seniority in
 the main list. The Scheduled Castes and Scheduled Tribes employees D
 should be adjudged by the Departmental Promotion Committee separately
 in regard to their fitness. In paragraph 4 of the Resolution, it was stated
 that these orders would take effect from January 1, 1976.

On April 30, 1984, the respondent-Board passed a Resolution that
 in Article 16(4) and Article 335 of the Constitution provision has been E
 made for backward classes for appointment and, therefore, there should
 be no difficulty in providing reservation in appointment to posts to give the
 benefit to the backward classes; and that the percentage of reservation as
 is kept in the Government service would be applicable to the Corporation.
 As per the orders of the Board, for every type of recruitment at every stage F
 or service or place, a separate roster register, as per the prescribed format,
 is to be kept. The Board had given orders for filling up the posts as per
 the percentage for Scheduled Castes and Scheduled Tribes. But for intro-
 duction of roster system in the direct recruitment or promotion the Cor-
 poration had not yet issued any orders. The Corporation, therefore, G
 resolved to give effect to the objectives of the Government and authorised
 the Managing Director to follow the roster system scrupulously as per the
 directions of the Government in IMPD, vide letter dated September 29,
 1983 for class-I to class-IV employees which are as under :

"1) For SC/ST

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A (i) *For direct recruitment*

Class I upto Sr Executive's level and Class II, III and IV employees.

(ii) *For promotion*

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Class I upto Executive level and Class II, III and IV employees.

(2) *For Socially and Educationally Backward Class and Physically handicapped.*

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(i) *For direct recruitment only*

Class I, Class II, Class III and Class IV employees."

Subsequently, they passed the impugned Resolution giving effect to the policy of reservation and the roster system w.e.f. 1.1.1976. The question is : from what date the Corporation would give effect to the roster system?

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It is true, as contended by Shri P.S. Poti, learned senior counsel for the State, that when the policy of the Government envisaged under Article 16(4) read with Articles 14 and 16(1) and 335 is given effect to the reservation in initial requirement and promotion can be made. But the question of retrospectivity of the policy does not arise; what is being done is to give effect to the constitutional policy of providing adequate representation to the members of Scheduled Castes and Scheduled Tribes in all classes of service or posts where they are not adequately represented. Therefore, the arbitrariness does not arise since it is part of the scheme of the Constitution. Unless adequate representation is given to the employees belonging to Scheduled Castes and Scheduled Tribes in promotions also, the adequacy of representation in all classes and grades of service, where there is no element of direct recruitment cannot be achieved. Obvious, therefore, Article 16(4-A) was brought on the Constitution by Constitution (77th Amendment) Act, after the majority judgment of this Court by a Bench of 9 Judges in *Indra Sawhney v. Union of India & Ors.*, [1992] Supp. 3 SCC 210. The Preamble of the Constitution and Article 38 accord social and economic justice as fundamental rights to all people in all institutions of national level. Article 46 enjoins the State to accord social and economic justice to the Scheduled Castes and Scheduled Tribes. Article 51A enjoins every citizen to improve excellence individually and collectively so that the nation constantly rises to higher levels, socially, economically and cultural-

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ly. Right to development assured by the Constitution is held to be a fundamental right. So the policy of reservation in the Preamble of the Constitution, the fundamental rights under Articles 14, 15(1), 15(4), 16(1), 16(4), 16(4A), 46 and 335 and the other related articles is to give effect to the above constitutional objectives. A

On the facts, it is not necessary for us to go into the question of retrospectivity for the reason that after the aforesaid Resolution and similar other Resolutions by other institutions came to be passed, followed by agitation carried on by the anti-reservationists in the State, the Gujarat State Government had constituted an Expert Committee to go into the question which had made 11 recommendations for implementation. One of the recommendations made by the said committee was to give effect to the policy of reservation prospectively. The Government had accepted the recommendation and agreed thus : B C

"Orders for implementation of the recommendations of the Sadhwani Committee Nos. 5, 6, 9, 10 and 11 will have prospective effect." D

Item 11 relates to giving effect to the roster system prospectively. In that view of the matter, the Government having conceded to the claims of anti-reservationists and passed the resolution to give effect to the policy of reservation in promotions prospectively, the respondent-Corporation was justified in passing the Resolution for giving effect to the policy of reservation in all posts of classes I to IV from April 30, 1984. The subsequent impugned Resolution giving effect to the roster from January 1, 1976, therefore, would not be justified in the light of the Resolution passed by the Government on August 18, 1985 referred to earlier. E F

It is seen that pending writ petition some officers belonging to Scheduled Castes and Scheduled Tribes have come to be promoted. Since they are only marginal promotions, we do not like to interfere with the promotions already made. Subject to sustaining the promotions given to them, there shall be a direction that the Corporation would keep operating the roster w.e.f. April 30, 1984 and onwards. G

The writ petition is disposed of accordingly. No costs.