
(2004) 02 RAJ CK 0039

In the Rajasthan High Court

Case No : Civil Writ Petition No. 7477 of 2003

Manish Chandra

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 19-02-2004

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 16, 16(1)

Citation : (2004) 2 RLW 1317 : (2004) 2 WLC 50

Hon'ble Judges : Anil Dev Singh, C.J.;K.S. Rathore, J

Bench : Division Bench

Advocate : R.N. Mathur, for the Appellant; Sumeet Vishnoi, for Bharat Vyas, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Rathore, J.—The Union Public Service Commission vide notice-dated 29.11.2003 fixed 16.3.2004 the date for preliminary Civil Services examination for recruitment to the posts mentioned therein. Clause (iv) of the aforesaid notice allows four chances to a General category candidate for clearing the examination. In respect of Scheduled Caste/Scheduled Tribe category candidates, Clause (iv) places no restriction on number of attempts for clearing the examination. So far as Other Backward Class category candidates are concerned, Clause (iv) permits them seven chances to clear the examination. The petitioner, who is a General category candidate, has a grievance with respect to the four chances given to the General category candidates to clear the examination. Learned counsel appearing for the petitioner submits that while the General category candidates have been given four chances to clear the examination, the Scheduled Caste/Scheduled Tribe category candidates have been given unlimited chances to clear the examination. According to him this amounts to reverse discrimination. In support of his submission he places reliance on the decision of the Supreme Court in *Ajit Singh and Ors. v. State of Punjab and Ors.* (1).

2. We have considered the submissions of the learned counsel for the petitioner.

3. We regret our Inability to accept the submission of the learned counsel for the petitioner. Weaker sections of the society like Scheduled Castes and Scheduled Tribes are victims of centuries old inequities. To alleviate disparities Constitution allows the State to take positive action in order to strike out and eradicate discrimination. Articles 14, 15 and 16 are manifestation of goal of equality set out by the Constitution. Explicit preference and priority have been permitted to be given to class of people who had suffered injustice in the past. The hardship suffered by them is required to be removed. The Scheduled Caste, Scheduled Tribe and Backward Class candidates stand on different footing than General category candidate and they form separate and independent classes. Instate of Kerala and Anr. v. N.M. Thomas and Ors. (2), it was held that under Article 16(1) equality of opportunity of employment means equality as between members of the same class of employees and not equality between members of separate and independent class. Such separate and independent classification is permissible to liquidate the handicap of the weaker sections of the society, (see Akhil Bharatiya Soshit Karamchari Sangh (Railway) v. Union of India and Ors. (3).

4. Protective measures for Scheduled Caste, Scheduled Tribe and Other Backward Class candidates are not discriminatory. As a matter of principle State has plenary power to utilize classification to remedy any kind of inequality and conditions of unfairness. Benign and compensatory discrimination has to be resorted to by the State in favour of the weaker sections of the society as unaided; they cannot come up. For long they have remained drawers of water and hewer of wood and load.

5. In Chattar Singh and Ors. v. State of Rajasthan and Ors. (4), it was held that equal protection clause requires an affirmative action for those placed unequally and equality for unequals is secured by treating them unequally. The Supreme Court further went on to hold that affirmative action or positive discrimination is inbuilt in equality of opportunity in status enshrined in Articles 14 and 16(1) of the Constitution. Affirmative action is meant to lift the Scheduled Caste, Scheduled Tribe and Other Backward Class candidates, who have remained at the lowest rung of the society. Therefore, number of opportunities provided to Scheduled Caste, Scheduled Tribe and Other Backward Class candidates to clear the examination is in keeping with the aforesaid principle.

6. The petitioner, who is a General category candidate, cannot claim parity with the Scheduled Caste, Scheduled Tribe and Other Backward Class candidates. There is nothing arbitrary in providing less number of chances to a General category candidate to pass the examination in comparison to Scheduled Caste, Scheduled Tribe and Other Backward Class candidates. Scheduled Caste, Scheduled Tribe and Other Backward Class candidates require greater protection than General category candidates. We are not satisfied with the argument of the learned counsel for the petitioner that this is a case of reverse discrimination. Scheduled Castes, Scheduled Tribes and Other Backward Classes are separate and distinct classes than the General class candidates. These categories stand on

a different footing and as such same treatment cannot be given to the different and separate categories.

7. In the circumstances, we do not find any merit in this writ petition and the same is dismissed.

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8. Since the writ petition is dismissed, the stay application is dismissed as well.