

454

SUPREME COURT CASES

(2009) 9 SCC

*the Cochin Port Trust*²; *Indian Oil Corpn. Ltd. v. State of Bihar*³; *Supreme Court Employees' Welfare Assn. v. Union of India*⁴; *CIT v. Shree Manjunatheaware Packing Products & Camphor Works*⁵; *P. Nallammal v. State*⁶; and *U.P. SRTC v. Omaditya Verma*⁷.)

24. In the light of the discussions made above, we find no merit in the appeal. It is, accordingly, dismissed, but with no order as to costs.

(2009) 9 Supreme Court Cases 454

(BEFORE TARUN CHATTERJEE AND V.S. SIRPURKAR, JJ.)

ANIL CHANDRA AND OTHERS

.. Appellants;

Versus

RADHA KRISHNA GAUR AND OTHERS

.. Respondents.

Civil Appeals No. 6187 of 2009[†] with No. 6188 of 2009[‡],
decided on September 10, 2009

A. Constitution of India — Arts. 16(4-A), 16, 14, 15 and 341 & 342 — Reservation in promotion for Scheduled Castes/Scheduled Tribes — Constitutional prerequisites for, reiterated, following *M. Nagaraj*, (2006) 8 SCC 212 — Held, the ceiling limit of 50%, the concept of creamy layer and the compelling reasons, namely, backwardness, inadequacy of representation and overall administrative efficiency are all constitutional requirements without which the structure of equality of opportunity in Art. 16 would collapse

B. Constitution of India — Arts. 14, 15 and 16 — Extent of reservation permissible — Held, adequate reservation does not mean proportional representation

C. Constitution of India — Art. 136 — Interference in service matters — Reservation in promotion for SCs/STs — Interference with interim orders of High Court protecting seniority of petitioners existing prior to enforcement of U.P. Government Servants Seniority (Third Amendment) Rules, 2007 — If warranted — R. 8-A of 2008 Rules entitling government servants belonging to Scheduled Castes and Scheduled Tribes to consequential seniority on accelerated promotion through roster/rule of reservation — Operation of — Held, constitutional obligation of State at time of providing reservation in promotion is to identify class or classes of posts for which reservation required — Neither any effort made to identify the class or

2 (1978) 3 SCC 119 : 1978 SCC (L&S) 438

3 (1986) 4 SCC 146 : 1986 SCC (L&S) 740

4 (1989) 4 SCC 187 : 1989 SCC (L&S) 569

5 (1998) 1 SCC 598

6 (1999) 6 SCC 559 : 1999 SCC (Cri) 1133

7 (2005) 4 SCC 424

[†] Arising out of SLP (C) No. 13913 of 2008. From the Judgment and Order dated 4-12-2007 of the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow in WP No. 1496 (SB) of 2007

[‡] Arising out of SLP (C) No. 14794 of 2008

- classes of posts for which reservation to be provided in promotion nor any exercise done to quantify extent of reservation — R. 8-A inserted mechanically without taking into consideration prerequisites for making such a provision as required under Art. 16(4-A) — State should have shown existence of compelling reasons for “extent of reservation” — Rules pertaining to reservation and promotion list were prospective in nature and cannot disturb promotion list of appellants — Hence, High Court fully justified in granting interim order — Matter already heard in part by High Court, hence interference at this stage not appropriate — U.P. Government Servants’ Seniority Rules, 1991 — R. 8-A — U.P. Water Supply and Sewerage Act, 1975 (43 of 1975) — Ss. 97(2) & 98(1) — U.P. Jal Nigam Engineers (Public Health Branch) Service Regulations, 1978 — U.P. Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994 (4 of 1994) — Constitution of India — Arts. 16(4-A), 16 and 14 — Service Law — Promotion — Prerequisites for granting such benefit — Reservation in matters of promotion**
(Paras 17 and 19 to 21)

- D. Administrative Law — Subordinate/Delegated legislation — Retrospective/Retroactive operation/Retroactivity — Rule/notification/circular to be retrospective in nature, held, has to expressly specify the same as per the rules of interpretation of statutes — U.P. Government Servants Seniority (Third Amendment) Rules, 2007 — R. 8-A — Rules, held, prospective in nature**

Dismissing the appeals, the Supreme Court

Held :

- It was the constitutional obligation of the State at the time of providing reservation in the matter of promotion to identify the class or classes of posts in the service for which reservation is required. However, neither has any effort been made to identify the class or classes of posts for which reservation is to be provided in promotion nor has any exercise been done to quantify the extent of reservation. Adequate reservation does not mean proportional representation. Rule 8-A has been inserted mechanically without taking into consideration the prerequisites for making such a provision as required under Article 16(4-A) of the Constitution of India. The ceiling limit of 50%, the concept of creamy layer and the compelling reasons, namely, backwardness, inadequacy of representation and overall administrative efficiency are all constitutional requirements without which the structure of equality of opportunity in Article 16 would collapse. The main issue concerns the “extent of reservation” and in this regard, the State should have shown the existence of the compelling reasons, namely, backwardness, inadequacy of representation and overall administrative efficiency before making provision for reservation.
(Para 17)

- Indra Sawhney v. Union of India*, 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385; *M. Nagaraj v. Union of India*, (2006) 8 SCC 212, *followed*

- The Rules pertaining to the reservation and promotion list are prospective in nature and thereby cannot disturb the promotion list of the appellants by virtue of this Rule. Further, if a rule/notification/circular claims to be retrospective in nature, it has to expressly specify the same, as per the rules of interpretation of statutes. In the instant petition, the appellants have failed to establish the nature with regard to retrospective effect of the notification/rules.
(Para 19)

456

SUPREME COURT CASES

(2009) 9 SCC

The High Court was fully justified in granting the present interim order and there is no infirmity in the same. It is clarified that any observations made in this order shall not influence the High Court to decide the writ petition on merits. The matter has already been heard in part by the High Court and it would not be appropriate to interfere with the impugned order passed by the High Court at this stage. (Paras 20 and 21)

B-D/43826/CL

Advocates who appeared in this case :

Shail K. Dwivedi, Additional Advocate General, P.S. Patwalia, Senior Advocate (A.S. Pundir, T.N. Singh, P.N. Gupta and Chandra Prakash Pandey, Advocates) for the Appellants;

A.K. Ganguli, Senior Advocate (Kumar Parimal, Rajan Roy, Aniruddha P. Mayee, Sunil Kr. Jain, A. Mittal, Rahul Kaushik, Ms Shilpi Kaushik, Pradeep Misra, Daleep Kr. Dhayani and Ashok Kr. Singh, Advocates) for the Respondents.

Chronological list of cases cited

on page(s)

1. (2006) 8 SCC 212, *M. Nagaraj v. Union of India* 457g, 461a
2. 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385, *Indra Sawhney v. Union of India* 457d

The Judgment of the Court was delivered by

TARUN CHATTERJEE, J.— Leave granted. These two appeals are directed against an interim order dated 4-12-2007 passed in Writ Petition No. 1496 (SB) of 2007 by a Division Bench of the High Court of Allahabad, Lucknow Bench, Lucknow whereby the High Court directed the aforesaid writ petition to be tagged with Writ Petition No. 1389 (SB) of 2007 pending in the High Court, following the interim order passed in the aforesaid Writ Petition No. 1389 (SB) of 2007 directing that the seniority of the respondents as existing prior to the enforcement of the U.P. Government Servants Seniority (Third Amendment) Rules, 2007 shall not be disturbed in pursuance of the Rules by way of the aforesaid impugned order.

2. The relevant facts leading to the filing of these appeals may be summarised as under: in the year 1973, government orders providing reservation in the matter of promotion for the Scheduled Castes and Scheduled Tribes were issued. Subsequently, U.P. Jal Nigam adopted the U.P. Government Servants Seniority Rules, 1991. The aforesaid Rules were notified by the State Government vide Notification dated 20-3-1991 which consisted of provisions of the aforesaid Rules of 1991.

3. Respondent 2, namely, U.P. Jal Nigam is a statutory corporation created under the U.P. Water Supply and Sewerage Act, 1975, and the service conditions of the employees of the Nigam are governed by the U.P. Jal Nigam Engineers (Public Health Branch) Service Regulations, 1978. The aforesaid Regulations were made in exercise of power conferred on U.P. Jal Nigam under Sections 97(2) and 98(1) of the U.P. Water Supply and Sewerage Act, 1975 with the prior approval of the State Government.

4. Subsequently, in the year 1994, the Uttar Pradesh Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward

- Classes) Act, 1994 was promulgated and Section 3(7) of the said Act of 1994 says that if on the date of the commencement of this Act, reservation was in force under government orders for appointment to posts to be filled up by promotion, such government orders shall continue to be applicable till they are modified or revoked. Further, on 10-10-1994 the percentage of reservation in the matter of Scheduled Castes was enhanced from 18% to 21% by means of government order referring to Section 3(7) of the aforesaid Act of 1994.
- 5.** Article 16(4-A) was introduced by an amendment of the Constitution on 17-6-1995 which reads as under:
- “16. (4-A) Nothing in this article shall prevent the State from making any provision for reservation in [the] matters of promotion, with consequential seniority, to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State.”
- Article 16(4-A) of the Constitution, which was inserted in the Constitution on 17-6-1995, as noted hereinafter, was incorporated by the Constitution (Seventy-seventh Amendment) Act, 1995, thereby introducing an enabling provision for providing reservation in the matter of promotion. However, this Court in its judgment dated 16-11-1992 in *Indra Sawhney v. Union of India*¹ observed that reservation of appointments or posts under Article 16 of the Constitution is confined to the initial appointment and cannot extend to reservation in the matter of promotion.
- 6.** Further, in the year 2002 the U.P. Government Servants Seniority (First Amendment) Rules, 2002 were issued by which Rule 8-A was inserted in the Seniority Rules, 1991 providing consequential seniority to the Scheduled Castes and Scheduled Tribes from the date of their promotion and in the meantime the validity of Article 16(4-A) of the Constitution as also the rules and enactments of various States granting consequential seniority to the Scheduled Castes and Scheduled Tribes in the matter of promotion was assailed in a bunch of writ petitions which were filed before this Court under Article 32 of the Constitution of India and the said matters were referred to a Constitution Bench.
- 7.** Further, in the year 2005 the U.P. Government Servants Seniority (Second Amendment) Rules, 2005 were introduced by which Rule 8-A referred to above was omitted. On 19-10-2006 the aforesaid reference was decided by the Constitution Bench in *M. Nagaraj v. Union of India*², SCC p. 278, para 123 and the Constitution Bench held in that decision that the provision contained in Article 16(4-A) of the Constitution is an enabling provision and the State is not bound to make reservation for SCs/STs in the matter of promotion.

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¹ 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385 : AIR 1993 SCC 477

² (2006) 8 SCC 212

“123. ... However, if they wish to exercise their discretion and make such provision, the State has to collect quantifiable data showing backwardness of the class and inadequacy of representation of that class in public employment in addition to compliance with Article 335 [of the Constitution of India]. It is made clear that even if the State has compelling reasons, as stated above, the State will have to see that its reservation provision does not lead to excessiveness so as to breach the ceiling limit of 50% or obliterate the creamy layer or extend the reservation indefinitely.”

8. Further, after the passing of the aforesaid judgment by the Constitution Bench, the U.P. Government issued a Notification on 14-9-2007 by which the U.P. Government Servants Seniority (Third Amendment) Rules, 2007 were issued which runs as under:

“8-A. *Entitlement of consequential seniority to a person belonging to Scheduled Castes or Scheduled Tribes.*—Notwithstanding anything contained in Rules 6, 7 or 8 of these Rules, a person belonging to the Scheduled Castes or Scheduled Tribes shall, on his promotion by virtue of rule of reservation/roster, be entitled to consequential seniority also from 17-6-1995 in the Seniority Rules, 1991 and also provided for consequential seniority to the Scheduled Castes and Scheduled Tribes from the date of their promotion as per the roster/rule of reservation.”

9. After the issuance of the aforesaid notification, the State Government vide Letter dated 3-10-2007 directed the various development authorities including the appellants to take necessary action in accordance with the Notification dated 14-9-2007 and according to Section 92 of the U.P. Avas Evam Vikas Parishad Adhiniyam, 1965 the State Government will have control over the Board and other local authorities and the State Government may give the Board such directions which in its opinion are necessary or expedient for carrying out the purpose of the Act, and it shall be the duty of the Board to comply with such directions.

10. On 17-10-2007 the State Government issued another order wherein it was directed that as a result of the aforesaid amendment in the Seniority Rules, 1991 necessary amendments should be made in the seniority list by adopting the procedure in accordance with the Seniority Rules. But before making any such provision, it was the constitutional obligation and duty of the State Government to see in each case the existence of the compelling reasons, namely, backwardness, inadequacy of representation and overall administrative inefficiency on the basis of qualified data collected but in the present case, no such exercise has been undertaken by the State of U.P.

11. The aforesaid Notification dated 14-9-2007 was adopted vide order dated 19-10-2007 by the Chairman of the Jal Nigam and was given immediate effect thereto. Thereafter, U.P. Jal Nigam issued the tentative joint seniority list of Chief Engineer Level I, Chief Engineer Level II (Civil) and Superintending Engineer (Civil) and the tentative seniority list of the

Executive Engineers of U.P. Jal Nigam dated 3-11-2007 in furtherance of the aforesaid Notification dated 14-9-2007.

- a* **12.** On 6-11-2007 the validity of the aforesaid Rule 8-A of the Uttar Pradesh Government Servants Seniority (Third Amendment) Rules, 2007 was challenged by the Engineers of the Irrigation Department by way of Writ Petition No. 1389 (SB) of 2007 before the High Court of Allahabad, Lucknow Bench, Lucknow. In the said writ petition, the Division Bench of the High Court of Allahabad, Lucknow Bench after hearing the parties, has
- b* issued a notice to the Advocate General of the State vide order dated 6-11-2007. The High Court, in the meantime, passed an interim order by which the seniority of the petitioners in that writ petition and other promoted officers, as was existing prior to the enforcement of the aforesaid Uttar Pradesh Government Servants Seniority (Third Amendment) Rules, 2007 shall not be disturbed in pursuance of these Rules and no reversion shall be
- c* effected.

- 13.** The respondents who were working on the post of Superintending Engineers, Executive Engineers and Assistant Engineers in U.P. Jal Nigam, aggrieved by the aforesaid seniority list, filed a writ petition assailing the validity of the U.P. Government Servants Seniority (Third Amendment)
- d* Rules, 2007, by which Rule 8-A has been inserted in the U.P. Government Servants Seniority Rules, 1991 and by virtue of the aforesaid Rules, the government servants belonging to Scheduled Castes and Scheduled Tribes would be entitled to consequential seniority on accelerated promotion given to them through roster/rule of reservation.

- 14.** In the aforesaid writ petition, the respondents further assailed the
- e* validity of the Notification dated 14-9-2007 of the U.P. Government Servants Seniority (Third Amendment) Rules, 2007 made effective from 17-6-1995. They also challenged the order dated 19-10-2007 by which the aforesaid Notification dated 14-9-2007 was adopted. The respondents also challenged the aforesaid tentative seniority list dated 3-11-2007 issued by U.P. Jal Nigam in furtherance of the notification.
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- 15.** The aforesaid Writ Petition No. 1496 (SB) of 2007 came up for hearing before a Division Bench of the High Court of Allahabad, Lucknow Bench, Lucknow. The High Court directed the aforesaid writ petition to be tagged with Writ Petition No. 1389 (SB) of 2007 pending in the High Court. However, the Division Bench, following the reasons mentioned in the order
- g* passed in Writ Petition No. 1389 (SB) of 2007, by an interim order, directed that the seniority of the respondents as existing prior to the enforcement of the U.P. Government Servants Seniority (Third Amendment) Rules, 2007 shall not be disturbed in pursuance of the Rules.

- 16.** Further, in the meantime, some of the Executive Engineers also filed Writ Petition No. 81 of 2008 thereby challenging the consequential validity
- h* of Rule 8-A of the U.P. Government Servants Seniority (Third Amendment) Rules, 2007. In the present writ petition, the Division Bench of the High

460

SUPREME COURT CASES

(2009) 9 SCC

Court, relying upon the order passed by the High Court in the earlier Writ Petition No. 1389 (SB) of 2007, issued notice and granted relief and provided that the seniority of the appellants therein as existing prior to the enforcement of the U.P. Government Servants Seniority (Third Amendment) Rules, 2007 shall not be disturbed in pursuance of these Rules. Subsequently, U.P. Avas Evam Vikas Parishad, Lucknow, which was a party in the aforesaid writ petition, aggrieved by the aforesaid interim order dated 17-1-2008, filed Special Leave Petition (C) No. 3097 of 2008 before this Court challenging the aforesaid interim order of the High Court. This Court, vide order dated 22-2-2008, granted leave and allowed the aforesaid appeal filed by the Parishad to the extent that the interim order passed by the High Court was set aside and requested the High Court to dispose of the writ petition preferably within two months from the date of the communication of the order. The appellants, on coming to know about the passing of the aforesaid order, filed an application for impleadment and the said application was numbered as CM Application No. 189180 of 2008. In the said application, it was contended that the appellants were necessary and affected parties and yet they were not arrayed as the respondents in the aforesaid writ petition. It was also contended that any order passed in the aforesaid writ petition was going to affect the rights of the present appellants. Accordingly, they prayed to be impleaded as Respondents 4 to 8 in the array of the parties. Further, on 5-3-2008 the aforesaid impleadment application came up for hearing before the High Court and the High Court on that date allowed the impleadment application filed by the appellants. Hence, on 3-4-2008 the present special leave petition was filed.

17. In the present case and in the facts and circumstances stated hereinafter, we are of the view that it was the constitutional obligation of the State, at the time of providing reservation in the matter of promotion to identify the class or classes of posts in the service for which reservation is required, however, neither any effort has been made to identify the class or classes of posts for which reservation is to be provided in promotion nor any exercise has been done to quantify the extent of reservation. Adequate reservation does not mean proportional representation. Rule 8-A has been inserted mechanically without taking into consideration the prerequisites for making such a provision as required under Article 16(4-A) of the Constitution of India. The ceiling limit of 50%, the concept of creamy layer and the compelling reasons, namely, backwardness, inadequacy of representation and overall administrative efficiency are all constitutional requirements without which the structure of equality of opportunity in Article 16 would collapse. However, in this case, as stated, the main issue concerns the “extent of reservation” and in this regard, the State should have shown the existence of the compelling reasons, namely, backwardness, inadequacy of representation and overall administrative efficiency before making provision for reservation.

ANIL CHANDRA v. RADHA KRISHNA GAUR (*Chatterjee, J.*)

461

18. As observed in *M. Nagaraj v. Union of India*² it has been held that: (SCC p. 278, para 123)

- a* “123. ... The State is not bound to make reservation for SCs/STs in matters of promotions. However, if they wish to exercise their discretion and make such provision, the State has to collect quantifiable data showing backwardness of the class and inadequacy of representation of that class in public employment in addition to compliance with Article 335 [of the Constitution]. It is made clear that even if the State has
- b* compelling reasons, as stated above, the State will have to see that its reservation provision does not lead to excessiveness so as to breach the ceiling limit of 50% or obliterate the creamy layer or extend the reservation indefinitely.”

- 19.** The Rules pertaining to the reservation and promotion list are prospective in nature and thereby cannot disturb the promotion list of the
- c* appellants by virtue of this Rule. Further, if a rule/notification/circular claims to be retrospective in nature, has to expressly specify, as per the rules of interpretation of statutes in the instant petition, the appellants have failed to establish the nature with regard to retrospective effect of the notification/rules.

- 20.** In the light of the reasons abovementioned, we are of the view that the High Court was fully justified in granting the present interim order and there is no infirmity in the same. Since the interim order passed by the High Court, which has not been interfered with by us in this judgment, we make it clear that the grant of interim order and any observation made by the High Court while granting interim order and any observations made by us in this order shall not influence the High Court to decide the writ petition on merits and the High Court shall not be influenced by any of the observations made
- e* by us in this order.

- 21.** There is one other aspect of this matter. These appeals have been filed, as noted herein earlier, against an interim order passed by the High Court. It appears that the main writ petition, with which the present writ application has been tagged by the High Court, has already been taken up for hearing, which is already heard in part. Such being the position at this stage, it would not be appropriate for us to interfere with the impugned order passed by the High Court at this stage when the writ petition itself can be decided within a very short time. Considering the importance of the present dispute between the parties, we are of the view that the High Court shall take efforts to decide the writ petitions at an early date and dispose of the same within six
- f* months from the date of supply of a copy of this order to it.

- 22.** The appeals are thus dismissed. There will be no order as to costs.

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