

(1991) 03 KAR CK 0070
In the Karnataka High Court
Case No : C.R.P. No. 387 of 1991

Dalvoy Anglo-Sanskrit School Committee APPELLANT
Vs
K.S. Narasappaiah RESPONDENT

Date of Decision : 18-03-1991

Acts Referred:

Constitution of India, 1950 — Article 16 (1), 16 (2), 16 (4)

Citation : (1991) ILR (Kar) 1880 : (1991) 2 KarLJ 155

Hon'ble Judges : K.A. Swami, J

Bench : Single Bench

Advocate : S. Vasantha Kumar, for the Appellant; H.S. Jois, for R-1, for the Respondent

Final Decision : Allowed

Judgement

K.A. Swami, J.—At the stage of admission, the first respondent has entered appearance, however the second respondent has remained absent.

2. As this Revision Petition involves a substantial question of law, it is admitted. By consent of both sides, it is heard for final disposal,

3. This Revision Petition is preferred against the order dated 30-11-1990 passed by the learned Principal District Judge and Educational Appellate Tribunal, Mysore, in EAT No. 8/1988. The first respondent herein preferred the aforesaid EAT 8/1988 against the order dated 16-4-1988 passed by the petitioner- Society promoting respondent-2 herein as the Head Master of the Dalvoy High School in Mysore. The Educational Appellate Tribunal has held as follows;

"a) The order passed by the 1st respondent in pursuance of the Resolution dated 16-4-1988 promoting the 2nd respondent as Head Master of Dalvoy High School, Mysore, with effect from 18-4-1988 is hereby set aside;

b) The 1st respondent is directed to take steps to promote the appellant to the post of Head Master, Dalvoy High School, Mysore, with effect from 1-4-1988;

c) The appellant shall be entitled to all the financial benefits arising on account of such promotion. The 1st respondent shall work out the same and pay the amount found to be due to the appellant. Any dispute between the parties in this regard shall be resolved by the executing Court;

d) The 1st respondent shall also pay the costs of this appeal to the appellant. The 2nd respondent shall bear his own costs. Advocate's fee is fixed at Rs. 200/-."

4. It is contended on behalf of the petitioner that it is not in dispute the post of Head Master forms a separate cadre and it consists of only one post; that in the case of cadre consisting of only one post there cannot be any reservation for any category of people because reservation in such a case would result in hundred per cent reservation which is impermissible under the Constitution; that the learned Educational Appellate Tribunal has failed to bear this aspect in mind, therefore it is the case of the petitioner that the directions issued by the learned Educational Appellate Tribunal are not legal and valid; that the Educational Appellate Tribunal on setting aside the promotion ought to have only directed the petitioner to fill up the vacancy in the cadre of Head Master on merits and in accordance with law without reference to any reservation. In support of these contentions, Sri Vasantha Kumar, learned Counsel for the petitioner has placed reliance on a Decision of the Supreme Court in Chakradhar Paswan Vs. State of Bihar and Ors, and also a Full Bench Decision of this Court in Dr. Rajkumar and others Vs. Gulbarga University and others, .

5. In reply to the aforesaid contentions, learned Counsel appearing for the first respondent contends that if the contentions of the petitioner are sustained, persons belonging to the reservation category would not be entitled to get promotion as the cadre of Head Master consists of only one post and it would completely deprive them of the benefit of reservation guaranteed under the Constitution and that the directions issued by the learned District Judge in the facts and circumstances of the case do not call for interference. However, learned Counsel for the first respondent could not state anything about the principles enunciated in the aforesaid two Decisions.

6. Therefore, in the light of the aforesaid contentions, the following point arises for consideration:

1) In the case of aided institutions, if the cadre consists of only one post, whether filling up of that post is governed by the Roster formulated by the State Government as annexed to the Government Order No. DPAR 22 SBC 79 dated 30-8-1979 or whether such post should be filled up on merits and without reference to any reservation?

7. In the light of the aforesaid two Decisions, I do not consider it necessary to discuss the matter afresh, inasmuch as, the aforesaid two Decisions completely cover the contentions urged on behalf of the petitioner. In Dr. Chakradhar Paswan v. State of Bihar and Ors., this question has been specifically considered

and it has been held as follows:

"It is quite clear after the decision in Devadasan's case that no reservation could be made under Article 16(4) so as to create a monopoly. Otherwise, it would render the guarantee of equal opportunity contained in Articles 16(1) and 16(2) wholly meaningless and illusory. These principles unmistakably lead us to the conclusion that if there is only one post in the cadre, there can be no reservation with reference to that post either for recruitment at the initial stage or for filling up a future vacancy in respect of that post. A reservation which would come under Article 16(4) pre-supposes the availability of at least more than one post in that cadre."

This has been reiterated by a Full Bench of this Court in the case of Dr. Rajkumar v. Gulbarga University as follows:

"The next question for consideration is about the method which should be adopted in providing reservation for the cadres of Professors, Readers and Lecturers for, though these posts are in different subjects they carry same designation and pay scale. Therefore the question is as to whether reservation has to be worked out in respect of such cadres, separately. This question is also no longer res Integra. This Court in the case of Dr. L. Krishna Vs. State of Karnataka, has held that in the case of teaching cadres though the designation and pay scale of the posts of Professors, Readers and Lecturers in different subjects are one and the same, still having regard to the fact that the posts of Professors, Readers and Lecturers in each of the subject is distinct and separate, each subject has to be treated as independent unit for the purpose of recruitment and reservation. The said view stands confirmed by the decision of the Supreme Court in the case of Chakradhar. In view of this position in law, the only reasonable method of giving effect to reservation in the cadre in which the number of posts available is smaller, is by way of providing a reasonable roster. In fact, in view of the Judgment of this Court in Krishna, the State Government by its order dated 28-1-1987 (Annexure-R1) prescribed a 100 point roster. The first 10 points prescribed are: (1) Scheduled Caste, (2) Scheduled Tribe, (3) General Merit, (4) Group-A of the Backward Classes, (5) Group-B of the Backward Classes, (6) Scheduled Caste, (7) General Merit, (8) Group "C" of the Backward Classes, (9) Group "D" of the Backward Classes and (10) General Merit and the roster continues upto 100 points. As number of posts available in each of the Departments in each of the cadres is generally less than ten, and once a person is appointed against a vacancy, it appears to us that 100 point roster is unwieldy because, for the completion of the roster it might take a few centuries. The validity of that order is not challenged in this petition. We should, however observe that it would be reasonable to fix the roster for points as minimum as possible for cadre in which the posts available are only a few and therefore the roster requires to be reviewed and modified."

xxx xxx xxx "Applying the above principle, reserving of only post in any cadre under Article 16(4), which amounts to cent per cent reservation, is impermissible

as Ruled by the Supreme Court in the case of Chakradhar."

The Full Bench has followed the Decision of the Supreme Court in Chakradhar's case. Thus, the established position of law is that no reservation under Article 16(4) of the Constitution is permissible if a cadre consists of only one post. It is not in dispute that in the instant case the cadre of Head Master is different from the other cadres. It consists of only one post. That being so, the Rules of Reservation cannot apply to the post of Head Master which is a different and distinct cadre consisting of only one post.

8. The Roster annexed to the Government Order No DPAR 22 SBC 79 dated 30-8-1979 found at page Nos. 157, 158 and 159 of the "Brochure on Reservation for Scheduled Castes and Scheduled Tribes and other categories of Backward Classes in Services and Posts" cannot apply because such a roster can be operated in respect of a cadre which consists of at least six posts so that one cycle can be completed. Therefore, in the case of a cadre consisting of one post, the question of application of 33 Point Roster formulated as Annexures to the Government Order No. DPAR 22 SBC 79 dated 30-8-1979 does not arise at all. The Educational Appellate Tribunal has applied a very curious reasoning in para 15 of its order. The relevant portions in para 15 of the order of the Educational Appellate Tribunal are as follows:

"The Government has taken care to see that proper representation is given to the members of those communities by specifying the vacancies which are to be filled only for such candidates. In the Roster System, it has been made very clear as to which vacancies belong to the Scheduled Castes and Scheduled Tribes and which are unreserved vacancies. According to the vacancies listed therein, vacancy Nos. 1, 2, 7, 14, 21 and 27 are vacancies reserved for Scheduled Castes and Scheduled Tribes. The remaining vacancies are unreserved vacancies. The fourth vacancy is an unreserved vacancy. The directions of the Government in the Government Order dated 27-4-1978 in pursuance of which Government Order dated 30- 8-1979 has been issued and the Roster System has been introduced may be perused.

It is obvious therefore that the Government Orders are intended to be complied with strictly and there is no discretion left with the promoting authorities to fill up a vacancy specified for one category with the candidates belonging to the other categories. Therefore, the 1st respondent was bound under the law to fill up the fourth vacancy which is an unreserved vacancy from the general merit pool. Since it is not disputed that as on the date when the vacancy arose, the appellant was the senior most Assistant Master and was qualified for the promotional post, his case ought to have been considered.

As already pointed out above, from Ex.P-3(c) and the stand taken by the 1st respondent in the objection statement, it is clear that the only ground on which the 2nd respondent has been promoted as the Head Master is that he is a candidate belonging to the Scheduled Castes. That cannot be done in view of the

specific directions in the two Government Orders referred to above and the Roster System introduced which very clearly and unambiguously show that the fourth vacancy as per the Roster System is an unreserved vacancy and therefore must be filled up from the merit pool. It cannot be filled up by promoting a candidate belonging to the Scheduled Castes, because it is not a vacancy reserved for the Scheduled Castes."

According to the reasoning of the Educational Appellate Tribunal as and when the post of a Head Master becomes vacant it should be counted or treated as one vacancy. Therefore as the present vacancy occurs for the fourth time it should go to unreserved class as per the Roster annexed to the Government Order No. DPAR 22 SBC 79 dated 30-8-1979. The reasoning is highly unnatural and does not stand to scrutiny. When the cadre consists of only one post, merely because the incumbent of that post retires or resigns or for whatever reason the post falls vacant it does not become a new vacancy as long as the post remains one and the same. Therefore, it is not possible to accept the reasoning of the learned Educational Appellate Tribunal.

9. Whether it is a vacancy in the Government Department or a vacancy in a private institution aided by the Government to which also the principles of reservation are made applicable, does not make any difference as long as the concerned cadre consists of only one post. Hence, it is not open to the State Government to insist upon the private educational institutions receiving grant that in the case of a cadre consisting of only one post, that post should be filled up by applying reservation quota. The point raised for determination is answered accordingly.

10. For the reasons stated above, the order under Revision has to be set aside. Accordingly, this Revision Petition is allowed. The order dated 30-11-1990 passed by the Education Appellate Tribunal, Mysore, in E.A.T. No. 8/1988 and also the order dated 16-4-1988 made by the petitioner-Society promoting respondent-2 herein as Head Master of the Dalvoy High School are set aside. The petitioner is directed to fill up the post of Head Master on the basis of seniority-cum-merit and in accordance with law without reference to any reservation on or before 15-6-1991. Till then the present arrangement is allowed to continue. In the facts and circumstances of the case, there will be no order as to costs.