
(1997) 04 SC CK 0169

In the Supreme Court Of India

Case No : Civil Appeals No. 2345 Of 1981 With No. 2346 Of 1981 And Slp (C)
No. 2892 Of 1983

State of Punjab and Another

APPELLANT

Vs

M.L. Sehgal and Others

RESPONDENT

Date of Decision : 30-04-1997

Acts Referred:

Citation : (1997) 6 SCC 69

Hon'ble Judges : S. B. Majmudar, J; M. Jagannadha Rao, J

Bench : Division Bench

Judgement

1. An important constitutional question arises for consideration in these civil appeals and special leave petition. The post in the cadre is a solitary post of Chief Engineer in the service of State of Punjab. The question is whether for such a solitary post in the cadre the roster and reservation point can ever operate; or in other words, can there be any reservation as envisaged under Article 16(4) of the Constitution for a solitary post in the cadre. The other question is whether the system of carry forward of the reservation points for future vacancies in the cadre comprising the posts can ever be applicable if the entire cadre consists of a solitary post. In the two latest decisions of this Court, one by a three-Judge Bench in the case of Union of India v. Madhav, (1997) 2 SCC 332 : 1997 SCC (L&S) 503 and the other in the case of Union of India v. Brij Lal Thakur, (1997) 4 SCC 278 : 1997 SCC (L&S) 939 : JT (1997) 4 SC 195 this Court has taken the view that there can be reservation on roster points also for a solitary post in a cadre. In our view, these judgments require a relook in the light of the Constitution Bench judgment of this Court in the case of Arati Ray Choudhury v. Union of India, (1974) 1 SCC 87 : 1974 SCC (L&S) 73 wherein the Constitution Bench was concerned with the question as to how the system of carrying forward of reserved vacancy can operate when there was a plurality of posts in the cadre of Headmistress. In the latter judgments as aforesaid, a view has been taken that the aforesaid Constitution Bench judgment is an authority for the proposition that even though there is a solitary post in the cadre, roster and

reservation points can operate.

2. In our view this aspect of the matter requires a closer scrutiny as we are prima facie of the view that the said reasoning adopted in the latter judgments runs counter to the view taken in the aforesaid Constitution Bench judgment which in fact dealt with plurality of posts in a cadre. There is a later Constitution Bench judgment in the case of *R.K. Sabharwal v. State of Punjab*, (1995) 2 SCC 745 : 1995 SCC (L&S) 548 : (1995) 29 ATC 481 which has proceeded on the basis that reservation points and roster can operate provided there is plurality of posts in the cadre and the Constitution Bench in the later judgment has indicated how posts in a cadre are different from vacancies. In the light of these Constitution Bench judgments the view propounded in the judgments in *Union of India v. Madhav*, (1997) 2 SCC 332 : 1997 SCC (L&S) 503 as well as in *Union of India v. Brij Lal Thakur*² in our view, requires reconsideration. There are two other judgments, one is in the case of *Chakradhar Paswan (Dr) v. State of Bihar*, (1988) 2 SCC 214 : 1988 SCC (L&S) 516 : (1988) 7 ATC 104 and another in the case of *Chetana Dilip Motghare v. Bhide Girls' Education Society*, 1995 Supp (1) SCC 157 : 1995 SCC (L&S) 312 : (1995) 29 ATC 107 wherein a view has been taken that when the post is a solitary post in the cadre, the roster and carry-forward scheme underlying any reservation policy cannot apply. It also appears that reliance placed by this Court on Article 16(4-A) of the Constitution of India in the aforesaid judgments in *Union of India v. Madhav*¹ and *Union of India v. Brij Lal Thakur*, (1997) 4 SCC 278 : 1997 SCC (L&S) 939 : JT (1997) 4 SC 195 for taking the view propounded therein, is prima facie misplaced as the said amendment also refers to a class of posts and not to a solitary post. The said amendment also is confined to the question of applicability of reservation policy in promotions for posts in a cadre and does not deal with the present controversy. As the judgment of this Court in *Union of India v. Madhav*, (1997) 2 SCC 332 : 1997 SCC (L&S) 503 is of a Bench of three learned Judges, in our view, these appeals and the SLP deserve to be decided by a Constitution Bench of five learned Judges. The Registry is directed to take appropriate orders from Hon^{ble} the Chief Justice of India for placing these matters before a Constitution Bench of five learned Judges.