

(1991) 05 DEL CK 0045

In the Delhi High Court

Case No : Civil Writ Appeal No. 322 of 1974

M.G. Jain Co.

APPELLANT

Vs

Delhi Electric Supply Undertakings and Others

RESPONDENT

Date of Decision : 13-05-1991

Acts Referred:

Constitution of India, 1950 — Article 16(4)
Electricity (Supply) Act, 1948 — Section 79

Citation : (1991) 44 DLT 336 : (1991) 1 DRJ 472 Supp : (1992) ILR Delhi 82 : (1991) LabIC 1898

Hon'ble Judges : Sat Pal, J; Leila Seth, J

Bench : Division Bench

Advocate : O.D. Gupta, A.K. Dey, O.K.C. Grover, A.K. Bhasin, Mukul Rohatagi and Vipin Sanghi, for the Appellant;

Judgement

Sat Pal, J.

(1) In this writ petition, the petitioners have challenged the promotions appointments of respondents 4 to 7 to the post of assistant accountant, accounts superintendent and assistant finance officer/assistant general accountant and of respondents 8 to 17 to the post of senior clerks which have been made in pursuance to the agreement/decision dated 11th January, 1974 of the General Manager (E), Delhi Electric Supply Undertaking (hereinafter referred to as "undertaking"). The petitioners have also prayed for restraining the respondents 1 to 3 from giving effect to either the said decision or to the Government of India instructions relating to reservation of vacancies for the candidates belonging to Scheduled Castes/Scheduled Tribes or other otherwise making such reservations and promotions on that basis.

(2) Briefly stated the facts of the case are that before the establishment of undertaking which is one of the Municipal Authorities for the Corporation there was a Delhi State Electricity Board (in short the Board) constituted under the Electricity (Supply) Act, 1948 (hereinafter referred as the Act of 1948). In terms

of section 76(c) of the Act of 1948, the Board was empowered to make regulations in respect of the duties of officers and servants of the Board and their salaries, allowances and other conditions of service Accordingly the regulations were made by the Board under the aforesaid Section 79(c) vide resolutions of 4th May, 1951 and the said regulations were duly certified, u/s 5 of the Industrial Employment(Standing Orders) Act, 1946.

(3) On the-establishment of the corporation under the Delhi Municipal Corporation Act with effect from 7th April, 1958, the Board and other Bodies and Local Authorities specified in the II schedule to the said Act were taken over by the Corporation and u/s 511 of the said Act every officer and other employee of each of the said bodies including the Board stood transferred to and became officer/employee of the Corporation on the condition of holding office by the same tenure at the remunerations and with the same terms and conditions of service. The said Section 511 further provides that the tenure, remuneration and terms and conditions of service of any such officer/employee shall not be altered to his advantage without the previous sanction of the Central Government.

(4) SECTION. 516(2) of the Delhi Municipal Corporation Act provides that any rule made under the Act of 1948 shall continue in force and be deemed to have been made under the provisions of the Delhi Municipal Corporation Act unless and until the said rule is superseded by any rule made under the provisions of the Delhi Municipal Corporation Act. At the relevant time no regulations with regard to conditions of service of the employees of the Board had been framed under the provisions of" the. Delhi Municipal Corporation Act and as such the regulations made u/s 79(c) of the Act of 1948 were applicable to the employees of the Board.

(5) Petitioners 1, 2, 3 and 4 were initially appointed in the Board and on establishment of the Corporation with effect from 7th April,1958 were transferred to the Undertaking and petitioners continued to be governed by the Regulations framed under the Act of 1948 in regard to the terms and conditions of their service by virtue of Section 511 of the Delhi Municipal Corporation Act. Petitioners 5 to 8 were directly appointed under the Under- taking but they were also governed by the said Regulations by virtue of Section 516(2);of the Delhi Municipal Corporation Act.

(6) The Government of India vide O.M. No. 1/12/67. Estt. (c) dated 11th July 1968 decided that there will be reservation of 12.5 per cent and 5 percent of the vacancies for Scheduled Castes and Scheduled Tribes respectively in promotions made within or to class II, III, IV posts.

(7) The Regulations framed under the Act of 1948 as made applicable u/s 516(2) of the Delhi Municipal Corporation Act did not provide for reservation of any post under the Board for the employees belonging to Scheduled Castes/Scheduled Tribes. The Corporation passed a resolution in its meeting held on 12th January, 1970 to this resolution it was resolved that the order issued by the Government

of India dated 11th July, 1968 regarding reservation of quota for departmental promotion of Scheduled Caste employees be put into implementation forthwith and the Harijan employees in the Corporation be given promotion immediately. Thereafter the General Manager (E) of the Undertaking issued order dated 11th January, 1974 wherein it was stated, ""according to the Government instructions separate roster shall be maintained for the. employees of the Scheduled Castes and Schedule Tribes and confirmation and promotion in each category of post shall be made according to the roster. On confirmation they shall be eligible to promotion to the next higher post as per reserve quota." The said orders making provision for promotion of the Scheduled Casts/Scheduled Tribes to to the posts in question has been challenged in the present writ petition.

(8) The main ground of challenge to the orders dated 11th Jenttary, 1974 as mentioned in the writ petition is that the said decision is contrary to and in violation of the service conditions of the petitioners as laid down in the Regulations framed u/s 79(c) of the Act of 1948 inasmuch as there is no provision in the said Regulations providing for reservation of the posts of the employees belonging to Scheduled Castes/Scheduled Tribes and the impugned orders which are in the nature of the administrative instructions cannot supersede the Regulations framed under the Statute.

(9) The learned counsel for the petitioners, Mr. G.D. Gupta, has urged that the Resolution No. 633 passed by the Corporation on 12th January, 1976 which, envisages implementation of Government of India orders dated 11th July, 1968 regarding reservation of posts for Scheduled Castes candidates for departmental promotions and the impugned. orders dated 11th January, 1974 are merely in the nature of administrative instructions and cannot override the Regulations which were framed u/s 79(c) of the act of 1948.

(10) In support of his contention that the administrative instructions cannot supersede the statutory regulations, the learned counsel for the petitioners referred to judgment of the Supreme Court in State of Haryana, Vs. Shamsheer Jang Bahadur, etc. etc.,

(11) Mr. Rohtagi, the learned counsel who appeared for respondents 5 to 8 has not disputed the proposition of law that administrative instructions cannot override the regulations framed under the Act. He, however, submitted that the statutory rules/regulations can be supplemented by issuing administrative instructions which are not in conflict with the Statutory provisions. In this connection he also referred to a judgment of the Supreme Court in Union of India (UOI) and Others Vs. Somasundaram Viswanath and Others, .

(12) So the question for consideration is, whether in the present case there is any conflict between the regulations framed under the Act of 1948 and the resolution dated 12th January, 1970 passed by the Corporation which provides for implementation of the Government of India orders dated 11th July, 1968 regarding reservation of quota for departmental promotion of Scheduled Castes/

Scheduled Tribes employees in pursuance of which the impugned orders dated 11th January, 1974 were issued by the Undertaking.

(13) The learned counsel for the petitioners submitted that Articles 16(4) and 335 of the Constitution of India and section 92(2) of the Delhi Municipal Corporation Act are only enabling provisions for reservation of posts for the employees belonging to Scheduled Castes/Scheduled Tribes. He further submitted that promotion to the posts of senior clerks and assistant accounts and other posts mentioned in the writ petition was governed by the Regulations framed under the Act of 1948. Since the said Regulations do not provide for reservation of posts for the employees belonging to Scheduled Castes/Scheduled Tribes, it was not open to the respondent Corporation to issue administrative instructions contained in the resolution dated 12th January, 1970 and impugned orders dated 11th January, 1974 which provided for such reservation in terms of the Government of India orders dated 11th July, 1968. He, Therefore, contended that the aforesaid administrative instructions were inconsistent with the Statutory Regulations and could have no effect and as such the promotions/appointments of respondents 8 to 17 to the posts of senior clerks and of respondents 4 to 7 to the posts of assistant accountant/assistant accounts officer etc., made in pursuance of administrative instructions were liable to be quashed in these proceedings. In support of the above contention reliance was placed on a Division Bench judgment of the Andhra Pradesh High Court in the case of P.V.S. Janardhan Rao and others v. Union of India and others 1981(3) Slr 614, which in turn relied upon a Bench decision of the Allahabad High Court in Mohan Lal v. Comptroller and Auditor General (1980) Slr 46. Mr. Gupta, learned counsel for the petitioners further contended that the impugned orders amount to altering the terms and conditions of the petitioners to their disadvantage within the meaning of Section 511 of the Delhi Municipal Corporation Act and since before doing so the approval of the Central Government has not been obtained the said orders are liable to be declared null and void.

(14) Mr. Ashok Bhasin, the learned counsel for the respondents No. 1 to 3 admitted that there was no provision in the Regulations framed under the Act of 1948 for reservation of posts for employees belonging to Scheduled Castes/Scheduled Tribes. He, however, submitted that the said Regulations have been superseded by Delhi Electric Supply Undertaking (DMC) Service Regulations 1977, and in terms of Regulation 2(b), the definition of Rules include Civil Service Regulations and the Government of India orders dated 11th July, 1968 were in fact issued under the Civil Service Regulations. There is however, no merit in this contention as the said Regulations of 1977 were not in force at the relevant time.

(15) Mr. Bhasin further submitted that provision was made for such reservation for Scheduled Castes/Scheduled Tribes employees under Articles 16(4) and 335 of the Constitution of India and Section 92(2) of the Delhi Municipal Corporation Act and the impugned orders were issued pursuant to these provisions of law. He

contended that in any case the writ petition was liable to be dismissed as the impugned orders affect only chances of promotion and as such do not affect the service conditions of the petitioners. In support of his contention he referred to judgment of the Supreme Court in the case of K.S. Nair and others v. Oil and Natural Gas Commission and others 1974(2) Slj 657 : 1974(2) Slr 11 (Gujarat) and State of Kerala and Another Vs. N.M. Thomas and Others, It will, however, be relevant to observe here that in K S. Nair's case (supra) the question whether reservation of Scheduled Castes/Scheduled Tribes employees could be made by administrative instructions was left open.

(16) Mr. Rohtagi, the learned counsel for respondents 5 to 18 submitted that Article 16(4) of the Constitution of India was not to be read in isolation and it was to be read as part and parcel of Article 16(1) and (2) of the Constitution. He submitted that the benefits conferred by way of special provisions for reservation under the provisions of Article 16(4) of the Constitution can be claimed by the employees belonging to Scheduled Castes/Scheduled Tribes by way of fundamental rights and can be enforced as such. The learned counsel further contended that there is no inconsistency between the Regulations framed under Act of 1948 and the administrative instructions contained in the resolution dated 12th January, 1970. He submitted that the said Regulations are silent with regard to the reservation in favor of the Scheduled Caste/ Scheduled Tribes employees and all that has been done by issuing the administrative instructions is to fill up the gaps by providing for reservation for these classes of persons. In this connection he placed reliance on a judgment of the Supreme Court in the case of Paluru Ramkrishnaiah and others v. Union of India, .

(17) Mr. Rohtagi submitted that there is no provision in the Regulations under the Act of 1948 debarring the Corporation to make reservation of posts for the members of Scheduled Castes/Scheduled Tribes and as such it was not necessary that for making reservation for the employees belonging to Scheduled Castes/ Scheduled Tribes, the Regulations ought to have been amended. He submitted that such reservation could be made even by administrative instructions in view of Articles 16(4) and 335 of the Constitution of India and Section 9(2) of the Delhi Municipal Corporation Act. In this connection he relied on a Full Bench judgment of the Punjab and Haryana High Court in Kanwal Parkash and others v. The State of Punjab and others. 1976(2) Slr 801. He also relied on a judgment of the Supreme Court in M.R. Balaji and Others Vs. State of Mysore, .

(18) Mr. Rohtagi further contended that in any case the impugned orders affected only the chances of promotion of the petitioners and as such cannot be treated as affecting the service conditions of the petitioners. In this connection he referred to a judgment of the Supreme Court in Paluru Ramkrishnaiah (Supra.)

(19) It would be convenient to refer to the relevant provisions of the Constitution and of the Delhi Municipal Corporation Act before dealing with the points raised in the case.

(20) Article 16(4) of the Constitution empowers the State to make any provision for the reservation of appointments of posts in favor of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State. In the judgment of the Supreme Court in *State of Kerala and another v. N.M. Thomas and others* (supra), four out of the seven judges expressed the view that Article 16(4) of the Constitution was not an exception to Article 16(1) but an emphatic statement for dealing with reservation or one of the modes of achieving equality for the backward class of citizens.

(21) Article 335 of the Constitution makes it obligatory for the State to take into consideration the claims of the members of the Scheduled Castes/ Scheduled Tribes in the making of appointments to services and posts the State consistently with the maintenance of efficiency or administration.. Article 46 of the Constitution which appears in Part Iv relating to Directive principles of the State Policy enjoins upon the State to promote with special care the educational and economic interests of the weaker sections of the people, in particular the members of Scheduled Castes and Scheduled Tribes.

(22) Besides the provisions of the Constitution mentioned hereinabove .there is a provision, namely. Section 92(2) in the Delhi Municipal Corporation Act which reads as under :

"THE claims of the members of the Scheduled Castes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments of municipal officers and other municipal employees."

(23) It will be seen that the wording of Section 92(2) of the Delhi Municipal Corporation Act is almost identical with that of the Article 335 of the Constitution which, as stated above, makes it obligatory for the State to take into consideration the claims of the members of the Scheduled Castes and Scheduled Tribes in the making of appointments to the services and posts under the State. In fact it is with a view to discharge its obligation u/s 92(2) of the Delhi Municipal Corporation Act that the Corporation passed the resolution dated 12th January, 1979 which provided for the implementation of the orders of the Government of India dated 11th July, 1968 regarding reservation of quota for departmental promotion of Scheduled Castes employees and promotion of the Harijan employee immediately. The impugned orders dated 11th January, 1974 were issued by the General Manager of the Undertaking in pursuance of the aforesaid resolution.

(24) We are, thereof, of the opinion that there is no conflict between the Regulations framed under the Act of 1948, and the resolution dated 12th January,1970 pursuant to which the impugned orders dated 11th January, 1974 were issued.

(25) In this connection it Will also be relevant to note that there is no provision in the Regulations framed under the Act of 948 debarring the Corporation to

make reservation of posts for members of Scheduled Castes and Schedule Tribes. The Supreme Court in the Case of M.R. Balaji (supra) held that the State can make the special provisions for the advancement of any socially and educationally backward class of citizens or for the Scheduled Castes and Scheduled Tribes by an executive order. In view of this judgment, the resolution dated 12th January, 1970 and the impugned orders dated 11th January, 1974 which are in the nature of administrative instructions, would be legal and valid. In this connection it will also be relevant to refer to a Full Bench judgment of Punjab and Haryana High Court in the case of Kanwal Parkash and others v. The State of Punjab and others, (supra). In this case the Punjab & Haryana High Court held that in case there is no provision in the statutory rules debarring the Government to make reservation of posts for the members of Scheduled Castes and Scheduled Tribes, the said reservation could be made by administrative instructions, such instructions having been validly issued pursuant to a command of the highest orders contained in Article 16(4) read with Articles 46 and 335 of the Constitution. In view of this settled law, the impugned administrative instructions cannot be held to be contrary to the Regulations framed under the Act of 1948.

(26) It appears to us that the decision of Andhra Pradesh High Court in the case of P.V.S. Janardhan Rao (supra) relied upon by the learned counsel for the petitioners that reservation is not a case of filling up the gaps, is not quite correct in view of the judgment of the Supreme Court in the case of M.R. Balaji (supra). Even otherwise the ratio of the said judgment of the Andhra Pradesh High Court is not applicable to the facts of the present case. The impugned administrative instructions in the present case, as stated above have been issued by the respondent Corporation with a view to discharge its obligations u/s 92(2) of the Delhi Municipal Corporation Act.

(27) The present writ petition is liable to be dismissed on account of another reason also. It is now well settled by the decision of the Supreme Court in the case of State of Mysore v. G. B. Purohit 1967 SLR 753 that though a right to be considered for promotion is a condition of service, mere chances of promotion are not. A rule which merely affects chances of promotion can not be regarded as varying the condition of service. This view has been re-affirmed by the Supreme Court in the case of V. Ramchandra Shankar Deodhar and Others Vs. The State of Maharashtra and Others, and in the case of Paluru Ramkrishnaiah and another (supra). In the present case the impugned orders affect only chances of promotion as respects reservation of posts for Scheduled Castes employees, the petitioners still could be considered for promotion against the unreserved posts.

(28) The decision of the Supreme Court in the case of State of Punjab & Haryana v. Shamsher Jang (supra) referred to by Mr. Gupta, learned counsel for the petitioners, would not be relevant to the points involved in the present case. The facts in that case were that the promotion from the post of clerk to the post of assistant was governed by Punjab Civil Secretariat (State Service Class III)

Rules, 1952 framed under Article 39 of the Constitution. There was no provision in the rules to qualify the written test for the said promotion. However, in June 1958, the Government issued administrative instructions providing for a qualifying test turn such promotions. The question under consideration in that case was whether the Government could add to the qualifications prescribed under the statutory rules for promotion by way of administrative instructions. The Supreme Court held that by adding to the qualifications already prescribed by the rules, the Government really has altered the existing conditions of service as those administrative instructions affect the promotions of concerned officials. But in the present case the impugned administration of promotion of the petitioners and not the promotions, as stated hereinabove. The petitioners inspire of the impugned orders, still could be considered for promotion against the unreserved post.

(29) In the result we see no merit in the writ petition. The writ petition is dismissed but in the facts and circumstances of case, we leave is to the parties to bear their own costs.