

(1998) 11 RAJ CK 0038

In the Rajasthan High Court

Case No : CivilSpecial Appeal (Writ) No. 201/97

Tarachand Dangi

APPELLANT

Vs

The Municipal Council

RESPONDENT

Date of Decision : 24-11-1998

Acts Referred:

Citation : (2000) 1 RLW 153 : (1999) WLC 426 : (1999) 1 WLN 198

Hon'ble Judges : P.P. Naolekar, J;M.A.A. Khan, J

Bench : Division Bench

Final Decision : Allowed

Judgement

P.P. Naolekar, J.—Undisputed facts of the case are that the post of Assistant Revenue Inspector was created in Municipal Council, Sikar, vide order dated 30.9.91. The respondent was a member of the scheduled caste while the petitioner Tara Chand Dangi is from general category. Shri Nemichand Garwa, respondent was appointed as a Nakedar in the Municipal Council, Sikar, by order dated 8th August, 1990, whereas the appellant Tara Chand was appointed on 1.2.7 as a Nakedar. So far as the seniority is concerned, in the Municipal Council Service, the appellant was senior. It is not disputed by the parties that both i.e. the appellant and the respondent No. 3 were eligible for promotion on the post of Assistant Revenue Inspector, having acquired the qualification of Matriculation with Diploma in Local Self Government and having five years, experience as a Nakedar/Moharir. The Municipal Council took up the proceedings for promotion to the post of Assistant Revenue Inspector from the post of Nakedar/Moharir. Since the respondent No. 3's name was not taken into consideration, he has approached this Court by filing a writ petition. According to the petitioner respondent, for the purpose of promotion, there was a 100 point roster issued by the State Government, applicable, whereby reservation was made for filling up the vacancies from the members of scheduled caste/scheduled tribes. The petitioner is a member of Scheduled caste and therefore, he was entitled for consideration under the roster made applicable for promotion. The learned Single

Judge specifically considered the question whether for filling of the single post of the Assistant Revenue Inspector by promotion, 100 point roster issued by the State Government applies or not. Relying on the decision in the matter of State of Bihar v. Bageshwar Prasad reported in 1996 (1) SLR 185, the learned Single Judge held that the roster is applicable even for a single post and thus, the petitioner respondent No. 3 was entitled to be considered for promotion to the post of Assistant Revenue Inspector and accordingly, directions were issued for consideration of the case of the petitioner respondent No. 3. It is informed to this Court by the counsel for the appellant that in pursuance of the order passed by this Court, the case of the petitioner was considered and he was given promotion by order dated 11.3.97 to the post of Assistant Revenue Inspector, in the Municipal Council, Sikar.

2. Aggrieved by the order passed by the learned Single Judge, the appellant has filed appeal in this Court. Counsel for the appellant has brought to the notice of this Court a constitutional Bench decision of the Supreme Court reported in Post Graduate Institute of Medical Education and Research, Chandigarh Vs. Faculty Association and Others, Post Graduate Institute of Medical Education and Research, Chandigarh v. Faculty Association and other batch of petitions. The Apex Court has considered the question whether for a single cadre post, reservation for the backward classes namely Scheduled Caste, Scheduled Tribe and other backward Classes could be made either directly or by device of rotation of roster point. The constitutional Bench has specifically overruled the decision in the matter of State of Bihar v. Bageshwar Prasad (*supra*). Law is now settled by the decision rendered by the Constitutional Bench that there cannot be a reservation in a single post cadre directly or by device of rotation of roster point. In view of the decision of the Supreme Court, the decision given by the learned Single judge does not stand the test of law and is therefore, set aside. The Municipal Council, Sikar, is directed to consider the case for promotion afresh to the post of Assistant Revenue Inspector applying the test of seniority - cum-merit, without applying the roster point system, within a period of one month from the placement of order before the appropriate authority. The order of promotion issued on 11.3.97 shall not come in the way of process of selection by promotion.

3. The appeal is allowed accordingly.