

Pratap Sanyal (Dr.) Vs State of Tripura and Others

Court: Gauhati High Court (Agartala Bench)

Date of Decision: April 28, 2000

Acts Referred: Constitution of India, 1950 " Article 16(1), 16(4), 16(4A)

Citation: (2000) 2 GLT 507

Hon'ble Judges: P.G. Agarwal, J

Bench: Single Bench

Advocate: B. Das and A. Bhattacharjee, for the Appellant; M. Nath, for the Respondent

Final Decision: Dismissed

Judgement

P.G. Agarwal, J.

Heard Sri B. Das, learned senior counsel for the Petitioner and Sri M. Nath, learned senior counsel for the Respondents.

State of Tripura.

2. The Petitioner, Dr. Pratap Sanyal joined the Tripura Health Service on 27.1.1975 in Grade-V of the said service. He was promoted to the

Grade-IV of the service on 1.3.1983 and thereafter while he was waiting for his promotion to the next grade i.e. Grade-III, the Respondent No. 3

Dr. Nirode Das, who according to the Petitioner, was junior to him. was promoted to Grade-III on the basis of the Govt. memorandum providing

for enhanced promotional avenues for reserve categories i.e. officers belonging to schedule caste and schedule tribe. In this writ petition, the

Petitioner has challenged the above Govt. Memo providing for reservation/promotion mainly on the grounds that

(i) there cannot be a reservation in a single post.

(ii) the question of efficiency of the services was not considered while making the provision for reservation and that the existing rules provided for

recruitment/promotion according to merit with due regard to the seniority and the rules are silent as regards the reservation, and the gap cannot be

filled up by way of such Govt. circular.

3. It may be mentioned here that in the meantime the State of Tripura has enacted the Reservation for schedule caste and schedule tribe Service

Act in 1991 and the rules have also been framed in the year 1992.

4. The submission regarding single post promotion need not be discussed as on perusal of the writ petition I find that there is no whisper even that

the post to which Respondent No. 3 was promoted is a single promotion post; on the contrary, it is stated in para 18 that there were other writ

petitions filed by other members of the Service challenging the above Govt. notification. Sri Das submits that the decision in the Indra Sawhney etc.

etc Vs. Union of India and others, etc. etc., still holds field and the reservation for schedule caste and schedule tribe in the matter of promotion has

been deprecated by the Apex Court. Learned Counsel for the Respondents on the other hand submits that the matter in hand stands covered by

the decision of this Court in Civil Rule No. 104, 158, 159, 180 and 181 of 1982, given on 15.3.1992. In the above decision, this Court held that

the provision for reservation in recruitment by promotion in Tripura Health Service does not suffer from any infirmity, much less any illegality and

the batch of writ petitions were accordingly dismissed. Similar view was taken by this Court in a later decision i.e. in the case of Bikash Deb

Barma, Petitioner v. Registrar Gauhati High Court and Ors. Respondents 1997 (1) GLT 565 . The decision of the learned Single Judge in Bikash

Debbarma (supra) was subsequently upheld by the Division Bench in the writ appeal. In a recent decision, in the case of Ajit Singh and Others Vs.

The State of Punjab and Others, Workmen represented by Assam Petroleum Mazdoor Union Vs. Management Oil India Ltd. and Others, , the

Apex Court observed as below:

28. We next come to the question whether Article 16(4) and Article 16(4A) guaranteed any fundamental right to reservation. It should be noted

that both these articles open with a non-obstante clause "Nothing in this article shall prevent the State from making any provisions for

reservation." There is a marked difference in the language employed in Article 16(1) on the one hand and Article 16(4) and Article 16(4A).

There is no directive or command in Article 16(4) or Article 16(4A) as in Article 16(1). On the face of it, the above language in each of Articles

16(4) and 16(4 A), is in the nature of an enabling provision and it has been so held in judgments rendered by Constitution Benches and in other

cases right from 1963.

5. As the State of Tripura has provided for reservation in the matter of promotion in the health services of the State and in absence of any materials

to show that the above promotion will hamper/affect the efficiency in the service, no case for quashing the above notification has been made out.

6. Relying on the observation of the Apex Court in Ajit Singh (supra), Sri Das, learned senior counsel for the petitioner submits that the reserve

category promotees cannot be given accelerated promotion each time overlooking the general category officers who were senior to them in the

feeder post. It is stated that the petitioner and the Respondent No. 3 were together in Grade-V of the service and as a matter of fact, the

Respondent No. 3 was junior to the petitioner and in view of the reservation, he was promoted to Grade-IV prior to the petitioner. Subsequently,

the petitioner was also promoted to Grade-IV. In Grade-IV the petitioner should have been treated as senior to the Respondent No. 3, but the

authority concerned has again promoted the Respondent No. 3 to Grade-III. I will like to reproduce the following observation of the Apex Court in

Ajit Singh (supra):

76. We, therefore, hold that the roster point promotees (reserved category) cannot count their seniority in the promoted category from the date of

their continuous officiation in the promoted post vis-a-vis the general candidates who were senior to them in the lower category and who were later

promoted. On the other hand, the senior general candidate at the lower level, if he reaches the promotional level later but before the further

promotion of the reserved candidate, he will have to be treated as senior, at the promotional level, to the reserved candidate even if the reserved

candidate was earlier promoted to that level. We shall explain this further under Point 3. We also hold that Virpal and Ajit Singh have been

correctly decided and that Jagdishlal is not correct decided. Points 1 and 2 are decided accordingly.

80. As accepted in Union of India and others etc. Vs. Virpal Singh Chauhan etc., and Ajit Singh Januja and others Vs. State of Punjab and others,

, we hold that in case any senior general candidate at level 2 (Assistant) reaches Level 3 (Superintendent Grade II) before the reserved candidate

(roster point promotee) at level 3 goes further up to level 4 in that case the seniority at level 3 has to be modified by placing such a general

candidate above the roster promotee, reflecting their inter se seniority at level 2. Further promotion to level 4 must be on the basis of such a

modified seniority at level 3, namely that the senior general candidate of level 2 will remain senior also at level 3 to the reserved candidate, even if

the latter had reached level 3 earlier and remained there when the senior general candidate reached that level 3. In cases where the reserved

candidate has gone up to level 4 ignoring the seniority of the senior general candidate at level 3, seniority at level 4 has to be refixed (when the

senior general candidate is promoted to level 4) on the basis of when the time of reserved candidate for promotion to level 4 would have come, if

the case of the senior general candidates was considered at level 3 in due time. To the above extent, we accept the first part of the contention of

the learned Counsel for the general candidates. Such a procedure in our view will properly balance the rights of reserved candidates and the

fundamental rights guaranteed under Article 16(1) to the general candidates.

7. In order to consider the submission of the learned Counsel, I have perused the pleadings of the writ petitioner, but find no averment to the effect

that the Respondent No. 3 was junior to the petitioner in Grade-V of the service or that the said Respondent was promoted to Grade-IV on the

basis of the reservation. Hence, in absence of the pleadings, it cannot be said that the petitioner shall be treated as senior to the Respondent No. 3

in Grade-IV of the service. Further Respondent No. 3 was promoted in the year 1990 and considering the prospectivity laid down in the case of

R.K. Sabharwal and others Vs. State of Punjab and others, and reiterated in Ajit Singh (supra) better known as Ajit Singh (II) case, it is held that

no case for reversion of Respondent No. 3 has been made out. Learned Counsel for the petitioner has no information as to whether during the last

ten years, the petitioner has been promoted to Grade-IH or not. The question of seniority is not involved in the present writ petition, but it goes

without saying that the State-Respondents shall be bound to follow the principle of seniority laid down in Ajit Singh (II) case.

8. In the result, writ petition stands dismissed.