

PETITIONER:
P.S GHALAUT

Vs.

RESPONDENT:
STATE OF HARYANA AND OTHERS

DATE OF JUDGMENT 03/08/1995

BENCH:
RAMASWAMY, K.
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RAMASWAMY, K.
PARIPOORNAN, K.S.(J)

CITATION:
1996 AIR 351 1995 SCC (5) 625
1995 SCALE (5) 56

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

Leave granted.

We have heard the learned counsel on both sides. The undisputed facts are that the appellant as a general candidate and the third respondent, Dr. Nitya Anand to backward class quota were selected for appointment as lecturer in the Haryana Medical Education Service as per H.M.E.S. Rules, 1965 (for short, 'the Rules'). The Public Service Commission recommended the names of the appellant and Dr. Nitya Anand along with three other candidates for appointment as lecturers. It would appear that Dr. Diwakar Jain and Dr. Sidharth Dass had not joined the service. Though Dr. Om Prakash Kalra initially had joined the service, he too left the service. Consequently the appellant, as general candidate and Dr. Nitya Anand remained in service.

The question is whether the appellant is senior to Nitya Anand. The contention of the appellant is that since the order of merit given by the Selection Committee and the letter of appointment do indicate that the appellant is high up in the order of merit to Dr. Nitya Anand, he is senior to the later. While maintaining inter se seniority by wrong interpretation Dr. Nitya Anand has been made senior to the appellant which is contrary to the IIInd proviso to Rule 13 of the Rules. This contention was not accepted by the High Court in the impugned Judgment dated May 3, 1993 in Civil W.P. No. 4946/93 by the Punjab & Haryana High Court at Chandigarh. Shri Manoj Kumar, learned counsel appearing for the appellant relying upon the instruction issued by the Chief Secretary, dated April 27, 1972 and the Judgment of the Division Bench of that Court in Bhupinder Singh Vs. Haryana Warehousing Corporation in Civil W.P. No. 2006/92 dated June 2, 1992 contended that when the Selection Committee had mentioned inter se seniority in the order of merit, the State has no power to interfere with the inter se seniority.

The same seniority shall be continued to be maintained while fixing inter se seniority after the appointment given to the respective candidates. The High Court, therefore was not right in upholding the action of the respondents. The learned counsel for the respondents have resisted the contention.

We have given our anxious consideration to the respective contentions. The question is whether Dr. Nitya Anand is senior to the appellant. In 100 point roaster maintained by the State Government, the Government have earmarked some places to the reserved candidates. In the instructions issued by the Chief Secretary on April 27, 1972, it was specifically stated that the vacancies reserved for Scheduled Castes and Backward Classes shall be filled up to those specified points enumerated in the roaster. To give effect to the Public Policy of reservation envisaged in Article 16(4) read with Articles 14 and 16(1) and consistent with Art. 335, the State prescribed certain percentage of posts or vacancies and they are required to be filled as per the roaster. Admittedly, initially 2% posts were reserved for the backward classes which was later increased to 10%. Vacancies 1 to 9 were filled up by the general candidates. In consequence of the reservation to the backward classes, vacancy No.10 was reserved for the backward classes. Admittedly, Dr. Nitya Anand belongs to the backward class. The question, therefore, is whether the placement of Dr. Nitya Anand in the 10th place and relegation of the appellant to lower in the order of ranking in the roaster is valid in law. It is true that Rule 13 of the Rules envisages that the seniority inter se of members of the service shall be determined by the length of continuous service on any post in the service provided further that in the case of two or more members appointed by direct recruitment, the order of merit determined by the Commission shall not be disturbed in fixing the seniority. In other words, where the inter se merit has been determined by the public Service Commission or the Selection Committee, as the case may be, and recommended to the Government for appointment, while accepting the recommendations so made, the Government do require to maintain the order of merit determined by the Public Service Commission/Committee. But the question is whether the merit list prepared gets disturbed, then the roaster has been maintained and the placement of the candidates in the order specified in the roaster when filled up and is it illegal, arbitrary or unconstitutional. It is seen that when the roaster is maintained to give effect to the constitutional policy of reservation to render socioeconomic justice to the concerned sections, respective places assigned to the candidates belonging to them, general candidates, backward classes or Scheduled Castes or Scheduled Tribes, as the case may be, the change in the order of merit inevitably get affected. If original order of merit prepared by the Public Service Commission or Selection Committee, if remains unaffected, roaster becomes redundant and always remains unimplemented. The reserved candidates always remain at the bottom of the select list unless selected as general candidates in the order of merit. To relieve such injustice and hardship, roaster is maintained and vacancies are filled up in the order maintained therein. The placement of candidates shall be to the respective points fixed in the roaster. Take for instance vacancy No. 1 and 6, as pointed out in the Chief Secretary's letter have admittedly been reserved for Scheduled Castes. Suppose recruitment was made to fill up ten vacancies, three candidates from Scheduled Castes were selected. The first

one as general and second and third were selected on the basis of reserved quota. The question is whether the first candidate will be put in the quota allotted to the Scheduled Castes in the roaster. Having been selected as a general candidate, though he is more meritorious than the second and third candidates, he will not get the placement in the roaster, reserved for Scheduled Castes i.e. No. 1 and 6 points. Consequently candidates Nos. 2 and 3 will get the placement at No.1 and 6 and the first candidate will get the placement in the order of merit along with the general candidates according to the order of merit maintained by the Selection Committee or the Public Service Commission. He cannot complain that having been selected in the merit, he must be placed in the placement reserved for Scheduled Castes at point No. 1 in the roaster. Equally, though general candidate is more meritorious in the order of merit prepared by the Public Service Commission or the Selection Committee, when the appointments are made and the vacancies are filled up according to the roaster, necessarily and inevitably the Reserved candidates though less meritorious in the order of merit maintained by the Public Service Commission would occupy the respective places assigned in the roaster. Thereby they steal a march over some of the general candidates and get seniority over the general candidates. This scheme is, therefore, constitutional, valid and is not arbitrary.

The Chief Secretary in his letter obviously was in error in directing to maintain the roaster the same inter seniority maintained by the Public Service Commission or Selection Committee. If that is given effect to, the roaster points would remain unfilled and rotation therein get disturbed. It is obvious that the interpretation of the Rule by the Chief Secretary was found favour with the Division Bench which was strongly relied upon by the appellant. The order of merit indicated in the second proviso would be applicable only inter se to the general candidates or reserved candidates but gets changed when vacancies are filled up as per roaster and appointments are made thereunder. The High Court, therefore, was right in holding that the 2nd proviso to Rule 13 is inapplicable to the facts and was also right in its finding that when appointments are made to fill up the vacancies in the order of roaster, the order of merit prepared by the Selection Committee get changed. In these circumstances, the appeal is dismissed but without costs.