

PETITIONER:
JAGDISH PARSAD SINHA & ORS.

Vs.

RESPONDENT:
BHAGWAT PRASAD & ORS.

DATE OF JUDGMENT 01/08/1989

BENCH:
MISRA RANGNATH
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MISRA RANGNATH
KULDIP SINGH (J)

CITATION:
1989 AIR 1794 1989 SCR (3) 658
1989 SCC (3) 610 JT 1989 (3) 257
1989 SCALE (2) 173

ACT:

Constitution of India 1950: Articles 14 and 16---Service cadre--Bifurcation of--To provide quick promotional avenues to those lower down in the joint cadre action held ultra vires.

Civil Services: Bihar Subordinate Education 'Service (Teaching Branch) Determination of Seniority Rules: Secondary Education Service--Cadre Bifurcation of for providing quick promotional avenues to those beyond the eligible zone---Action--Held illegal and ultra vires.

HEADNOTE:

On 20th February, 1975, the State Government published a joint seniority list of teachers of subordinate Education Service belonging to the Boys branch, and the Higher Secondary Teachers of the Subordinate Educational Service. This joint gradation list was challenged before the High Court, but the writ petition was dismissed as also an application for review of the dismissal. The Special Leave Petition against the aforesaid decision was dismissed by this Court on 30th March, 1981.

The aforesaid single cadre known as Secondary Education Service was bifurcated by the State Government by its Notification dated 8th November 1986 under which the Subordinate Education Service (Teaching Branch) Determination of Seniority Rules, were framed under the proviso to Article 309 of the Constitution-

This bifurcation scheme was challenged in the High Court. The stand of the Government was that the demand for such bifurcation was taken up in the legislature and in terms of the decision of the Implementation Committee of the Bihar Legislative Council, the new scheme for bifurcation had to be implemented. The High Court by its decision dated 27th November, 1987 quashed the Notification dated 18th November, 1986 under which the bifurcation was done.

The High Court was of the view that though the authority of the state to frame rules in terms of the proviso to Article 309 was unquestionable, yet notice had to be taken of time fact that those who stood

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together and fell in line to proceed further in the seniori-

ty list have to be provided all opportunities in respect of their avenues of promotion alike without breaking that order, so that one who ranks higher in the grade may not go down in due course of service, and held that the rules in the Notification dated 18th November, 1986 were ultra vires Articles 16(1) and 14 of the Constitution.

Dismissing the Special Leave Petition to this Court,

HELD: The High Court, rightly found fault with the State Government action, and holding that the rules in the Notification dated 18th November, 1986 are ultra vires Articles 16(1) and 14 of the Constitution. [660F]

Counsel for the State was not able to dislodge the conclusion that bifurcation was the outcome of an attempt to provide quick promotional avenues to those who were lower down in the joint cadre and would not have come within the range of consideration for promotional benefits but by bifurcation became entitled to such benefits. [661C]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 656 of 1989.

From the Judgment and Order dated 27.11.1987 of the Patna High Court in C.W.J .C. No. 1254 of 1987.

Tapas Ray and D.P. Mukharjee for the Appellants.

M.K. Ramamurthi, P.P. Singh, A.N. Trehan and Promod Swarup for the Respondents.

The Judgment of the Court was delivered by

RANGANATH MISRA, J. This appeal by special leave is directed against the decision of the Patna High Court dated 27.11.1987 quashing the notification dated 18.11.1986 under which in terms of the Subordinate Education Service (Teaching Branch) Determination of Seniority Rules framed under the proviso to Article 309 of the Constitution, the hitherto single cadre known as Secondary Education Service was bifurcated.

On 20th of February, 1975, the State Government published a joint seniority list of teachers of Subordinate Education Service belonging to the Boys school branch and the Higher Secondary Teachers

660 of the Subordinate Education Service. The joint gradation list was challenged before the High Court in Writ Petition No. 2956 of 1975. The High Court dismissed the writ petition as also an application for review of such dismissal. On 30th March, 1981, this Court dismissed the special leave petition carried against the decision of the High Court. When with the dismissal of the special leave petition the position was getting settled, the State Minister of Education came forward with a proposal that the cadre should be separated and the Higher Secondary teachers and Secondary teachers of the Upper Division of the Subordinate Education Service should have a separate gradation list. Ultimately by the impugned notification the bifurcation was done. The Government took the stand that the demand to bifurcate was taken up in the Legislature and in terms of the decision taken by the Implementation Committee of the Bihar Legislative Council, the new scheme of bifurcate came to be done.

The High Court considered the matter at great length and with care. The legal position as settled by several decisions of this Court was noticed. Towards the end of the judgment the High Court has said:

"We have referred to the judgment of the Supreme Court in K.S. Vora & Ors. v. State

of Gujarat & Ors., only to illustrate that the courts have at no time ignored the interest of the employees and questioned the authority of the State to frame rules in terms of the proviso to Article 309 of the Constitution of India, but the courts have always taken notice of the fact that those who stood together and fell in line to proceed further have to be provided all opportunities in respect of their avenues of promotion alike without breaking that order, so that one who ranks higher in the grade may not go down in due course of service. It is in this context that we have no hesitation in holding that rules in the notification dated 18.11.1986 are ultra vires Articles 16(1) and 14 of the Constitution.

We do not propose to predicate into what is alleged to be the mala fide of the respondent State inasmuch as after the judgment of this Court in C'.W.J.C. No. 2956 of 1975, the Minister of State decided to find means to disintegrate the already integrated cadre or the Chairman of the Legislative Council, having no apparent role in the process of making rules in terms of proviso to Article 309 of the Constitution appeared and influenced the process. We

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refrain from going into this aspect, for we think, with our conclusion as above, the upper division of the Subordinate Education Service shall continue to have the same respect as it got from the judgment of this Court in C.W.J.C. No. 2956 of 1975 and no one in the Government shall in future again attempt to deny to the members of the said service their due rights for promotion to the selection grade and other higher posts."

In course of hearing of the matter, counsel for the State was not able to dislodge the conclusion that bifurcation was the outcome of an attempt to provide quick promotional avenues to those who were lower down in the joint cadre and would not have come within the range of consideration for promotional benefits but by bifurcation became entitled to such benefits. The High Court, in our opinion, rightly found fault with such action.

We have considered the matter from different angles keeping the relevant aspects in view but have not been able to satisfy ourselves that the judgment of the High Court suffers from any infirmity to justify its vacation.

The appeal is accordingly dismissed but parties are left to bear their respective costs.

N.V.K.
missed.
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Appeal dis-