

(2000) 12 AHC CK 0100

In the Allahabad High Court

Case No : C.M.W.P. No's. 41634 and 46973 of 1999

Sudhir Kumar Anand and others

APPELLANT

Vs

U. P. State Electricity Board, Lucknow and others

RESPONDENT

Date of Decision : 20-12-2000

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 16(4A), 162, 73

Electricity (Supply) Act, 1948 — Section 15, 27, 78A, 79

Uttar Pradesh Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994 — Section 3(7), 3(7)

Citation : (2001) 1 AWC 490 : (2001) 1 UPLBEC 708

Hon'ble Judges : S.R. Singh, J;D.R. Chaudhary, J

Bench : Division Bench

Advocate : Pushkar Mehrotra and Ravi Kiran Jain, for the Appellant; R.P. Goyal, A. G. and S.P. Mehrotra, for the Respondent

Final Decision : Dismissed

Judgement

S. R. Singh, J.—These petitions raise common question of law and being grounded on same set of facts were taken up together for convenient disposal by a common judgment. The petitioners of Writ Petition No. 41634 of 1999 who are Senior Assistant Engineers belonging to the Electrical and Mechanical cadre of Uttar Pradesh State Electricity Board (hereinafter referred to as the Board) have prayed for issuance of writ of mandamus commanding the respondents to make promotion to the posts of Executive Engineer in consonance with the law laid down by the Supreme Court in *Indra Sawhney v. Union of India*, and not to extend the benefit of reservation in promotion for officers belonging to Scheduled Castes/Scheduled Tribes to the posts of Executive Engineer. Promotion of Mewa Lal (SC) from the post of Superintending Engineer to the post of Chief Engineer vide order dated 30.10.1999 (Annexure-1) to Writ Petition No. 46973 of 1999 is sought to be quashed on the ground that he has been illegally given the benefit of reservation in a post to be filled by promotion under the Service Regulations on the basis of merit.

2. We have heard Sri Ravi Kiran Jain, senior advocate representing the petitioners, Sri R. P. Goyal, Advocate-General assisted by Sri S. P. Mehrotra counsel appearing for the respondents and Sri Ram Singh, appearing for beneficiaries of reservation in promotion.

3. Sri Ravi Kiran Jain, learned counsel appearing for the petitioners has raised two submissions : First, that Article 16(4) of the Constitution does not comprehend reservation in promotion as laid down by the Supreme Court in Indra Sawhney's case and clause (4A) inserted in Article 16 of the Constitution w.e.f. 17.6.1995 by virtue of the Constitution (Seventy Seventh Amendment) Act, 1995 being prospective in operation cannot save sub-section (7) of Section 3 of the Uttar Pradesh Public Services (Reservation for Scheduled Castes, Scheduled Tribes and other Backward Classes) Act, 1994 (hereinafter referred to as the U. P. Act No. 4 of 1994) ; and secondly, that the directions issued by the State Government providing therein that Electricity Board would make general reservation in favour of the members of the Scheduled Caste in accordance with the orders of the State Government issued, from time to time, on the subject of representation of Scheduled Castes in services in the vacancies to be filled by direct recruitment and by promotion are unconstitutional and void besides being not binding on the U. P. State Electricity Board or its successor Corporations, namely, the Uttar Pradesh Power Corporation Limited ; the Uttar Pradesh Rajya Vidyut Utpadan Nigam Limited ; and the Uttar Pradesh Jal Viddut Nigam Limited inasmuch as the directions so issued prior to 17.6.1995 were not covered by Article 16(4) and the subsequent Government Orders on the issue are not comprehended by Section 78A of the Electricity (Supply) Act, 1948, sub-section (1) of which provides that in the discharge of its functions, the Board shall be guided by such directions on question of policy as may be given to it by the State Government. It has been submitted by the learned counsel that the State Government cannot issue any direction u/s 78A of the Electricity (Supply) Act, 1948 regulating appointment of officers and employees of the Board. Learned counsel submitted that appointment of officers and employees the manner of their appointments are not the "functions" in respect of which the State Government could issue directions u/s 78A of the Act.

4. We have given our thoughtful consideration to the issues involved herein. In Indra Sawhney's case the Supreme Court has held that Article 16(4) of the Constitution does not permit reservation in the matter of promotion. The law in this regard as laid down in The General Manager, Southern Railway Vs. Rangachari, , has been reversed. But the Supreme Court, while deciding Indra Sawhney's case, has held that its decision on the question would operate only prospectively and shall not affect promotions already made whether on temporary, officiating or regular/ permanent basis and further that "wherever reservations are already provided in the matter of promotion or for that matter services under any Corporation, authority or body falling under the definition "State" in Article 12, such reservation shall continue in operation for a period of five years from this day".

5. Sub-section (7) of Section 3 of the U. P. Act No. 4 of 1994 came into force on 11.12.1993, i.e., after the decision in Indra Sawhney's case which reads as under :

"(7) If, on the date of commencement of this Act, reservation was in force under Government Orders for appointment to posts to be filled by promotion, such Government orders shall continue to be applicable till they are modified or revoked."

6. The validity of sub-section (7) of Section 3 of U. P. Act No. 4 of 1994 has been questioned by Sri Ravi Kiran Jain on the ground that the State Legislature was not competent to enact sub-section (7) of Section 3 of the U. P. Act No. 4 of 1994, in view of the pronouncement by the Apex Court in Indra Sawhney's case. The argument is misconceived. It is evident that sub-section (7) of Section 3 by itself does not provide for any reservation. Rather it simply visualises that the Government Orders providing for reservation in promotion, as on the date of commencement of the Act, will continue to be applicable till they are modified or revoked. Accordingly, we are of the view that the Government Orders on the subject of reservation in favour of Scheduled Castes for appointment to posts to be filled by promotion in force on the date of the commencement of the Act were capable of being invoked independently of sub-section (7) of Section 3 of U. P. Act 4 of 1994 by virtue the directions contained in Indra Sawhney's case and after insertion of the clause (4A) in Article 16 of the Constitution w.e.f. 17.6.1995, no exception can be taken to the provisions contained in subsection (7) of Section 3 of the Act which became valid and operative by strength of clause (4A) of Article 16 of the Constitution. It is true that but for insertion of clause (4A) in Article 16(4), sub-section (7) of Section 3 would not have been available for being invoked on expiration of period of five years from 15.11.1993 but now after insertion of clause (4A) in Article 16 of the Constitution. Section 3 (7) of U. P. Act No. 4 of 1994 has become a valid law and, therefore, it cannot be struck down as violative of Articles 14 and 16 of the Constitution. It may be pertinently observed that now after insertion of clause (4A) in Article 16 of the Constitution, the appropriate Government can, in exercise of its executive powers under Articles 73 and 162 of the Constitution, as the case may be, can provide for reservation in favour of Scheduled Castes/Scheduled Tribes in matters of promotion of any class or classes of posts in the services under the State Government Order dated 31.3.1996 (Annexure CA7) and other Government Orders referred to therein were issued by the State Government in exercise of its executive power under the Constitution. The Government order aforesaid was adopted by the Board in its meeting held in April, 1966 by noting the proposal submitted by its Member Secretary vide note dated April 20, 1966. The direction contained in the said Government order was that the Board would make general reservation in the vacancies to be filled by direct recruitment and by promotion through competitive examination limited to departmental candidates belonging to Scheduled Castes but it contained a further direction that the Board would "in the matter of such reservation have been or may be issued by the State

Government from time to time". Subsequent Government Order dated 20.3.1974 as amended by the Government Order dated 27.12.1974 provides for reservation in favour of Scheduled Castes/Scheduled Tribes in posts to be filled by promotion on the criterion of "seniority subject to rejection of the unfit."

7. Now coming to the second point raised by Sri Ravi Kiran Jain, it may be pointed out that Section 78A of the Electricity (Supply) Act, 1948 provides that in the discharge of its functions, the Board shall be guided by such directions on "questions of policy" as may be given to it by the State Government. The functions, powers and duties of the Board are co-related. The word "functions" used in Section 78A, in our opinion, does not exclude statutory functions of the Board comprehended by Section 79 of the Act which empowers the Board to make regulations not inconsistent with the provisions of the Act and the rules made thereunder to provide for all or any of the matters referred to therein. Clause (d) of Section 79 speaks of power to make regulations regarding duties of the officers and other employees of the Board and their salaries, allowances and other conditions of service. Section 15 of the Act does not exclude, expressly or by necessary implication, the power of the State Government to issue directions to the Board on questions of policy regarding due representation to the members of the Scheduled Castes. Reliance was, however, placed by Sri Ravi Kiran Jain on a decision of the Full Bench of the Kerala High Court in *A. M. Mani v. Kerala State Electricity Board and others* AIR 1968 Ker 76, in which it was held that "functions" within the meaning of Section 78A of the Electricity Supply Act, 1948 mean primary and essential functions and not incidental functions. A direction under the Section, it was held, "cannot extend to the framing of a rule by the Board regarding conditions of service of its employees". The word "functions" used in Section 27 of the Act which enumerate functions of the Board was, however, held to be not exhaustive. Section 27 of the Act speaks of "other functions of the Board" and reads thus: "The Board or a Generating Company shall have such further powers and duties as are provided in this Act." Duty to provide due representation to the members of the Scheduled Castes/Scheduled Tribes in services under the Board, being a constitutional duty, the State Government can issue directions to the Board to discharge its constitutional obligation. Such directions have nothing to do with the conditions of service of officers and employees serving under the Board. It was no doubt held by the Full Bench of the Kerala High Court that directions issued by the Government cannot extend to framing of rules regarding conditions of service of its employees. But the decision has to be considered in the context in which it was rendered *State of Punjab Vs. Baldev Singh, etc. etc.*, . The directions issued by the State Government in that case did not relate to any question of policy. The petitioner therein was due to retire on completion of 55 years of age as per Kerala Service Rules adopted by the Board. But before the petitioner therein could retire, the Government raised the age of superannuation of technical personnel from 55 to 58 years and issued directives to the Board to raise the age of superannuation of technical personnel serving under it. Obviously such a direction cannot be termed

as a direction on question of policy. In the instant case, however, direction issued by the State Government to the Board regarding representation of the Scheduled Castes in services under the Board as per Government orders that may be issued from time to time was a policy direction. Equal treatment of unequally circumstanced persons is bound to result in denial of equal opportunity. The Government was under a constitutional obligation to issue such direction to the Board as may be in furtherance of its constitutional obligations and the Board being "State" within the meaning of Article 12 of the Constitution is bound to carry out such direction.

8. Reliance was placed by Sri Jain on the decision of the Supreme Court in *Rakesh Ranjan Verma and others Vs. State of Biha and others*, in which the above mentioned Full Bench decision of the Kerala High Court was also noticed. The Supreme Court after noticing Section 78A of the Electricity (Supply) Act, 1948 has albeit laid down that the provisions contained in Section 78A clearly lay down that the Board shall be guided by such directions and questions of policy as may be given to it by the State Government. But considering the nature of directions given in that case vide letters dated July 18, 1998 and May 5, 1989 it was held by the Apex Court that such directions "cannot be considered as directions on any question of policy". It may be observed that directions issued by the Government therein pertain to absorption of certain Junior Electrical Engineers and being a direction pertaining to absorption of individual officer against vacant post of Junior Electrical Engineer was held by the Supreme Court to be not involving any questions of policy. In the present case, the direction issued was that the Board shall follow the Government orders issued from time to time regarding representation of Scheduled Castes in services under the Board both in respect of posts to be filled by direct recruitment and posts to be filled by promotion. Such direction, in our opinion, involves question of policy having due regard to the constitutional mandate of equality of opportunity. It is well settled that where a group of persons are unequally situated, equal treatment may lead to denial of guarantee of equal opportunity. In such view of the matter, directions issued by the State Government in the instant case were covered by the provisions of Section 78A of the Electricity (Supply) Act, 1948.

9. It may be pertinent to observe here that though initially directions to the Board was in respect of appointment against posts to be filled by direct recruitment and by promotion through competitive examination limited to departmental candidates but subsequent Government Orders including G. O. No. 15/5/1973-National Integration dated March 20, 1974 provides for reservation in promotion where promotion is made on the basis of seniority subject to rejection of the unfit. It is true that under the U. P. State Electricity Board Services of Engineers Regulations, 1970 amended vide XXIV (Amendment) Regulations, 1998 and reservation in favour of Scheduled Casts/Scheduled Tribes/ Backward Classes is provided only in direct recruitment and there is no provision for reservation in respect of posts to be filled by promotion but the directions issued by the State Government have the force of law and will prevail by virtue of

Section 3 (7) of the U. P. Act 4 of 1994.

10. In view of the above discussion, we find no merits in the writ petition and the petition is accordingly dismissed.