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BIHAR STATE HARIJAN KALYAN PARISHAD

v.

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UNION OF INDIA & ORS.

March 1, 1985.

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[O. CHINNAPPA REDDY, E. S. VEKKATARAMIAH., JJ.]

Constitution of India 1950, Article 16

Reservation of posts for Scheduled Castes and Scheduled Tribes—Group 'A' services—Promotion by selection method—Presidential Directive para 9—Public Sector Undertaking—Government communications denying benefit of reservation—Quashed.

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In case of promotion to posts promotion to which are by the selection method, 15% and 7½ per cent of posts were to be reserved for Scheduled Castes and Scheduled Tribes respectively. Para 9 of the Presidential Directive provided that the aforesaid rule of reservation was also applicable to promotions by selection to posts within Group 'A' carrying a salary of Rs. 2250 per month or less, and prescribed that officers belonging to the Scheduled Castes and Scheduled Tribes would be considered for promotion, who are senior enough to be within the zone of consideration, and described the procedure to be adopted.

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By a letter dated the 8th April 1982, the Ministry of Steel and Mines, Department of Steel, informed the Chairman, Steel Authority of India Limited, that in accordance with para 9 of the Presidential Directive there was no reservation for Scheduled Castes and Scheduled Tribes in promotion by selection to posts within Group 'A'. This letter in turn was followed up by a communication dated August 19, 1982 by the Steel Authority of India to the Chief Personnel Manager, Bokaro Steel Plant stating that no reservation for scheduled caste/scheduled tribe candidates in matters of promotions to any grade within Group-A posts are to be provided, since promotions within Group-A posts in the company are based on selection method.

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The writ petition of the Appellant, complaining that the letter dated April 8, 1982 of the Ministry of Steel & Mines and the letter dated August

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19, 1982 to the Chief Personnel Manager of Bokaro Steel Plant purported to deny to the scheduled castes and scheduled tribes the benefit of reservation in the matter of promotion to selection posts within Group 'A', was summarily dismissed by the High Court.

Allowing the Appeal to this Court,

HELD : 1. Para 9 of the Presidential Directive, which deals with "concessions to employees of Scheduled Castes and Scheduled Tribes in promotions by selection method" makes abundantly clear that the rule of reservation is also applicable to promotions by selection to posts within Group 'A' which carry an ultimate salary of Rs. 2,250/—per month or less. It however, prescribes a procedure different from the usual procedure adopted in filling up posts reserved for Scheduled Castes and Scheduled Tribes. [16F-G]

2. The letters of the Department of Steel dated 8th April, 1982, and of the Steel Authority of India Ltd., dated August 19, 1982 are contrary to para 9 of the Presidential Directive. [17A]

3. The writ petition is allowed. The letters dated April 8, 1982 and August 19, 1982 are quashed. The respondents are directed to give effect to paragraph 9 of the Presidential Directive. [17A]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 680 of 1985.

From the Judgment and order dated 1.2.1983 of the High Court of Patna at Ranchi in C.W.J.C. No. 1152/82.

V.M. Tarkunde, P.H. Parekh and Miss Lata Krishnamurthi for the petitioners.

V.A. Syed Mohammad, Abdul Khader, K.J. John, S.R. Grover, Manjul Bajpayee, D. Goverdhan, C.V. Subba Rao, R.N. Poddar, and Miss A. Subhashini for the Respondents.

The judgment of the Court was delivered by

CHINNAPPA REDDY, J. Special leave granted.

The Bihar State Harijan Kalyan Parishad whose writ petition against the Steel Authority of India Ltd., the Union of India and others, was dismissed in limine is the appellant before us in this appeal. We are afraid, notwithstanding the summary dismissal

A of the writ petition by the High Court, this appeal has to be allowed. The appellant is rightly aggrieved with letter No. 18.(12)/81-SAIL-II/Coord dated April 8, 1982 from the Ministry of Steel and Mines addressed to the Chairman of the Steel Authority of India Limited and letter No. PER/IR/7949 (pt) dated August 19, 1982 from the Steel Authority of India Limited to the Chief Personnel Manager, Bokaro Steel Plant, Bokaro. The effect of the two letters, which we will extract in full later at an appropriate stage, is to deny to the scheduled castes and scheduled tribes the benefit of reservation in the matter of promotion to selection posts within Group 'A'. The Bokaro Steel Plant, we may mention here, is a unit of the Steel Authority of India Limited which in turn is a public limited Company entirely owned, controlled and supervised by the Central Government. It is not disputed that the Steel Authority of India Limited is an instrumentality of the State and is an authority within the meaning of Art. 12 of the Constitution of India.

D The Government of India, Ministry of Finance Bureau of Public Enterprises, issued a directive to the Chief Executives of all Public Sector Enterprises on the subject of reservation for scheduled castes and scheduled tribes in appointments in public enterprises. While 15% and 7½ per cent of posts are generally to be reserved for Scheduled Castes and Scheduled Tribes respectively, in the case of promotion of members of the Scheduled Castes and Scheduled Tribes to posts promotion to which are by the selection method, a special procedure is devised by Para 9 of the directive. In the case of promotions within Group 'A', it is laid down :

F "In promotions by selection to posts within Group 'A' which carry an ultimate salary of Rs. 2, 250 per month, or less, the scheduled caste/scheduled tribe officers who are senior enough in the zone of consideration for promotion so as to be within the number of vacancies for which the select list has to be drawn up, would be included in that list provided they are not considered unfit for promotion. Their position in the select list would, however, be the same as assigned to them by the Departmental Promotion Committee on the basis of their record of service. They would not be given, for this purpose one grading higher than the grading otherwise assignable to them on the basis of their record of service."

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A close perusal of the directive and in particular paragraph 9 which deals with "concessions to employees of Scheduled Castes and Scheduled Tribes in promotions by selection method" makes it abundantly clear that the rule of reservation is also applicable to promotions by selection to posts within Group 'A' which carry an ultimate salary of Rs. 2, 250 per month or less, but that the procedure is slightly different than in the case of other posts. While the rule of reservation applies to promotions by selection to posts within Group 'A' carrying a salary of Rs. 2,250 per month or less, it is prescribed that only those officers belonging to the Scheduled Castes and Scheduled Tribes will be considered for promotion, who are senior enough to be within the zone of consideration. Thereafter a Select List depending upon the number of vacancies would be drawn up in which would also be included those officers belonging to the Scheduled Castes and Scheduled Tribes who are not considered unfit for promotion. Their position in the Select List would be that assigned to them by the Departmental Promotion Committee on the basis of the record of service. In other words, their inclusion in the Select List would not give them seniority, merely by virtue of their belonging to the scheduled castes and scheduled tribes over other officers placed above them in the Select List by the Departmental Promotion Committee. This appears to us to be the only possible interpretation of paragraph 9 of the directive. However, by letter No. 18(12)/81-SAIL-II/Coord dated the 8th April, 1982 from the Ministry of Steel and Mines, Department of Steel, addressed to the Chairman of the Steel Authority of India Limited, the above-mentioned paragraph 9 of the directive appears to have been totally misinterpreted. The letter runs as follows :

"Sir,

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I am directed to refer to your letter No. PER/IR/ 1914 (pt) dated the 12th November, 1981 on the above subject and to say that in accordance with para 9 of the Presidential Directive on the subject there is no reservation for S/C ST in promotion by selection to posts within Group 'A' which carry an ultimate salary of Rs. 2250 per month or less.

Your faithfully,

Sd/-

(T.V. NAYER)

Deputy Secretary to the Govt. of India"

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A This letter in turn was followed by a communication dated August 19, 1982 from the Steel Authority of India to the Chief Personnel Manager of Bokaro Steel Plant to the following effect :

“Dear Sir,

B Kindly refer to your letter No. BCL-PER (OP) 5/57/3251 dated 19th July, 1982, on the above subject.

C 2. No reservation for scheduled caste/scheduled tribe candidates in matters of promotions to any grade within Group-A posts are to be provided, since promotions within Group-A posts in the company are based on selection method. The principle of seniority subject to fitness does not apply in the case of our promotion policy since the employees have first to be found suitable for promotion through selection process, and only thereafter, at certain levels, are the promotions made in the order of seniority of those selected.

Yours faithfully.

Sd/-

(P.N. Singh)

E Deputy Director (IR)”

F It is at once seen that the two letters are contrary to paragraph 9 of the Presidential Directive on which they purport to place reliance. Paragraph 9 of the Presidential Directive no where says that the rule of reservation does not apply to promotion by selection to posts within Group A which carry an ultimate salary of Rs. 2250 per month or less. On the other hand paragraph 9 of the Presidential Directive proceeds on the basic assumption that the rule of reservation does apply but prescribes a certain procedure to be followed, a procedure different from the usual procedure adopted in filling up posts reserved for Scheduled Castes and Scheduled Tribes. It is indeed a matter of surprise to us that the Ministry of Steel and Mines has chosen to place such an interpretation on paragraph 9 of the Presidential Directive. The stand taken by them in the letter dated April 8, 1984 is reiterated in paragraph 5 of the counter affidavit filed on behalf of the Union of India. No explanation has been given in the counter affidavit for what appears to us to be a plain *volte face*. We have no option, but to quash the

letters dated April 8, 1982 and August 19, 1982 above extracted by us and to direct the respondents to give effect to paragraph 9 of the Presidential Directive with effect from the date of the Directive. We have set out our interpretation of the Presidential Directive and effect will be given to the Presidential Directive in the manner interpreted by us. We also wish to make it clear that the classification of posts will be on the same lines as mentioned in paragraph 2 of the Presidential Directive. The writ petition is allowed with costs.

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N.V.K.

Petition allowed.