

(2005) 02 MAD CK 0135

In the Madras High Court

Case No : Writ Petition No's. 11296 to 11298 of 2003 and 28787 of 2004,
WPMP. No's. 14171/03 and 34972/04 and WVMP. No. 2183 of 2004

Registration Department S.C./S.T. and M.B.C. Employees
General Welfare Sangam

APPELLANT

Vs

S. Chandrasekar, The Government of Tamilnadu, Backward
Classes and Most Backward Classes Welfare (BCC)
Department, The Inspector General of Registration and The
Registrar, Tamil Nadu Administrative Tribunal

Registration Department S.C./S.T. And M.B.C.
Employees General Welfare Sangam Vs The Registration
Department Backward Class Association and Others
K.
Subramanian Vs The State of Tamil Nadu and Others
V.
Adhimoolam, S. Ganesan, E. Sarasakumari and V. Anbu
Mohan Vs N. Jayaraman and Others

RESPONDENT

Date of Decision : 28-02-2005

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2005) 2 CTC 36 : (2005) 2 MLJ 188

Hon'ble Judges : S.K. Krishnan, J;P. Sathasivam, J

Bench : Division Bench

Advocate : K. Chandru for Muthumani Doraisami, in WP. 11296 to 11298/2003 and R. Yashood Vardhan, in WP. 28787/2004, for the Appellant; E. Sampath Kumar, Government Advocate for R.2 and R.3 in WP. No. 11296/03, P. Jayaraman for G. Thangavel, for R.1, E. Sampath Kumar, Government Advocate for R.2 and R.3, R. Rangaramanujam, for R.5 and G. Devi, for R.6 in WP. No. 11297/03, E. Sampath Kumar, Government Advocate for R.1 and R.2 and V. Vijayashankar, for R.4 to 8 and R.9 to R.52, R. Saravanakumar, for R.53 and R.54 and V. Ravikumar for R.55 and R.56 in WP. No. 11298/03, E. Sampath Kumar, Government Advocate for R.2, 3 and 5, R. Rangaramanujam, for R.4 and R. Saravanakumar, for R.7 and R.8 in W.P. No. 28787 of 2004, for the Respondent

Final Decision : Dismissed

Judgement

P. Sathasivam, J

1. Aggrieved by the common order of the Tamil Nadu Administrative Tribunal, Chennai dated 22.10.2002 made in O.A. No. 3551 of 2000 etc.,

Registration Department SC/ST/MBC Employees General Welfare Sangam and others have filed the above writ petitions.

2. Tamil Nadu Backward Class Officials Association - applicant in O.A. No. 9044 of 1997 has prayed for setting aside the letter of the Secretary

to Government, Commercial Taxes and Hindu Religious Department, Chennai dated 06.10.1997. The other applicants mostly filed for challenging

the letter of the Government dated 23.02.1999 issued by the Backward Class and Most Backward Classes Welfare Department, Government of

Tamil Nadu. In other applications, the Assistants working in the Registration Department have challenged the panel prepared for appointment to

the post of Sub-Registrar Grade II and published in Government letters dated 03.12.1997, 03.06.1999 and 24.09.1999.

3. The following facts are culled out from various applications filed before the Tribunal. The Government by its order dated 12.11.1993 has

upgraded 551 posts of Junior Assistants and Typists, so as to enable them to draw salary of Assistant with a view to give them pecuniary

advantages under the guise of promotional opportunities. As per the provisions of Tamil Nadu Commercial Taxes Subordinate Service Rules, the

qualification for a person to be included in the panel for appointment to the post of Assistant Commercial Tax Officer by transfer is eight years of

total service in Government, of which not less than 2 years should be spent as Assistant, as on crucial date. The upgraded Junior Assistants /

Typists holding the post for two years cannot be made eligible for inclusion in the list of Assistant Commercial Tax Officer (in short "ACTO") by

transfer. He can be included in the list only after he has been regularly promoted as Assistant in the service. The Special Commissioner and

Commissioner of Commercial Taxes has rejected the request of certain upgraded Assistants for inclusion in the list of Assistant Commercial Tax

Officer for the year 1996-1997, on the ground that they have not rendered two years of service as Assistant. Therefore, by letter dated

06.10.1997, the Government made it clear that two years in the upgraded post of Junior Assistant / Typist as enough qualification for inclusion in

the list of ACTOs., is against the Rules and liable to be struck down.

4. The Assistants working in the Commercial Taxes Department filed other applications challenging the reservation provided in promotion while appointing ACTO from among the Assistants. All the applicants are initially recruited as Junior Assistants in the Commercial Tax Department and after completion of qualifying years of service and after passing of Departmental tests, they were promoted as Assistants, which is in Ministerial Service. The applicants became Assistants in the year 1991 and 1993. The next post in the hierarchy is ACTO, which is a Subordinate Service. The method of appointment to the category of ACTO is either by way of direct recruitment, which is done by the Tamil Nadu Public Service Commission or by way of recruitment by transfer. The post of ACTO, which is a Subordinate Service, the recruitment by way of transfer is made from among the clerks employed in Commercial Taxes Department and Clerks and Superintendents in any of the Commercial Taxes sections in the Office of the Commissioner of Commercial Taxes and all these persons belong to Tamil Nadu Ministerial Service. Appointment as ACTO from among the Assistants is only on the basis of seniority, subject to passing the eligibility test. In the order dated 29.02.2000, the Secretary to Government, Commercial Taxes Department, Chennai has stated that candidates (Assistants) who are working in the Tamil Nadu Ministerial Service are transferred as ACTOs., under the Tamil Nadu Commercial Taxes Subordinate Service for the year 1999. The grievance of the applicants is that the Department has provided reservation while appointing ACTOs., from among the Assistants. The Assistants belong to Ministerial Service and they have to be appointed by transfer of service as ACTOs., which is a Subordinate Service. The post of ACTO carries higher scale of pay with greater responsibility and therefore, it is nothing but promotion so far as Assistants are concerned. The Assistants, who are junior to some of the applicants have been promoted as ACTOs., which is illegal and this has been made possible because Government has followed the reservation policy, while granting promotion to them. Such reservation in promotion cannot be provided in view of the direction of the Supreme Court in the case of Indira Sawhney and R.K. Sabarwal cases, where it has been categorically held that no reservation can be provided in promotion.

5. Some of the applicants who are working as Assistants in the Registration Department have filed applications seeking to set aside Rule 5 of the Special Rules for Tamil Nadu Registration Subordinate Service and the proceedings of the Secretary to Government, Backward Class and Most Backward Class Welfare Department dated 23.02.1999. So far as this Rule and the Government Order make it applicable the rule of reservation of appointment to the post of Sub Registrar Grade II by recruitment by transfer of Assistants in the Registration Department. The said Rule 5 provides for reservation for Backward Class and Most Backward Class in recruitment by transfer and also by direct recruitment. Some of the applicants who have filed applications belong to forward community, but most of them belong to Backward Class community. Because of the rule of reservation, the applicants in Original Applications are not able to get appointment in the post of Sub-Registrar Grade II even though they have become Assistants as early as in 1986, whereas in the case of Assistants belonging to Most Backward Class, they are able to get the post of Sub-Registrar even though they have become Assistants only in the year 1995. Reservation is not permissible in the matter of appointment to a higher post in respect of Backward Class and Most Backward classes. The Government is wrong in proceeding to make appointments to the post of Sub-Registrar Grade II by adopting the principle of reservation. Even though the appointment is by way of transfer of service, it actually amounts to promotion and therefore there can be no reservation in the case of promotions.

6. The Registration Department Backward Class Association represented by its President G.R. Murali and others have filed separate original application before the Tamil Nadu Administrative Tribunal challenging the panel of the year 1997-98 fit for appointment to the post of Sub-Registrar Grade II issued in the proceedings dated 3.12.1997, another panel fit for appointment to the post of Sub-Registrar Grade II for the panel year 1998-99 issued in the proceedings dated 03.06.1999 and another panel fit for appointment to the post of Sub-Registrar Grade II for the panel year 1999-2000 issued in proceedings dated 24.09.1999, which were prepared by following the rule of reservation as contemplated in the relevant rules by the Registration and Commercial Taxes Department, Government of Tamil Nadu. After hearing all the parties, the Tribunal by the

order impugned quashed the said panel dated 03.12.1997, 03.06.1999 and 24.09.1999 on the ground that "recruitment by transfer" is nothing but promotion, as such "rule of reservation" shall not be applicable.

7. The Government filed a counter before the Tribunal highlighting various Government Orders, the service rendered in the upgraded post of

Assistants can also be taken into account for the purpose of qualifying service for promotion as ACTO and therefore the Government letter is in accordance with rules and is not arbitrary.

8. The questions considered before the Tribunal are:

(i) Whether reservation for Backward Class and Most Backward Class can be provided in case of appointment by transfer to the posts of

Assistant Commercial Tax Officer, Sub-Registrar Grade II and Deputy Tahsildar, which all belong to a State Subordinate Service from among the

members of Tamil Nadu Ministerial Service;

(ii) Whether the impugned letter and the panels prepared by the Government for the aforesaid posts for 1998-1999 and subsequent years adopting

the principles of reservation is liable to be set aside as it is oppose to law laid down by the Supreme Court in Indira Sawhnay's case.

9. The Tribunal, on consideration of various materials placed and in the light of the decision of the Supreme Court rendered in Indra Sawhney etc.

etc Vs. Union of India and others, etc. etc., as well as Article 14, 16(4), 16(4-A) of the Constitution of India, various Government Orders etc., set

aside the Government letter dated 23.02.1999 and the panels dated 03.12.1997, 03.06.1999 and 24.09.1999 as illegal and violative of law laid

down by Supreme Court in Indira Sawhnay's case and ultimately allowed all the applications. Questioning the same, present writ petitions have been filed.

10. Heard the learned counsel for the petitioners as well as respondents.

11. The subject matter of the dispute relates to promoting Assistants to the post of Assistant Commercial Tax Officer / Sub-Registrar Grade II /

Deputy Tahsildar. It is the grievance of the applicants before the Tribunal that by wrong approach and interpretation of the Government by

applying reservation for the promotional posts, their juniors were promoted to the above mentioned promotional posts and they were deprived of

the same. The pith and substance of the grievance of the applicants is that though reservation is applicable at the initial appointment, the same is not

applicable to in the case of promotion or recruitment by transfer. We have already referred to the fact that at the relevant time the applicants were

working in the feeder category as Assistants in the Ministerial Service and eligible to be promoted as Assistant Commercial Tax officer / Sub-

Registrar Grade II / Deputy Tahsildar all State Subordinate Service. In other words, the above mentioned posts can be filled up only by way of

direct recruitment and recruitment by transfer from one service to another service and not by way of promotion.

12. In this regard, it is useful to refer the relevant rules applicable to the applicants. Rule 2 (13) of the Tamil Nadu State and Subordinate Service

Rules defines ""promotion"".

Rule 2 (13)

Promotion

113. ""Promotion"" means the appointment of a member of any category or grade of a service or class of service to a higher category or grade of

such service or class;

Recruited direct

(14) A candidate is said to be ""recruited direct"" to a service, class, category or post when, in case his first appointment thereto has to be made in

consultation with the Commission, on the date of its notification inviting applications for the recruitment and in any other case, at the time of his first

appointment thereto, he is not in the service of the Government of India or the Government of a State:

Provided that for the purposes of this definition a person shall be deemed to be not in the service of the Government of India or the Government of

a State-

(i) if a period of five years has not elapsed since his first appointment to a service of the Government of India or the Government of a State; or

(ii) if he belongs to the Scheduled Castes, Scheduled Tribes or Backward Classes;

Recruited by transfer

(15) A candidate is said to be ""recruited by transfer"" to a service -

(a) if, at the time of his first appointment thereto, he is either a full member or

an approved probationer in the Madras High Court Service or in any other service, the rules for which prescribe a period of probation for member thereof; or

(b) in case, at the time of his first appointment thereto, he is the holder of a post which has been included in another service but for which no

probation has been prescribed, if he has put in that post satisfactory service for a total period of two years on duty within a continuous period of three years.

Explanation.- Where the special rules for a service provide for recruitment to that service or to any class or category thereof by transfer from any

specified service, class or category, a candidate need not, for the purposes of such recruitment, be a full member of an approved probationer in the

service, class or category so specified, provided he is a full member or an approved probationer in any other service, class or category;

13. As pointed out by the Tribunal, though communal reservation was being followed in the matter of Government employment prior to

independence, after attaining republic, our Constitution itself provides (vide Article 16) equality of opportunity irrespective caste, religion, sex etc.,

in the matter of public employment. Consequent to the striking down communal G. Os., Article 16 (4) was amended providing reservation for

Backward communities in the matter of public appointments. In this regard it is useful to refer Article 16 (4).

16. Equality of opportunity in matters of public employment.-

(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.

The said provision enables the State Governments to make provision for reservation in public appointments for backward class peoples, two

Commissions were appointed to identify the Backward Class and Most Backward Class communities. The Mandal Commission submitted its

report and Government of India has chosen to adopt and as a follow up action issued various Government Orders. Those Government Orders

providing reservation and appointment in public offices in favour of Backward communities is a subject matter of litigation before the Supreme

Court in *Indira Sawhnay v. Union of India* (cited supra). Since the judgment in the Mandal Commission is a land mark judgment in the field of

reservation", it is useful to refer the principles and directions issued in the said judgment. The following conclusion / observation of the Supreme

Court are relevant.

307. The initial appointments may be made at various levels or grades of the hierarchy in the service. There is no warrant in Article 16(4) to

conclude from the expression "reservation of appointments or posts" that reservation extends not merely to the initial appointment, but to every

stage of promotion. Once appointed in a service, any further discrimination in matters relating to conditions of service, such as salary, increments,

promotions, retirement benefits, etc. is constitutionally impermissible, it being the very negation of equality, fairness and justice.

309. In whichever post that a member of a backward class is appointed, reservation provisions are attracted at the stage of his initial appointment

and not subsequently. Further promotions must be governed by common rules applicable to all employees of the respective grades.

375. There is no doubt that the backward classes should not only have adequate representation in the lowest cadres of services but they should

also aspire to secure adequate representation in the higher services as well. Article 16(4) permits reservation for backward classes by way of

direct recruitment to any of the cadres in the State services. Reservation can be made in direct recruitment to any cadre or service from Class IV

to Class I of the State services. The majority in *The General Manager, Southern Railway Vs. Rangachari*, has read in Article 16(4), what is not

there, to support the element of qualitative representation.

376. The reservation permissible under Article 16(4) can only be "in favour of any backward class of citizens" and not for individuals. Article 16(1)

guarantees a right to an individual citizen whereas Article 16(4) permits protective discrimination in favour of a class. It is, therefore, mandatory that

the opportunity to compete for the reserve posts has to be given to a class and not to the individuals. When direct recruitment to a service is made

the "backward Class" as a whole is given an opportunity to be considered for the reserve posts. Every member of the said class has a right to

compete. But that is not true of the process of promotion. The promotional posts

are not offered to the backward class. Only the individuals are benefited. The object, context and the plain language of Article 16(4) make it clear that the job reservation can be done only in the direct recruitment and not when the higher posts are filled by way of promotion.

377. It is not possible to read in these lines the permissibility of reservation even in the process of promotion. This is the only interpretation which can be given in the context and also in conformity with the service jurisprudence.

Question No. 7:

Whether Clause (4) of Article 16 provides reservation only in the matter of initial appointments/ direct recruitment or does it contemplate and provide for reservations being made in the matter of promotion as well?

827. We find it difficult to agree with the view in Rangachari that Article 16(4) contemplates or permits reservation in promotions as well.

14. It is clear that after the said decision, the Government shall not adopt policy of reservation in promotion so far as Backward Class communities

are concerned. Reservation Policy in the matter of promotion is permissible only in the case of SC/ST, for which an amendment was brought in by

inserting 16(4-A) with effect from 17.06.1995. Based on the law declared by the Supreme Court in Indra Sawhney's case, the applicants who

were working as Assistants in Registration / Revenue and Commercial Tax Departments approached the Tribunal, questioning the three panels and

giving promotion by applying the rule of reservation. It is clear from the Constitutional provisions as well as the judgment in Indira Sawhney case,

though Central and State Governments are empowered to provide reservation for backward class of citizens, there cannot be any further

reservation for them in the promotional posts.

15. Now, we shall consider the stand taken by the Government and the beneficiaries of the impugned orders (Government letter and promotion

panels) that the appointments were done only by ""transfer of service"" and they are not ""promotions"", hence reservation can be done. It is not in

dispute that the post of Assistant Commercial Tax Officers/ Sub-Registrar Grade II and Deputy Tahsildar belong to State Subordinate Service.

The mode of appointment to these posts are (i) direct recruitment and (ii) recruitment by transfer of service. It is also not in dispute that direct

recruitment is done by Service Commission and Reservation is permissible. The mode of appointment is by transfer of service. The persons who

are eligible to be appointed to these posts are Assistants and Junior Assistants working in the respective Departments and they are the members of

the Tamil Nadu Ministerial Service. The eligible persons, namely Assistants, Junior Assistants are appointed by transfer of service as Sub-Registrar

Grade II / ACTO or Deputy Tahsildar, in view of the fact that the above said posts are with higher scale of pay, higher status, and higher rank etc.,

Their appointments amounts to higher service. It is brought to our notice that the Assistant in the Registration Department is given the scale of pay

of Rs.4,000 - 100 - 6000, whereas if he has been appointed as Sub-Registrar Grade II by transfer of service, his pay of scale is Rs.5,300-150-

8300. Accordingly, even though it is called as appointment by transfer of service, as rightly observed by the Tribunal, it actually amounts to

promotion in rank, status and also higher emoluments.

16. Now, let us consider judicial decisions which explain ""promotion"" as well as ""recruitment by transfer"" or ""appointments by transfer of service"".

(a) In the case of Tarsem Singh and Another Vs. State of Punjab and Others, it is held,

9. Promotion as understood under the service law jurisprudence means advancement in rank, grade or both. Promotion is always a step

towards advancement to a higher position, grade or honour. Opting to come to a lower pay scale or to a lower post cannot be considered a

promotion, it is rather a demotion.

(b) In State of Rajasthan Vs. Fateh Chand Soni, , the following conclusion of their Lordships is relevant.

8. The High Court, in our opinion, was not right in holding that promotion can only be to a higher post in the Service and appointment to a higher

scale of an officer holding the same post does not constitute promotion. In the literal sense the word ""promote"" means ""to advance to a higher

position, grade, or honour"". So also "promotion" means ""advancement or preferment in honour, dignity, rank, or grade"". (See: Webster's

Comprehensive Dictionary, International Edn., p.1009). "Promotion" thus not only covers advancement to a higher position or rank but also

implies advancement to a higher grade. In service law also the expression

"promotion" has been understood in the wider sense and it has been held that "promotion can be either to a higher pay scale or to a higher post". (See: Union of India (UOI) and Another Vs. S.S. Ranade, .

(c) In Union of India (UOI) and Another Vs. S.S. Ranade, , the Supreme Court held,

11. In order to decide whether a post is either equivalent or is higher or lower than another post, one cannot look only at the pay scale for that

post. One must also look at the duties and responsibilities that are attached to such posts.

17. In the light of the above principles, we have to see that the persons all along members of Ministerial Service have to be appointed as State

Subordinate Service and they were appointed by transfer of service. We have already demonstrated that the post of Sub-Registrar Grade II /

ACTO / Deputy Tahsildar are higher service with higher scale of pay as well as with higher rank. We have also demonstrated the scale of pay of

Assistant in the Registration Department as well as his scale of pay after appointment by transfer of service as Sub-Registrar Grade II. As rightly

observed by the Tribunal, even though it is called as appointment by transfer of service, it actually amounts to promotion in rank, status and also

higher emoluments. We concur with the conclusion of the Tribunal that in the light of the factual details and materials, the transfer of service

whatever name it is called, it actually amounts to promotion.

18. Now, let us consider whether reservation is permissible in promotion. We have already referred to Article 16 of the Constitution, which

enables the Government to create reservation in respect of backward communities at the time of initial appointment. This was also reiterated in

Indira Shawney"s case. Further, Clause (4-A) was inserted in Article 16 with effect from 17.06.1995 in order to give due representation to SC/ST

in promotions also. The newly added provision, namely 4-A empowers the Government to provide reservation even in the case of promotion only

in respect of SC/ST and not for other communities, including backward class community. In this regard, it is relevant to quote the following

conclusion of their Lordships in the case of Commissioner of Commercial Taxes, A.P. Hyderabad and another Vs. G. Sethumadhava Rao and

others, .

9. The reservation for Scheduled Castes and Scheduled Tribes in contradistinction to the rest of the Indian community and others are classified to accord fundamental right of equality of opportunity to the Scheduled castes and Scheduled Tribes for the purpose of adequate representation in the services under the State. In *Indra Sawhney v. Union of India* (1992) Supp (3) SCR 217: AIR 1992 SCW 3682, a larger bench of nine Judges per majority, in which Justice A.M. Ahmadi, J. (as he then was) did not participate on the issue since it did not directly arise for decision therein, held that reservation of appointment or post under Art.16(4) is confined to initial appointment only and cannot extend to provide reservation in matters of promotion. However, this Court upheld the promotions made until the date of the judgment, namely, November 16, 1992, and held that wherever special rules have not provided reservation in appointment by promotion, the same was permitted to be done within 5 years from that date. The Parliament amended Article 16 by 77th Constitution (Amendment Act) 1995 which came into force from June 17, 1995, incorporating Clause 4A to Art.16 which reads thus:

Nothing in this Article shall prevent the State from making any provision for reservation in matters of promotion to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the States, are not adequately represented in the services under the State".

10. The Parliament by amending the Constitution and introducing Art.16(4A) has removed the base as interpreted by this Court in *Indra Sawhney's* case, AIR 1992 SCW 3682, that appointment does not include promotion by making express provisions that when the State forms an opinion that members of the Scheduled Castes or Scheduled Tribes are not adequately represented in any service or to any class or classes of base in the service under the State, the State is empowered to make provisions for reservation by promotion. Article 16(1) does not prevent the State from making such a provision. In *Indra Sawhney's* case also, this Court reiterated that right to equality under Article 16(1) is equally applicable to the Scheduled Caste and Scheduled Tribes and Article 16(4) is not an exception. Reservation is part of the scheme of equality under Article 16(1). Article 16(4-A) would establish that the interpretation put up in

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Bharatiya Soshit Karamchari Sangh (Railway) represented by its Assistant General Secretary on behalf of the Association Vs. Union of India

(UOI) and Others, , received parliamentary approval. It would thus be clear that as a principle of law, rule of reservation can apply not only to

initial recruitment but also in promotions where the State is of the opinion that Scheduled Castes and Scheduled Tribes are not adequately

represented in promotional posts in class or classes of service under the State. It is seen that Rule 22 of the general rules provides reservation for

appointment by direct recruitment. By Constitutional parameters and interpretation of law by this Court, reservation under Articles 141B, 16(1)

and 16(4) would include reservation in promotion as well.

19. In the light of the above position it would not be possible for the Court to either give direction for reservation for communities other than

SC/ST in the case of promotion or approve any such direction issued by the Tribunal or any other Courts. In this regard it is relevant to refer the

case of Post-Graduate Institute of Medical Education and Research etc. Vs. K.L. Narasimhan and another etc., , wherein the Court held that the

Court cannot give mandamus to disobey the Constitution and principle of reservation enshrined in Articles 15 (4) and 16; nor is the Court

competent to direct the authorities to disobey the constitutional mandate. It would, therefore, be manifestly illegal to seek a mandamus or direction;

nor would the court be justified to issue such mandamus or direction to the appropriate Government to dereserve a vacancy.

20. In the light of the above discussion, we are in agreement with the conclusion arrived at by the Tribunal. We are satisfied that Assistants

belonging to Backward class and Most Backward class cannot claim reservation in the matter of higher post of Sub-Registrar Grade II / ACTO /

Deputy Tahsildar without violating the guaranteed fundamental right of equality enshrined in Article 16 (1) of the Constitution. We also hold that

since Assistants who are appointed as Sub-Registrar Grade II / ACTO / Deputy Tahsildar get the appointment to the higher post above the post

of initial requirement, such appointment is promotion, consequently reservation is not permissible in such appointments. Any provision to the extent

it applies to the rule of reservation for appointment is not valid and

unconstitutional after five years from the date of judgment in Indira Sawhny's case. We also hold that the reservation of appointments or post under Article 16(4) is confined to initial appointment only and cannot extend to provide reservation in the matter of promotion. If the Government feels that for ensuring adequate representation of Backward class of citizens in any service, class / category, it is necessary to provide for direct recruitment therein, it shall be open to do so. But the reservation in the matter of promotion was permitted for the period of 5 years from the date of judgment i.e., from 16.11.1992 to 15.11.1997. As rightly pointed out by the learned counsel for the respondents all the ingredients of the meaning of "promotion" in Rule 13 are found and only the method is by way of recruitment by transfer in the same Department with higher scale of pay and all the norms of promotion are followed while appointments are made. Therefore, in the case on hand, the "recruitment by transfer" in all these cases in the same Department is deemed to be the "promotion" and for which the rules of reservation does not apply. Under these circumstances, we are in entire agreement with the conclusion arrived at by the Tribunal and do not find any merit in these petitions. Consequently, the writ petitions fail and the same are dismissed. No costs. Connected WPMPs., and WVMP., are also dismissed.