

PETITIONER:

P & T SCHEDULED CASTE/TRIBE EMPLOYEES' WELFARE ASSOCIATION (R

Vs.

RESPONDENT:

UNION OF INDIA & ORS.

DATE OF JUDGMENT 29/08/1988

BENCH:

VENKATARAMIAH, E.S. (J)

BENCH:

VENKATARAMIAH, E.S. (J)

NATRAJAN, S. (J)

OJHA, N.D. (J)

CITATION:

1989 AIR 139 1988 SCR Supl. (2) 623
1988 SCC (4) 147 JT 1988 (3) 486
1988 SCALE (2) 662

ACT:

Constitution of India, 1950: Articles 16, 330, 334 and 335- Promotion posts in P & T department -Reservation for Scheduled Caste, Scheduled Tribe employees- Advantage enjoyed lost in the New Scheme of 1983- Scheduled Caste, Tribe employees of other departments continue to enjoy the advantage- Government directed to confer similar advantage to Scheduled Caste, Scheduled Tribe employees of Post and Telegraph Department.

Civil Services -P & T department - Promotion-Reservation of vacancies for SC, ST employee-New Scheme, 1983-All employees to get promotion after 16 years-Advantage of SC, ST employees getting promotion within a shorter period lost-Govt. directed to issue order conferring the additional advantage on SC, ST employees in P & T department, as are enjoyed by SC, ST employees in other departments.

HEADNOTE:

In supersession of its earlier order issued in 1968, the Union Government communicated in 1971 its policy regarding reservation for the Scheduled Castes and the Scheduled Tribes in posts filled by promotion on the basis of seniority subject to fitness. Whenever such promotion were to be made in appointments to Class-I, Class-II, Class-III and Class-IV posts in grades or services in which the element of direct recruitment, if any, did not exceed 50 per cent, 15 per cent and 7 1/2 per cent of the vacancies were to be reserved for SCs and STs respectively. Detailed instructions were issued to the appointing authorities to make promotions accordingly so that the SCs and STs could have an advantage of getting promotion to a higher grade much earlier than the others.

In 1974, further instructions were issued with regard to reservation of Scheduled Castes and Scheduled Tribes in posts filled by promotions/appointments to Selection Grade Posts directing reservation of 15 per cent/7 1/2 percent of the vacancies for SCs/STs.

PG NO 623

PG NO 624

In the Posts and Telegraphs Department, the aforesaid policy continued till 1983 when an agreement was arrived at

between the Ministry of Communications and certain associations of Post and Telegraphs employees, and a fresh order relating to the policy of promotion to be adopted in the P & T Department was issued in supersession of the scheme of reservation followed till then. Under the policy, all official belonging to basic grades in Group C and Group D to which there was direct recruitment either from outside and/or by means of limited competitive examination from lower cadres and who had completed 16 years of service in that grade would be placed in the next higher grade. Whether an employee belonged to general category or to the category of SCs and STs, he would get his promotion on the completion of 16 years' service. Under the previous scheme it was possible for the SC and ST employees to secure promotion within a period of 1() to 12 years, while the other employees had to wait for nearly 20 to 23 years. Thus, the comparative advantage enjoyed by employees belonging to SCs and STs was taken away. No specific order was issued by the Government regarding reservation for SCs and STs, though clause 6 of the new scheme provided for it. But the earlier orders providing for reservation for SCs and STs were made inapplicable. Aggrieved by the new policy, which deprived the SC and ST employees of the advantage which they were enjoying, the petitioners approached this Court by way of the present writ petition.

Petitioners prayed for a direction to the Govt. of India for issuing an order under clause 6 of the new scheme conferring such additional advantage to them as are enjoyed by SC and ST employees in other departments.

The Respondent contended that the new scheme was advantageous to all the employees since all of them would get automatic promotion after completing 16 years of service in a cadre and that it was done with the consent of the Federations of Employees of the P & T Department.

Allowing the writ petition,

HELD:1. The advantage of promotion within a shorted period is being enjoyed by persons 'belonging to the Departments and only the petitioners have been deprived of it. Such deprivation violates the equality clause of the

PG NO 625

Constitution. While it may be true that no writ can be issued ordinarily compelling the Government to make reservation under Article 16(4) which is only an enabling clause, the circumstances in which the members belonging to the Scheduled Castes and Scheduled Tribes in the Posts and Telegraphs Department are deprived of indirectly, the advantage of such reservation which they were enjoying earlier, while others who are similarly situated in the other departments are allowed to enjoy it, make the action of Government discriminatory and invite intervention by this Court. [629G-H; 630A-B]

2. One of the methods by which the Government can confer some extra advantage on the employees belonging to the Scheduled Castes and the Scheduled Tribes in cases of this nature where promotion to higher cadre is a time-bound one is to direct that the employees belonging to the Scheduled Castes and the Scheduled Tribes may be promoted to the higher cadre on completion of a shorter period of service than what is prescribed for others. In this particular case it is open to the Government to direct that while all others would be entitled to be promoted to the higher cadre on completion of 16 years of service, the members belonging to the Scheduled Castes and the Scheduled Tribes may be promoted to the higher cadre on completion of, say 12 or 13 years of service. There may be other methods of achieving

the same result. In what way it should be done is a matter left to the discretion of the Government. This should be decided by the Government taking into consideration all aspects of the case. [630B-F]

3. The Government of India shall within four months issue an order under clause 6 of the letter dated 23.11.1983 conferring some additional advantage on the employees belonging to the Scheduled Castes and the Scheduled Tribes in the Posts & Telegraphs Department commensurate with similar advantages which are being enjoyed by the employees belonging to the Scheduled Castes and the Scheduled Tribes in the other departments. Any order that may be issued by the Government shall operate prospectively. All promotion that have been made so far pursuant to the policy contained in the letter dated 23.11.1983 and that may be made hereafter till the date on which the direction to the issued by the Government under clause 6 comes into operation, shall however, remain undisturbed. [630-F-H;631A]

JUDGMENT:

ORIGINAL JURISDICTION: Writ Petition (Civil) Nos.1003-1005 of 1984.

(Under Article 32 of the Constitution of India).

PG NO 626

R.K. Garg, Pankaj Kalra and P.K. Jain for the Petitioners.

V.C. Mahajan, Ms. A. Subhashini, C.V. Subba Rao, Grish Chander, S.K. Mehta, Dhruv Mehta, Aman Vachher, S.M. Sarin and Jagannath Goulay (N.f.) for the Respondents.

The Judgments of the Court was delivered by

VENKATARAMIAH, J. People belonging to the Scheduled Castes and the Scheduled Tribes and to other weaker sections of society in India are the zealously protected children of the Indian Constitution. Article 46 of the Constitution provides that the State shall promote with special care the educational and economic interest of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation. While clause (1) of Article 15 of the Constitution provides that the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them, clause (4) of that Article provides that nothing in the said Article or in clause (2) of Article 29 of the Constitution shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes. Similarly, while clause (4) of Article 16 of the Constitution provides that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State and clause (2) of the said Article provides that no citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of any employment or office under the State, clause (4) of the said Article provides that nothing in that Article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State. Article 330 and Article 332 of the Constitution provide for reservation of seats for the Scheduled Castes and the

Scheduled Tribes in the Lok Sabha and in the Legislative Assemblies of the States till such period as is provided in Article 334 of the Constitution. Article 335 of the Constitution, which is relevant for purposes of this case, provides that the claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State.

PG NO 627

The present case is, however, one in which a concession which had been extended to the employees belonging to the Scheduled Castes and the Scheduled Tribes by way of reservation of vacancies at the stage of promotion has been withdrawn in a rather concealed way. Petitioners 1 and 2 in this Writ Petition are the P & T Scheduled Caste/Tribe Employees' Welfare Association (Regd.) Delhi and the Federation of all India Scheduled Castes & Scheduled Tribes Employees P & T Department, New Delhi and Petitioner 3 is an employee in the Posts & Telegraphs Department. By the letter bearing No. 27/2/71-Estt. (SCT) dated 27.11.1972 issued by the Department of Personnel, the Government communicated its policy regarding the reservations for the Scheduled Castes and the Scheduled Tribes in posts filled by promotion/promotions on the basis of seniority subject to fitness. The said policy was adopted by the Government in supersession of the orders contained in an earlier Government Order dated 11.7.1968. Under the said policy a reservation of 15 per cent of vacancies was made for the Scheduled Castes and 7-1/2 percent for the Scheduled Tribes wherever promotions were to be made on the basis of seniority subject to fitness, in appointments to all Class I, Class II, Class III and Class IV posts in grades or services in which the element of direct recruitment, if any, did not exceed 50 per cent. In order to implement the above reservation the Government directed the appointing authorities to maintain a separate 40-point roster to determine the number of reserved vacancies in a year in which points 1, 8, 14, 22, 28 & 36 had to be reserved for the Scheduled Castes and points 4, 17 and 31 had to be reserved for the Scheduled Tribes. Detailed instructions were issued to the appointing authorities to make promotions in accordance with the directions contained therein so that members belonging to the Scheduled Castes and the Scheduled Tribes could have an advantage of getting promotion to a higher cadre much earlier than the employees who did not belong to the Scheduled Castes and the Scheduled Tribes. By the letter of the Department of Personnel & Administrative Reforms bearing O.M. No. 8/11/73-Estt. (SCT) dated 12.9.1974 addressed to all the Ministries further instructions were issued with regard to the reservation of the Scheduled Castes and the Scheduled Tribes in posts filled by promotions/appointments to Selection Grade posts directing reservation of 15 per cent of vacancies for Scheduled Castes and 7-1/2 per cent for Scheduled Tribes. As regards the Posts & Telegraphs employees working under the P & T Board, the Ministry of Communications by its letter No. 31-19/74-PE-I dated 15.6.1974 gave certain further directions with regard to the filling-up of posts by promotion conferring certain other advantages on persons belonging to the Scheduled Castes and the Scheduled Tribes. The policy

PG NO 628

of reservation contained in the above three Government letters was continued till the year 1983 in the Post &

Telegraphs Department. It would appear that in the year 1983 an agreement was arrived at between the Ministry of Communications and certain associations of employees working in the Posts & Telegraphs Department and as a consequence of the said agreement a fresh order relating to the policy of promotion to be adopted in the Posts & Telegraphs Department was issued in supersession of the scheme of reservation, which was being followed till then. The said New policy, the validity of which is challenged before us, is contained in the letter bearing No. 31-26/83-PE-1 dated 17. 12. 1983 addressed to all heads of circles. Under this new policy it was decided that with effect from 30.11.1983 all officials belonging to basic grades in Group C and Group D to which there was direct recruitment either from outside and/or by means of limited competitive examination from lower cadres, and who had completed 16 years of service in that grade would be placed in the next higher grade. This policy, it is alleged, was introduced in order to remove the effects of stagnation of employees in a particular grade for nearly 20 to 23 years without being promoted to higher grade. It would appear that under the scheme which was prevailing prior to 30.11.1983 it was possible for members belonging to the Scheduled Castes and the Scheduled Tribes to secure promotion to the higher cadre within a period of 10 to 12 years while the other employees had to wait for nearly 20 to 23 years. Thus an advantage had been conferred on the employees belonging to the Scheduled Castes and the Scheduled Tribes since they could secure promotion within a shorter period. Under the new policy irrespective of the fact whether an employee belonged to the general category or to the category of the Scheduled Castes and the Scheduled Tribes he would have to wait for nearly 20 to 23 years to get promotion to the higher cadre on the completion of 16 years. Thereby the comparative advantage which the members belonging to the Scheduled Castes and the Scheduled Tribes were enjoying was taken away and all the employees, namely, the employees belonging to the Scheduled Castes, the Scheduled Tribes and to the other categories were placed at par. However, clause 6 of the said letter dated 17.12.1983 which contained the new policy reads thus:

"6. For promotions under the time-bound one promotion scheme the normal orders relating to reservation for SC/ST communities will not apply unless any specific order in this regard is subsequently issued."

PG NO 629

It is admitted that no specific order has been issued by the Government pursuant to clause 6 so far. But the earlier orders providing for reservation in favour of the Scheduled Castes and the Scheduled Tribes were made inapplicable. Aggrieved by the action taken by the Government in implementing the policy contained in letter dated 23. 12. 1983, which had the effect of depriving the members belonging to the Scheduled Castes and the Scheduled Tribes of the advantage which they were enjoying, the petitioners have filed this petition questioning the said action. The petition is resisted by the respondents. It is urged on behalf of the Government that the 'time-bound one promotion scheme' contained in the letter dated 23.12.83 was advantageous to all the employees since all of them would get automatically promoted to a higher cadre on completing 16 years of service in a cadre and that it had been issued with the consent of the Federations of Employees of the Posts & Telegraphs Department.

It is not disputed that in many of the other departments

of the Union Government the scheme of reservation of posts for the Scheduled Castes and the Scheduled Tribes is in vogue in cases of promotions from the lower grades to the higher grades when they are done on the basis of seniority subject to fitness and under the said policy the persons belonging to the Scheduled Castes and the Scheduled Tribes working in the other departments have been conferred an extra advantage which was not available to the Candidates

belonging to other categories and that in the Posts & Telegraphs Department also the employees belonging to the Scheduled Castes and the Scheduled Tribes were enjoying a similar advantage before 30.11.1983 on which date the policy contained in the letter dated 23.12.1983 come into force. Even the letter dated 23.12.1983 while it sets at naught the normal orders relating to reservation for the Scheduled Casts and the Scheduled Tribes in the Posts Telegraphs Department in force in the other department provides for the issue of specific orders by the Government under which the members belonging to the Scheduled Castes & the Scheduled Tribes could gain some extra advantage. Admittedly no such order has been issued till today. The petitioners have prayed that a direction should be issued to the Government to issue specific order conferring on them such an extra advantage. We feel that the claim made by the petitioners is fully justified in view of the fact that similar advantage is being enjoyed by persons belonging to the Scheduled Castes and the Scheduled Tribes in other Departments and only they have been deprived of it. Such deprivation violates the equality clause of the Constitution. While it may be true that no writ can be issued ordinarily compelling the Government to make reservation under Article 16(4) which

PG NO 630

is only an enabling clause, the circumstances in which the members belonging to the Scheduled Castes and the Scheduled Tribes in the Posts and Telegraphs Department are deprived of indirectly the advantage of such reservation which they were enjoying earlier while others who are similarly situated in the other departments are allowed to enjoy it make the action of Government discriminatory and invite intervention by this Court.

One of the methods by which the Government can confer some extra advantage on the employees belonging to the Scheduled Castes and the Scheduled Tribes in cases of this nature where promotion to higher cadre is a time-bound one is to direct that the employees belonging to the Scheduled Castes and the Scheduled Tribes may be promoted to the higher cadre on completion of a shorter period of service than what is prescribed for others. In this particular case it is open to the Government to direct that while all others would be entitled to be promoted to the higher cadre on completion of 16 years of service, the members belonging to the Scheduled Castes and the Scheduled Tribes may be promoted to the higher cadre on completion of, say, 12 or 13 years of service. There may be other methods of achieving the same result. The claim for conferment of some extra advantage on the Scheduled Castes and the Scheduled Tribes employees working in the Posts & Telegraphs Department which may be commensurate with the extra advantage which members belonging to the Scheduled Castes and the Scheduled Tribes are enjoying in the other departments of the Government of the maintenance of efficiency in the service appear to be a reasonable one. In what way it should be done is a matter left to the discretion of the Government. This should be decided by the Government taking into consideration all aspects of the case.

We therefore, issue a direction to the Government of India to issue an order under clause 6 of the letter dated some additional advantage on the employees belonging to the Scheduled Castes and the Scheduled Tribes in the Post & Telegraphs Department commensurate with similar advantages which are being enjoyed by the employees belonging to the Scheduled Castes and the Scheduled Tribes in the other departments of the Government of India. The Government shall issue such an order accordingly within four months from today. Any order that may be issued by the Government shall operate prospectively. All promotions that have been made so far pursuant to the policy contained in the letter dated 23.12.1983 and that may be made hereafter till the date on

PG NO 631

which the direction to be issued by the Government under clause 6 comes into operation, shall however remain undisturbed.

This petition is accordingly allowed. No costs.

G.N.

Petition allowed.