

CHAIRMAN AND M.D. SINGARENI COLLIERIES AND ANR.

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v.

M. RAMESH CHANDER AND ORS.

NOVEMBER 22, 1994

[P.B. SAWANT AND N.P. SINGH, JJ.]

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SERVICE LAW—Mines Rules—Rule 72—Recruitment—Posts of Welfare Officers Cadre Career Plan—Policy decision to fill up 1/3rd posts by internal candidates and rest by external candidates—Procedure of appointment by selecting internal candidates before external candidates are selected—Whether proper—Held, yes.

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SERVICE LAW—Recruitment—Quota fixed for both internal and external candidates—Common test held—Procedure of appointment challenged—Method of selection cannot vary according to results of tests held.

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The dispute relates to the recruitment to the statutory posts of Welfare Officers, the appointments to which are to be made in the mines under Rule 72 of the Mines Rules.

Coal India Limited introduced w.e.f. 23.9.1988 a Cadre Career Plan for Welfare Officers and took a policy decision that 1/3rd posts of the Welfare Officers should be filled up by internal candidates and the rest by the external candidates. The Appellant Company changed its recruitment policy by modifying the existing ratio of 1:1 between internal and external candidates to 33-1/3:66-2/3. The Company issued an advertisement inviting applications for 28 posts of Welfare Officer on the basis of said quota for internal and external candidates. A common written test was conducted and a merit list was displayed. While preparing the said common list both of internal and external candidates, the internal candidates were first selected for ten out of 28 posts on the basis of the quota of 33-1/3 per cent and on the basis of merit and the rules of reservation. The selection to the balance 18 posts falling in the quota of direct recruits, viz., 66-2/3 per cent, was also made on the basis of merit and the rule of reservation from all the candidates, viz., internal and external. It is this selection which was challenged before the High Court by way of Writ Petitions. These appeals have been filed against the judgment of the High Court allowing the Writ petitions.

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A The appellant-company submitted that it has been giving a fair opportunity to both internal and external candidates on the basis of the present quota fixed between them since 1989. The posts to the extent of 33-1/3 per cent are exclusively kept for internal candidates by selecting those many candidates from the internal pool, and the balance of 66-2/3 per cent of the common pool are thrown open both for internal and external candidates. Thus on account of this procedure, the internal candidates stand a chance of getting a larger share in the appointment to the said posts exceeding even their quota. In any case, the internal candidates cannot approach the Court for direction to the company to follow a different procedure so long as their quota is not reduced and they are not denied the opportunity to compete for the posts reserved for the external candidates.

D The respondents claimed that there should be no reservation either while selecting the internal or external candidates in their respective quota, and that the external candidates should be selected before the internal candidates are selected. Respondents took contradictory stands in that behalf before this Court and the High Court. They contended for selection of external candidates first as that may give them some additional advantage because of the results of the present test. Allowing the appeal, this Court

E HELD: 1. In fact the procedure followed by the company viz., of first selecting the internal candidates for their quota of 33-1/3 per cent from the common merit list and thereafter selecting the external candidates, works out to the advantage of the internal candidates since after securing the quota which is already reserved for them, they also stand a chance to get more posts in the quota meant for the external candidates for which they are allowed to compete. It must be understood when the internal candidates are selected in their quota, that they are so selected from among the competing internal candidates in the common merit list. This means that the internal candidates up to their quota are first selected even if they secure less marks than the external candidates in the common merit list. It is thereafter that the selection of the external candidates is undertaken. Unless two separate tests are held, one for the internal candidates and another for the external candidates, the present procedure followed for selecting internal and external candidates after holding a common test cannot be complained against at least by the internal candidates which in effect works to their advantage. (652 D to F)

1.2 The internal candidates contended for the selection of the external candidates first in the present test. The method of selection cannot vary according to the results of the tests held to confer additional benefits on the internal candidates. (652 G, H) A

1.3 As regards reservations, the company is bound to follow the rule of reservation both while selecting the internal and the external candidates. (653 A) B

1.4 As it is the present method of reserving a quota for the internal candidates in the direct recruitment may not be constitutionally valid. After holding a common test for direct recruitment, no quota can be created in the common pool for candidates other than those covered by Art. 16 (4) of the Constitution. (653 B, C) C

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 7665-7666/94.

From the Judgment and Order dated 6.8.92 of the High Court of A.P. in WA Nos.367 and 368/92. D

Altaf Ahmed, Addl. Solicitor Genl. and B. Parthasarthi for the Appellant.

C. Sitaramiah, Arvind Sharma, K.R. Nagaraja and Ms. B. Sunita Rao for the Respondents. E

The Judgment of the Court was delivered by

SAWANT, J. Leave granted.

The dispute relates to the recruitment to the statutory posts of the Welfare Officers, the appointments to which are to be made in the mines under Rule 72 of the Mines Rules. The qualifications of the candidates for the said posts are also prescribed by the said Rules. F

The history of appointment of the Welfare Officers in the appellant-Company [the "Company"] is relevant to be noted in this connection. In 1975, the Company issued an advertisement calling for applications for the said posts from eligible candidates. No quota was fixed for internal candidates. The eligible candidates, both internal and external, who applied for the said posts were subjected to a common written test and the candidates were selected on the basis of merit and the rule of reservation in G H

A favour of the Scheduled Caste and Scheduled Tribes. Thereafter in 1981, recruitment test was conducted exclusively for internal candidates without inviting applications from external candidates. In the year 1985, a quota for the internal and external candidates was introduced in the ratio of 1:1 and some internal candidates were recruited on the basis of the said quota subject of course to merit and reservations.

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Subsequently, in the year 1987, another batch of Welfare Officers both from internal and external candidates, was recruited on the basis of 1:1 ratio between internal and external candidates again on the basis of merit and the rule of reservation. Against the said selection, the Clerical Association approached the High Court even before the date fixed for interview, by

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Writ Petition No. 13073 of 1985 contending that the posts were promotional ones and no outsiders could be considered for the same. Another Writ Petition No. 18370 of 1987 was filed by one Vasudeva Reddy and nine other internal candidates after the selection was made, challenging the selection as illegal and for a direction for selection of candidates on the basis of rank obtained in the order of merit without reference to the quota

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for internal and external candidates. Both the said writ petitions were dismissed by the High Court by a common order. The Court negated the contention that outsiders should not be considered for the said posts. Against the dismissal of Writ Petition No. 18370 of 1987, a writ appeal was

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filed before the same Court. While the writ appeal was pending, Coal India Ltd. introduced w.e.f. 23.9.1988 a Cadre Career Plan for Welfare Officers and took a policy decision that 1/3rd posts of the Welfare Officers should be filled up by internal candidates and the rest by the external candidates.

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Hence the present Company also changed its recruitment policy by its circular dated 26th May, 1989 by modifying the ratio of 1:1 between internal and external candidates to 33-1/3 : 66-2/3. The Company also issued an advertisement inviting applications for another 28 posts of

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Welfare Officers on the basis of the said quota for internal and external candidates. A common written test was conducted on 25th June, 1989 for internal and external candidates and a merit list was displayed on the same date. Since the High Court in the earlier writ petitions challenging 1987 selection, had ordered stay of the final selection until further orders, the final selection list of Welfare Officers was not drawn pursuant to the

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selection on 25th June, 1989. The stay was vacated by the High Court on 15th December, 1989 and a list of the selected candidates was drawn in March, 1990. While preparing the said common list both of internal and external candidates, the internal candidates were first selected for ten out of 28 posts on the basis of the quota of 33-1/3 per cent and on the basis of merit and the rule of reservation. The selection to the balance 18 posts

falling in the quota of direct recruits, viz. 66-2/3 per cent, was also made on the basis of merit and the rule of reservation from all the candidates, viz., internal and external. It is this selection which was challenged before the High Court by Writ Petition Nos. 4255 of 1990 and 5639 of 1991 and they were disposed of by a common judgment against which a writ appeal was filed in the same Court. The decision of the High Court in the said appeal is the subject matter of the appeals before us.

2. It is the contention of the appellant Company that it has been giving a fair opportunity to both internal and external candidates on the basis of the present quota fixed between them, viz., 33-1/3 per cent and 66-2/3 per cent respectively, since 1989. The posts to the extent of 33-1/3 per cent are exclusively kept for internal candidates by selecting those many candidates from the internal pool, and the balance of 66-2/3 per cent of the common pool are thrown open both for internal and external candidates. Thus on account of this procedure, the internal candidates stand a chance of getting a larger share in the appointment to the said posts exceeding even their quota. Hence, the grievance made by and on behalf of the internal candidates is unjustified. In any case, the internal candidates cannot approach the Court for direction to the Company to follow a different procedure so long as their quota is not reduced and they are not denied the opportunity to compete for the posts reserved for the external candidates. The appellant-Company also pointed out that the grievance of the respondents with regard to the method of selecting the internal and external candidates is devoid of merit. As per the procedure followed by the appellant-Company, the internal candidates, as pointed out above, are first drawn out and the balance of 66-2/3 per cent is left open for both the external and internal candidates. The respondents have been taking conflicting stands in this regard. Before the High Court their stand was that 66-2/3 per cent of the posts meant for external candidates should be filled up first both from internal and external candidates on the basis of the merit. In the pleadings before this Court, they have raised the contention that it is 33-1/3 per cent posts meant for internal candidates which should be filled up first. It is, therefore, contended on behalf of the appellant-Company that the respondents do not know what exactly they want. It is also pointed out by the Company that they are duty bound to follow the rule of reservation both while selecting the internal candidates from their quota and while selecting the candidates from the direct recruitment quota. The High Court has not fully appreciated the procedure followed by the Company and its advantage to the internal candidates. The decision of the High Court is, therefore, erroneous. The contention of the respondents further that there are no rules and regulations for recruitment to the post of Welfare Officer is not correct.

A According to the earlier policy decision of the Board of the Company, the recruitment was made to the said posts on the basis of 1:1 ratio between internal and external candidates. Thereafter, to have a uniformity and to follow the scheme accepted by Coal India Ltd., the quota of the internal candidates was reduced to 33-1/3 per cent again by a policy decision of the Board.

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3. It is not necessary to separately mention the contentions of the respondents since they are already referred to while reproducing the contentions of the appellant-Company. It is clear from the respective contentions that the respondents desire two things, viz., that there should be no reservation either while selecting the internal or external candidates in their respective quota, and that the external candidates should be selected before the internal candidates are selected. As regards the second contention of the respondents, the Company is right in its submission that the respondents have taken contradictory stands in that behalf before this Court and the High Court. Suffice it to point out that in fact the procedure followed by the Company viz., of first selecting the internal candidates for their quota of 33-1/3 per cent from the common merit list and thereafter selecting the external candidates, works out to the advantage of the internal candidates since after securing the quota which is already reserved for them, they also stand a chance to get more posts in the quota meant for the external candidates for which they are allowed to compete. We are, therefore, unable to understand the contention raised by and on behalf of the internal candidates in that behalf. It must be understood that when the internal candidates are selected in their quota, they are so selected from among the competing internal candidates in the common merit list. This means that the internal candidates upto their quota are first selected even if they secure less marks than the external candidates in the common merit list. It is therefore, that the selection of the external candidates is undertaken. Unless two separate tests are held, one for the internal candidates and another for the external candidates, the present procedure followed for selecting internal and external candidates after holding a common test cannot be complained against at least by the internal candidates which, as pointed out earlier, in effect works to their advantage.

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4. The internal candidates are today contending for the selection of the external candidates first as that may give them some additional advantage because of the results of the present test. The method of selection cannot vary according to the results of the tests held to confer additional benefits on the internal candidates. Yet that will be the consequence of accepting the said contention.

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5. As regards reservations, the company is bound to follow the rule of reservation both while selecting the internal and the external candidates. As the law stands today, no exception can be taken to it since it is obligatory on the appellant-Company to abide by the law. A

As it is, we are afraid that the present method of reserving a quota for the internal candidates in the direct recruitment may not be constitutionally valid. All the said posts are, as the rules stands today, to be filled up by direct recruitment. That is why one common test is held for all the competing candidates, viz., the internal and external candidates. After holding a common test for direct requirement, no quota can be created in the common pool for candidates other than those covered by Article 16(4) of the Constitution. All candidates for direct recruitment have to compete with each other whether they are internal or external candidates. However, in the present case, we are not called upon to pronounce upon the validity of the said rule followed by the appellant-Company since no such challenge is raised before us. B
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6. In the circumstances, we are unable to follow the reasoning of the High Court. There appears to be an obvious confusion in appreciating the method followed by the Company in selecting the candidates from both the quotas. We, therefore, allow the appeals and dismiss the writ petitions. We are refraining from awarding costs since the respondents are employees. D

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Appeal allowed. E