R.K. SABHARWAL AND ORS. A

v.

THE STATE OF PUNJAB

FEBRUARY 10, 1995

[KULDIP SINGH, S. MOHAN, M.K. MUKHERJEE, B
B.L. HANSARIA AND S.B. MAJMUDAR, JJ.]

Service Law—Punjab Service of Engineers Class 1 P.W.D. (I.B) Rules 1964.

C

Reservation of post for SC/ST/backward candidates—Roster system-relevency in reservation of posts—Where roster is in the form of running account, on yearly basis, once posts are filled up initially on that basis, the percentage of reservation is achieved and so roster need not be continued thereafter—Vacancies arising after initial posts in the cadre are to be filled up only by persons belonging to the same category to which the retiring person D *belonged/the category to which the post belonged in the roaster—State may carry forward the post on non-availability of reserve candidate—Right to be considered for appointment to a post is only in relation to the number of posts which form the cadre strength—Reservation of posts to be related to cadre strength.*

E

Words and phrases—'Post', 'Vacancy', 'Running account', 'Cadre strength'—Meaning of—In the context of service jurisprudence.

Both the Writ petitioners and the respondents were Engineers working for the Irrigation Department of the Government of Punjab, though F **the petitioners belong to the general category and the respondents to the reserved category of SC/ST. As per Government instructions, there is 14% reservation for SC and 2% for backward classes for promotion within and to Class I and II, subject to the condition that the candidate has minimum necessary qualifications and a satisfactory record. Thus in a lot of 100** G **vacancies occurring from time to time, certain serial numbers were reserved for SC and certain other numbers for backward classes. A roster was to be kept and implemented in the form of a running account from year to year. The relevant Rules also laid down other eligibility conditions like the number of years of service in the post etc. though the Government could waive these after recording reasons. The Writ petition challenges** H

1995(2) eILR(PAT) SC 1

A this reservation policy.

It was the case of the petitioners that they were already working as Executive Engineers when the respondents were promoted superceding several persons. They submitted, *inter alia* that there should be a nexus between the object of the reservation and the mechanism used to promote
B the same. To arrive at the reservation figure, both the number of reserve persons in the general category as well as in the reserved posts should be counted. Once a post falls vacant, after the initial posts are filled up on the basis of the roster, then such posts are to be filled up only by the category of person who were occupying the said post. The petitioners relied
C on *Joginder Singh Sethi and Others* v. *Punjab Government and Others,* (1982) 2 SLR 307.

Disposing the Writ petition, this Court

HELD : 1. Despite any number of appointees/promotees belonging
D to the backward classes against the general category of posts the given percentage has to be provided in addition. The prescribed percentage cannot be varied or changed simply because some of the members of the backward classes have already been appointed/promoted against the general seats. [44-C. 43-H]

E

2. The 'running account' is to operate only till the quota provided under the impugned instructions is reached and not thereafter. Once the prescribed percentage of posts is filled the numerical test of adequecy is satisfied and thereafter the roaster does not survive. [45-A]

F

3. The percentage of resrvation is the desired representation of the backward classes in the State services and is consistent with the demographic estimate based on the proportion worked out in relation to their population. When a percentage of reservation is fixed in respect of a particular cadre and the roaster indicates the reserve points, it has to be taken that the post shown at the reserve poinsts are to be filled from
G amongst the members of reserve categories and the candidates belonging to the general category are not entitled to be considered for the reserve posts. On the other hand the reserve category candidates can compete for non-reserve posts and in the event of their appointment to the said post their number cannot be added and taken into consideration for working
H out the percentage of reservation. [45-B, 43-D-E]

Joginder Singh Sethi and Others **v.** *Punjab Government and Others,* **(1982) 2 SLR 307 and** *Jaswant Singh* **v.** *Secretary to Government of Punjab, Education Department,* **(1989) 4 SLR 257, referred to.** A

4. Article 16(4) of the Constitution of India permits the State Government to make any provision for the reservation of appointments or posts in favour of any backward class of citizen which, in the opinion of the State is not adequately represented in the services under the State. It is therefore, incumbent on the State Government to reach a conclusion that the backward class/classes for which the reservation is made is not adequately represented in the State services. While doing so the State may take the total population of a particular backward class and its representation in the State services. When the State after doing the necessary exercise makes the reservation and provides the extent of percentage of posts to be reserved for the said backward class then the percentage has to be followed strictly. The roaster point has to be filled by way of appointment/promotion of the member of the said class. No general category candidate can be appointed against a slot in the roster which is reserved for the backward class. The fact that considerable number of members of a backward class have been appointed/promoted against seats in the State services may be a relevant factor for the State Government to review the question of continuing the reservation for the said class but so long as the instructions/rules providing certain percentage of reservations for the backward classes are operative the same has to be followed. [43-F-H, 44-A-C] B C D E

5. The reservations provided under the impugned Government instructions are to be operated in accordance with the roster to be maintained in each department. The roster is implemented in the form of running account from year to year. The purpose of 'running account' is to make sure that the scheduled castes/scheduled tribes and backward classes get their percentage of reserved posts. When all the roster points in a cadre are filled the required percentage of reservation is achieved. In other words, in a cadre of 100 posts when the posts are earmarked in the roster for the scheduled caste and backward classes are filled the percentage of reservation provided for the reserved categories is achieved. There is no justification to operate the roster thereafter. The 'running account' is to operate only till the quota. The numerical quota of posts is not a shifting boundry but represents a figure with due application of mind. Therefore the only way to ensure equality of opportunity to backward classes and the F G H

1995(2) eILR(PAT) SC 1

A general category is to permit the roster to operate till the time the respective appointees/promotees occupy the posts meant for them in the roster. The operation of the roster and 'running account' must come to an end thereafter. Suppose all the posts in a cadre consisting of 100 posts are filled in accordance with the roster by December 31, 1994. Thereafter in the year 1995, 25 general category persons (out of 84) retire. Again in the year 1996, 25 more presons belonging to the general category retire. The position which would emerge would be that the scheduled castes and backward classes would claim 16% share out of the 50 vacancies. If 8 vacancies were given to them in the cadre of 100 posts the reserved categories would be holding 24 posts thereby increasing the reservation from 16% to 24%. On the contrary if the roster is permitted to operate till the total posts in the cadre are filled and thereafter the vacancies falling in the cadre are to be filled by the same category of persons whose retirement etc. casused the vacancies then the balance between the reserve category and the general category shall always be maintained. In the event of non-availablity of a reserve candidate at the roster point it would be open to the State Government to carry forward the point in a just and fair manner. [44-E-H, 45-A, C, 47-E-H]

Indira Sawhney v. *Union of India,* AIR (1993) SC 477, relied on.

6. The vacancies arising to the cadre after the initial posts are filled, will pose no difficulty. When there is a vacancy whether permanent or temporary in a particular post the same has to be filled from amongst the category to which the post belonged in the roster. By following this procedure there shall neither be shortfall nor excess in the percentage of reservation. [45-D-E]

J.C. Malik and Others v. *Union of India and Others,* (1978) 1 SLR 844, relied on.

7. The expressions 'posts' and 'vacancy' often used in executive instructions providing for reservations, are rather problematical. The word 'post' means an appointment, job, office, or employment. A position to which a person is appointed. 'Vacancy' means an unoccupied post or office. The plain meaning of the two expressions make it clear that there must be a 'post' in existence to enable the 'vacancy' to occur. [45-F]

8. The cadre-strength is always measured by the number of posts

comprising the cadre. Right to be considered for appointment can only be claimed in respect of a post in a cadre. As a consequence the percentage of reservation has to be worked out in relation to the number of posts which from the cadre strength. The concept of 'vacancy' has no relevance in operating the percentage of reservation. [45-G-H]

CIVIL ORIGINAL JURISDICTION : Writ Petition (C) No. 79 of 1979.

(Under Article 32 of the Constitution of India.)

V.R. Reddy, Additional Solicitor General, G.K. Chatrath, A.G., Harish N. Salve, Punjab, Arun Jaitley, Rajiv Dhawan, Dr. Anand Prakash Sharma, V.C. Mahajan, S.N. Jha, D. Goburdhan, R.P. Singh, Ugra Shankar Prasad, Wasim A. Qadri, Ashok K. Srivastava, D.S. Mehra, Ms. Anil Katiyar, Ms. A subhashini, Arivind K. Sharma, Ms. Indu Goswami, Rajiv K. Garg, Ms. Minakshi Grover, Ms. Monika Goyal, K.R. Nagaraja, R. Santhana Krishnan, P.K. Rao, V.S. Chauhan, Sakesh Kumar for S.K. Agnihotri, R.S. Suri, T. Topgay, Rohit Kr. Aggarwal, P.H. Parekh, S. Fazl, Ms. Nina Gupta, Vineet Kumar Arvind Minocha, S.K. Mehta, B.D. Sharma, S.S. Khanduja, R. Nagarathanam, Madan Mohan Lal Srivastava, Ms. S. Bagga, Hiranandani Sethi & Co., A.S. Bhasme, S.V. Tambwekar, S.K. Verma, Devi D. Sharma, A.T.M. Sampath, D.N. Mishra, for JBD & Co., K.B. Rohtagi, D.B. Vohra, Prem Malhotra, C.V. Rappai, C.S.S. Rao, Ms. Sushma Suri, S. Muralidhar Shakil Ahmad Syed, B.K. Prasad, P. Parmeswaran Syed Shaukat Hussain, Mukul Mudgal, S. Srinivasan, Shyam Narain Singh, A. Mariarputham, B.S. Gupta, Rajesh and V.K. Verma for the appearing parties.

The following Judgment of the Court was delivered :

The petitoners and respondents 4, 5 and 6 are members of the Punjab Service of Engineers (Class I) (the Service) in the Irrigation Department of the State of Punjab. The respondents are members of the Scheduled Castes whereas the petitioners belong to the general category. The conditions of service of the members of the Service are governed by the Rules called The Punjab Service of Engineers Class I P.W.D. (I.B.) Rules, 1964 (the Rules). the Punjab Government by the instructions dated May 4, 1974 provided reservations for the Scheduled Castes and Backward

1995(2) eILR(PAT) SC 1

A Classes in promotions to and within Class I and II services under the State Government. It was laid down under the said instructions that 16 per cent of the posts to be filled by promotion were to be reserved for members of the Scheduled Castes and Backward Classes (14 per cent for the Scheduled Castes and 2 per cent for the Backward Classes) subject to the conditions
B that the persons to be considered must possess the minimum necessary qualifications and they should have satisfactory record of service. The instructions further provided as under :

> "(i) In a lot of 100 vacancies occurring from time to time, those falling at serial numbers mentioned below should be treated as
C reserved for the members of Scheduled Castes;
>
> 1, 7, 15, 22, 30, 37, 44,51, 58, 65, 72, 80, 87, 91 and so on. Vacancies falling at serial numbers 26 and 76 should be treated as reserved for the members of Backward Classes.
>
D (ii) The reservation prescribed shall be given effect to in accordance with a roster to be maintained in each Department. The roster will be implemented in the form of a running account from year to year."

E Rule 9 of the Rules which provides for promotion within the service reads as under :

> "Promotion within service :-
>
> (1) Subject to the provisions of sub-rules 2 and 3 members of the
F Service shall be eligible for promotion to any of the posts in the Service, namely, Executive Engineers, Superintending Engineers and Chief Engineers.
>
> Provided that a Member of the Service in whose case the qualifications mentioned in clause (a) of Rule 6 have been waived, shall
G not be eligible for promotion to the post of Superintending Engineer or above till he has acquired the necessary qualification.
>
> Explanation :- Once an officer has been appointed a member of the Service, his promotion within it from one rank to another shall
H be regarded as promotion within the same cadre.

(2) Promotions shall be made by selection on the basis of merit and suitability in all respects and no member of the Service shall have any claim to such promotion as a matter of right or mere seniority.

(3) A member of the Service shall not be eligible for promotion to the rank of –

(a) Executive Engineer unless he has rendered five years service as an Assistant Executive Engineer;

Provided that an officer who has rendered six years or more service as an Assistant Executive Engineer shall unless he is considered unsuitable for promotion, be given preference for such promotion over an eligible Class II Officer;

(b) Superintending Engineer, unless he has rendered seven years service as an Executive Engineer;

(c) Chief Engineer, unless he has rendered three years service as Superintending Engineer;

Provided that, if it appears to be necessary to promote an officer in public interest, the Government may, for reasons to be recorded in writing, either generally for a specified period or in any individual case reduce the period specified in clauses (a), (b) and (c) to such extent as it may deem proper."

It is stated in the writ petition that the petitioners are at serial Nos. 19, 23, 26, 29, 30, 31, 34 and 38 of the seniority list of the Service whereas the respondents are at serial Nos. 46, 140 and 152. Respondent-Rattan Singh was promoted to the rank of Chief Engineer against the psot reserved for the Scheduled Castes by superseding 36 senior colleagues including the petitioners. Similarly, respondents Surjit Singh and Om Parkash were promoted as Superintending Engineers against the reserve vacancies by superseding 82 and 87 senior colleagues respectively. According to the petitioners at the time of promotion of these respondents the petitioners were already working as Superintending Engineers for several years. It is further averred in the petition that respondents 4, 5 and 6 were in fact working as Executive Engineers when the petitioners were holding the post of Superintending Engineers.

A On the above facts the petitioners have challenged the reservation-policy on several grounds but Mr. Harish Salve, learned counsel for the petitioners, has confined the arguments to the following two points.

(1) The object of reservation is to provide adequate representation
B to the Schedule Castes/Tribes and Backward Classes in services and as such any mechanism provided to achieve that end must have nexus to the object sought to be achieved. The precise argument is that for working out the percentage of reservation the promotees/appointees belonging to the Scheduled Castes and Backward Classes whether appointed against the general category posts or against the reserve posts are to be counted. In
C other words if more than 14% of the Scheduled Castes candidates are appointed/promoted in a cadre on their own merit/seniority by competing with the general category candidates then the purpose of reservation in the said cadre having been achieved the Government instructions providing reservations would become inoperative.

D

2. Once the posts earmarked for the Scheduled Castes/Tribes and Backward Classes on the roster are filled the reservation is complete. Roster cannot operate any further and it should be stopped. Any post falling vacant, in a cadre thereafter, is to be filled from the category -
E reserve or general - due to retirement etc. of whose member the post fell vacant.

Adverting to the first point Mr. Harish Salve and Mr. Rajiv Dhawan, learned counsel representing the petitioners, have contended that the total number of promotees/appointees belonging to the reserve categories in a
F cadre are to be counted to work- out the prescribed percentage of reservation. According to the learned counsel the reserve categories can take advantage of the reservation made in their favour till their representation in the Service – including those appointed against general category posts – reaches the prescribed percentage. For working out the percentage the
G promotees/appointees belonging to reserve categories in the Service, whether on the reserve posts or general category posts, are to be counted. Support is sought from the judgment of the Punjab and Haryana High Court in *Joginder Singh Sethi and others* v. *Punjab Government and others,* (1982) 2 SLR 307. In the said case 22% reservation was provided for the
H members of Scheduled Castes/Tribes and Backward Classes. In the cadre

strength of 202 posts the Scheduled Castes candidates were entitled to 42 posts. There were already 47 members of the said category in the cadre but out of them 10 were promoted on the basis of seniority-cum-merit against the general category posts. There being only 37 persons who had been promoted against the reserved posts 4 more Scheduled Castes were sought to be promoted against the reserve vacancies. The High Court quashed the promotion on the ground that the cadre was already having more than 22% persons from the reserve categories. We are of the view that the High Court in *Joginder Singh Sethi's* case fell into a patent error. The said case was subsequently considered by a Full Bench of Punjab & Haryana High Court in *Jaswant Singh* v. *Secretary to Government of Punjab, Education Department,* (1989) 4 Services Law Reporter 257. The Full Bench did not agree with the ratio in *Joginder Singh Sethi's* case and reversed the same.

When a percentage of reservation is fixed in respect of a particular cadre and the roster indicates the reserve points, it has to be taken that the posts shown at the reserve points are to be filled from amongst the members of reserve categories and the candidates belonging to the general category are not entitled to be considered for the reserve posts. On the other hand the reserve category candidates can compete for the non-reserve posts and in the event of their appointment to the said posts their number cannot be added and taken into consideration for working out the percentage of reservation. Article 16(4) of the Constitution of India permits the State Government to make any provision for the reservation of appointments or posts in favour of any backward class of citizen which, in the opinion of the State is not adequately represented in the Services under the State. It is, therefore, incumbent on the State Government to reach a conclusion that the backward class/classes for which the reservation is made is not adequately represented in the State Services. While doing so the State Government may take the total population of a particular backward class and its representation in the State Services. When the State Government after doing the necessary exercise makes the reservation and provides the extent of percentage of posts to be reserved for the said backward class then the percentage has to be followed strictly. The prescribed percentage cannot be varied or charged simply because some of the members of the backward class have already been ap-

1995(2) eILR(PAT) SC 1

A pointed/promoted against the general seats. As mentioned abvoe the roster point which is reserved for a backward class has to be filled by way of appointment/promotion of the member of the said class. No general category candidate can be appointed against a slot in the roster which is reserved for the backward class. The fact that considerable number of B members of a backward class have been appointed/promoted against general seats in the State Services may be a relevant factor for the State Government to review the question of continuing reservation for the said class but so long as the instructions/Rules providing certain percentage of reservations for the backward classes are operative the same have to be C followed. Despite any number of appointees/promotees belonging to the backward classes against the general cateory posts the given percentage has to be provided in addition. We, therefore, see no force in the first contention raised by the learned counsel and reject the same.

We see considerable force in the second contention raised by the D learned counsel for the petitioners. The reservations provided under the impugned Government instructions are to be operated in accordance with the roster to be maintained in each Department. The roster is implemented in the form of running account from year to year. The purpose of "running account" is to make sure that the Scheduled Castes/Schedule Tribes and E Backward Classes get their percentage of reserved posts. The concept of "running account" in the impugned instructions has to be so interpreted that it does not result in excessive reservation. "16% of the posts....." are reserved for members of the Scheduled Caste and Backward Classes. In a lot of 100 posts those falling at serial numbers 1, 7, 15, 22, 30, 37, 44, 51, F 58, 65, 72, 80, 87 and 91 have been reserved and earmarked in the roster for the Scheduled Castes. Roster points 26 and 76 are reserved for the members of Backward Classes. It is thus obvious that when recruitment to a cadre starts then 14 posts earmarked in the roster are to be filled from amongst the members of the Scheduled Caste. To illustrate, first post in a G cadre must go to the Scheduled Caste and thereafter the said class is entitled to 7th, 15th, 22nd and onwards upto 91st post. When the total number of posts in a cadre are filled by the operation of the roster then the result envisaged by the impugned instructions is achieved. In other words, in a cadre of 100 posts when the posts earmarked in the roster for H the Scheduled Castes and the Backward Classes are filled the percentage

of reservation provided for the reserved categories is achieved. We see no justification to operate the roster thereafter. The "running account" is to operate only till the quota provided under the impugned instructions is reached and not thereafter. Once the prescribed percentage of posts is filled the numerical test of adequacy is satisfied and thereafter the roster does not survive. The percentage of reservation is the desired representation of the Backward Classes in the State services and is consistent with the demographic estimate based on the proportion worked out in relation to their population. The numerical quota of posts is not a shifting boundary but represents a figure with due application of mind. Therefore, the only way to assure equality of opportunity to the Backward Classes and the general category is to permit the roster to operate till the time the respective appointees/promotees occupy the posts meant for them in the roster. The operation of the roster and the "running account" must come to an end thereafter. The vacancies arising in the cadre, after the initial posts are filled, will pose no difficulty. As and when there is a vacancy whether permanent or temporary in a particular post the same has to be filled from amongst the category to which the post belonged in the roster. For example the Scheduled Caste persons holding the posts at Roster-points 1, 7, 15 retire then these slots are to be filled from amongst the persons belonging to the Scheduled Castes. Similarly, if the persons holding the post at points 8 to 14 or 23 to 29 retire then these slots are to be filled from among the general category. By following this procedure there shall neither be short-fall nor excess in the percentage of reservation.

The expressions "posts" and "vacancies", often used in the executive instructions providing for reservations, are rather problematical. The word "post" means an appointment, job, office or employment. A position to which a person is appointed. "Vacancy" means an unoccupied post or office. The plain meaning of the two expressions make it clear that there must be a 'post' in existence to enable the 'vacancy' to occur. The cadre-strength is always measured by the number of posts comprising the cadre. Right to be considered for appointment can only be claimed in respect of a post in a cadre. As a consequence the percentage of reservation has to be worked out in relation to the number of posts which form the cadre-strength. The concept of 'vacancy' has no relevance in operating the percentage of reservation.

A When all the roster-points in a cadre are filled the required percentage of reservation is achieved. Once the total cadre has full representation of the Scheduled Castes/Tribes and Backward Classes in accordance with the reservation policy then the vacancies arising thereafter in the cadre are to be filled from amongst the category of persons to whom the respective B vacancies belong. Jeevan Reddy, J. speaking for the majority in *Indira Sawhney* v. *Union of India,* AIR (1993) SC 477, observed as under :-

> "Take a unit/service/cadre comprising 1000 posts. The reservation in favour of Scheduled Tribes, Scheduled Castes and Other Backward Classes is 50% which means that out of the 1000 posts 500 C must be held by the members of these classes i.e. 270 by Other Backward Classes, 150 by Scheduled Castes and 80 by Scheduled Tribes. At a given point of time, let us say the number of members of OBCs in the unit/service/category is only 50, a shortfall of 220. Similarly the number of members of Scheduled Castes and D Scheduled Tribes is only 20 and 5 respectively, shortfall of 130 and 75. It the entire service/cadre is taken as a unit and the backlog is sought to be made up, then the open competition channel has to be choked altogether for a number of years until the number of members of all backward classes reaches 500 i.e., till the quota meant for each of them is filled up. this may take quite a number E of years because the number of vacancies arising each year are not many. Meanwhile, the members of open competition category would become age barred and ineligible. Equality of opportunity in their case would become a mere mirage. It must be remembered that the equality of opportunity guaranteed by clause (1) is to each F individual citizen of the country while clause (4) contemplates special provision being made in favour of socially disadvantaged classes. Both must be balanced against each other. Neither should be allowed to eclipse the other. For the above reason, we hold that for the purpose of applying the rule of 50% a year should be taken as the unit and not the entire strength of the cadre, service or the G unit as the case may be"

The quoted observations clearly illustrate that the rule of 50% a year as a unit and not the entire strength of the cadre has been adopted to protect the rights of the general category under clause (1) of Article 16 of H the Constitution of India. These observations in *Indra Sawhney's* case are

only in relation to posts which are filled initially in a cadre. The operation of a roster, for filling the cadre-strength, by itself ensures that the reservation remains within the 50% limit. *Indra Sawhney's* case is not the authority for the point that the roster survives after the cadre-strength is full and the percentage of reservation is achieved.

A Division Bench of the Allahabad High Court in *J.C. Malik and others* v. *Union of India and others,* (1978) 1 SLR 844 interpreted Railway Board's circular dated April 20, 1970 providing 15% reservations for the Scheduled Castes. The High Court held that the percentage of reservation is in respect of the appointment to the posts in a cadre. On the basis of the material placed before the High Court it reached the conclusion that if the reservation is permitted in the vacancies after all the posts in a cadre are filled then serious consequences would ensue and the general category is likely to suffer considerably. We see no infirmity in the view taken by the High Court.

We may examine the likely result if the roster is permitted to operate in respect of the vacancies arising after the total posts in a cadre are filled. In a 100 point roster, 14 posts at various roster-points are filled from amongst the Scheduled Castes/Scheduled Tribes candidates, 2 posts are filled from amongst the Backward Classes and the remaining 84 posts are filled from amongst the general category. Suppose all the posts in a cadre consisting of 100 posts are filled in accordance with the roster by December 31, 1994. Thereafter in the year 1995, 25 general category persons (out of the 84) retire. Again in the year 1996, 25 more persons belonging to the neral category retire. The position which would emerge would be that the Scheduled Castes and Backward Classes would claim 16% share out of the 50 vacancies. If 8 vacancies are given to them then in the cadre of 100 posts the reserve categories would be holding 24 posts thereby increasing the reservation from 16% to 24%. On the contrary if the roster is permitted to operate till the total posts in a cadre are filled and thereafter the vacancies falling in the cadre are to be filled by the same category of persons whose retimrement etc. caused the vacancies then the balance between the reserve category and the general category shall always be maintained. We make it clear that in the even of non- availability of a reserve candidate at the roster-point it would be open to the State Government to carry forward the point in a just and fair manner.

A We, therefore, find considerable force in the second point raised by the learned counsel for the petitioners. We, however, direct that the interpretation given by us to the working of the roster and our findings on this point shall be operative prospectively.

B The writ petition is, therefore, disposed of in the above terms. No costs.

I.M.A. Petition disposed of.