

A

STATE OF BIHAR AND ORS.

v.

BAGESHWARI PRASAD AND ANR.

OCTOBER 6, 1994

B

[K. RAMASWAMY AND N. VENKATACHALA, JJ.]

C

Service Law—Government circular bearing Letter No. 21-AG-I- 125-KG-20165—Reservation—Roaster not covered with post but with vacancy—Second vacancy reserved for Scheduled Castes and fourth for Scheduled Tribes filled by general candidate since reserved candidates not available—6th vacancy—Reserved candidate available—Authorities enjoined to consider the claim of reserved candidate—Power of Government to fuse all posts of equal scale of pay for applying rule of reservation or successive vacancies arising in single post—Constitution of India—Articles 16(1) and 16(4).

D

The claim of Respondent No. 2 to be promoted as office Superintendent in a Supertime Scale on the basis that he was a reserved candidate in the 6th vacancy was rejected by the High Court on the ground that since the post of Superintendent was a single post, it could not be reserved for the reserved candidates. The High Court issued a direction to the Govern-

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ment to consider the case of a general candidate for promotion to the post of Office Superintendent. Hence appeal by the State.

Allowing the appeal, this Court

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HELD : 1.1. In the Government Circular bearing Letter No. 21-AG-I-125-KG-20165, the Government provided for reservation and prepared the roaster the posts in the cadre. Sample roaster for all categories of first, second, third and fourth division of service have been given. Second vacancy is reserved for Scheduled Castes, fourth vacancy for Scheduled Tribes and first, third, sixth and seventh vacancies are unreserved. It was stated that in the matter of reservation, if there is only one vacancy, the second turn of vacancy of the same post would be filled by appointment of person from reserved castes. The roaster is not concerned with the post but with vacancy arising according to the roaster and will go on implementing the vacancy arising in each successive occasions. Thus in

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considering the question whether a person can be considered for promo-

tion from the reserved category on the basis of the roaster, it is not the post that is material but it is the vacancy which is material. [320-B-F] A

1.2. In the instant case when second and fourth vacancy, reserved for Scheduled Castes and Scheduled Tribes, have been filled by general candidates since reserved candidates were not, then available, when 6th vacancy had arisen and the claim of the reserved candidate was available, the authorities were enjoined to consider the claim of the reserved candidate. Under these circumstances, the second respondent was rightly considered for promotion and was legally promoted as Superintendent. B

[320-H, 321-A-B] C

Dr. Chabradhar Paswan v. State of Bihar and Ors., AIR (1988) SC 959, distinguished. C

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7478 of 1994. D

From the Judgement and order dated 5392 of the High Court of Patna in CWJC No. 4220/90. D

B.B. Singh for the Appellants.

K.N. Rai for the Respondents. E

The following Order of the Court was delivered :

Leave granted.

This appeal by Special Leave is directed against the judgment of the High Court of Patna in C.W.J.C. No. 4220/90 dated March 5, 1992. the only question that arises for consideration is whether Sita Ram Prasad, respondent No. 2 was entitled to be promoted as Office Superintendent in a Supertime scale on the basis that he was a reserved candidate in the 6th vacancy. The High Court in the impugned Judgment relying on the Judgment of this Court in *Dr. Chakradhar Paswan v. State of Bihar & Ors.*, AIR (1988) SC 959 held that since the post of Superintendent is a single post, it cannot be reserved for the reserved candidates. Accordingly, the order of appointment to the reserved vacancy was held to be illegal, a direction was issued to the Government to consider the case of the 1st respondent for promotion to the post of H

A O.S. as a general candidate. The State has impugned that order in this appeal.

B In the Government Circular, Annexure R-1 bearing Letter No. 21-AG-I-125-KG-20165, the Government have decided in providing for reservation and prepared the roaster to the posts in the cadre. In paragraph 2, it is stated thus :

C "Therefore, the State Government has taken decision that for the removal of this criticisms and doubts there should be modification in roaster for 50 vacancies in the form of sample by those letters. Sample of modified roaster is given below, this will be applicable for the recruitment and promotion from now onwards".

D Sample roaster for all categories of first, second, third and fourth division of service have been given. Second vacancy is reserved for Scheduled Castes, fourth vacancy for Scheduled Tribes and first, third, sixth and seventh vacancies are unreserved for general candidates. In paragraph 3, it was stated that it has to be made clear that in the matter of reservation, if there is only one vacancy, the second turn of the vacancy of the same post would be filled by the appointment of persons from reserved castes. The roaster is not concerned with the post but with vacancy arising according to the roaster and will go on implementing the vacancy arising in each successive occasions. Thus in considering the question whether a person can be considered for a promotion from the reserved category on the basis of the roaster, it is not the post that is material but it is the vacancy which is material. In *Paswan's* case one post of Director and other posts of Dy. Director was sought to be fused for purpose of treating the posts available for reservation. The pay scales of the posts of Director and Dy. Director are different. 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 Art. 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

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available. When 6th 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's* 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. The writ petition stands dismissed. The appeal is allowed. But in the circumstances without costs.

A.G.

Appeal allowed.