

(1990) 08 SC CK 0081

In the Supreme Court Of India

Case No : Writ Petition No. 847 of 1987

Syndicate Bank Scheduled Castes and Scheduled Tribes
Employees Association (Regd.), through its General
Secretary, K.S. Badlia and Others

APPELLANT

Vs

Union of India (UOI), through its Additional Secretary,
Ministry of Finance (Deptt. of Economic Affa

RESPONDENT

Date of Decision : 10-08-1990

Acts Referred:

Citation : (1990) 3 JT 468 : (1990) 2 LLJ 354 : (1990) 2 SCALE 229 : (1990)
SCC 350 Supp : (1990) 1 SCC 350 Supp : (1990) 3 SCR 713 : (1990) 2 UJ 600 :
(1990) 2 UPLBEC 1298

Hon'ble Judges : S. C. Agrawal, J;N. M. Kasliwal, J

Bench : Division Bench

Final Decision : allowed

Judgement

N.M. Kasliwal, J.—This Petition under Article 32 of the Constitution of India has been filed by the Syndicate Bank Scheduled Castes and Scheduled Tribes Employees Association representing the interest of Scheduled Castes and Scheduled Tribes Employees of the Syndicate Bank all over India as well as by three other Assistant Managers of the Syndicate Bank. The case as set up in the petition is that Group 'A' Officers posts which are Class I posts contain different grades called Junior Management Grade Scale I, Middle Management Grade Scale II, Middle Management Grade Scale III and like this upto Grade Scale VII. The criteria for promotions from Junior Management Grade Scale I to Middle Management Grade Scale II and so on is based on a promotion policy dated 17.9.1985 framed in this regard by the Bank. According to the petitioners the Syndicate Bank is a Nationalised Bank owned and controlled by the Central Government. All the policy decisions and major internal administration are regulated and governed by and under Rules issued by the Central Government from time to time. In order to implement the principles enshrined in the Constitution of India granting benefit to members belonging to Scheduled Castes

and Scheduled Tribes, the Central Government evolved the concept of quota system in the ratio of 15% and 7 1/2% reservation for Scheduled Castes and Scheduled Tribes respectively both at the time of recruitment as well as at the time of promotions in all Government organisations.

2. It has been further alleged by the Petitioners that 14 leading banks of the country were nationalised in the year 1969 and the Government ought to have extended the said policy of reservation in the banking sector also w.e.f. 1969. However, the reservation policy was extended to the banking industry initially in the year 1972, but that remained restricted in respect of appointments made by direct recruitment only. Later on by a D.O. Letter No. 10/24/74-SCT (B) dated 31.12.1977 the Central Government called upon the banks to implement the reservation policy in the matter of promotional posts also. In the matter of promotions within the Officers cadre, the respondent bank did not maintain any roster and did not follow the reservation policy on an erroneous impression that the reservation in promotional cadres made through selection method is barred. The petitioners in this regard have submitted that by an Office Memorandum issued by the Home Ministry as long back as on 26.3.1970 clearly provided reservations for Scheduled Castes and Scheduled Tribes Officers for their promotion within Class I posts and also in cases of Officers who drew a basic pay of Rs. 2,000/- per month or less. Subsequently department of Personnel and Administrative Reforms also issued an O.M. No. 1/10/74-Esstt (SCT) dated 23.12.1974 to all Ministries on the same lines as contained in the earlier O.M. issued by the Ministry of Home Affairs dated 26th March, 1970. The Government of India, Ministry of Finance, Department of Economic Affairs (Banking Division) issued a Circular dated 30th May, 1981 addressed to all the 26 Nationalised Banks existing at that time in the matter of reservation for Scheduled Castes and Scheduled Tribes in respect of promotion. In the aforesaid letter after making a reference to the Department's letter D.O. No. 10/24/75-SCT (B) dated 31.12.1977 Ministry of Home Affairs O.M.No.I/9/69-Esstt(SCT) dated 26.3.1970 and Department of Personnel and Administrative Reforms O.M. No. 1/10/74-Esstt (SCT) dated 23.12.74 it was stated that as per the above Government orders there is no reservation for Scheduled Castes and Scheduled Tribes in 'Promotion by Selection' within the Officers cadre. It was further stated in the above circular that certain concessions and facilities are to be provided to the Scheduled Castes and Scheduled Tribes Officers in order to improve their chances for selection to the Higher categories of posts in the Officers cadre in accordance with the orders contained in the aforesaid O.Ms of Ministry of Home Affairs. It was further stated that it has been decided that the concessions mentioned in Para 2 of Home Ministry's Office Memorandum dated 26.3.1970 would be available to the SC/ST Officers in Public sector Bank/Financial Institutions 'Promotions by Selections' to posts within the Officers cadre upto Scale III. All the banks were requested to implement the Government instructions contained in the Office Memorandums of Ministry of Home Affairs and Department of Personnel and Administrative Reforms dated 26.3.1970 and 23.12.1974 respectively in the existing scheme of

promotions with such procedural modifications as may be necessary.

3. The case of the petitioners further is that the Central Government wrongly and erroneously interpreted the above circulars and in taking the view that there was no reservation in the promotional posts within the officers cadre. In identical circumstances the Ministry of Steel and Mines in a letter dated April 8, 1982 addressed to the Chairman of the Steel Authority of India Limited and letter dated August 19, 1982 from the Steel Authority of India to the Chief Personnel Manager Bokaro Steel Plant took the view that the Scheduled Castes and Scheduled Tribes personnel were not entitled to the benefit of reservation in the matter of promotion to selection posts within Group 'A'. The Bihar State Harijan Kalyan Parishad came before this Court by special leave challenging the above view taken by the Steel Authority of India and the Union of India. This Court in Bihar State Harijan Kalyan Parishad Vs. Union of India and Others, granted special leave. This Court held in the above case that a close perusal of the directive and in particular paragraph 9 which dealt with the concessions to employees of Scheduled Castes and Scheduled Tribes in promotions by selection method makes it abundantly clear that the rule of reservation is also applicable to promotions by selection to posts within Group 'A' which carry an ultimate salary of Rs. 2250/- per month or less but the procedure is slightly different than the case of other posts. It was further held in the above case that while the rule of reservation applies to promotions by selection to posts within group 'A' carrying a salary of Rs. 2250/- per month or less, it is prescribed that only those officers belonging to the Scheduled Castes and Scheduled Tribes will be considered for promotion who are senior to be within the zone of consideration. Thereafter a Select List depending upon the number of vacancies would be drawn up in which also those officers belonging to Scheduled Castes and Scheduled Tribes would be included who are not considered unfit for promotion. Their position in the select List would be that assigned to them by the departmental Promotion Committee on the basis of the record of service. In other words their inclusion in the Select List would not give them seniority, merely by virtue of their belonging to the Scheduled Castes and Scheduled Tribes over other officers placed above them in the Select List made by Departmental Promotion Committee. The Court thus quashed the List dated April 8, 1982 and August 19, 1982 and directed the respondents to give effect to paragraph 9 of the Presidential directive w.e.f. the date of the directive. Subsequently a Miscellaneous Petition No. 3637/86 was also filed in view of a misunderstanding of the above Judgment by the Authorities. The Court by order dated 21st January, 1987 decided the above miscellaneous petition and made the following observations:

We wish to clarify the position by stating that the Scheduled Castes/Scheduled Tribes Officers who are senior enough to be within zone of consideration for promotion should be included in the Select List against the vacancies available to the members of Scheduled Castes/Scheduled Tribes according to the rosters, provided they are not considered unfit for promotion. Paragraph 2 of the

Presidential Directive should be strictly adhered to and effect shall be given on the basis of scales of pay that obtained prior to 1975 as mentioned in that paragraph. The officers promoted as a consequence of our order will be entitled to be paid salary and allowances from the respective dates with effect from which they should have been promoted.

4. After the above decision of the Supreme Court which applied in all force to the case of the present petitioners, a meeting took place between the representatives of Syndicate Bank SC/ST Employees Association and the Management of Syndicate Bank on 16th and 17th April, 1986. In the aforesaid meeting the representatives of the management were fully convinced with the stand taken by the representatives of Syndicate Bank SC and ST Employees Association and after agreeing in principle, they assured to take up the matter very strongly again with the Government of India, Ministry of Finance (Banking Division) for their approval. The petitioners thereafter made frantic efforts and also submitted representations but no relief was granted to the petitioners. It may be mentioned that Minister of State for Finance, Government of India in his letter dated November 22, 1986 addressed to Shri Banwarilal Bairva Member of Parliament clearly admitted as regards the reservation for SC/ST employees in Indian Overseas Bank that he had checked up his reply to the Lok Sabha starred question No. 342 answered on 8th August, 1986 and had also got further clarifications from the Bank on the subject. It was further stated in the above letter as follows:

In respect of promotions, the bank was maintaining rosters for only such category of posts to which the reservations were being applied by the bank. Since as per the Brochure on reservations for SCs/STs are available in promotions within the officers cadre only if they are based on seniority, and the bank considered the method of promotions followed by it as one based on selection, it did not consider maintenance of rosters necessary. During the course of discussions between the officials of the bank and Banking Division, it was revealed that the procedure followed by the bank for effecting promotions within the officers cadre was the one falling within the categorisation of seniority. The bank was immediately advised to maintain rosters even for these promotions within the Officers cadre and to provide for reservations for the SCs/STs. The bank has accepted its mistake and has already agreed to provide for reservations and also to calculate the backlog from 1978 when the reservations in promotions were first introduced in the banks.

5. It may be also mentioned that the Government of India, Ministry of Finance, Department of Economic Affairs (Banking Division) vide letter No. F.No. 10/72/86-SCT (B) dated 28.11.1986 addressed to all the nationalised banks also clarified the position in regard to reservations for SC/ST in promotions as under:

It may be recalled that instructions were issued by the Government on 3.5.1980 advising bank to apply the provisions of carry forward interchange, and lapsing of vacancies in promotions also because of certain factors even though strictly

speaking these provisions are not applicable to promotions by selection. In doing so, the posts filled by selection method were specifically categorised as those where promotions are made on the basis of a written examination followed by interview and/or on the basis of the interview. On the other hand promotions based on the assessment: of the confidential reports of the officers were classified as those based on seniority, subject to fitness. The banks are, therefore, requested to review the method of promotions followed by them and ensure that wherever the rosters are to be maintained for determining the number of vacancies reserved for SC/ST. This is done scrupulously. The results of the review may be intimated to the Government by 15th December, 1986. While intimating the information, the methodology adopted for effecting promotions from various cadres/scales should be specifically intimated.

6. The grievance of the petitioners is that despite the aforesaid unequivocal directions from the Government, the bank failed to make reservations for the Scheduled Castes/Scheduled Tribes employees. The petitioners made representations to the respondents in this regard in which it was reiterated that after decision of the Supreme Court in Bihar State Harijan Kalyan Parishad v. Union of India and Ors. (supra) and further order of clarification dated 21st January, 1987, the petitioners were entitled to the same treatment. However the grievances of the petitioners were not redressed and a view was taken by the authorities of the respondent/bank that there was no direction from the Government of India for prescribing reservation policy within officers cadre and that they were following the selection method of promotion in the case of Officers posts.

7. The Union of India filed a counter affidavit contesting the stand taken by the petitioners. So far as the bank is concerned they did not file any separate reply in detail but took the stand that the Syndicate Bank was a Nationalised bank and was under the Administrative control of the Government of India, Banking Division as such the bank is guided in the discharge of its functions by any directions issued by Banking Division, Ministry of Finance, Government of India from time to time. Reference was made to Regulation 17(1) according to which promotions to all grades of officers in the bank were required to be made in accordance with the policy laid down by the Board from time to time having regard to the guidelines of the Government, if any. In view of these circumstances it was stated in the counter affidavit that they fully adopt all the submissions of fact and law made by the Government of India in its counter affidavit.

8. We have heard Mr. R. Sachar, Learned Counsel for the petitioners, Mr. K.N. Bhat, for the Syndicate Bank and Mr. R. Rajappa, for the Union of India. It may be stated at the outset that though the Union of India in its reply had taken several grounds for contesting the present petition, but the Learned Counsel appearing for the Union of India conceded before us and made a statement that he was not pressing the grounds taken in the counter affidavit filed by Me Union

of India and they would abide by any directions given, by this Hon'ble Court. Mr. Bhat appearing on behalf of the Bank also submitted that the Bank was bound by the decisions taken by the Government of India, Ministry of Finance, Banking Division and the Bank was not at fault in not granting relief to the petitioners in as much as the Government of India was not clear in its policy of reservation. The attitude of the Government of India is clearly discernible from its counter affidavit filed in the present case. It was thus prayed that this Hon'ble Court should not hold the Bank responsible for not granting an appropriate relief to the petitioners at its own end and for dragging the petitioners unnecessarily in this litigation.

9. Mr. Sachar contended that the Minister of State for Finance, Government of India in his letter dated November 22, 1986 addressed to Shri Banwari Lal Bairva, Member of Parliament, made it clear that during the course of discussions between the officials of the bank and banking division regarding reservations for SC/St employees of the Indian Overseas Bank, it was revealed that the procedure followed by the bank for effecting promotions, within the officers cadre was the one falling within the categorisation of seniority. The bank was immediately advised to maintain rosters even for these promotions within the officers cadre and to provide for reservations for the SCs/STs. It was further mentioned in the above letter that the bank accepted its mistake and had already agreed to provide for reservations and also to calculate the backlog from 1978 when the reservations in promotions were first introduced in the banks. In another letter issued by the Banking Division of the Ministry of Finance dated 28.11.86 addressed to the Chairmen and Managing Directors of 20 nationalised banks it was mentioned as under:

It may be recalled that instructions were issued by the Government on 3.5.80 advising banks to apply the provisions of carry forward, interchange, and lapsing of vacancies in promotions also because of certain factors even though strictly speaking these provisions are not applicable to promotions by selection. In doing so, the posts filled by selection method were specifically categorised as those where promotions are made on the basis of a written examination followed by interview and/or on the basis of the interview. On the other hand promotions based on the assessment of the confidential reports of the officers were classified as those based on seniority subject to fitness.

10. The banks were, therefore, requested to review the method of promotions followed by them and ensure that wherever the rosters are to be maintained for determining the number of vacancies reserved for SC/ST, this be done scrupulously. Mr. Sachar brought to our notice the promotion policy in respect of officers of the Syndicate Bank issued on 17.9.85 annexed with the writ petition as Annexure - L at point number 3 as follows:

3. The Promotion Policy identifies the following four factors as relevant for ascertaining the suitability of officers for promotion from one scale to another

- a) Seniority for promotions upto SMGS IV
- b) Educational and professional Qualification for movement to Middle Management Grade Scale II only.
- c) Performance in the grade/scale.
- d) Potential as identified in the interview for movement to Middle Management Grade Scale III and above.

11. It was thus submitted that from a reading of the two letters dated 22.11.86 and 28.11.86 together with the promotion policy issued by the Syndicate Bank it was clear that for promotions from one scale to another upto SMG IV was based on seniority and the Syndicate Bank as such ought to have made promotions upto SMG IV by giving benefit of reservation to SC/STs in the employment of the bank.

12. It was also contended by Mr. Sachar that upto 1979, the Syndicate Bank made promotions of officers from one scale to another purely on the basis of officers completing five years of service as on 31st December of previous year. No promotions were made in 1979, 1980 and 1981. Since 1982 the promotions within the officers cadre were being made on the basis of the following policy:

13. The minimum eligibility service and factor weightage shall be as follows:

Movement from Minimum eligibility Points for Points for Maximum points
 Maximum points Service as on 31st seniority educational & for performance for
 potential December of Previous Professional in the scale as indemnified year
 qualification in the interview JMGS to MMGS 7 years In JMGS I 60 10 30 Nil II
 MMGS II to 5 years in MMGS II 50 - 30 20 MMGS III mmgs iii to 5 years in
 MMGS III 20 - 50 30 SMGS IV SMGS IV to 3 years in SMGS IV - 60 40 TEGS V
 SMGS V to TEGS 2 year in SMGS V - 60 40 VI TEGS VI 3 year in - - 60 40 TEGS
 VII TEGS VI

14. It was contended that from the above policy, it would be clear that there was no written test and interview for promotions from Gr.I to Gr.II and that 60% of the marks had been fixed for seniority. The above policy further makes it clear that the seniority was considered a predominant factor. The Government of India in its office memorandum dated 27.11.72 had provided for reservation of 15% and 7 1/2% for SC and ST candidates respectively, and the Government of India, Banking Division, had made the reservation policy applicable in the ease of promotional posts also vide its D.O. Letter No. 10/24/74-SCT(B) dated 31.12.77. Thus, there remains no ambiguity and the respondent bank ought to have given benefit of reservation policy from 1st January, 1978 to the members of SCs/STs in the cadre of officers. Mr. Sachar also submitted that as already mentioned above in the matter of employees of the Indian Overseas Bank rosters for calculating the vacancies reserved for the SCs/STs had been applied in the case of promotions within the officers cadre. It was further argued that the principle of contemporanea ex position i.e. interpreting the statute or any other document by

reference to the exposition it has received from contemporary authority, has to be applied in case of employees of the Syndicate Bank also While effecting promotions within the officers cadre. Reliance in support of the above contention is placed on *Desh Bandhu Gupta and Co. and Others Vs. Delhi Stock Exchange Association Ltd.*,

15. We find no force in the above contention of Mr. Sachar. A perusal of the promotion policy goes to show that for the purpose of promotions in the cadre of officers from JMGS to MMGS II and from MMGS II to MMGS III and then upto scale VII, is not based on seniority alone. Apart from the points for seniority other factors based on selective process were also important and as such it cannot be held that such promotions in the higher scale were based solely on seniority. A perusal of the criteria laid down in the promotion policy already extracted above clearly goes to show that apart from points for seniority, points for educational and professional qualification, points for performance in the scale and points for potential as identified in the interview have also to be assessed while making appointment by promotion. Merely because in the case of promotion from JMGS to MMGS n points for seniority being mentioned as 60, it cannot be said that such promotion in scale II may be considered as promotion otherwise than by the method Of selection. In our view unless the promotion, is based on seniority alone arid other factors based on merit such as educational and professional qualifications, performance in the scale, written examination or interview have no material bearing it cannot be considered as a promotion based on seniority. A perusal of the policy shows that it is a hybrid system Of promotion in which upto scale IV points are given for seniority as well as for other factors also which are based on a sort of selection process depending upon the educational qualifications, performance in the scale and interview. While in the case of promotion from scale IV to scale VII there are no points given for seniority at all. Thus taking in view the entire scheme of promotion policy, we think that promotions in the officers cadre from JMGS I to Scale VII shall be considered as promotions on selection basis. However the rule of reservation for SCs/STs will apply to appointments made by promotion oh selection basis, subject to a procedure somewhat different from usual procedure adopted in filling up posts reserved for SCs and STs on selection basis alone for appointments to be made by direct recruitment.

16. Mr. Sachar then submitted that in case the above policy of promotion is not considered as based on seniority, or otherwise than by selection, the petitioners are to be governed by the principles already laid down in *Bihar State Harijan Kalyan Parishad v. Union of India and Ors.* (supra). It was contended that in identical case though relating to employees of Steel Authority of India Ltd., this Court interpreted paragraph 9 of the Presidential directive in the case of promotions within group 'A' which provided as under:

In promotions by selection to posts within Group 'A' which carry an ultimate salary of Rs. 2250/-per month, or less, the Scheduled Caste/Scheduled Tribe

officers, who are senior enough in the zone of consideration for promotion so as to be within the number of vacancies for which the Select List has to be drawn up, would be included in that list provided they are not considered unfit for promotion. Their position in the select list would, however, be the same as assigned to them by the Departmental Promotion Committee on the basis of their record of service. They would not be given, for this purpose one grading higher than the grading otherwise assignable to them on the basis of their record of service.

17. It was held in the above case that a close perusal of the directive and in particular paragraph 9 which deals with "concessions to employees of SC/ST in promotions by selection methods" makes it abundantly clear that the rule of reservation is also applicable to promotion by selection to posts within group 'A' which carry ultimate salary of Rs. 2250/- per month or less but that the procedure is slightly different than in the case of other posts.

18. We find force in this alternative submission made by Mr. Sachar. Even though the promotional posts are based on selection method, the rule of reservation will apply to posts within group 'A' and the benefit of reservation policy to members of SC and ST cannot be denied on the ground that promotional posts are to be filled by method of selection. We find no distinction in the case of employees in the officers group in JMGS I of the Bank from the officers falling in group 'A' under the Steel Authority of India Ltd., for the purpose of applying reservation policy. Government of India committed a clear mistake in not applying the principle already decided in Bihar State Harijan Kalyan Parishad's case (*supra*) to the employees of the Syndicate Bank and in not giving a clear direction in this regard to the management of Syndicate Bank. There can be no manner of doubt that the management of the Syndicate Bank was not at fault as they were bound by the instructions and policy laid down by the Banking Division of the Finance Ministry of the Government of India and in the absence of a clear direction from the Government of India, it was not possible for them to grant relief to the SC/ST employees of the bank. As already mentioned above the Union of India had wrongly taken a contrary stand in its counter filed to the present petition, and clearly in derogation to the principle already decided in the case of Bihar State Harijan Kalyan Parishad (*supra*) by this Court.

19. In the result this petition is allowed. The orders of the respondents dated 15th June, 1987 and 25th June, 1987 are declared as illegal. It is further decided that though group 'A' posts are selection posts still the reservation policy is applicable to such posts and the respondents are directed to compute the backlog of unfilled reserved quota available to the SC/ST officers in the promotional posts with effect from 1.1.1978, the date of introduction of reservation policy in the respondent bank. The respondents are further directed to grant promotion to the SC/ST employees of the Syndicate Bank with all consequential benefits of salary and allowances from the respective dates *w.e.f.* which they should have been promoted, after applying the roster system in their

favour. We grant three months' time to carry out these directions.

20. The petitioners would be entitled to costs to be paid by the respondent Union of India.