

SHRI SURESH CHANDRA
v.
SHRI J.B. AGARWAL AND ORS.

A

APRIL 4, 1997

[K. RAMASWAMY AND G.B. PATTANAIK, JJ.]

B

Constitution of India, 1950 : Articles 14, 16, and 335.

Service Law—Scheduled Castes and Scheduled Tribes—Reservation—Appellant working as Assistant Manager (Electrical)—Considered for promotion to Senior Manager's post by applying Rule of Roster—Contention of Respondent that Rule of Reservation could not be applied to the single post cadre—Rejection of—Rule of reservation held applicable to the single post cadre.

C

Arati Ray Choudhury v. Union of India & Ors., [1974] 2 SCR 1; *Union of India & Anr. v. Madhav*, JT (1996) 9 SC 320 and *State of U.P. v. Dr. Dina Nath Shukla & Anr.*, JT (1997) 2 SC 467, relied on.

D

Dr. Chakradhar Paswan v. State of Bihar and Ors., [1988] 2 SCC 214, dissented from.

E

Chetana Dilip Motghare v. Bhide Girls' Education Society, Nagpur & Ors., [1985] Supp. 1 SCC 157; *Ahmedabad St. Xavier College v. State of Gujarat*, [1975] 1 SCR 173; *Dr. Pradeep Jain & Ors. v. Union of India & Ors.*, [1984] 3 SCC 654; *Marri Chandra Shekhar Rao v. Dean Seth G.S. Medical College & Ors.*, [1990] 3 SCC 130 and *Ashok Kumar Gupta v. State of U.P.*, (1997) 3 Scale 289, referred to.

F

S. Vinod Kumar & Anr. v. Union of India, JT (1996) 8 SC 643, held Inapplicable.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3081 of 1997.

G

From the Judgment and Order dated 18.4.95 of the Delhi High Court in C.W.P. No. 4254 of 1994.

M.P. Raju, Ms. Mary Searia, T.U. Raja and L.J. Vadakara for the

H

A Appellant.

Ms. Pinky Anand, Ms. Gecta Luthra, D. Goburdhan and R.P. Gupta for the Respondents.

The following Order of the Court was delivered :

B

Leave granted. We have heard learned counsel on both sides.

This appeal by special leave arises from the judgment of the Division Bench of the Delhi High Court, made on April 18, 1995 in CWP No. 4254/94.

C

The admitted position is that to the post of the Assistant Manager (Electrical) carrying the pay scale of Rs. 1000-1600, the next channel of promotion is Senior Manager (Electrical) carrying the pay scale of Rs. 3000-45000. When the case of the appellant was sought to be considered for the said post by applying rule of roster, the respondent filed a writ

D

petition. The High Court following the judgment of this Court in *Dr. Chakradhar Paswan v. State of Bihar & Ors.*, [1988] 2 SCC 214 had held that rule of reservation could not be applied to the single post cadre as it would amount to 100% reservation violating Article 16(1) read with Article 14 of the Constitution. In *Arti Ray Choudhury v. Union of India & Ors.*, [1974] 2 SCR 1, a Constitution Bench of this Court had held that the

E

reservation in single post applying the rule of the roster is constitutionally valid. This Court has considered the entire case law in *Union of India & Anr. v. Madhav, JT* (1996) 9 SC 320. The Bench of three Judges, to which both of us were members, held that in case of solitary isolated post on the basis of the rule of rotation, the benefits and facilities should be extended to

F

the reserved candidates, namely Scheduled Castes and Scheduled Tribes for appointment by promotion to the single post and, therefore, application of the rule of reservation is not unconstitutional. Accordingly, it was held thus :

G

"Even though there is a single post, if the Government have applied the rule of rotation and the roster point to the vacancies that had arisen in the single point post and were sought to be filled up by the candidates belonging to the reserved categories at the point on which they are eligible to be considered, such a rule is not violative of Article 16(1) of the Constitution."

This principle was reiterated in *State of U.P. v. Dr. Dina Nath Shukla & Anr.*, JT (1997) 2 SC 467. Shri Goburdhan, learned counsel appearing

for the respondents, has contended that this Court has considered that the judgment in *Chetana Dilip Motghare v. Bhide Girls' Education Society, Nagpur & Ors.*, [1985] Supp. 1 SCC 157. The said judgment was considered in *Madhav's* case and it was held therein, as a question fact, that since the material was not placed before the Court, having noticed the Constitution Bench judgment in *Arati Ray Choudhury* case, the Court limited the decision to the facts of that case and held that it is not possible to accede to the contentions raised by the review petitioner therein. Therefore, there is no question of reconsideration of the position once over. It is then contended that as held in *S. Vinod Kumar & Anr. v. Union of India*. JT (1996) 8 SC 643, the basic qualifications cannot be relaxed while applying the rule of reservation under Article 16(4) of the Constitution. He contends that respondent is a degree-holder while the appellant is only diploma-holder. Therefore, his case could not be considered. The question was considered by the Departmental Promotion Committee and it held that subject to the other eligibility criteria, educational qualification could be relaxed. If the appellant satisfies other qualifications then his case would be considered. He then contends that the said relaxation is bad in view of the orders that relaxation of the eligibility cannot be granted. He places reliance upon the rules of recruitment in that behalf. The rules of recruitment, as placed before us, do indicate the basic qualification for initial recruitment which cannot be relaxed. But in a case of promotion, the said rule does not apply. It is, therefore, not necessary for us to go into the question whether the appellant is eligible to be considered on other grounds. Whether or not he would be eligible, his case would be considered in accordance with law.

It is contended by Shri Goburdhan that respondent has been working as a Manager for the past three years in the post of Senior Manager. He is likely to retire after three years and, therefore, he will be deprived of the chance to remain in promotion post. We cannot accede to the contention. If the rule of roster is applied to a single post cadre and if the vacancy arises against a reserved post in accordance with the rule of roster, necessarily, so long as the reserved candidate is found for promotion, one is required to give place to fill up the post in accordance with the roster point. Otherwise, the roster point itself would be rendered illusory.

He contends that in *Paswan's* case, it was held that the reservation in promotion to the single post is contrary to the ratio in the *Devadasan*

- A case and violative of Article 16(1) and 16(2) of the Constitution. That principle is not correct principle of law. It is contrary to the Judgment of the nine Judges Bench of this Court in *Ahmedabad St. Xavier College v. State of Gujarat*, [1975] 1 SCR 173; a judgment of Constitution Bench in *Arati Ray Choudhury's case*; *Dr. Pradeep Jain & Ors. v. Union of India & Ors.*, [1984] 3 SCC 654; *Marri Chandra Shekhar Rao v. Dean, Seth G.S. Medical College & Ors.*, [1990] 3 SCC 130 and *Ashok Kumar Gupta v. State of U.P.*, [1997] 3 SCALE 289.
- B

The appeal is, accordingly, allowed. The writ petition stands dismissed but, in the circumstances, without cost.

C T.N.A.

Appeal allowed.