

(2002) 02 GAU CK 0048

In the Gauhati High Court

Case No : Writ Appeal No. 99 of 2002 in Writ Petition (C) No. 147 (AP) of 2000

State of Arunachal Pradesh

APPELLANT

Vs

Ashok Kr. Yadav and Others

RESPONDENT

Date of Decision : 27-02-2002

Acts Referred:

Constitution of India, 1950 — Article 16

Citation : (2002) 1 GLT 223

Hon'ble Judges : R.S. Mongia, C.J.;Aftab H. Saikia, J

Bench : Division Bench

Advocate : G. Deka, for the Appellant; B.K. Sharma and P.K. Tiwari, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Mongia, C.J.—Heard Mrs. G. Deka, learned Govt. Advocate, for the Appellant and Mr. B.K. Sharma, learned Counsel appearing for Respondent No. 1 (writ Petitioner).

2. By an advertisement issued by the Arunachal Pradesh Public Service Commission (for short, APPSC), dated 23.9.99, applications were invited for filling up 22 posts of Assistant Engineers (Civil), Group "B" (Gazetted) under the Irrigation and Flood Control Department. Out of these 22 posts, 18 posts were reserved for the Scheduled Tribes of Arunachal Pradesh. This reservation is pursuant to the notification issued by the Government of Arunachal Pradesh, dated 24.9.90, which reads as under:

In exercise of the powers conferred by Clause (4) of Article 16 of the Constitution of India, the Governor of Arunachal Pradesh is pleased to order that 80% (Eighty percent) of the Group" B" posts which are filled up by direct recruitment shall be reserved for Arunachal Pradesh Scheduled Tribe candidates.

This notification shall come into force with immediate effect.

3. In passing we may notice that the indigenous inhabitants of Arunachal Pradesh, all belong to Scheduled Tribes. In other words, 80% of the posts are meant for Arunachalees and 20% of the posts, under the notification, are to go to non-Arunachalees. One Shri Ashok Kumar Yadav and Anr. person, Shri Sanjoy Kumar Srivastava, both non-Arunachalees, apart from some Ors. , had applied as non-Arunachalees. Shri Yadav and Shri Srivastava were recommended by the APPSC by keeping them on the combined merit list of non-Arunachalees and Arunachalees at S1. Nos. 8 and 14, respectively. However, it may be observed here that amongst the non-Arunachalees, Sarvashri Ashok Kumar Yadav and Sanjoy Kumar Srivastava were at S1. Nos. 3 and 4, respectively, in the merit list. It may further be observed here that the candidates at S1. Nos. 1 and 2 in the merit list amongst the Arunachalee happened to get more marks than Shri Yadav and Shri Srivastava, who were at S1. Nos. 3 and 4 amongst the non-Arunachalees. What the State Government did was that since the candidates at S1. Nos. 1 and 2 amongst the Arunachalees were better in merit than those at S1. Nos. 3 and 4 amongst the non-Arunachalees (Sarvashri Yadav and Srivastava), they shifted the two Arunachalees to the category of non-Arunachalees and removed the names of the candidates at S1. Nos. 3 and 4 amongst the non-Arunachalees and added the candidates at S1. Nos. 19 and 20 amongst the Arunachalees to be amongst the first 18 candidates. However, prior to doing all this, Sarvashri Ashok Kumar Yadav and Sanjoy Srivastava had been given the offer of appointment and Shri Yadav, who was working in Punjab Agricultural University, Ludhiana, was asked to resign that post before joining as Assistant Engineer (Civil). Pursuant to the offer of appointment, in fact, Shri Yadav resigned from his post. So far as Shri Srivastava is concerned, he was already in some other job in the Government of Arunachal Pradesh.

4. When, the aforesaid facts came to the knowledge of the State Government, they withdrew the offer of appointment to Sarvashri Yadav and Srivastava and gave appointment to two Arunachalces who were initially at S1. Nos. 19 and 20 amongst the Arunachalees. This led Shri Yadav and Shri Srivastava to file two separate writ petitions, i.e., WP(C) No. 147(AP)/2000 and WP(C) No. 148(AP)/2000, respectively. Both these writ petitions have been allowed by the common judgment of the learned Single Judge, dated 8.2.2002. The State of Arunachal Pradesh has filed the present appeal against the judgment in WP(C) No. 147(AP)/2000. However, so far the State Government has not filed any appeal against the judgment in WP(C) No. 148(AP)/2000.

5. Notice of motion was issued. We have heard learned Counsel for the parties.

6. Counsel for Mr. Yadav submitted that what the State Government has done is to apply the ratio of R.K. Sabarwal case of the Apex Court reported in R.K. Sabharwal and others Vs. State of Punjab and others, , by considering that it was a case of reservation amongst Arunachalees and non-Arunachalees, similar to the reservation for Scheduled Castes, Scheduled Tribes, etc. and, therefore, the candidates who were better in merit amongst Arunachalees as compared to non-

Arunachalees must shift to the category of non-Arunachalees. According to the counsel, strictly speaking it is not a case of reservation stricto sensu. It is a case where 80% of the posts are to go to the Arunachalees and 20% of the posts are to go to non-Arunachalees. There is separate compartmentalisation for Arunachalees and non-Arunachalees. An Arunachalee cannot be considered for the posts meant for non-Arunachalees and vice versa. To substantiate this argument, learned Counsel submitted that if 80% of the posts were to be reserved for Arunachalees, then it will be hit by the dicta of the Apex Court, inasmuch as, the reservation for Arunachalees will amount to more than 50%, which is not permissible. He further submitted that vide notification of the Arunachal Pradesh Government, dated 26.3.91, this matter was clarified, wherein it was mentioned that the posts amongst the aforesaid categories would be filled up as per the 100 point roster. The notification dated 26.3.91 reads as under: -

Consequent upon reservation of 80% of the Group "B" posts to be filled up by Direct Recruitment, as notified vide Govt. notification of even. No. of 24.9.90, the ratio of reservation of Direct recruitment of Group "B" post shall be 4:1. To facilitate proper implementation of the Govt. decision in this respect, a Model 100 Point Roster indicating the point of reservation is appended herewith for strict compliance by all concerned.

A new roster in the similar manner shall be drawn up on exhaustion of all the points of the old roster.

The roster system shall come into force w.e.f. the date of Govt. Notification issued vide Govt. notification of even No. dated 24.9.90.

7. The 100 point roster provides for filling up the vacancies as follows:

8. According to the learned Counsel, the roster makes it clear that the first four vacancies would go to the Arunachalees and the 5th one would go to a non-Arunachalee, and so on. According to the learned Counsel, the question of shifting a more meritorious person from amongst the Arunachalees to the post meant for a non-Arunachalee is not permissible. The first four vacancies irrespective of the merit, would go to the Arunachalees and the 5th vacancy, irrespective of the merit, would go to the first non-Arunachalee, and so on.

9. In somewhat similar circumstances, the Apex Court in *State of Punjab and Others Vs. Dr. R.N. Bhatnagar and Another*, where the posts were to be filled in a certain ratio amongst direct recruits and promotees, held that it does not amount to reservation amongst the direct recruits and the promotees and, therefore, the ratio of *R.K. Sabharwal* case (supra) in such a case, could not apply. In that case, a particular cadre was of five posts and the posts were to be filled as per the rules - 75% by promotion and 25% by direct recruitment. There was already one direct recruit amongst the four and one of the posts held by a promotee had fallen vacant and as per the ratio (after rounding up) four posts were to be filled by promotion and one by direct recruitment. The submission

was that since one post was already held by a direct recruit, the post which had been vacated by a promotee could not have been filled by direct recruitment. The Apex Court held that this was not a case of promotion the every time the posts were to be filled, the roster had to be applied in the ratio of 3:1 between the promotees and direct recruits and possibility could not be ruled out that at a given time there could be three promotees and two direct recruits and sometime vice versa.

10. According to us, in the present case when the State applied the ratio of R.K. Sabharwal case (supra) considering as there was a reservation of posts, this was not correct. The learned Single Judge, according to us, was correct in allowing the writ petition filed by Sri Yadav and holding that he had no competition with the Arunachalees and he would get the appointment as per his merit amongst the non-Arunachalees in the vacancy as per his merit amongst the non-Arunachalees in the vacancy as per the roster fixed under the 1991 notification (supra).

11. For the foregoing reasons, we find no, merit in this appeal, which is hereby dismissed.