

(2001) 04 AP CK 0061

In the Andhra Pradesh High Court

Case No : Writ Petition No. 34717 of 1998

Andhra Bank Scheduled Tribe Employees' Welfare Association	APPELLANT
Vs	
Andhra Bank, Hyderabad	RESPONDENT

Date of Decision : 26-04-2001

Acts Referred:

Constitution of India, 1950 — Article 16(1), 4

Citation : (2001) 4 ALD 153 : (2001) 3 ALT 349 : (2002) 1 UPLBEC 591

Hon'ble Judges : S.B. Sinha, C.J.;V.V.S. Rao, J;Goda Raghuram, J

Bench : Full Bench

Advocate : Mr. M. Ramachandra Reddy, for the Appellant; Mr. Nooty Rama Mohan Rao, SC for the Andhra Bank and Mr. L. Narasimha Reddy, SC for the Central Government, for the Respondent

Judgement

S.B. Sinha, CJ.

1. The question which has been referred to by a learned single Judge of this Court for consideration of this Full Bench is as follows:

In case of promotion to the various posts, whether the State or the Union of India, as the case may be, is at liberty to have or not to have reservations in favour of SCs, STs and other BCs.

2. The petitioner is an Association registered under the Societies Registration Act. The members of the Association are the employees of the first respondent Bank. The grievance of the petitioner is that promotion policy is going to be implemented without following the reservation policy.

3. It is not in dispute that the appointment to the post in Junior Management Grade Scale-I is filled up by direct recruitment whereafter promotion is granted to Middle Management Grade Scale II and Middle Management Grade Scale III and Senior Management Grade Scales IV and V. As regard the promotion by Selection method, para 9.2 of the Chapter 9 of Reservation Policy which reads as follows was applicable:

9.2(a) Promotions by selection within Group A (Class I) :--In promotions by selection to posts within Group A (Class I) which carry an ultimate salary of Rs.5,700/- there is no reservation, but the Scheduled Castes/Scheduled Tribes Officers, who are senior enough in the zone of consideration for promotion so as to be within the number of vacancies for which the select list has to be drawn up would be included in that list provided they are not considered unfit for promotion. Their position in the select list would, however, be the same as assigned to them by the Departmental Promotion Committee on the basis of their record of service. They would not be given, for this purpose, one grading higher than the grading otherwise assignable to them on the basis of their record of service.

4. It is not in dispute that having regard to the decision of the Apex Court in Indra Sawhney etc. etc Vs. Union of India and others, etc. etc., , the Constitution was amended by inserting clause (4-A) in Article 16 which reads thus:-

Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion of any class or classes of posts in the services under the State in favour of Scheduled Castes and the Scheduled Tribes which, in the opinion of the State are not adequately represented in the services under the State.

5. The contention of the petitioner was that having regard to the aforementioned Constitutional provision, the first respondent was obligated to adopt the reservation policy.

6. It is not in dispute that after the provision in Article 16(4-A) came into force, the Ministry of Personnel, public Grievances and Pensions, Department of Personnel and Training issued an Office Memorandum dated 13-8-1997 which is in the following terms:

The undersigned is directed to invite attention to this Department's O.M. No.36012/37/93, Estt. (SCT) dated 19-8-1993 clarifying that the Supreme Court had, in the Indra Sahawney case (supra), permitted the reservation, for the Scheduled Castes and the Scheduled Tribes in promotion to continue for a period of five years from 16-11-1992.

Consequent to the judgment in Indra Sahawney's case (supra), the Constitution was amended by the Constitution (Seventy-seventh amendment) Act, 1995 and Article 16(4-A) was incorporated in the Constitution. This Article enables the State to provide for reservation, in matters of promotion, in favour of the Scheduled Castes and the Scheduled Tribes, which in the opinion of the State are not adequately represented in the Service under the State.

In pursuance of Article 16(4-A), 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 whereafter, the reservation in promotion shall continue to maintain the representation to the extent of the prescribed percentages for the respective categories.

7. The petitioners in this writ application proceeded on the basis that reservation policy exists in relation to the promotional avenues also and the same was protected under the Article 16(4-A) of the Constitution and by reason of the aforementioned circular dated 13-8-1997, the same had been taken away.

8. It is no longer *res integra* that Article 16(4-A) provides only for an enabling provision. It is also well settled that no writ in the nature of mandamus can issue directing the State to provide for reservation policy when there exists none.

9. As indicated hereinbefore, by reason of Chapter 9 of the reservation policy, no reservation was provided for in respect of posts which carried ultimate salary of Rs.5,700/-. In terms of the said Office memo dated 13-8-1997, a decision had been taken to continue the reservation in promotions, which would mean that the reservation policy existing if any only could be given effect to. The contention of the petitioner to the effect that as reservations have been provided for by reason of Article 16(4-A), a duty has been cast upon the first respondent to continue the same and in any event, the same should be extended, cannot be accepted. The question referred to for decision before this Bench is no longer *res integra*.

10. In *P and T Scheduled Caste/Tribe Employees' Welfare Association (Regd.) and Others Vs. Union of India (UOI) and Others*, , it has been held:

It is not disputed that in many of the other departments of the Union Government the scheme of reservation of posts for the Scheduled Castes and the Scheduled Tribes is in vogue in cases of promotions from the lower grades to the higher grades when they are done on the basis of seniority subject to fitness and under the said policy the persons belonging to the Scheduled Castes and the Scheduled Tribes working in the other departments have been conferred an extra advantage which was not available to the candidates belonging to other categories and that in the Posts and Telegraphs Department also the employees belonging to the Scheduled Castes and the Scheduled Tribes were enjoying a similar advantage before 30-12-1983 on which date the policy contained in the letter dated 23-12-1983 came into force. Even the letter dated 23-12-1983 while it sets at naught the normal orders relating to reservation for the Scheduled Castes and the Scheduled Tribes in the Posts and Telegraphs Department in force in the other departments provides for the issue of specific orders by the Government under which the members belonging to the Scheduled Castes and the Scheduled Tribes could gain some extra advantage. Admittedly no such order has been issued till today. The petitioners have prayed that a direction should be issued to the Government to issue specific orders conferring on them such an extra advantage. We feel that the claim made by the petitioners is fully justified in view of the fact that similar advantage is being enjoyed by persons belonging

to the Scheduled Castes and the Scheduled Tribes in other Departments and only they have been deprived of it. Such deprivation violates the equality clause of the Constitution. While it may be true that no writ can be issued ordinarily compelling the Government to make reservation. Under Article 16(4) which is only an enabling clause, the circumstances, in which the members belonging to the Scheduled Castes and Scheduled Tribes in the Posts and Telegraphs Department are deprived of indirectly the advantage of such reservation which they were enjoying earlier while others who are similarly situated in the other departments are allowed to enjoy it make the action of Government discriminatory and invite intervention by this Court.

One of the methods by which the Government can confer some extra advantage on the employees belonging to the Scheduled Castes and the Scheduled Tribes in cases of this nature where promotion to higher cadre is a time-bound one is to direct that the employees belonging to the Scheduled Castes and the Scheduled Tribes may be promoted to the higher cadre on completion of a shorter period of service than what is prescribed for others. In this particular case it is open to the Government to direct that while all others would be entitled to be promoted to the higher cadre on completion of 16 years of service, the members belonging to the Scheduled Castes and the Scheduled Tribes may be promoted to the higher cadre on completion of say, 12 or 13 years of service. There may be other methods of achieving the same result. The claim for conferment of some extra advantage on the Scheduled Castes and the Scheduled Tribes employees working in the Posts and Telegraphs Department which may be commensurate with the extra advantage which members belonging to the Scheduled Castes and the Scheduled Tribes are enjoying in the other departments of the Government of India without detriment to the maintenance of efficiency in the service appears to be a reasonable one. In what way it should be done is a matter left to the discretion of the Government. This should be decided by the Government taking into consideration all aspects of the case,

We therefore, issue a direction to the Government of India to issue an order under clause 6 of the letter dated 23-11-1983 conferring some additional advantage on the employees belonging to the Scheduled Castes and the Scheduled Tribes in the Posts and Telegraphs Department commensurate with similar advantages which are being enjoyed by the employees belonging to the Scheduled Castes and the Scheduled Tribes in the other departments of the Government of India. The Government shall issue such an order accordingly within four months from today. Any order that may be issued by the Government shall operate prospectively. All promotions that have been made so far pursuant to the policy contained in the letter dated 23-12-1983 and that may be made hereafter till the date on which the direction to be issued by the Government under clause 6 comes into operation, shall however, remain undisturbed.

11. In *State Bank of India Scheduled Caste/Tribe Employees Welfare Association and another Vs. State Bank of India and others*, , the Apex Court observed:

It is contended on behalf of the employees that in the light of the subsequent relaxation in service norms granted by the circular of 28-7-1983, which was in excess of the relaxation originally granted under the circular of 3-4-1978, the lapsed vacancies should be retrospectively filled. We find it difficult to accept this contention. In the first place any relaxation granted in favour of Scheduled Caste and Scheduled Tribe employees in respect of service norms is a matter of policy. Undoubtedly, Article 16(4) enables the Government to make reservations for Scheduled Castes and Scheduled Tribes either at the initial stage of recruitment or at the stage of promotion. This Court in the case of C.A. Rajendran Vs. Union of India (UOI) and Others, , has stated that Article 16(4) does not confer any right on the petitioner and there is no constitutional duty imposed on the Government to make such a reservation. Article 16(4) is an enabling provision and confers a discretionary power on the State to make reservation either at the Stage of the initial recruitment or at the stage of promotion in favour of a backward class of citizens which in its opinion, is not adequately represented in the service of the State.

12. The matter has been given a quietus in Ajit Singh and Others Vs. The State of Punjab and Others, , wherein it has been categorically held:

We next come to the question whether Article 16(4) and Article 16(4-A) guaranteed any fundamental right to reservation. It should be noted that both these articles open with a non-obstante clause - "Nothing in this Article shall prevent the State from making any provision for reservation.....". There is a marked difference in the language employed in Article 16(1) on the one hand and Article 16(4) and Article 16(4-A) on the other. There is no directive or command in Article 16(4) or Article 16(4-A) as in Article 16(1). On the face of it, the above language in each of Articles 16(4) and 16(4-A) is in the nature of an enabling provision and it has been so held in judgments rendered by Constitution Benches and in other cases right from 1963.

It was further held:

Power is coupled with duty:

Learned senior Counsel for the reserved candidates, Sri K. Parasaran, however contended that Article 16(4) and Article 16(4-A) confer a power coupled with a duty and that it would be permissible to enforce such a duty by issuing a writ of mandamus. Reliance for that purpose was placed upon Comptroller and Auditor-general of India, Gian Prakash, New Delhi and Another Vs. K.S. Jagannathan and Another, and also on Julius v. Lord Bishop (1880) 5 AC 214) which case was followed by this Court in Commissioner of Police, Bombay Vs. Gordhandas Bhanji, . We are unable to agree with the above contention.

13. Yet again, in Indira Sawhney Vs. Union of India and Others, , the decision in Ajit Singh's case (supra) has been reiterated in the following terms:

The judgment of Jeevan Reddy, J., was rendered for himself and on behalf of

three other learned Judges, Kania, C.J. and M.N. Venkatachaliah, A.M. Ahmadi, JJ., (as they then were). The said judgment laid emphasis on the relevance of caste and also stated that upon a member of the backward class reaching an "advanced social level or status", he would no longer belong to the backward class and would have to be weeded out. Similar views were expressed by Sawant, Thommen, Kuldip Singh and Sahai, JJ., in their separate judgments.

14. In view of the aforementioned authoritative pronouncements of the Apex Court, it must be held that unless the reservation policy was existing, the question of providing therefore and extending the same in terms of Article 16(4-A) does not arise. In any event, this Court in exercise of its jurisdiction under Article 226 of the Constitution cannot issue a writ of mandamus directing the respondents to provide for such a policy particularly in view of the fact that Article 16(4-A) is an enabling provision. If no reservation has been made by the State, the High Court has no jurisdiction under Article 226 of the Constitution to issue any direction therefor.

15. In any event, a writ in the nature of mandamus as prayed for cannot be issued. In *Supreme Court Employees' Welfare Association v. Union of India*, , the Apex Court clearly held:

There can be no doubt that no Court can direct a legislature to enact a particular law. Similarly, when an executive authority exercises a legislative power by way of subordinate legislation pursuant to the delegated authority of a Legislature, such executive authority cannot be asked to enact a law which he has been empowered to do under the delegated legislative authority.

16. For the afore mentioned reasons, the question involved in this case must be answered in affirmative. There is no merit in this writ petition. It is accordingly dismissed.