

PETITIONER:  
POST GRADUATE INSTITUTE OF MEDICAL EDUCATION & RESEARCH ETX.

Vs.

RESPONDENT:  
K.L. NARASIMBAN & ANR. ETC.

DATE OF JUDGMENT: 02/05/1997

BENCH:  
G.B. PATTANAIK

ACT:

HEADNOTE:

JUDGMENT:

WITH  
CIVIL APPEAL NOS. 3175, 3177 & 3176 of 1997  
(Arising out of SLP(C) Nos. 17366/92, 420 and 3028/93.  
AND  
WRIT PETITION (C) No. 781 OF 1995  
J U D G M E N T

PATTANAIK. J.

I entirely agree with the conclusions and directions contained in illuminating Judgement of Brother Ramaswamy. J. but i would like to put may thoughts on one aspect of the matter which had been vehemently argued by Mr. Rao. the learned senior counsel for the General Category candidates in relation to filling up of the posts of Assistant Professor and Professor in the post Graduate Institute at Chandigarh. According to Mr. Rao the Government of India in the Ministry of Home Affairs have decided since November, 1963 that the reservation order in favour of Scheduled Castes and scheduled Tribes will not apply in the case of appointment to the posts for conducting research. as per Ministry of Home Affairs OM No. 9/2/63- SCF (I) dated 2.11.1963. By yet another OM dated 17.7.1964 the earlier order dated 2.11.1963 was clarified to the effect that for being exempted from the reservation orders under the earlier office Memorandum the post in question must satisfy that it has been classified as 'scientific or technical' in terms of Cabinet Secretariat (Department of Cabinet Affairs) O.M. No. 65/11/CF-61(1) 9/2/63-SCF(1) dated 28.12.1961. Mr. Rao contends that in consonance with the aforesaid circulars of the Governments of India the Ministry of Health and Family welfare, New Delhi Having requested the Director of post Graduate Institute of Medical Education and Research. Chandigarh to submit a self contained proposal giving full details of the post category-wise which satisfies the condition laid down in the department of personnel and Administrative reforms OM No. 9/2/73-Estt. (SCT) dated 23.6.1975 regarding exemption of scientific and Technical posts from the purview of reservation orders of Government of India for Scheduled Castes and scheduled Tribes candidates and the said matter having been considered by the Board of the Institute in its meeting dated 10.3.90. it must

be held that the posts of Assistant professor and above in the Institute have been classified as Scientific or Technical posts and thereby the reservation policy for appointment to those posts could not apply, this argument proceeds on the assumption that the posts of Assistant professor and professor in the post Graduate Institute of Medical Education and Research, Chandigarh are posts for conducting research or for organising, conducting and directing research in their respective field of discipline and as such fall out of the purview of the reservation order in accordance with the office Memorandums of Ministry of personnel dated 2.11.1963 and 17.7.1964. The Central Government has framed a set of Rules in exercise of power conferred by section 31 of the post Graduate Institute of Medical Education and Research, Chandigarh, Act. 1966 called the post Graduate Institute of Medical Education and Research, Chandigarh, Rules 1967 therein after referred to as 'the Rules'). Rule 32 prescribes the qualification for appointment and sub-rule (2) of Rule 32 confers power on the Director to fill up the vacancies in posts and services either by direct recruitment or by promotion under the institute. The said sub-rule also provides that the Director in filling the vacancies in posts and services shall make such reservations in favour of candidates belonging to scheduled castes and Scheduled Tribes as may be made by the Central Government from time to time in filling vacancies in posts and services under the Central Government. Sub-rule (2) of rule 32 is extracted hereinbelow in extenso:

(2) The Director shall, in filling vacancies in posts and services, either by direct recruitment or by promotion, under the Institute, make such reservations in favour of candidates belonging to the Scheduled Castes and Scheduled Tribes, as may be made by the Central Government from time to time in filling vacancies in posts and services under the Central Government."

The aforesaid provision casts an obligation on the Director of the Institute to make reservations in filling up the vacancies in posts in favour of candidates belonging to the scheduled castes and Scheduled Tribes in accordance with the reservations made by the Central Government in filling vacancies in posts and services under the Central Government. The two office memorandums issued by the Ministry of Home Affairs dated 2.11.1963 and 17.7.1964 no doubt contemplate that the reservation orders in favour of Scheduled Castes and scheduled Tribes will not apply in case of appointments to the posts for conducting research or for organising, conducting and directing research and post classified as 'Scientific or Technical' in terms of Cabinet Sectt. office Memorandum dated 28.12.1961 should be exempted from the purview of the orders relating to reservation for scheduled castes and Scheduled Tribes. But until and unless the posts are classified as such to be scientific or technical, the provisions of sub-rule (2) of Rule 32 would continue to apply and the Director is duty-bound to make reservations in favour of candidates belonging to the scheduled Castes and scheduled Tribes in filling the vacancies in the posts and services.

It was averred in the counter-affidavit filed in the High Court on behalf of the Institute that various faculty posts such as Additional Professor, Associate professor and

Assistant Professor at this Institute have not been classified as Scientific and Technical Posts in accordance with the instructions of the Government of India dated 23.6.1975. it is only for the purpose of classifying the post the Ministry of Health and Family welfare vide their letter dated 28th September. 1989 requested the Director PGIMER to submit a self contained proposal giving full details of the posts category-wise which satisfy the condition laid down in the Department of personnel and Administrative Reforms OM No. 9/2/73-Estt. dated 23.6.1975 regarding exemption of scientific and technical posts from the purview of reservation orders of Government of India. But he so-called self contained proposal has not been sent to the Government of India in the Ministry of Health and Family Welfare and on the other hand in the meeting of the Institute dated 10.3.1990 a decision was taken that before sending the proposal to the Government of India the matter needs to be considered by the Academic committee of the Institute. In this view of the matter. until a concrete proposal emanates from the Institute Identifying the post and the said proposal is examined by the Administrative Ministry of Family and Health Welfare and a decision is taken thereon. It is not possible to conclude that the post of Assistant Professors are outside the purview of the reservation orders. No decision of the Ministry of health and Family Welfare has been produced before us classifying the post of assistant professor as scientific post meant for carrying out the research and as scientific post meant for carrying out the research and as such the reservation orders issued by the Government of India would continue to apply in filling up of the vacancies in the post of Assistant Professors in the post Graduate institute of Medical education and Research at Chandigarh until such posts are classified by the Ministry of health in the Government of India, to be Scientific and Technical posts.