
(1994) 10 SC CK 0016

In the Supreme Court Of India

Case No : Civil Appeal No. 7478 of 1994

State of Bihar and Others

APPELLANT

Vs

Bageshwari Prasad and Another

RESPONDENT

Date of Decision : 06-10-1994

Acts Referred:

Constitution of India, 1950 — Article 16

Citation : (1995) 1 BLJR 401 : (1995) 1 SCC 432 Supp : (1994) 4 SCR 318
Supp : (1995) 1 SLJ 178

Hon'ble Judges : N. Venkatachala, J;K. Ramaswamy, J

Bench : Division Bench

Advocate : B.B. Singh, for the Appellant; K.N. Rai, for the Respondent

Final Decision : Allowed

Judgement

1. Leave granted.

2. This appeal by Special Leave is directed against the judgment of the High Court of Patna in C.W.J.C. No. 4220/90 dated March 5, 1992. the only question that arises for consideration is whether Sita Ram Prasad, respondent No. 2 was entitled to be promoted as Office Superintendent in a Supertime scale on the basis that he was a reserved candidate in the 6th vacancy. The High Court in the impugned Judgment relying on the Judgment of this Court in Chakradhar Paswan Vs. State of Bihar and Ors, held that since the post of Superintendent is a single post, it cannot be reserved for the reserved candidates. Accordingly, the order of appointment to the reserved vacancy was held to be illegal, a direction was issued to the Government to consider the case of the Ist respondent for promotion to the post of O.S. as a general candidate. The State has impugned that order in this appeal.

3. In the Government Circular, Annexure R-1 bearing Letter No. 21 AG-I-125-KG-20165, the Government have decided in providing for reservation and prepared the roster to the posts in the cadre. In paragraph 2, it is stated thus:

Therefore, the State Government has taken decision that for the removal of this criticisms and doubts there should be modification in roaster for 50 vacancies in the form of sample by those letters. Sample of modified roaster is given below, this will be applicable for the recruitment and promotion from now onwards.

4. Sample roaster for all Categories of first, second, third and fourth division of service have been given. Second vacancy is reserved for Scheduled Castes, fourth vacancy for Scheduled Tribes and first, third, sixth and seventh vacancies are unreserved for general candidates. In paragraph 3, it was stated that it has to be made clear that in the matter of reservation, if there is only one vacancy, the second turn of the vacancy of the same post would be filled by the appointment of persons from reserved castes. The roaster is not concerned with the post but with vacancy arising according to the roaster and will go on implementing the vacancy arising in each successive occasions. Thus in considering the question whether a person can be considered for a promotion from the reserved category on the basis of the roaster, it is not the post that is material but it is the vacancy which is material. In *Paswan's* case one post of Director and other posts of Dy. Director was sought to be fused for purpose of treating the posts available for reservation. The pay scales of the posts of Director and Dy. Director are different. The ratio does not preclude the power of the Government to fuse all posts of equal scale of pay for applying rule of reservation under Article 16(1) and 16(4) or successive vacancies arising in single post. Therefore, the general candidates, when were promoted to the post of Office Superintendent, the Second vacancy which ought to have been reserved for Scheduled Castes and fourth for Scheduled Tribes, have been filled by the general candidates since Scheduled Castes and Scheduled Tribes were not, then available. When 6th vacancy had arisen, the claim of the reserved candidate was available and the authorities are enjoined to consider the claim of the reserved candidate. The High Court was clearly in error in relying the ratio in *Paswan's* case which stood entirely on a different situation to hold that the post cannot be reserved. Under these circumstances, the order of the High Court is set aside and the second respondent was rightly considered for promotion and was legally promoted as Superintendent. The writ petition stands dismissed. The appeal is allowed. But in the circumstances without costs.