

(1999) 11 GAU CK 0001
In the Gauhati High Court
Case No : Civil Rule No. 207 of 1998

Harimohan Sarkar

APPELLANT

Vs

Tripura Handloom and Handicrafts Development Corpn. Ltd.
and Others

RESPONDENT

Date of Decision : 25-11-1999

Acts Referred:

Citation : (2000) 1 GLT 213

Hon'ble Judges : M.L. Singhal, J

Bench : Single Bench

Advocate : P.C. Das, for the Appellant; A. Ghosh, for the Respondent

Final Decision : Allowed

Judgement

M.L. Singhal, J.—Heard Mr. P.C. Das, learned Counsel for the Petitioner. Also heard Mr. A. Ghosh, learned Counsel for the Respondents.

2. The Petitioner Sri Harimohan Sarkar is working as salesman in the office of the Tripura Handloom & Handicrafts Development Corporation Ltd. Agartala, Respondent No. 1. There are 5 posts of Supervisors in the office of the Respondent No. 1 to be filled up by promotion from the persons holding the post of salesman. The Petitioner who is a scheduled caste candidate has filed this petition praying that as per rules 16% posts of Supervisors on promotion have to be given to the scheduled caste candidates. Earlier, the said 5 posts of Supervisors were filled up according to the reservation quota. But subsequently on retirement of the persons, at present 3 posts have been filled up from persons belonging to general category and 2 posts have been filled up from scheduled tribe candidates and as such there is no post available to the Petitioner for promotion. In December, 1997, the Respondents Nos. 2 and 3 Scheduled tribe candidates have been promoted by passing the claim of the Petitioner and as such the Petitioner has been wrongly denied promotion to the post of supervisor. Under the rules, the Petitioner is entitled to promotion and has sought promotion by way of this present writ petition.

3. The Tripura Handloom & Handicrafts Development Corporation Ltd. the Respondent No. 1 in its affidavit has disclosed that the promotions of the Respondent Nos. 2 and 3 have been made as per the Schedule of the Tripura Sch. Caste Sch. Tribes (Reservation of Vacancies in Services and Post) Act. 1991 (SI No. 4 of the Schedule) it is clearly defined that "The roster is running account from year, to year and shall be maintained in a cyclic order accordingly. If recruitment in a particular year stops at a particular point of the cycle, say at the fourth point, recruitment in the subsequent year shall be at the net point that is at the fifth point". And accordingly as per the roster point the Corporation filled up posts at the present case against roster point No. 9 and point No. 10. which is for S.T and U.R. respectively. But, as the roster point No. 6 which is earmarked for S.T category was not filled up by S.T. category that was filled up by U.R. category, in the instant case the another S.T. candidate has been considered in roster point No. 10 against the backlog S.T. vacancy of roster point No. 6 (carried forward) which is earmarked for S.T. category.

4. It is undisputed in this case that out of the 5 posts of Supervisors, 16% posts have to be given to the SC candidates. Undisputedly at present all the 5 posts have been filled up. 3 posts from persons belonging to general category and 2 posts from persons belonging to ST category have been promoted.

5. In R.K. Sabharwal and others Vs. State of Punjab and others, (paragraph 10). The Supreme Court has observed as under:

10. We may examine the likely result if the roster is permitted to operate in respect of the vacancies arising after the total posts in a cadre are filled. In a 100 point roster, 14 posts at various roster-points are filled from amongst the Scheduled Castes/Scheduled Tribes candidates, 2 posts are filled from amongst the Backward classes and the remaining 84 posts are filled from amongst the general category. Suppose all the posts in a cadre consisting of 100 posts are filled in accordance with the roster by December 31, 1994. Thereafter in the year 1995, 25 general category persons (out of the 84) retire. Again in the year 1996, 25 more persons belonging to the general category retire. The position which would emerge would be that the Scheduled Castes and Backward classes would claim 16% share but of the 50 vacancies. If 8 vacancies are given to them then in the cadre of 100 posts the reserve categories would be holding 24 posts thereby increasing the reservation from 16% to 24%. On the contrary if the roster is permitted to operate till the total posts in a cadre are filled and thereafter the vacancies falling in the cadre are to be filled by the same category of persons whose retirement etc. caused the vacancies then the balance between the reserve category and the general category shall always be maintained. We make it clear that in the event of non-availability of a reserve candidate at the roster point it would be open to the State Government to carry forward the point in a just and fair manner.

6. In view of the observations made above, it is clear that the even if the roster is allowed to operate, even then the balance between general category and the

reserve category has to be maintained, a number of posts earmarked for a particular category, have to be filled up by the persons belonging to that category. Apparently, the Petitioner has been wrongly denied promotion. The mandate of the Constitution has been flouted.

7. In the result, the writ petition succeeds and is allowed. The Respondents No. 1 and 4 are directed to promote the Petitioner to the post of Supervisor within a period of two months from today. Costs on parties.