

SONIA
v.
ORIENTAL INSURANCE CO. LTD. AND ORS.

AUGUST 7, 2007

[TARUN CHATTERJEE AND P.K. BALASUBRAMANYAN, JJ.]

Service Law:

Selection—Selection process initiated by Respondents—Advertisement issued on 30-10-03 inviting applications—One vacancy reserved for STs—Advertisement permitted exchange of reservation between SCs and STs, hence, both SCs and STs were eligible to compete for this reserved vacancy—Appellant, SC by birth, appeared for competitive examination against the vacancy reserved for STs and listed as a successful candidate—But not called for interview for selection purposes in view of O.M. dated 6-11-03 issued by Respondents by which permission of exchange of reservation between SCs and STs was withdrawn—Writ petition filed by Appellant dismissed by High Court—On appeal, held: O.M. dated 6-11-03 was issued at a time when candidates including Appellant had already acted on the basis of advertisement—Also no retrospective effect given to the O.M.—Appellant governed by the date on which applications were invited, i.e. on 30-10-03—O.M. will not be applicable in case of Appellant and to the pending process of selection, hence, Appellant would be entitled to be empanelled to appear before the Interview Board.

On 30th October, 2003, Respondents issued advertisement notifying vacancies for appointment to the post of Assistant Administrative Officer (AAO). Out of the five vacancies notified, one vacancy was reserved for Scheduled Tribes. Since the advertisement specifically permitted exchange of reservation between Scheduled Castes and Scheduled Tribes, both Scheduled Caste and Scheduled Tribe candidates were eligible to compete for this reserved vacancy. Appellant, who is Scheduled Caste by birth, was permitted to appear for the competitive examination against the reserved vacancy. Her name appeared in the list of successful candidates, however, she was not called for interview and not considered for selection in view of O.M. No.36012/17/2002-Estt.(Res) dated 6th November, 2003 issued by the

A Respondents by which permission of exchange of reservation between Scheduled Castes and Scheduled Tribes was withdrawn. The said O.M. provided that a post reserved for Scheduled Tribes could not be filled up by a Scheduled Caste candidate or vice versa by exchange of vacancies between the two.

B Appellant filed writ petition before the High Court for a direction upon the Respondents to consider her case against the vacancy reserved for Scheduled Tribe candidates. High Court dismissed the writ petition holding that no legal right of the Appellant have been infringed for not empanelling her as a successful candidate to appear before the interview Board set up by the Respondents. Hence the present appeal.

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Allowing the appeal, the Court

D HELD: 1.1. The Office Memorandum dated 6th November, 2003 by which permission of exchange of reservation between Scheduled Caste and Scheduled Tribes was withdrawn, was issued at a time when candidates including the appellant had already acted on the basis of the advertisement dated 30th October, 2003 in which permission was granted for exchange of reservation between Scheduled Caste and Scheduled Tribes. Appellant acted on the basis of the aforesaid advertisement which permitted her to apply for the post and in fact she was permitted to sit in the examination and was subsequently also found to be a successful candidate in the said examination.

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[Para 7] [888-B; 889-A]

F 1.2. Law is well settled that an Office Memorandum cannot have a retrospective effect unless and until intention of the authorities to make it as such is revealed expressly or by necessary implication in the Office Memorandum. The Office Memorandum dated 6th November, 2003 cannot have or could not have retrospective effect as the appellant would be governed or covered by the date on which applications were invited to fill up the posts of Assistant Administrative Officer, i.e., on 30th October, 2003 and also for the reason that no retrospective effect has been given to the said Office Memorandum. [Para 7] [889-C-D; 888-E-F]

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H 1.3. On a plain reading of Clause [6] of the Office Memorandum dated 6th November, 2003, it can be seen that in case some posts reserved for Scheduled Tribes might have been filled by Scheduled Caste candidates by exchange of reservation or vice versa before issuance of the said Office

Memorandum, such cases need not be re-opened. This clause would clearly show that the posts reserved for Scheduled Tribes which have been filled by Scheduled Caste candidates by exchange of reservation before issuance of this Office Memorandum need not be disturbed. A close examination of clause [6] of the Office Memorandum dated 6th November, 2003 would show that it does not speak about the pending process of selection. It only speaks about the appointments already made and for which a retrospective effect has not been given. [Para 7] [888-C-D; 889-D-E]

1.4. The Office Memorandum dated 6th November, 2003 would not apply to the selection process which started before the said Office Memorandum was issued by the Respondents. [Para 7] [889-E-F]

N.T. Devin Katti v. Karnataka Public Service Commission, [1990] 3 SCC 157 and *P. Mahendran and Ors. v. State of Karnataka and Ors.*, [1990] 1 SCC 411, relied on.

2. In view of the above, the High Court was not justified in dismissing the writ petition of the appellant only on the ground that in view of Office Memorandum dated 6th November, 2003, no legal right of the appellant was infringed. Since, the Office Memorandum will not be applicable in the case of the appellant and to the pending process of selection, the appellant would be entitled to be empanelled to appear before the Interview Board for selection to the post of Assistant Administrative Officer. The respondents are directed to call the appellant for interview before the Interview Board for selection to the post of Assistant Administrative Officer and if she is selected by the Interview Board, she should be promoted or appointed to the post of Assistant Administrative Officer. [Paras 8 and 9] [889-G-H; 890-A-B]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3521 of 2007.

From the Judgment and Order dated 23.8.2004 of the High Court of Punjab and Haryana at Chandigarh in Civil Writ Petition No. 4644 of 2004.

Mahalakshmi Pawani, G. Balaji (for M/s. Mahalakshmi Balaji & Co.) for the Appellant.

Vishnu Nehra Mehra and B.K. Satija for the Respondent.

The Judgment of the Court was delivered by

TARUN CHATTERJEE, J. 1. Leave granted.

A 2. This appeal is directed against the Judgment and order dated 23rd August, 2004 passed by a Division Bench of the High Court of Punjab and Haryana at Chandigarh whereby the High Court dismissed a writ application filed by the appellant only on the ground that no legal right of the appellant had been infringed.

B 3. A writ petition was filed by the appellant for a direction upon the respondent to consider the case of the appellant for promotion to the cadre of Assistant Administrative Officer (AAO) against the vacancy reserved for Scheduled Tribe candidates. A further direction was also prayed by the appellant to the extent that the respondents should keep one vacancy reserved for the appellant who had competed and was found successful as a candidate from Scheduled Caste reserved category and for other incidental reliefs.

C 4. The facts of the present case may briefly be stated as follows:

D 5. The appellant who is a Scheduled Caste by birth has been working as Assistant [T] in the Oriental Insurance Company on and from 2nd January, 1997. Applications were invited from eligible and desirous employees for appointment to the post of Assistant Administrative Officer in terms of the promotional policy of the respondents. There are two modes of appointment to the post of Assistant Administrative Officer, namely, (i) promotion from the departmental candidates; and (ii) by direct recruitment through competitive examination. In the said promotional policy, pre-examination training to Scheduled Caste/Scheduled Tribes/Other Backward Classes candidates who are eligible to appear in the aforesaid test has also been allowed. It is also evident from the policy that if no eligible candidate is available in a particular category, an exchange of vacancy between Scheduled Caste and Scheduled Tribes categories can be allowed to the extent of non-availability of eligible candidates in a particular category. Advertisement was published on 30th October, 2003 and accordingly the appellant applied on the basis of the said advertisement to the post of Assistant Administrative Officer. There were in all five vacancies out of which one was reserved for candidates belonging to the Scheduled Tribes category and both Scheduled Caste and Scheduled Tribes candidates were eligible to compete for this reserved vacancy. The appellant was permitted to undergo a pre-examination training between 1st December, 2003 to 19th December, 2003 which was imparted to Scheduled Caste and Scheduled Tribes employees in accordance with the aforesaid promotional policy. The appellant was permitted to appear for the competitive examination held on 21st December, 2003 against the vacancy reserved for

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candidates belonging to Scheduled Tribes category. The name of the appellant appeared at Sl.No.23 in the list of successful candidates. Since her name had appeared in the list of successful candidates, the appellant claimed that she was entitled to be called for interview and considered for selection. A notice dated 27th February, 2004 was issued by the respondents that no exchange of vacancies between Scheduled Caste and Scheduled Tribes categories could be allowed even if no eligible candidate was available under either of the two categories in view of OM No.36012/17/2002-Estt.(Res) dated 6th November, 2003, clarifying that it was not permissible to fill a post reserved for Scheduled Tribes by a Scheduled Caste candidate or vice versa by exchange of vacancies between the two. Feeling aggrieved by refusal of the authorities to empanel the appellant for the interview, the aforesaid writ petition was filed before the High Court which, as noted herein earlier, was dismissed with the observation that no legal right of the appellant had been infringed for not empanelling her as a successful candidate to appear before the Interview Board set up by the respondents.

6. It is this order of the High Court which the appellant has challenged before this Court by way of a special leave petition in respect of which leave has already been granted.

7. We have heard the learned counsel appearing for the parties and examined the judgment of the High Court and other materials on record. A perusal of the order of the High Court impugned in this appeal shows that the writ petition of the appellant as noted herein above, was dismissed solely on the ground that in view of OM dated 6th November, 2003, the exchange of vacancies between Scheduled Caste and Scheduled Tribes categories was not permissible. Before we take up this question for our decision, we may note that the respondents on 30th October, 2003, notified the number of vacancies required to be filled under various categories. It is also evident from the advertisement that out of five vacancies, four were unreserved and one was reserved for a candidate belonging to Scheduled Tribes. In this advertisement, the respondents specifically mentioned that in case no eligible candidates are available in a particular reserved category, i.e., Scheduled Caste and Scheduled Tribes, exchange of vacancies between these two categories was permitted. It would be necessary for us to reproduce the portion of the Promotional Policy regarding reservation for Scheduled Caste and Scheduled Tribes candidates: "*As regards exchange of vacancies between SC/ST categories in case no eligible candidate is available in a particular category such exchange is allowed between these two categories to the*

- A *extent of non-availability of eligible candidates in a particular category.*" From the above, it cannot be said to be in dispute that when no eligible candidate is available in a particular category, exchange of vacancies between Scheduled Caste and Scheduled Tribes categories can be allowed to the extent of non availability of eligible candidate in a particular category. It may also, at this stage, be noted that the Office Memorandum dated 6th November, 2003 by which permission of exchange of reservation between Scheduled Caste and Scheduled Tribes was withdrawn, was issued at a time when candidates including the appellant had already acted on the basis of the advertisement dated 30th October, 2003 in which permission was granted for exchange of reservation between Scheduled Caste and Scheduled Tribes.
- B Even on a plain reading of clause [6] of the Office Memorandum dated 6th November, 2003, it can be seen that in case some posts reserved for Scheduled Tribes might have been filled by Scheduled Caste candidates by exchange of reservation or vice versa before issuance of the said Office Memorandum, *such cases need not be re-opened*. This clause would clearly show that the posts reserved for Scheduled Tribes which have been filled by Scheduled Caste candidates by exchange of reservation before issuance of this Office Memorandum need not be disturbed. As noted herein earlier, applications were invited by the respondents on 30th October, 2003 whereas the Office Memorandum withdrawing permission of exchange of vacancies between Scheduled Caste and Scheduled Tribes candidates was issued on 6th November, 2003. Let us now, therefore, consider whether this Office Memorandum could have a retrospective effect or not. In our view, the Office Memorandum dated 6th November, 2003 cannot have or could not have retrospective effect as the appellant would be governed or covered by the date on which applications were invited to fill up the posts of Assistant Administrative Officer, i.e., on 30th October, 2003 and also for the reason that no retrospective effect has been given to the said Office Memorandum. In *N.T. Devin Katti v. Karnataka Public Service Commission*, [1990] 3 SCC 157 this Court has held that where selection process has been initiated by issuing an advertisement inviting applications, selection should normally be regulated by the rule or order then prevalent and also when advertisement expressly states that the appointment shall be made in accordance with the existing rule or order, subsequent amendment in the existing rule or order will not affect the pending selection process unless contrary intention is expressly or impliedly indicated. In the present case, admittedly, while inviting applications, respondents advertised the number of vacancies required to be filled under various categories. Notice inviting application also mentioned that if under a particular category an eligible candidate was not available, exchange of
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vacancies between the two categories was permitted. The appellant acted on the basis of the aforesaid advertisement which permitted her to apply for the post and in fact she was permitted to sit in the examination and was subsequently also found to be a successful candidate in the said examination. Therefore, in view of the aforesaid decision in the case of *N.T. Devin Katti v. Karnataka Public Service Commission*, [1990] 3 SCC 157, we are of the view that OM dated 6th November, 2003 cannot have any retrospective effect and the date on which the applications were invited should be the relevant date for consideration whether exchange of Scheduled Caste and Scheduled Tribes candidates was permissible. The decision in the case of *N.T. Devin Katti v. Karnataka Public Service Commission*, [1990] 3 SCC 157 has also been echoed by a decision of this Court in the case of *P. Mahendran and Ors. v. State of Karnataka and Ors.*, [1990] 1 SCC 411. In any view of the matter, law is well settled that an Office Memorandum cannot have a retrospective effect unless and until intention of the authorities to make it as such is revealed expressly or by necessary implication in the Office Memorandum. On the other hand from the Office Memorandum, as noted herein above, we find that the candidates who had already been selected, the case of such candidates would not be re-opened. A close examination of clause [6] of the Office Memorandum dated 6th November, 2003, in our view, would show that it does not speak about the pending process of selection. It only speaks about the appointments already made and for which a retrospective effect has not been given. Therefore, in view of the principles laid down by the aforesaid two decisions of this Court, the Office Memorandum dated 6th November, 2003, in our view, would not apply to the selection process which started before the said Office Memorandum was issued by the respondents. It may be repeated at this stage that the appellant was permitted to appear for the examination for the post of Assistant Administrative Officer in respect of which she was declared successful on 17th February, 2004 well after the Office Memorandum was issued by the respondents.

8. In view of the above, we are of the view that the High Court was not justified in dismissing the writ petition of the appellant only on the ground that in view of Office Memorandum dated 6th November, 2003, no legal right of the appellant was infringed. Since, we have already held that the Office Memorandum will not be applicable in the case of the appellant and to the pending process of selection, we are of the view that the appellant would be entitled to be empanelled to appear before the Interview Board for selection to the post of Assistant Administrative Officer.

A 9. For the above reasons, we set aside the Judgment of the High Court and allow this appeal. The respondents are directed to call the appellant for interview before the Interview Board for selection to the post of Assistant Administrative Officer and if she is selected by the Interview Board, she should be promoted or appointed to the post of Assistant Administrative Officer. There will, however, be no order as to costs.

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B.B.B.

Appeal allowed.