

(1993) 09 KAR CK 0023

In the Karnataka High Court

Case No : Writ Petition No. 17896 of 1992

Karnataka State Handicrafts Development Corporation
Scheduled Castes and Scheduled Tribes Employees
Association

APPELLANT

Vs

Karnataka State Handicrafts Development Corporation Ltd.

RESPONDENT

Date of Decision : 16-09-1993

Acts Referred:

Constitution of India, 1950 — Article 16 (4), 335

Citation : (1994) 68 FLR 696 : (1993) ILR (Kar) 3523 : (1993) 4 KarLJ 402

Hon'ble Judges : Hanumanthappa, J

Bench : Single Bench

Advocate : Ravivarma Kumar, for the Appellant; Subba Rao and B.C. Prabhakar, for the Respondent

Final Decision : Dismissed

Judgement

Hanumanthappa, J.

The points for consideration in this Writ Petition are :-

1) Whether Time Bound Advancement of pay scale given to an employee/official be construed as an "indirect time-bound promotion"?

2) Whether the benefit of Time Bound Advancement of pay scale be extended taking into consideration the roster ordered by the Government in its order dated 27.4.1978 in view of Article 16(4) to give adequate representation to Scheduled Caste Scheduled Tribe persons in the matter of recruitment, seniority and promotion?

2. A few facts which are necessary to dispose of this Writ Petition are: The petitioner herein is an Association of the employees of Scheduled Caste and Scheduled Tribe in respondent Handicrafts Development Corporation. The respondent is a State Undertaking, It has different categories of employees in its organisation. As per the Cadre and Recruitment Rules of the respondent, there

are different types of posts to be filled up by way of direct recruitment and promotion. According to the petitioner's Association, it is always espousing the cause of its members belonging to SC/ST in the matter of recruitment and promotion. It is dissatisfied with the way in which the Corporation is treating its members in the matter of promotion and other benefits. According to it, Corporation is trying to circumvent the guidelines of the Government Order dated 27.4.1978 and the Circulars issued by the Government time and again in the matter of recruitment and promotion. It is the complaint of the petitioner that the Corporation is not taking steps to give promotions to the persons belonging to SC/ST on the basis of roster. One such action of respondent Corporation is the Office Order at Annexure-A dated 4.3.1992 captioned as Time Bound Advancement of Pay Scale to the staff of the Corporation pursuant to the Resolution dated 20.1.1992 of the Corporation. In the preamble of the said Office Order it is mentioned that the same shall be granted to employees holding the posts carrying pay scales specified in Column (2) thereof. The conditions stipulated to receive the said benefit are (1) the employee shall put in not less than 15 years continuous service in the same post on or after 20.1.1992; (2) there should be satisfactory record of service, which will be determined in the same manner as merit is determined for promotion on seniority-cum-merit basis; and (3) the employee should be qualified and eligible for promotion in accordance with the Rules applicable to the promotional post. Issuance of the said order drove the petitioner to this Court.

3. According to the petitioner, the order at Annexure-A is nothing but an intelligent way of circumventing the orders issued by the Government and also to prevent the persons belonging to Scheduled Castes/Scheduled Tribes seeking promotion since the said order, confers monetary benefit on officials. According to it, the order at Annexure "A" is not only arbitrary but is violative of Article 16(4) of the Constitution and also contrary to the law laid down by the Supreme Court in *P and T Scheduled Caste/Tribe Employees' Welfare Association (Regd.) and Others Vs. Union of India (UOI) and Others*, which has been referred to by this Court in *W.P.Nos. 5700/80* and connected Writ Petitions disposed of on 12.1.1990., *ITI SC & ST Employees Welfare Association v. Union of India*

4. Mr. Ravivarma Kumar, learned Counsel for the petitioner, contended that apart from the order at Annexure-A being violative of Article 16(4) of the Constitution, it has put an end to the promotional avenues to SC/ST persons; that the pay scales indicated in Column 3 of the order when compared, the only conclusion that can be arrived at is the said pay scales are meant only for those who do not belong to SC/ST. It is also his case that though the Government Order mandates the State authorities to follow the roster, as the same has not been followed, backlog has crept in the respondent Corporation and because of the said backlog or failure to comply with the Government Orders, now the beneficiaries under Annexure-A are only those who belong to other categories than SC/ST. Thus contending, he submitted that the order at Annexure-A be quashed and a direction be given to the respondent Corporation that while extending the benefit

of time bound advancement pay, the same shall be extended to members of SC/ST working in the Corporation without insisting the first condition, namely, one should have put-in 15 years service.

5. Mr. Subba Rao, learned Counsel for the respondent, submitted that time bound advancement pay scale is not a "promotion" but it is only a monetary benefit extended to employees since there is stagnation for good number of employees, which includes SC/ST persons who are also deprived of promotional avenue. The said Scheme shall not be construed as "promotion". He further submitted that in the Cadre and Recruitment Rules different cadres mentioned and the method of promotion are provided and it is incorrect to say that the time bound advancement pay will take away the avenues of promotion. He has further submitted that the respondent Corporation has not deviated from any of the orders of Government while making the appointments; that the order at Annexure-A in no way contravene Articles 16(4) of the Constitution or the law laid down by the Supreme Court. He also pointed-out that there is no direction for giving preferential treatment to SC/ST in the matter of time bound advancement pay. He has vehemently contended that the benefit of time bound advancement pay is a monetary benefit extended to persons who have put in considerable years of service without any promotion and the same cannot be extended ignoring the length of service as contended by the learned Counsel for the petitioner. Thus arguing, he prayed for dismissing the Writ Petition.

6. The controversy revolves round the proper understanding of time bound advancement pay in Annexure-A. In order to appreciate whether the said benefit could be construed as indirect promotion or not, one has to look into the Cadre and Recruitment Rules. As long as Cadre and Recruitment Rules are there and provision for promotion is there, it cannot be said that the time bound advancement Scheme is an intelligent way of preventing SC/ST persons seeking promotion. It is not the case of the petitioner Association that the time bound advancement Scheme does not apply to SC/ST persons. Mr. Subbarao pointed-out that this Scheme is applicable to all the posts and has nothing to do with the chances of promotion. Promotion means jumping from lower cadre to higher cadre. There is no cadre as such for time bound advancement pay. Even though an employee obtains the benefit of the Scheme and receives higher salary, he remains in the same cadre. As such, it cannot be said that time bound advancement is "promotion", All categories of employees in the pay scales 1 to 12 mentioned in Column No. (1) in Annexure-A will have equal chance of getting the benefit if they fulfil the conditions. That does not mean that employees who receive the benefit will secure automatic promotion. In other words, time bound advancement pay is nothing but a monetary benefit or financial incentive given to an employee who does not get promotion within the 15 years period in view of limited avenues for promotion depending upon the vacancies arise in the promotional cadres contained in the recruitment Rules and not a promotion as such. Accordingly, the first question is answered in the negative.

7. With regard to the second question relating to the concession to be shown to SC/ST persons while giving effect to time bound advancement Scheme, Mr. Ravivarma Kumar, learned Counsel for the petitioner, placed reliance on Articles 16(4) and 335 of the Constitution of India and the decision of the Supreme Court in *P and T Scheduled Caste/Tribe Employees' Welfare Association (Regd.) and Others Vs. Union of India (UOI) and Others*, as also the Decision of this Court in WP.No. 5700/80 and connected Petitions. In order to appreciate whether Article 18(4) and Article 335 of the Constitution should be extended to time bound advancement pay or not it is proper to understand the true effect of those Articles, Article 16(4) reads thus:-

"(4) Nothing in this Article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State."

Article 335 reads thus:-

"335. The claim of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State".

8. From a reading of the above two Articles it is clear that while making appointments reservations should be provided to backward classes and the claim of members of SC/ST shall be taken into consideration in order to see that proper and adequate representation is provided to persons belonging to these, categories, who were denied of such opportunities for various economic, social and other historical reasons, it is also stated that while doing so, maintenance of efficiency of administration shall be one of the factors to be taken into consideration. It is not mentioned that such reservation shall be extended while giving monetary benefit or incentives to the employees. As already stated, time bound advancement pay is an incentive or monetary benefit given to employees who do not get promotion for considerable years of service so as to maintain efficiency of administration. While the benefit accrues to all class of employees, in the matter of promotion the Rules governing service conditions takes care of reservation for SC/ST employees. Reservation for SC/ST provided in matters of appointments or selections cannot be extended to schemes conferring monetary benefits for various reasons.

9. Even in the authorities relied upon by Mr. Ravivarma Kumar, the point raised now was not the question raised for consideration. In those cases, clear case of discrimination was made out. On the other hand, it has been said that the time bound advancement Scheme is extended to all the employees without any discrimination and strictly following the norms prescribed in Annexure-A. Similar scheme exists for Government servants also under the Karnataka Civil Service Rules. In what way promotional avenues for SC/ST employees affected, is not

shown. Therefore, the authorities relied upon by Sri Ravivarma Kumar, on facts, have no application to the present case.

10. A reading of Article 16(4) makes it clear that making provision for reservation while appointing or promoting for SC/ST and backward classes is the duty of the State. Petitioner Association cannot compel the respondent Corporation to discharge the duties of the State. The Corporation cannot be equated to State. State Government has not issued any orders providing reservation in the matter of time bound advancement Scheme. In the absence of any specific provision or order, it is incorrect to claim that the time bound advancement Scheme in Annexure-A should be extended to SC/ST employees following the roster. Thus Point No. 2 is also answered in negative.

11. Mr. Ravivarma Kumar may be right in saying that some of the authorities/institutions/Bodies are indirectly depriving the benefits given to SC/ST people under Article 16(4) of the Constitution. According to him the present order at Annexure-A is one such, namely depriving the employees belonging to SC/ST to get promotion. This Court cannot take cognizance of the same as long as brain and intelligence dictates so in such cases. Unless the persons belong to this unfortunate class equip intellectually, things bound to happen like that and it is for the State and the executive to correct the same. It is not for the Courts to lay the guidelines. So long as efficiency in administration requires to be maintained, all benefits cannot be extended blindly ignoring the restrictions or conditions that may be required to maintain efficiency.

12. I am unable to agree with the complaint of the petitioner Association that respondent Corporation is depriving the benefits of reservation to the members of SC/ST. In Annexure-C, the Office Order dated 31.8.1988 issued by the respondent Corporation, the experience for promotion has been relaxed by two years in case of SC/ST candidates. This clearly proves that the Corporation is giving concession to SC/ST employees wherever they deserve. Such concession cannot be extended to all matters. Accordingly, question No. (2) is answered in negative.

13. Before parting with this case, it is proper to make note of the submission of Mr. Subbarao that the time bound advancement policy adumbrated in Annexure-A shall not be construed by the petitioner Association or its members that it will deprive promotional avenues to them. As long as such feeling is there, I do not think that any member of the petitioner Association will have a genuine grievance in the matter of promotion as if their chances of promotion is denied or deprived of.

14. The feeling of the petitioner Association is that respondent Corporation had made appointments without making provision for reservation strictly in accordance with the Government order and that if there was strict compliance, many persons belonging to SC/ST category would have been in higher positions and because of the failure to fill-up the backlog vacancies it adversely affected

the interests of SC/ST employees. The said grievance is not the issue involved in this Writ Petition. If that is the feeling of petitioner Association, it has to get it agitated in separate proceedings.

15. In the result, the Writ Petition fails and the same is dismissed.