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P.S. GHALAUT

v.

STATE OF HARYANA AND ORS.

AUGUST 3, 1995

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[K. RAMASWAMY AND K.S. PARIPOORNAN, JJ.]

Service Law :

Haryana Medical Education Service Rules, 1965 :

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Rule 13—Second proviso—Inter-se Seniority—Order of merit determined by Service Commission—Backward class quota—100 point roaster—Some places earmarked for reserved candidates—The order of merit indicated in the Second proviso applies only to inter-se the general candidates or reserved candidates but gets changed when vacancies are filled up as per roaster and appointments made thereunder—Roaster Scheme held valid and not arbitrary—Hence constitutional.

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Constitution of India, 1950 :

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Articles 14, 16(1) & (4), 335—Inter-se Seniority—Fixation of—Roaster scheme followed under Rule 13—Second Proviso of the Haryana Medical Education Service Rules, 1965—Constitution Validity of—Held : Valid.

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This appeal relates to *inter-se* seniority between the appellant and one NA, who belonged to backward class. In his writ petition before the High Court, the appellant contended that since the order of merit given by the Selection Committee and the letter of appointment indicated that he was high up in the order of merit to NA, he was senior to her, as per the second proviso to Rule 13 of the Haryana Medical Education Service Rules, 1965. The High Court rejected the contention and dismissed the writ petition. Hence this appeal.

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Dismissing the appeal, this Court

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HELD : 1.1. It is true that Rule 13 of the Haryana Medical Education Service Rules, 1965 envisages that the seniority *inter se* of members of the service shall be determined by the length of continuous service on any post in the service provided further that in the case of two or more members

appointed by direct recruitment the order of merit determined by the Commission shall not be disturbed in fixing the seniority. [509-E] A

1.2. When the roaster is maintained to give effect to the constitutional policy of reservation to render socio-economic justice to the concerned sections, respective places assigned to the candidates belonging to them, general candidates, backward classes or Scheduled Castes or Scheduled Tribes, as the case may be, the change in the order of merit inevitably gets affected. If original order of merit prepared by the Public Service Commission or Selection Committee, if remains unaffected, roaster becomes redundant and always remains unimplemented. The reserved candidates always remain at the bottom of the selection list unless selected as general candidates in the order of merit. To relieve such injustice and hardship, roaster is maintained and vacancies are filled up in the order maintained therein. The placement of candidates shall be to the respective points fixed in the roaster. [509-H; 510-A-B] B C

1.3. Though general candidate is more meritorious in the order of merit prepared by the Public Service Commission or the Selection Committee, when the appointments are made and the vacancies are filled up according to the roaster, necessarily and inevitably the Reserved candidates though less meritorious in the order of merit maintained by the Public Service Commission would occupy the respective places assigned in the roaster. Thereby they steal a march over some of the general candidates and get seniority over the general candidates. This scheme, is, therefore, constitutional, valid and is not arbitrary. [510-E-F] D E

1.4. The order of merit indicated in the second proviso would be applicable only *inter se* to the general candidates or reserved candidates but gets changed when vacancies are filled up as per roaster and appointments are made thereunder. The High Court, therefore, was right in holding that the 2nd proviso to Rule 13 is inapplicable to the facts and was also right in its finding that when appointments are made to fill up the vacancies in the order or roaster, the order of merit prepared by the Selection Committee get changed. [511-A-B] F G

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7608 of 1995.

From the Judgment and Order dated 3.5.93 of the Punjab & Haryana H

A High Court in C.W.P. No. 4946 of 1993.

Manoj Goel and Ravathy Raghavan for the Appellants.

Sunil Gupta, Ms. Indu Malhotra, Dania Pradhan and S.C. Patel for the Respondents.

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The following Order of the Court was delivered :

Leave granted.

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We have heard the learned counsel on both sides. The undisputed facts are that the appellant as a general candidate and the third respondent, Dr. Nitya Anand to backward class quota were selected for appointment as lecture in the Haryana Medical Education Service as per H.M.E.S. Rules, 1965 (for short, 'the Rules'). The Public Service Commission recommended the names of the appellant and Dr. Nitya Anand along with three other candidates for appointment as lecturers. It would appear that Dr. Diwakar Jain and Dr. Sidharth Dass had not joined the service. Though Dr. Om Prakash Kalra initially had joined the service, he too left the service. Consequently the appellant, as general candidate and Dr. Nitya Anand remained in service.

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The question is whether the appellant is senior to Nitya Anand. The contention of the appellant is that since the order of merit given by the Selection Committee and the letter of appointment do indicate that the appellant is high up in the order of merit to Dr. Nitya Anand, he is senior to the later. While maintaining *inter se* seniority by wrong interpretation

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Dr. Nitya Anand has been made senior to the appellant which is contrary to the IInd proviso to Rule 13 of the Rules. This contention was not accepted by the High Court in the impugned Judgment dated May 3, 1993 in Civil W.P. No. 4946/93 by the Punjab & Haryana High Court at Chandigarh. Shri Manoj Kumar, learned counsel appearing for the appellant relying upon the instructions issued by the Chief Secretary, dated April 27,

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1972 and the Judgment of the Division Bench of that Court in *Bhupender Singh v. Haryana Warehousing Corporation in Civil W.P. No. 2006/92 dated June 2, 1992* contended that when the Selection Committee had mentioned *inter se* seniority in the order of merit, the State has no power to interfere with the *inter se* seniority. The same seniority shall be continued to be

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maintained while fixing *inter se* seniority after the appointment given to the

respective candidates. The High Court, therefore was not right in upholding the action of the respondents. The learned counsel for the respondents have resisted the contention. A

We have given our anxious consideration to the respective contentions. The question is whether Dr. Nitya Anand is senior to the appellant. In 100 point roster maintained by the State Government, the Government have earmarked some places to the reserved candidates. In the instructions issued by the Chief Secretary on April 27, 1972, it was specifically stated that the vacancies reserved for Scheduled Castes and Backward Classes shall be filled up to those specified points enumerated in the roster. To give effect to the Public Policy of reservation envisaged in Article 16(4) read with Articles 14 and 16(1) and consistent with Art. 335, the State prescribed certain percentage of posts or vacancies and they are required to be filled as per the roster. Admittedly, initially 2% posts were reserved for the backward classes which was later increased to 10%. Vacancies 1 to 9 were filled up by the general candidates. In consequence of the reservation to the backward classes, vacancy No.10 was reserved for the backward classes. Admittedly, Dr. Nitya Anand belongs to the backward class. The question, therefore, is whether the placement of Dr. Nitya Anand in the 10th place and relegation of the appellant to lower in the order of ranking in the roster is valid in law. It is true that Rule 13 of the Rules envisages that the seniority *inter se* of members of the service shall be determined by the length of continuous service on any post in the service provided further that in the case of two or more members appointed by direct recruitment, the order of merit determined by the Commission shall not be disturbed in fixing the seniority. In other words, where the *inter se* merit has been determined by the public Service Commission or the Selection Committee, as the case may be, and recommended to the Government for appointment, while accepting the recommendations so made, the Government do require to maintain the order of merit determined by the Public Service Commission/Committee. But the question is whether the merit list prepared gets disturbed then the roster has been maintained and the placement of the candidates in the order specified in the roster when filled up and is it illegal, arbitrary or unconstitutional. It is seen that when the roster is maintained to give effect to the constitutional policy of reservation to render socio-economic justice to the concerned sections, respective places assigned to the candidates belonging to them, general candidates, backward classes or Scheduled Castes or Scheduled Tribes, as the case may be, B
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- A** the change in the order of merit inevitably get affected. If original order of merit prepared by the Public Service Commission or Selection Committee, if remains unaffected, roaster becomes redundant and always remain unimplemented. The reserved candidates always remain at the bottom of the select list unless selected as general candidates in the order of merit.
- B** To relieve such injustice and hardship, roaster is maintained and vacancies are filled up in the order maintained therein. The placement of candidates shall be to the respective points fixed in the roaster. Take for instance vacancy No. 1 and 6, as pointed out in the Chief Secretary's letter have admittedly been reserved for Scheduled Castes. Suppose recruitment was made to fill up ten vacancies, three candidates from Scheduled Castes were
- C** selected. The first one as general and second and third were selected on the basis of reserved quota. The question is whether the first candidate will be put in the quota allotted to the Scheduled Castes in the roaster. Having been selected as a general candidate, though he is more meritorious than the second and third candidates, he will not get the placement in the
- D** roaster, reserved for Scheduled Castes i.e. No. 1 and 6 points. Consequently candidates Nos. 2 and 3 will get the placement at No. 1 and 6 and the first candidate will get the placement in the order of merit along with the general candidates according to the order of merit maintained by the Selection Committee or the Public Service Commission. He cannot complain that having been selected in the merit, he must be placed in the
- E** placement reserved for Scheduled Castes at Point No. 1 in the roaster. Equally, though general candidate is more meritorious in the order of merit prepared by the Public Service Commission or the Selection Committee, when the appointments are made and the vacancies are filled up according to the roaster, necessarily and inevitably the Reserved candidates though
- F** less meritorious in the order of merit maintained by the Public Service Commission would occupy the respective places assigned in the roaster. Thereby they steal a march over of the general candidates and get seniority over the general candidates. This scheme is, therefore, constitutional, valid and is not arbitrary.
- G** The Chief Secretary in his letter obviously was in error in directing to maintain in the roaster the same inter seniority maintained by the Public Service Commission or Selection Committee. If that is given effect to, the roaster points would remain unfilled and rotation therein get disturbed. It is obvious that the interpretation of the Rule by the Chief Secretary was
- H** found favour with the Division Bench which was strongly relied upon by

the appellant. The order of merit indicated in the second proviso would be applicable only *inter se* to the general candidates or reserved candidates but gets changed when vacancies are filled up as per roaster and appointments are made thereunder. The High Court, therefore, was right in holding that the 2nd proviso to Rule 13 is inapplicable to the facts and was also right in its finding that when appointments are made to fill up the vacancies in the order of roaster, the order of merit prepared by the Selection Committee get changed. In these circumstances, the appeal is dismissed but without costs. A B

G.N.

Appeal dismissed.