

(1995) 02 SC CK 0090

In the Supreme Court Of India

Case No : Civil Appeals Nos. 4224-24 Of 1994 With Nos. 4779 Of 1994 And Of 1995

Prabhash Chand Jain

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 23-02-1995

Acts Referred:

Citation : (1995) 5 JT 603 : (1995) 3 SCALE 24 : (1995) 3 SCC 716 : (1995) 3 SCR 807 : (1995) 2 UJ 416

Hon'ble Judges : P. B. Sawant, J;B. L. Hansaria, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. SPECIAL leave granted in all the special leave petitions. Heard counsel for the parties in all the appeals.
2. OUR experience shows that disputes of this nature arise mainly on account of either the ignorance of the authorities who issue instructions in the matter of reservation from time to time, or on account of a deliberate distortion of the law of reservation and of the implementation of the rules and instructions relating to it. The present cases are a good example of the same.
3. WE are concerned here with the Scheduled Caste and Backward Class candidates and their appointment to the reserved posts which were at the relevant time designated as Head Assistants, and are presently redesignated as Deputy Superintendents, in the various Departments of the State government.
4. IN supersession of the earlier instructions on the subject, the State Government, on 9/2/1979 introduced reservations both in the direct recruitment and in the promotions in the State Employment in Class III and Class IV services. For that purpose, not only it laid down the percentage of reservations for different classes, but also introduced a roster of 100 points. The reservations in favour of Scheduled Castes was 20 per cent and that in favour of Backward

Classes was 5 per cent. The roster indicated points at which the Scheduled Caste and Backward Class candidates would be given appointment both in direct recruitment and in promotion. We are concerned in the present case with appointments of the Scheduled Caste and Backward Class candidates by promotion to the said post of Deputy Superintendent, which is a Class III post. According to the roster points introduced, the Scheduled Caste candidates should be appointed at points 4,8,14,18 and so on up to 100 and the backward class candidates at points at 10, 16, 32 and so on. Between 9/2/1979 and 15/7/1987, candidates all belonging to the General category were appointed by promotion to the said post in some of the departments ignoring the claims of the Scheduled Caste candidates who ought to have been appointed, as stated above at the relevant roster points. On the other hand, the candidates appointed earlier according to the roster points in some other departments were reverted. In WP No. 3184 of 1989 and WP No. 10096 of 1989, when the Scheduled Caste candidates approached the High court against their reversion, the learned Single Judge quashed the order of reversion. Writ Petition No. 11583 of 1989 was filed by the writ petitioner in WP No. 3184 of 1989 against the further appointment of a General category candidate ording to the roster point as introduced by circular dated 9/2/1979. This decision was upheld by the division bench of the High Court in the letters patent appeal.

5. IT is aggrieved by the said decision of the division bench that the present Civil have been filed by the General category candidates as well as by the State.

6. The main contention.on behalf of the appellants is that the circular dated 9/2/1979 stood amended by the letter of the Chief secretary to the Social Welfare Department written on 27/5/1988 and by the letter of Finance Commissioner written to the Supplies and Disposal Department on 8/3/1989. These letters in substance stated that whenever there were two posts, the same were not to be filled in by applying the reservation policy. We find no merit in this contention. In the first instance, both the said letters do not show that they have been issued as a consequence of any decision of the State government. On the other hand, the first letter of 27/5/1988 which is written by the Chief Secretary to the Commissioner and secretary of the Social Welfare Department, merely states that the matter has been examined by the Chief secretary and it is advised that in a cadre where there are only two posts, the reservation benefit is not admissible. As stated earlier, apart from the fact that the letter does not indicate that it is issued under the instructions of the State government, it gives no basis for the specious advice in question which was sought to be tendered by the Chief secretary to the Commissioner and secretary of the Social Welfare Department. If the policy of reservation as promulgated in the circular of 9/2/197979 which is undoubtedly issued in pursuance of the government's decision is to prevail and is not to be given a go-by, then clearly this advice of the Chief Secretary is contrary to the said policy. It is not possible to implement the circular of 9/2/1979 if the advice tendered by the Chief secretary is to be followed. Similar is the position with regard to the opinion expressed by the

Finance Commissioner in his letter of 8/3/1985 addressed to the Supplies and Disposal Department. It refers to the advice given by the Chief secretary under a letter which is not on record but which is probably in the same language as the letter of 27/5/1988 written by him to the Social Welfare Department.

7. EVEN assuming that the aforesaid letters written by the Chief secretary and Finance Commissioner are written in pursuance of some decision of the State government, unless the State government completely gives up the policy of reservations, as enunciated in the earlier circular of 9/2/1979, it will not be possible to implement the latter decision. Mr Rohtagi, learned counsel appearing for the State government was pointedly asked by us a question as to whether the Government had given up the policy of reservation enunciated in the circular of 9/2/1979. He fairly conceded that that was not the case. However, he contended that when there are two posts, reservation policy enunciated earlier, cannot be implemented. When we pointed out to him that it is possible to implement it, and in fact it is to implement the policy that the roster was introduced, he had no answer. We are a little puzzled as to why the Chief secretary and the Finance Commissioner should have in their letters in question stated that the reservation policy will not apply when there are only two posts available. It is obvious that none of them has applied his mind either to the roster and the roster points or to the law on the subject. In this connection, our attention is drawn by the learned counsel appearing for a reserved candidate, to the letter written by the Commissioner and secretary in the Industries Department to the Director of Industries, Haryana on 27/6/1988 where a specific query was answered by him, viz., whether when there are only two posts, the reservation policy should or should not be applied. His categorical answer was that even in such cases, the instructions given in the circular dated 9/2/1979 and the roster circulated with it are to be followed. This letter also shows that the letters of 27/5/1988 and 8/3/1989 are not written as a consequence of any decision of the State government. The individual functionaries are interpreting the circular of 9/2/1979 according to their light or predilection.

8. The last submission made by the learned counsel for the appellants and the respondent-State was that the recent judgment dated 10/2/1995 of the Constitution bench in *R.K. Sabharwal v. State of Punjab* supports their contention, inasmuch as, according to them, as per the said circular, the reservation policy is to be applied to the posts and not to the vacancies. We find no such observation made in the said judgment. In fact, in the very beginning, the court has stated that the expressions "posts" and "vacancies" are often used in the executive instructions providing for reservation, problematically. The court has then gone on to explain that the word "post" means the position to which the person is to be appointed. The vacancy means a non-occupied post or office. The plain meaning of the two expressions makes it clear that there must be posts to enable the vacancies to occur. The cadre strength is always measured by the number of posts comprising the cadre and the right to be considered for appointment can only be claimed in respect of a post in a cadre. As a

consequence, the percentage of reservation has to be worked out in relation to the number of posts which form the cadre strength. The concept of vacancy has no relevance in operating the percentage of reservation. The court has then explained that when all the roster points in the cadre are filled, the required percentage of reservation in post is achieved. The roster point in a cadre can be filled in only when the vacancies occur and not otherwise. Hence the observations made in the said judgment relating to the percentage of reservation in posts has to be understood in that sense. It is not the contention of the respondent-employees belonging to the reserved category that the percentage of reservation is to be calculated de hors the number of posts. However, while filling the posts, it is the vacancies which have to be taken into consideration and these vacancies have to be filled in, according to the roster points. That is precisely what is sought to be done in the present case by the circular of 9/2/1979.

9. WE, therefore, find no infirmity in the decision of the High court.

10. The appeals are dismissed with costs.