
(2000) 01 MP CK 0023

Madhya Pradesh High Court

Case No: Writ Petition No"s. 3832 and 3833/99

Dr. Pradeep
Shrivastava and Others

APPELLANT

Vs

Barkatullah University
and Another

RESPONDENT

Date of Decision: Jan. 25, 2000

Acts Referred:

- Constitution of India, 1950 - Article 14, 16(1), 16(4)

Citation: (2000) 1 MPHT 634

Hon'ble Judges: C.K. Prasad, J

Bench: Single Bench

Advocate: Ravindra Shrivastava and Kishor Shrivastava, for the Appellant; A.P. Singh, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

C.K. Prasad, J.

Both these writ petitions are founded on identical facts and question of law involved, being one and the same, they are being disposed of by this common order.

2. Petitioner Dr. Pradeep Shrivastava (Petitioner No. 1 in W.P. No. 3832/99) is the Head of Department of Limnology in the Barkatullah University and claims to have teaching experience of 20 years at post graduate and M.Phil, level. Dr. Pramod Kumar Mishra (Petitioner No. 2 in W.P. No. 3832/99) is a Professor of Commerce and Director of C.R.I.M. in the Barkatullah University, Bhopal and claims to have experience of 25 years in teaching M.B.A., M.Com., B.Com. and M.Phil, classes. Dr. Nirmal Chand Jain (Petitioner No. 3 in W.P. No. 3832/99) is an Assistant Professor of Commerce and claims to have teaching experience of 23 years of B.Com. and M.Com. classes. Dr. Mohan

Kumar Shrivastava (Petitioner No. 4 in W.P. No. 3832/99) is presently Reader and Head of Department of Law in the Barkatullah University. Dr. R.D. Singh (Petitioner in W.P. No. 3833/99) is presently Reader and Director of Environmental Management and Sustainable Development Programme and claims to have teaching experience of 14 years at post graduate level. Respondent No. 1, i.e., Barkatullah University issued advertisement for recruitment to the various posts of Professors, Readers and Lecturers on 23-4-1999. In the said advertisement posts of Professor were not reserved and were open to all the candidates and were to be filled on consideration of merit alone. Representations were made by certain people that in view of the provision of the M.P. Lok Sewa Anusuchit Jati, Anusuchit Janjati or Anya Pichhade Vargo Ke Liye Arakshan Act, 1994, post of Professor ought to have been reserved for the members of the reserved category. Non reservation of the post of Professor was also brought to the notice of the M.P. Anusuchit Jati Commission, a statutory Commission constituted under the M.P. Anusuchit Jati, Anusuchit Jan Jati Tatha Pichhade Varg Ayog Adhiniyam, 1983. Commission by its communication dated 23-7-1999 informed to the respondent University that in the advertisement issued by the University, provision for reservation to the posts of Professor, Reader and Lecturer have not been made which is contrary to the reservation rule. Accordingly, Commission requested the respondent University to rescind the advertisement issued and issue fresh advertisement providing reservation to the members of the reserved category. In the light of the aforesaid direction of the Commission, respondent University issued fresh advertisement which was published in the daily news paper "Dainik Bhaskar" on 14-8-1999. According to this advertisement the posts of Professor in Management, Commerce, Limnology, Law and Environment Management were reserved for the members of the Scheduled Caste, Other Backward Classes, Scheduled Caste, Scheduled Tribe and Scheduled Caste respectively. Number of post advertised for each of the faculty is a single post.

3. It is the stand of the petitioner that the post of Professor in each of the departments, referred to above, comprises of single post. This fact has not been controverted by the respondents in their return. In view of aforesaid, one has to proceed on the assumption that single post of Professor in different departments has been reserved for the members of the reserved categories. It is the stand of the petitioner that the post of Professor being single post cadre, same cannot be reserved for the members of the reserved category. However, according to the respondent-University, notwithstanding the fact that the post of Professor is a single cadre post still same can be reserved by rotation of roster.

4. Submission of Shri Shrivastava appearing on behalf of the petitioners is that this question stands concluded by the judgment of the Supreme Court in the case of [Post Graduate Institute of Medical Education and Research, Chandigarh Vs. Faculty Association and Others](#), ; whereas according to Shri A.P. Singh learned counsel representing respondent-University, the question falling for consideration in the present writ petition has been squarely answered by the Supreme Court in the case of [State of Uttar Pradesh Vs. Dr. Dina Nath Shukla and another](#), . According to him the judgment in

the said case in no uncertain terms has laid down the law that even if there exists any isolated post rule of rotation by application of roster is required to be adopted for making reservation for the members of the reserved category.

5. In view of the rival stand what falls for determination is as to whether in a single post cadre, reservation can be made by rotation of roster. This point for the first time came up for consideration before the Supreme Court in the case of [Chakradhar Paswan Vs. State of Bihar and Ors.](#) ; wherein the Supreme Court held as follows :--

"Another serious infirmity in the argument of the learned counsel for the appellant is that it overlooks the basic principle that if there is only one post in the cadre, there can be no reservation under Article 16(4) of the Constitution. The whole concept of reservation for application of the 50 point roster is that there are more than one post, and the reservation as laid down by this Court in [Chakradhar Paswan Vs. State of Bihar and Ors.](#) can be up to 50%."

Again in the case of [Smt. Chetana Dilip Motghare Vs. Bhide Girls Education Society, Nagput and others.](#) , the Supreme Court dealing with the question held as follows :--

"In the above decision we had held that in the case of Chakradhar Paswan (Dr.) v. State of Bihar the decision in Arati Ray Choudhary v. Union of India had been distinguished and it has been squarely laid down that if there was only one post in the cadre, there could be no reservation under Article 16(4) of the Constitution. We had noted that after the aforesaid decision in Dr. Chakradhar case, the Government of Maharashtra had also issued a circular letter dated 1-3-1989 in which it was laid down that in view of the law laid down in Dr. Chakradhar Paswan case if a reservation is made for a single post in the beginning of the year for the purpose of filling up the same in future, by way of promotion, that will be unconstitutional. It was also laid down in the circular that the principle of reservation would not apply in the case of an isolated post."

Thus, in the case of Dr. Chakradhar (supra) and Chetana Dilip Motghare (supra) the Supreme Court in no uncertain terms held that if there is only one post in the cadre there can be no reservation by rotation of roster.

6. However, in the case of [State of Bihar and Others Vs. Bageshwari Prasad and Another.](#) ; a contrary view has been taken and in that case it has been held as follows :--

"The ratio does not preclude the power of the Government to fuse all posts of equal scale of pay for applying rule of reservation under Articles 16(1) and 16(4) or successive vacancies arising in single post. Therefore, the general candidates when were promoted to the post of Office Superintendent, the second vacancy which ought to have been reserved for Scheduled Castes and fourth for Scheduled Tribes, have been filled by the general candidates since Scheduled Castes and Scheduled Tribes were not, then available. When sixth vacancy had arisen, the claim of the reserved candidate was available and the authorities are enjoined to consider the claim of the reserved candidate.

The High Court was clearly in error in relying the ratio in Paswan case which stood entirely on a different situation to hold that the post cannot be reserved. Under these circumstances, the order of the High Court is set aside and the second respondent was rightly considered for promotion and was legally promoted as Superintendent."

Similar view has been taken by the Supreme Court in the case of [Union of India and Another Vs. Madhav Gajanan Chaubal and Another](#), . In this case Supreme Court held as follows:--

"Thus, we hold that even though there is a single post, if the Government have applied the rule of rotation and the roster point to the vacancies that had arisen in the single point post and were sought to be filled up by the candidates belonging to the reserved categories at the point on which they are eligible to be considered, such a rule is not violative of Article 16(1) of the Constitution."

The point further fell for consideration before the Supreme Court in the case of [Union of India and others Vs. Brij Lal Thakur](#), ; and in the said case it has been held as follows :--

"Accordingly we hold that appointment by promotion to the single post of E.C.G. Technician applying 40 point post and rule of rotation, consideration of Smt. Prakash Kaur to the said vacancy is not violative of Articles 14 and 16(1) of the Constitution. The promotion is legal and valid. The Tribunal, therefore, was incorrect in setting aside the promotion of Mrs. Prakash Kaur."

Following the judgment of Madhav (supra) the Supreme Court in the case of Dr. Dina Nath Shukla (supra) held as follows :--

"In [Union of India and Another Vs. Madhav Gajanan Chaubal and Another](#), , a Bench of three Judges, had held in para 9 that the reservation could be provided even to the isolated post on the basis of rule of rotation. Extension of reservation in such cases is not unconstitutional. On the other had, such scheme provides for and facilitates the Dalits and Tribes being considered for promotion to hold single post consistent with equality of opportunity on par with others.

Therefore, it was held that the rule of rotation and the roster point in filling up the vacancy that has arisen in the single post sought to be filled up with the reserved candidates, is not violative of Article 16(1) or 14 of the Constitution."

Thus, the judgment of the Supreme Court in the case of Bageshwari Prasad, Brij Lal Thakur (supra), Madhav (supra) and Dr. Dina Nath Shukla (supra) take the view that in a single post cadre, reservation can be made by rotation of roster.

7. Controversy as to whether in a single post cadre reservation can be made or not has been settled by a Constitution Bench of the Supreme Court by its judgment in the case of PG Institute of Medical and Research (supra). After referring to all the authorities on the

question, the Constitution Bench of the Supreme Court held as follows :--

"35. In a single post cadre, reservation at any point of time on account of rotation of roster is bound to bring about a situation where such single post in the cadre will be kept reserved exclusively for the members of the backward classes and in total exclusion of the general members of the public, and cent per cent reservation for the backward classes is not permissible within the constitutional framework. The decisions of this Court to this effect over the decades have been consistent.

36. Hence, until there is plurality of posts in a cadre, the question of reservation will not arise because any attempt of reservation by whatever means and even with device of rotation of roster in a single post cadre is bound to create 100% reservation of such post whenever such reservation is to be implemented. The device of rotation of roster in respect of single post cadre will only mean that on some occasions there will be complete reservation and the appointment to such post is kept out of bound to the members of a large segment of the community who do not belong to any reserved class, but on some other occasions the post will be available for open competition when in fact on all such occasions, a single post cadre should have been filled only by open competition amongst all segments of the society."

Again, in the case of [S.R. Murthy Vs. State of Karnataka and Others](#), ; the Supreme Court has held as follows :--

"In the light of this ratio since the post in question was a single post, the application of the roster for the purpose of promotion was not permissible."

This judgment has been rendered by the Supreme Court following its earlier Constitution Bench Judgment in the case of PG Institute of Medical Education and Research (supra). In the case of PG Institute of Medical Education and Research the Supreme Court has specifically over ruled its earlier judgment in the case of Madhav (supra) and Bageshwari (supra).

8. True it is that the law laid down by the Supreme Court in the case of Dr. Dina Nath Shukla (supra) on which Shri Singh has placed heavy reliance has not been specifically over ruled by the Supreme Court in the case of Post Graduate Institute of Medical Education and Research (supra), in fact, the same has not even been referred. However, I am of the considered view that the ratio laid down in this case is following the judgment of the Supreme Court in the case of Madhav (supra). This would be evident from paragraph 9 of the judgment of Dr. Dina Nath Shukla (supra) in which the Supreme Court took note of its earlier decision in Madhav (supra) and held that in view of the three-Judges Bench decision reservation could be provided even to the isolated post on the basis of rule of rotation. As stated earlier, the decision of the Supreme Court in the case of Madhav (supra) has specifically been over ruled by the Constitution Bench in the case of PG Institute of Medical Education and Research (supra). In view of the aforesaid I

have no hesitation in holding that the judgment of the Supreme Court in the case of Dr. Dina Nath Shukla (supra) that isolated post can be reserved on the basis of rule of rotation does not hold the field.

9. In my considered opinion the judgment of the Constitution Bench of the Supreme Court in the case of PG Institute of Medical Education and Research (supra) settles the matter beyond any pale of controversy and as such, I have no doubt in my mind that in a single post cadre reservation can not be made by rotation of roster and unless there is plurality of post the question of reservation shall not arise.

10. Admittedly, in the present case posts of Professors which are single post cadre have been reserved for the members of the reserved category. This being so, same cannot be allowed to stand. In view of my answer to the aforesaid contention, I deem it inexpedient to answer other submissions of Shri Shrivastava. However to put the record straight, Shri Shrivastava has contended that the post of Professor in a University cannot at all be reserved.

11. In the result, both the writ petitions are allowed. Impugned advertisement making reservation of a single post of Professor is quashed. In the facts and circumstances of the case, there shall be no order as to cost.