

(1997) 06 GAU CK 0002

In the Gauhati High Court

Case No : Writ Appeal Nos. 97, 98, 99, 100.102, 103, 104 And 105 of 1996

State of Tripura

APPELLANT

Vs

Bijoy Kumar Sengupta :Mantu Bhattacharjee :Durgadas
Datta :Matilal Saha :Matilal Saha :Matilal Saha :Sunil
Chandra Bhowmik :Sukesh Ranjan Biswas

RESPONDENT

Date of Decision : 09-06-1997

Acts Referred:

Citation : (1997) 2 GLJ 209

Hon'ble Judges : H.K.Kumar Singh, J and W.A.Shishak, J

Bench : Division Bench

Advocate : A.Chakraborty, C.S.Sinha, H.K.Bhattacharjee, A.Ghosh, S.Deb,
R.Das Gupta, P.K.Paul, Advocates appearing for Parties

Judgement

1. These eight (8) appeals directed against the judgment dated 10.9.1996 passed by a learned Single Judge of this Court against writ petitions filed by the present respondents.

2. The only issue raised before the learned Single Judge was "whether the policy of reservation is applicable to a single post in a cadre". The findings of the learned Single Judge went in favour of the writ petitioners/respondents. Hence, these appeals by the State of Tripura.

3. As stated above, the same issue has been raised before us once again i.e. whether policy of reservation is applicable to a single and isolated post in a cadre.

4. We have heard Mr. Ashok Chakraborty, the learned Advocate General assisted by Mr. A. Ghosh and Mr. PK Paul, learned Advocate on behalf of the Stateappellants. We have heard also Mr. S. Deb, the learned "senior counsel, who appears on behalf of respondent in Writ Appeal No. 104 of 1996, Dr. HK Bhattacharjee, learned counsel, who appears on behalf of the respondent in Writ Appeal No. 102 of 1996 and Mr. CS Sinha, learned counsel, who appears on behalf of respondents in Writ Appeal Nos.97 of 1996,100 of 1996, 103 of 1996

and 105 of ^996. Despite notices none appears on behalf of respondents in Writ Appeal Nos.98 of 1996 and 99 of 1996.

5. A legislation known as the Tripura Scheduled Castes and Scheduled Tribes (Reservation of Vacancies in Services and Posts) Act, 1991 was made to provide reservation of vacancies in services and posts for the members of the Scheduled Castes and Scheduled Tribes, residents in the State of Tripura. Section 4 of the Act prescribes the manner in which reservation is to be applied for Scheduled Castes and Scheduled Tribes in vacancies to be filled up by direct recruitment. Relevant for the purpose of this case is section 4 (a) which is as follows :

"(a) Subject to the other provisions of this Act, fifteen percent of the vacancies shall be reserved for the candidates belonging to the Scheduled Castes and twenty nine percent for the Scheduled Tribes in the manner set out in the Schedule." Section 5 of the Act relates to reservation in vacancies to be filled up by promotion. It runs as under :

"5. Reservation for Scheduled Castes and Scheduled Tribes in vacancies to be filled up by promotion: The reservation for members of the Scheduled Castes and Scheduled Tribes in vacancies in services or posts to be filled up by promotion in any establishment shall be regulated in the following manner, namely :

(a) There shall be reservation at fifteen percent for member of the Scheduled Castes and twenty nine percent for the members of the Scheduled Tribes.

(b) A separate hundred point roster in the form and manner set out in the Schedule shall be maintained by each establishment.

(c) The candidates belonging to the Scheduled Castes and Scheduled Tribes who qualify for selection on merit shall be included in the general list and not against reserved quota."

6. A hundred point roster has been prescribed for the application of sections 4 and 5 of the Act in para 1 of the Schedule. Para 2 of the Schedule states : "a roster shall be maintained for giving effect to the provisions contained in paragraph 1 for each type of recruitment and within it for each grade or service." Para 4 of the Schedule further states : "a roster is a running account from year to year and shall be maintained in a cyclic order accordingly. If recruitment in a particular year stops at a particular point of the cycle, say at the fourth point, recruitment in the subsequent year shall be at the next point, that is, at the fifth point."

7. By notification dated 17th September, 1992 the aforesaid Act came into force with effect from 2nd October, 1992. The Tripura Scheduled Castes and Scheduled Tribes (Reservation of Vacancies in Services and Posts) Rules, 1992 came to be framed in exercise of the powers conferred by section 12 of the Tripura S Scheduled Castes and Scheduled Tribes (Reservation of Vacancies in Services and Posts) Act, 1991. Hence, the aforesaid Act and Rules have been in force as far as Tripura is concerned since 1992.

8. The respondents/writ petitioners were aggrieved by certain ad hoc promotions issued against single and isolated vacancies by following the principles of reservation by rotation in favour of the members of the Scheduled Castes and Scheduled Tribes on the ground that principles of reservation is not applicable to a single and isolated post in a cadre.

9. The Supreme Court of India had occasions to discuss this issue in various cases brought before it from various States of India. Relevant decisions have already been dealt with by learned Single Judge including Indra Sawhney's case (AIR 1993 SC 477). At this stage it may be stated that another decision in regard to the same issue has been rendered by the Apex Court in (1997) 2 SCC 332 (Union of India & another vs. Madhav). The said decision was not available when the present issue was discussed by the learned Single Judge.

10. It is contended on behalf of the Stateappellant that if the policy of reservation of vacancies and posts to a single post in a cadre is not extended to the members of the Scheduled Castes and Scheduled Tribes in the State of Tripura, the very purpose of the Act and the Rules will be frustrated. Mr. A. Chakraborty, the learned Advocate General submits that in a State like Tripura where social and economic problems are so complex and delicate the members of the Scheduled Castes and Scheduled Tribes would need the protection of the majority in a meaningful way. According to him the State of Tripura is not only in farflung corner of India, but the members of the Scheduled Castes and Scheduled Tribes communities are yet to catch up with the advanced community. In this view of the matter it is submitted that the case of Tripura is particularly a peculiar one. It is further submitted that if reservation policy is not applied to a single and isolated post in a cadre by following the principles of reservation of hundred point roster the guarantee of equal opportunity contained in Article 16 (1) and 16 (2) of the Constitution would be rendered meaningless and illusory.

11. It is further submitted, relying on para 121 (3) (f) of Sawhney's case which states : "the adequacy of representation of a particular class in the services under the State is a matter within the subjective satisfaction of the appropriate Govt. The judicial scrutiny in that behalf is the same as in other matters within the subjective satisfaction of an authority", that the Govt of Tripura, keeping an eye on the actual needs of the Scheduled Castes and Scheduled Tribes of the State, have taken appropriate actions to follow the principles of rotation in filling up single and isolated post from amongst the members of the Scheduled Castes and Scheduled Tribes. According to Mr. Chakraborty, this has been done in the best interest of justice.

12. Mr. Chakraborty further submits that in view of the decision of the Supreme Court in (1997) 2 SCC 332 the issue now raised in the present case has been completely settled and it is not open to further discussion. Our attention has been brawn to paragraphs 9 and 10 of the said decision. They are extracted below:

"9. It would thus be seen that this Court has accepted that reservation could be provided even to the isolated posts on the basis of the rule of rotation. Extension of reservation in such cases is not unconstitutional. On the other hand, such scheme provides opportunity and facilities to Scheduled Castes and Scheduled Tribes to be considered for promotion to hold single post consistent with equality of opportunity on a par with others. In *RK Sabharwal vs. State of Punjab* a Constitution Bench of this Court considered whether the reservation as per the roster in promotion could be valid and consistent with Article 16 (1) of the Constitution.

This Court had pointed out that the reservation to the post as per the roster for the purpose of promotion is valid in law. The same can be filled up applying the roster points prescribed by the Govt. When a candidate belonging to the Backward Classes is appointed by promotion on merit, he cannot be considered to be reserved candidate; the candidate appointed on rule of reservation would be fitted into the post on the basis of roster point available to the reserved candidates. In *Chetana Dilip Motghare vs. Bhide Girls' Education Society*, a Bench of two Judges of this Court considered whether reservation to a single post could be valid in law. Though the decision in *Vidyulata Arvind Kakade* case was brought to the notice of the learned Judges, the learned Judges found that it did not lay down any contra principle to the one laid down by this Court in *Paswan* case and, therefore, it was held that single point post could not be reserved for promotion. With due respect, we hold that the learned Judges have not correctly appreciated the ratio laid down by this Court in *Vidyulata* case and *Arati Choudhury* case. In *State of Bihar vs. Baheshwari Prasad*, the Bihar Govt had provided by way of a circular the rule of rotation to a single post and applied the roster point for providing promotion to the vacancies that had arisen in accordance with roster point. This Court had upheld the rule of reservation and held that reservation to the single post by applying the rule of rotation is not violative of Article 14 and 16 (1) of the Constitution. The judgment in *Paswan* case was distinguished.

10. Thus, we hold that even though there is a single post, if the Govt have applied the rule of rotation and the roster point to the vacancies that had arisen in the single point post and were sought to be filled up by the candidates belonging to the reserved categories at the point on which they are eligible to be considered, such a rule, is not violative of Article 16 (1) of the Constitution."

13. It may be stated that the above findings were arrived at after discussing all the relevant cases on this issue earlier decided by the Apex Court. As stated in para 6 of *Madhav's* case (supra), Article 16 of the Constitution was amended in 1995. By section 2 of the Constitution (77th Amendment) Act, 1995, Article 16 (4A) was introduced which envisages that nothing in this Article shall prevent the State from making any provision in reservation in matter of promotion to any class or classes of posts in the service under the State. It was further been held by the Supreme Court in the above case that as a consequence of the aforesaid

amendment of Article 16, Parliament has removed the lacuna pointed out by the Court in *Indra Sawhney's* case (1992 SuppI (3) SCC 217). It may also be stated that the Tripura Act and Rules in regard to reservation have nowhere been nullified by any competent Court and they have been in force continuously since 1992.

14. The main submission of Mr. S. Deb, the learned senior counsel is that no Act has been passed by the Tripura Legislative Assembly after amendment of Article 16 was effected with effect from 20.7.1995. No doubt it is also Mr. Deb's submission that after the aforesaid amendment of Article 16 it is open to the State Government to make necessary provisions to extend reservation policy for promotion to single post also. However, according to Mr. Deb since no follow up legislation has been made in this regard to apply the principles of reservation to a single post is untenable. It is further submitted by Mr. Deb that if Tripura Legislature has chosen not to make necessary law in terms of the Amendment of Article 16 then the protection of principles of reservation will not be available in the State of Tripura. Dr. HK Bhattacharjee, learned counsel appearing on behalf of Manabindu Roy in Writ Appeal No. 102 of 1996 supports the submissions made by Mr. Deb as stated above.

15. Mr. CS Sinha, the learned counsel submits that since a single post is indivisible it cannot be reserved. According to him, it has to be opened to all. It is also his submission that the State of Tripura has not taken advantage of the 77th Constitution Amendment in respect of Article 16 inasmuch as no provision has been made by the State after the amendment was effected in 1995.

16. Mr. Ashok Chakraborty, the learned Advocate General further draws our attention to various Govt Memoranda to impress upon us that even prior to the coming into force of the Tripura Act and Rules, the State Govt had strictly followed hundred point roster in the State of Tripura in order to meet the needs of the people here. Memo dated 26th September, 1983, letter dated 28th July, 1985 addressed to the Director (JCA), Tribal Welfare Department. Memo dated 18th September, 1985 and Memo dated 28th March, 1987 are some of the documents which are placed before us for perusal.

17. As stated above, the Tripura Act and Rules have not been challenged by any of the writ petitioners. At the same time on careful perusal of the decision in *Madhav's* case which has also dealt with some earlier decisions rendered by the Apex Court, we are of the view that the issue raised before us has now been finally settled. It appears that it is not necessary for the State of Tripura to make any further law after the 77th Constitution Amendment was brought into effect in 1995 inasmuch as it is a question of following the principles of reservation to isolated post also. In our view, the State of Tripura is justified in applying the rules of rotation and the roster point to the vacancies that had arisen in the single point post to be filled up by the candidates belonging to the reservation categories at the point on which they are eligible to be considered.

18. In the result, in view of the reasons given in the foregoing paras, we allow these appeals by setting aside the impugned judgment dated 10.9.1996 passed by a learned Single Judge of this Court. In the facts and circumstances of this case the parties are directed to bear their own costs.