
(2000) 04 GAU CK 0027
In the Gauhati High Court
Case No : Civil Rule No. 361 of 1997

Ashutosh Roy and Others

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 05-04-2000

Acts Referred:

Citation : (2000) 2 GLT 474

Hon'ble Judges : P.G. Agarwal, J

Bench : Single Bench

Advocate : C.S. Sinha, for the Appellant; S. Das, for the Respondent

Judgement

P.G. Agarwal, J.—The present Petitioners before me were serving in the Agriculture Department, Government of Tripura and at the relevant time, they were posted as Head Clerk/Accountant in various offices of the said Department. They all belong to the un-reserved category and they alongwith proforma-Respondent Nos. 10 to 19 were serving in the feeder posts being eligible for promotion to the posts of Office Superintendent. In the said Department of Agriculture, the total number of posts in the cadre of Office Superintendent is twenty, out of which six are reserved for Scheduled Tribes, three for Scheduled Castes and remaining eleven for general category. All these posts were filled up in the year 1992 and thereafter, when vacancies arose due to retirement, resignation etc., some orders of promotion were passed against which a number of litigations were initiated. In this writ petition, we are not concerned with the above.

2. The relevant fact is that during the year 1996 and 1997 as many as 10 vacancies arose due to retirement, resignation etc. Among these seven persons belonged to general category, two were Scheduled Castes and one was Scheduled Tribes. Thereafter, vide impugned order dated 29.5.1997, these ten vacancies were filled up by one general category, five Scheduled Tribes category and four Scheduled Castes category officers by promotion. The Petitioners have challenged the above order of promotions mainly on the ground that as 10

vacancies arose in the ratio of 7:2:1 as stated above, these posts were to be filled up in the above ratio only, that is 7 general, 2 Scheduled Castes and 1 Scheduled Tribes. In support of their submission, the Petitioners have relied on a decision of the Apex Court in the case of R.K. Sabharwal and others Vs. State of Punjab and others, wherein the Apex Court held:

7, When all the roster points in a cadre are filled the required percentage of reservation is achieved. Once the total cadre has full representation of the Scheduled Castes/Tribes and Backward Classes in accordance with the reservation policy then the vacancies arising thereafter in the cadre are to be filled from amongst the category of persons to whom the respective vacancies belong.

The writ Petitioners, therefore, prayed for quashing of the Notification dated 29.5.1997 and for a direction in the nature of mandamus to promote the Petitioners to the rank of Office Superintendent.

3. The Respondent Nos. 1 to 8 have filed a joint written statement wherein it is fairly admitted that the Petitioners and the proforma-Respondent Nos. 10 to 19 had completed the required period in the feeder posts and they were eligible for promotion. The case of the Respondents is that in the State of Tripura. The Tripura Scheduled Tribes and Scheduled Castes (Reservation of Vacancies in Services and Posts) Act, 1991, for short, the Act is in force and in view of the provisions of the said Act and the Rules framed thereunder, a 100 point roster is available and at the relevant time the said 100 point roster was not exhausted and the promotions were made as per the said roster and also taking into consideration the backlog vacancies in respect of Scheduled Castes and Scheduled Tribes candidates. It is further stated in para 22 of the written statement that the backlog vacancies were filled up as per the special recruitment drive for filling up SC/ST reserved vacancies.

4. The proforma-Respondents have also filed a written statement in support of the impugned order regarding promotion.

5. I have heard Mr. C.S. Sinha, learned Counsel for the Petitioners and Mr. S. Das, learned Govt. Advocate for the Respondents.

6. There is no dispute at the Bar that 10 vacancies arose due to retirement of 7 persons belonging to general category, 2 persons belonging to Scheduled Caste category and 1 person belonging to Schedule Tribes category. There is also no dispute that these 10 vacancies were filled up as follows:

Scheduled Tribes - 5 Scheduled Castes-4 and General-1

7. The learned Counsel for the State has submitted that at the relevant time the 100 point roster was applicable and the said roster was not exhausted. The point at which the promotions were to be effected was at roster point No. 39 to 48. In view of the above roster, out of these 10 vacancies, 6 were to go to the un-reserved category and 4 to the reserved category. It is submitted that there were

backlog vacancies amounting to 4 in respect of the reserved category.

8. The learned Counsel for the Petitioners has submitted that in view of the decision of the Apex Court in the case of *Indra Sawhney v. Union of India* (1992) supp 3 SCC 217 and in the case of *5.5. S.S. Sharma and Others Vs. Union of India (UOI) and Others*, in the instant case, the recruitment was for both general and reserved category and as such the bar of 50% would apply and out of the four backlog vacancies, only two should have been filled up by the reserved category candidates.

9. The ratio laid down in *Indra Sawhney* (supra) and *R.K. Sabharwal* (supra) was explained and distinguished by the Apex Court in a latter decision in the case of *Post-Graduate Institute of Medical Education and Research etc. Vs. K.L. Narasimhan and another etc.*, It was held that 100% reservation in case of backlog vacancies for which the special recruitment is made, is permissible and it is not violative of carry forward rule. The Respondent State has filed a Memo dated 2nd May, 1997 to show that a special recruitment drive was made to fill up the backlog vacancies in various departments of the Government and the posts were filled up under the above special recruitment drive.

10. In view of the above, I hold that out of the 10 vacancies 8 (4 as per roster and 4 towards backlog - carry forward vacancies) would have been filled up from reserved category. In the instant case, 9 posts were filled up from reserved category. So far proforma-Respondent No. 10, Shri Karunamoy Goswami is concerned, his selection is not challenged. He belongs to the un-reserved category and further as per the seniority position, he stood at serial No. 19 and accordingly, he was promoted. I thus find the proforma-Respondent No. 19, Shri Pranjal Deb Barma, whose seniority stood at serial No. 81 and who was accommodated as roster point No. 47, was not eligible for promotion on either Count - as per backlog vacancies or as per the roster. The post was required to be filled up from un-reserved category and by promoting the Petitioner No. 1, Shri Ashutosh Roy whose seniority stood at serial No. 19. It is submitted that said Ashutosh Roy was subsequently promoted to the rank of Office Superintendent. In view of the above subsequent promotion, the only relief that the said Ashutosh Roy is entitled in the present case is that his promotion to the post of Office Superintendent in the pay scale of Rs. 2000-4400/- shall be deemed to be w.e. from the date on which Shri Pranjal Deb Barma, proforma-Respondent No. 19 was promoted and he will be placed above Shri Deb Barma. It is submitted that the other Petitioners namely, Petitioner Nos. 2, 3, 4 and 5 have since retired from service, they are, however, not entitled to any relief.

11. The writ petition stands disposed of as above.