
(1995) 01 MP CK 0015
In the Madhya Pradesh High Court
Case No : M.P. No. 1822 of 1992 (G)

Ashutosh Kumar Singh Rathore

APPELLANT

Vs

State Bank of Indore and Another

RESPONDENT

Date of Decision : 02-01-1995

Acts Referred:

Constitution of India, 1950 — Article 12, 226, 227

Citation : (1995) 1 MPJR 75

Hon'ble Judges : Shacheendra Dwivedi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Shacheendra Dwivedi, J.

In this petition preferred under Articles 226 and 227 of the Constitution of India, the petitioners crave for the issuance of a writ of Mandamus and/or certiorari or any other direction in the nature of a writ, for quashing the selection proceedings and the select list prepared thereunder for the promotion of employees of respondent-Bank to the posts of Junior. Management Grade Scale I (for short "JMGS I")

There is no dispute that respondent No. 1, the State Bank of Indore is a "State" within the meaning of Article 12 of the Constitution and is thus amenable to the writ jurisdiction of this Court.

All the petitioners are the employees of respondent No. 1, in its award staff. There is also no dispute that the petitioners were also entitled for consideration in the selection for promotion in the grade of Junior Management Grade Scale I.

In the process of such selection, the respondent held the written test and the interview. The petitioners along with other eligible employees of the General category as also of the reserved category for SC and ST were allowed to appear and a list of successful candidates was declared as contained in Annexure P/1.

There were 30 posts IMGS. I available for being filled up through promotion. The respondents had declared that out of the total, only 50% posts would be available for the candidates of General Category and on the remaining 50% posts the candidates of SC and ST shall be promoted, It was provided that if the suitable employees of SC and ST categories would not be available, in that case, the vacant posts may be filled up from the general category candidates.

The candidates of SC and ST were given relaxation of 5% marks in the written test and of 10% marks in the personal interview.

The petitioners contend that although the result of the written test and the interviews was not declared officially, yet the welfare Council of SC and ST category employees had disclosed the information from their sources and had expressed their happiness on the great success of their candidates by occupying 5 more posts of the general category, apart from those 15 seats, which were set apart for the candidates of reserved category. It is contended by the petitioners that in such a case, the candidates of reserved quota would be occupying 67% of the total seats. It was, therefore, urged that the selection so made was in contravention to the declared policy and was also against the dictum of the Apex Court, laid down in *Indra Sawhney etc. etc Vs. Union of India and others, etc. etc.*, wherein their Lordships had laid down the valuable principle relating to reservations in the matter of promotions, declaring that it shall not exceed 50%.

With the above submissions, it was strenuously contended that if the promotion orders were to be issued on the result as declared by the SC and ST welfare counsel, those would be in clear contravention of the dictum laid down by the Apex Court. The petitioners, therefore, pray that the respondents be commanded to follow the principles laid down by the highest judicial authority of the country and not to utilise the general category seats for SC and ST candidates and to keep the selection procedure in consonance with the dictum of Supreme Court. It was also urged that the representation (Annexure P/6) submitted by the petitioners to the respondents in this regard also went unheeded, hence, this petition.

By placing implicit reliance on *Indra Sawhney's* case, the argument advanced by the petitioners in relation to the reservation, consequential relaxations and the quota of seats in promotion, is wholly misplaced. The reservations in employment have been made for the up-liftment of the reserved category persons, and relaxations are given when they fail to achieve the general standard. No protection would be required when the persons of reserved category succeed in achieving the general standard. Under the reservation policy, the reserved seats are required to be filled up by reserved category candidates, but when they fail to achieve the general standard, they are to be given the benefit of permissible relaxation. The respondent Bank had fixed the relaxation of marks upto 5% in the written test and upto 10% in the personal interview. But if the candidates of reserved category be successful in obtaining the general standard, those would deserve the promotions on their own merit, and not on

account of reservation.

According to respondent-Bank, merit list from the successful candidates irrespective of the category, was prepared and the employees of reserved category were first appropriated against the reserved seats. In this process the seven employees of scheduled caste and one of scheduled Tribe were selected against their 7 and 8 seats respectively. For the remaining 7 vacant seats of Scheduled Tribes the selection was made by giving the benefit of relaxation to five candidates, since two of such employees had qualified under the general standard, and thus, all the reserved category seats were filled up.

The 15 general category seats were filled up from the candidates of the merit list. Incidentally, five more employees of scheduled caste still had their place in merit list and those were, therefore selected. Such selection is attacked by the petitioners on the ground that it exceeds the maximum quota of 50% reservation, therefore, it is against the dictum laid down by the Hon"ble Supreme Court in Indra Sawhney's case (Supra).

The contention is misconceived. The supreme Court, in such a situation, observed in Indra Sawhney's case (Supra.) that :-

94-A. ...In this connection it is well to remember that the reservations under Article 1 (sic)(4) do not operate labels communal reservation. It may well happen that some members belonging to say. Scheduled Castes get selected in the open competition field on the basis of their own merit, they will not be counted against the quota reserved for Scheduled Castes they will be treated as open competition candidates.

The respondent-Bank has submitted that only five candidates from S.T. category, out of the total number of 8 seats were given the benefit of relaxation and thus all the 8 seats reserved for S.T. category were filled up.

Therefore, the procedure adopted and the selection made by the respondents is in consonance with its policy/guidelines as contained in the latest Brochure Annexure B-2 and the mode utilised by the respondent-Bank in the process of selection of its employees for promotions as JMGS. I is found to be fully justified. It has to be held valid, in view of the India Sawhney itself. There has been violation of the reservation polity and the Apex Court Authority Indra Sawhney's case supports the respondents' stand. The reservations were provided only to the extend of the 50% of the available seats. Other employees of scheduled caste category have succeeded on their own merit and not because they belonged to the reserved category.

The petitioners grievance of infringement of their constitutional right and of discrimination is wholly untenable. The petitioners eligibility for promotion entitles them for the consideration to the promoted post, but docs not create nor confer a right for promotion. The general category seats remain available to all and have to be filled up according to the merit. The petitioners failed to earn

their place in the merit list, which was prepared irrespective of my category. After exhausting the 7 reserved category seats for Scheduled Caste, the remaining five Scheduled Caste candidates were selected for promotions in open completion of general category, since they had still found their place in the merit list.

In view of the above discussion. I have found no merit in this petition. It is consequently dismissed but there shall be no order as to the costs.