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**(1994) 12 CAL CK 0032**  
**In the Calcutta High Court**  
**Case No : F.M.A.T. No. 2186 of 1993**

Satyahari Das

APPELLANT

Vs

Emdad Hossain

RESPONDENT

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**Date of Decision :** 23-12-1994

**Acts Referred:**

Constitution of India, 1950 — Article 15, 15(2), 15(4), 16, 16(1)

**Citation :** (1995) 1 ILR (Cal) 424

**Hon'ble Judges :** Satya Narayan Chakravarty, J; Satya Brata Sinha, J

**Bench :** Division Bench

**Advocate :** Biman Kanti, Basu and Giti Das, for the Appellant; Jawaharlal Dey and Gouri Sankar Dey, for Private Respondents, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Satya Brata Sinha, J.—Although the stay application only was listed to-day, with the consent of the parties the appeal is also treated to be on the day's list and both the applications for stay as also the appeal are being disposed of by this judgment.

2. This appeal has been preferred as against the order dated February 15, 1993, passed by D. K. Basu J. in CO. No. 792(W) of 1993 whereby and where under the writ petition filed by the Respondent No. 1 was allowed.

3. An interim order of injunction had been granted restraining the Respondents from filling up the post of Headmaster until further orders with liberty to apply for variation or modification of the interim order. The District Inspector of Schools was directed to monitor the selection of Headmaster by appointing a senior competent officer of the District.

4. The short question which arises for consideration in this appeal is as to whether the post of Headmaster can be treated to be a reserved post.

5. Mr. Biman Kanti Basu, the learned Counsel appearing for the Appellant

submitted that keeping in view of the provisions of the West Bengal Scheduled Castes and Scheduled Tribes (Reservation of Vacancies in Services and Posts) Act, 1976, as also the circular letter issued by the State of West Bengal being office memo No. 40-TW/EC dated January 22, 1991, the post of Headmaster can also be declared to be a reserved post and thus no illegality has been committed by the State declaring the said post to a reserved one.

6. There cannot be any dispute that the State keeping in view of the provisions of Articles 15 and 16 of the Constitution of India may direct reservation of posts in the matter of appointment in State services. In the writ petition, the Respondent No. 1 has not questioned the jurisdiction of the State of West Bengal to fill up certain posts only by Scheduled Castes and Scheduled Tribes candidates in terms of the provisions of the aforementioned Act. It is also not in dispute that State of West Bengal has issued a notification dated March-27, 1990, providing for maintenance of 50 point roster of vacancies in the State Aided Secondary (Including. Junior High and Higher Secondary Schools). By reason of the aforementioned Memo, dated January 22, 1991, it has been provided:

1. Both the Secondary and Higher Secondary Units particular schools shall be considered as one single unit and all the posts in both the units/shall be deemed to belong, to one single establishment.

2. All the posts in any school shall be divided under the district categories, viz. (i) teaching category and (ii) non-teaching category.

3. The post of Headmaster, the post of Assistant Headmaster and the posts of Assistant Teacher in any school shall be grouped together to constitute the teaching category while the other posts (including the post of Librarian) in the said shall constitute a separate group under the non-teaching category.

4. The 50 point roster of vacancies shall apply in relation to each of the aforesaid two groups under the respective categories and it shall not apply individually in relation to any individual post under either group, one roster shall be maintained in respect of all the vacancies against all the posts grouped together under the teaching category ; similarly another roster shall be maintained in respect of all the vacancies against all the posts grouped together under the non-teaching category.

7. Mr. Basu on behalf of the Appellant would submit, that keeping in view para. 3 of the afore-mentioned memorandum, the post of Headmaster having been grouped together with other teaching staff for maintaining the 50 point roster of vacancies, the policy of reservation would be applicable in the case of appointment of the post of Headmaster also.

8. From a bare perusal of para. 1 of the aforementioned memorandum it would appear that all schools have been treated to be single units. It is not in dispute that the post of Headmaster in a school is a single cadre post. It is also not in dispute that for the purpose of the said notification, the teaching staff and non-

teaching staff have been treated to be in different category and in the teaching category the Headmaster although has also been included, but a Headmaster is not in the cadre of Assistant Teacher. The Headmaster appointed in a school has much more wider functions to perform. The said post carries a higher scale of pay. The Recruitment Rules framed by the Director of School Education are different in the case of appointment of Headmaster visa-vis Assistant Teachers.

9. As the schools have been treated to be separate units, there cannot be any doubt that whenever such post of Headmaster in a particular school is filled up ; only one post would be required to be filled up and not the posts of several Headmasters in different schools situated in the State of West Bengal at a time would be required to be filled up. A single post of Headmaster, thus, cannot be reserved.

10. Reference in this connection may be made in *Chakradhar Paswan Vs. State of Bihar and Ors*, wherein the Supreme Court has stated the law thus:

?No reservation could be made under Article 16(4) so as to create a monopoly. Otherwise, it would render the guarantee of equal opportunity contained in Articles 16(1) and 16(2) wholly meaningless and illusory. These principles unmistakably lead us to the conclusion that if there is duly one post in the cadre, there can be no reservation with reference to that post either for recruitment at the initial stage or for filling up a future vacancy in respect of the post. A reservation which would come under Article 16(4) presupposes the availability of at least more than one post in that cadre.

11. The ratio in *Dr. Chakradhar Paswan's* case has been reaffirmed in a recent decision of the Supreme Court in 1993 MhLJ 305 (SC) where the Supreme Court has held that the single post of Headmistress in an educational institution could not be reserved for a Scheduled Caste candidate. Where a cadre has a single post, the post is an unreserved post.

12. The afore-mentioned decision of the Supreme Court in *Chakradhar Paswan* (Supra) was followed by a Division Bench of Patna High Court of which I was a member in *Chandrika Singh v. State of Bihar* 1993 (2) B.L.J. 94 wherein it has been observed:

The question is no longer *integra res*. In *Chakradhar Paswan Vs. State of Bihar and Ors*, the question as to whether the post of Deputy Director (Homeopathy) could be treated as a reserved post, the Supreme Court held:

Another serious infirmity in the argument of the learned Counsel for the Appellant is that it overlooks the basic principle that if there is only one post in the cadre, there can be no reservation under Article 16(4) of the Constitution. The whole concept of reservation for application of the 50 point roster is that there are more than one post, and the reservation as laid down by this Court in *M. R. Balaji* case can be up to 50 per cent. The Government cannot for instance declare that the post of the Director of Indigenous Medicine shall be reserved for

the candidates belonging to? Scheduled Castes. The Director is a para-medical service with directs in its head and the three Deputy Directors belonging to three distinct and separate disciplines, viz. Homeopathic, Unani and Ayurvedic under him. In the paramedical system the three posts of Deputy Directors pertain to three distinct systems, and therefore such of them is an isolated post by itself. The same principle should we think, in the case of the Director, apply.

It further held:

It is quite clear after the decision in Devandaran case that no reservation could be made under Article 15(4) so as to create a monopoly. Otherwise it would render the guarantee of equal opportunity contained in Articles 16(1) and 15(2) wholly meaningless and illusory. These principles unmistakably lead us to the conclusion that if there is only one post in the cadre, there can be no reservation with reference to that post either for recruitment at the" initial stage or for filling up a future vacancy in respect of that post. A reservation which would come under Article 15(4) presupposes the availability of at least more than one post in that cadre.

13. This aspect of the matter has also been dealt with by a learned Single Judge of this Court in *Md. Fasli Ahmad v. State of Bihar and Ors.* C.W.J.C. No. 300 of 1989 disposed of on January 6, 1990, wherein it has been held that the post of Senior Selection Grade Typist cannot be treated as reserved post.

14. In *Md. Fasli Ahmad's* case it has categorically been held that it would be unreasonable to keep a post so that the same may be filled up by a candidate belonging to Scheduled Caste and Scheduled Tribe. In that case also *Chakradhar Paswan's* case(Supra) has been followed. Recently the same view has been reiterated by a Bench of this Court in which one of us, namely, S. B. Sinha J. was member in the case of *Anand Kumar Singh Vs. State of Bihar*

15. This aspect has also recently been considered by the Supreme Court in *Smt. Chetana Dilip Motghare Vs. Bhide Girls Education Society, Nagput and others*, wherein the Supreme Court held that the reservation of the post of Principal which was a single promotional post was impermissible in law.

16. Reference in this connection may be made to *Indra Sawhney etc. etc Vs. Union of India and others, etc. etc.*, wherein the Supreme Court has clearly held that in terms of constitutional provision more than 50 % reservation is not permissible.

17. In the event the post of Headmaster is held to come within the purview of the reserved category, the same will amount to 100% reservation which is not contemplated under the constitutional provision. In this view of the matter, it must be held that the Circular of the State Government dated January 22, 1991, does not comply" with the case of recruitment of the Headmaster which vacancy should be filled up from amongst the general category candidates.

18. For the reasons afore-mentioned there is no merit in this appeal which is

accordingly dismissed. However, before parting with the case, it may be noticed that Mr. Basu appearing on behalf of the Appellant has stated that the school has been suffering from last five years on account of absence of a regular Headmaster. In this view of the matter the appeal, application for stay, as also the writ petition are directed to be disposed of with a direction that the school authorities as also the District Inspector of Schools (SE) should take all steps to fill up the vacant post of Headmaster positively within a period of 4 months from the date of this order.

19. In the facts and circumstances of this case there will be no order as to costs.

20. S. N. Chakraborty J. has already agreed with the judgment and has signed it. As S. N. Chakraborty J. has left the Court, His Lordship had requested me to deliver this judgment on his behalf also.

Satya Narayan Chakrabarty, J.

21. I agree.