
(1978) 12 MAD CK 0006
In the Madras High Court
Case No : Writ Petition No. 3756 of 978

S. Alaghia Doss, Officiating Superintendent	APPELLANT
Vs	
The Director General, Post and Telegraphs Ors.	RESPONDENT

Date of Decision : 13-12-1978

Acts Referred:

Constitution of India, 1950 — Article 16, 16(1), 16(2), 16(4)

Citation : (1979) ILR (Mad) 312

Hon'ble Judges : V. Ramaswami, J

Bench : Single Bench

Advocate : R. Sukuntharaj, for the Appellant; K. Swamidurai, Additional Central Government Standing Counsel and P. Chidambaram, for the Respondent

Final Decision : Allowed

Judgement

V. Ramaswami, J.—The Telecommunications Branch of the Posts and Telegraphs Department, Tamil Nadu Circle was separated and

constituted as a separate Telecommunications Branch Circle with effect from 1st September, 1974. An option was given to all the members of the

staff belonging to the erstwhile Posts and Telegraphs Department of the Tamil Nadu Circle and those who have opted were selected and taken

into the service of the Telecommunications Branch. The service conditions, promotional avenue, seniority and other matters connected with the

service of the staff of the Telecommunications Branch with effect from 1st September, 1974 are separate and distinct. The hierarchy of posts under

Class III of the Telecommunications are as follows:

1. Office Superintendent.
2. Higher Selection Grade (in the cadre of Head Assistant).

3. Lower Selection Grade (in the cadre of Head Clerk).

4. Upper Division Clerk, and

5. Lower Division Clerk.

The posts upto and inclusive of higher selection grade are not election posts and promotion was done to these posts on the basis of seniority. The

post of the Office Superintendent is a selection post. In the higher selection grade (in the cadre of Head Assistant), there was only one post. The

promotion to this cadre is purely on the basis of seniority from the lower election grade (in the cadre of Head Clerk). The post of higher selection

grade (in the cadre of Head Assistant) was created with effect from 6th February 1975. One Gopal Doss who was then the senior most in the

lower selection grade was promoted and posted to the higher selection grade as Head Assistant (General) with effect from 7th February 1975.

The said Gopal Doss was promoted as office Superintendent with effect from 1st March 1975. The Petitioner who was then the senior most lower

selection grade clerk was promoted and post to officiate as Higher Selection Grade Assistant in the place of the said Gopal with effect from 1st

March 1978. By another communication, dated 18th April 1978, the Director of Telecommunications in continuation of his earlier orders directed

the promotion and posting as Head Assistant in the higher selection grade on a regular basis with effect from 1st March 1978. It appears that the

Director General of Posts and Telegraphs in his communication, dated 3rd May 1978 informed the Director of Telecommunications to fill up the

vacancies in the Telecommunications Circle in accordance with the reservations applicable to the various posts. Probably, in the view that the

appointment of the Petitioner as Head Assistant in the higher selection grade also will have to be considered with reference to the instructions of the

Director- General of Posts and Telegraphs, a communication was sent to the Petitioner on 21st June 1978 that the posting of the Petitioner on a

regular basis will have to be treated as ad-hoc with effect from 1st March 1978.

2. The Petitioner preferred an appeal to the Director-General contending that there is only one post in the cadre of Head Assistant in the higher

selection grade and as such there could be no reservation under Article 16(4) of the Constitution and the rules of reservation are not applicable.

But the Director-General in his communication, dated 7th September 1978

instructed the General Manager, Telecommunications to terminate the ad-hoc promotion and take action to fill up the post on a regular basis in the light of the instructions contained therein and applying the rules of reservation. The Petitioner has filed this writ Petition praying for a certiorarified mandamus, directing the Respondents to treat the only post of Head Assistant (General) in the cadre of higher selection grade in the Office of the General Manager, Telecommunications, Tamil Nadu Circle, as not reserved and for consequential reliefs.

3. The various instructions issued by the Government of India relating to reservations for schedule castes and scheduled tribes in services are contained in the Brochure published by the Government of India in this regard, Chapter II lists out the percentages of reservation that were in force at the relevant time in filling vacancies in posts and services under the Government of India. Paragraph 1(iii)(c) of this chapter, which is relevant for our purpose, states that where posts are filled by promotion: on the basis of seniority subject to fitness, in Class I, II, III and IV posts, in grades or services in which the element of direct recruitment, if any, does not exceed 50 percent.

15 percent is reserved for scheduled castes and 7½ percent for the scheduled tribes. Paragraph 9 of Chapter IV provides that to give proper effect to the reservations prescribed, every appointing authority should treat Vacancies as reserved or unreserved according to a model roster and the pattern as in Appendix I to the Brochure. The model foster for posts filled by promotion to which reservation orders applied, takes 40 points.

4. The contention of the learned Counsel for the Petitioner is that the reservations are with reference to the posts and services and not with reference to the vacancies. The rules relating to reservation for scheduled castes and scheduled tribes are not applicable where there is only one post in the cadre. Article 16(4) of the Constitution also does not contemplate any reservation in favour of backward class of citizens when there is only one post in the cadre.

5. The learned Counsel for the third Respondent contended that the instructions relating to reservations speak of filling vacancies and there is nothing in the rules to suggest that in a case where the cadre strength is only one, the rules of reservation are not applicable. He also contended that

the applicability of Article 16 (4) cannot be restricted in any way so as to make it not applicable to a case where there is only one post in the cadre.

6. The Supreme Court has considered the scope of Article 16 in a number of cases. In one of the earliest cases reported in *T. Devadasan Vs. The*

Union of India (UOI) and *Another*, the Supreme Court observed that:

the guarantee contained in Article 16(1) is for ensuring equality of opportunity for all citizens relating to employment, and to appointments to any

office under the State. This means that on every occasion for recruitment the State should see that all citizens are treated equally. The guarantee is

to each individual citizen and, therefore, every citizen who is seeking employment or appointment to an office under the State is entitled to be

afforded an opportunity for seeking such employment or appointment wherever it is intended to be field.

7. The Supreme Court further observed:

Further this Court has already held that Clause (4) of Article 16 is by way of a proviso or an exception to Clause (1). A proviso or an exception

cannot be so interpreted as to nullify or destroy the main provision. To hold that unlimited reservation of appointments could be made under Clause

(4) would in effect efface the guarantee contained in Clause (1) or at best make it illusory. No provision of the Constitution or of any enactment

can be so construed as to destroy another provision contemporaneously enacted therein. It is true, as pointed out by Mr. Ganapathy Iyer on behalf

of the Respondent that effect must be given to the express words of Article 16(4). Nothing in this Article shall prevent the State from making any

provision for the reservation of appointments...etc., but that does not mean that the provisions made by the State should have the effect of virtually

obliterating the rest of the Article, in particular Clauses (1) and (2) thereof. The over-riding effect of Clause (4) on Clause (1) and (2) could only

extend to the making of a reasonable number of reservation of appointments and posts in certain circumstances. That is all.

8. It was further held in *C.A. Rajendran v. Union of India* AIR 1968 S.C. 597 that Article 16(4) is an enabling provision and confers a

discretionary power on the State to make a reservation of appointments in favour of backward class of citizens which, in its opinion, is not

adequately represented in services of the State. But there is no constitutional duty imposed on the Government to make a reservation either at the initial stage of recruitment or at the stage of promotion.

9. It is also well settled that the principle of equality in Article 16 is applicable to employment at all stage in all respects namely initial recruitment, promotion, retirement, payment of pension and gratuity. It may be seen from these decisions, particularly the decision in *T. Devadasan Vs. The Union of India (UOI) and Another*, that there could be no reservation under Article 16(4) so as to create a monopoly. That as pointed out, would efface the guarantee contained in Clause (1). These principles in my opinion, necessarily lead to the conclusion that if there is only one post in the cadre there could not be any reservation with reference to that post either for recruitment at the initial stage or filling up a future vacancy in respect of that post. A reservation, which would come under Article 16(4), thus presupposes the availability of at least more than one post in that cadre. When there is only one post, there is no possibility of the exercise of portion or discretion by the Government to reserve the post for backward class of citizens within the meaning of Article 16(4).

10. The argument of the learned Counsel for the third Respondent is that the reservation is with reference to the vacancy and that therefore even if there is only one post, the points of vacancy for each time may be considered as reserved point or unreserved point as per the instructions in the roster. I am unable to agree with this contention of the learned Counsel. Article 16(4) speaks of reservation of appointments or posts; it does not include reservation of vacancies. Further, as we have noticed already, Clauses (1) and (2) of Article 16 have been held to apply both for appointments and promotions. If so, every time the post becomes vacant, Article 16(1) and (2) will be applicable and any reservation will make these provisions illusory.

11. Though the rules of reservation contained in the Brochure are possible of the construction placed by the learned Counsel for the third Respondent that the reservations are with reference to the vacancies and not with reference to the posts, since any such construction will invalidate the rules themselves as being unconstitutional and offending Article 16(1) and (2) they will have to be interpreted in such a way as to make it

constitutionally valid. In other words, the rules are not applicable to a case where there is only one post in the particular cadre. It is not disputed that if

the rules of reservation are not applicable, the Petitioner as the senior most lower selection grade clerk is entitled to be promoted as Head

Assistant (General) in the higher selection grade.

12. For the foregoing reasons, the writ petition is allowed and there will be a direction to Respondents 1 and 2 to treat the only post of Head

Assistant (General) in the cadre of higher selection grade in the Office of the General Manager, Telecommunications, Tamil Nadu Circlets not a

post to which the rules of reservation are applicable and fill up the post by applying the rules of seniority for promotion. There will be no orders as

to costs.