ANIL CHANDRA & ORS. A

v.

RADHA KRISHNA GAUR & ORS.

(Civil Appeal No. 6187 of 2009)

SEPTEMBER 10, 2009 B

[TARUN CHATTERJEE AND V.S. SIRPURKAR, JJ.]

U.P. Government Servants Seniority Rules 1991 – Rule 8-A (as inserted by U.P. Government Servants Seniority (3rd Amendment) Rules, 2007 – Government servants belonging C *to scheduled castes and scheduled tribes – Entitlement of consequential seniority on accelerated promotion through roster/rule of reservation – Challenge to – Interim order by High Court that seniority of respondent as existing prior to enforcement of Rules of 2007 not to be disturbed in pursuance* D *of the Rules – Justification of – Held: Justified – At the time of providing reservation in matter of promotions, the State is under the constitutional obligation to identify the class or classes of posts in the service for which reservation is required and quantify the extent of reservation – State did not undertake* E *such exercise – Rule 8(A) was inserted mechanically – Rules pertaining to reservation and promotion list is prospective in nature and cannot disturb the promotion list – Appellants failed to establish the nature with regard to retrospective effect of the Rule – Constitution of India, 1950 – Article 16(4-A) –* F *Service law.*

Rule 8-A was inserted in the U. P. Government Servants Seniority Rules, 1991 by the U. P. Government Servants Seniority (3rd Amendment) Rules, 2007. By virtue of the said Rule, the Government Servants G **belonging to Scheduled Castes and Scheduled Tribes would be entitled to consequential seniority on accelerated promotion given to them through roster/rule of reservation. Thereafter, U.P. Jal Nigam issued a**

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A tentative joint seniority list of the engineers. The engineers of the irrigation department filed writ petition challenging Rule 8-A. High Court passed an interim order by which the seniority of the petitioners and other promoted officers as was existing prior to the B enforcement of the U.P. Government Servants Seniority (3rd Amendment) Rules, 2007 shall not be disturbed in pursuance of these Rules and no reversion shall be effected. Respondents working as Superintending Engineers, Executive Engineers and Assistant Engineers C in U.P. Jal Nigam also challenged the said Rule. The Division Bench of High Court passed an interim order directing that the said writ petition be tagged with the writ petition pending in the High Court and that the seniority of the respondents as existing prior to the enforcement D of the Amendment Rules, 2007 shall not be disturbed in pursuance of these Rules. Hence the present appeals.

Dismissing the appeals, the Court

HELD: 1.1 In the facts and circumstances of the E case, 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 F 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 G 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

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all constitutional requirements without which, the structure of equality of opportunity in Article 16 would collapse. However, as regard the "extent of reservation", 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. The State is not bound to make reservation for SC/ST in matter 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 representaticn of that class in public employment in addition to compliance of Article 335 of the Constitution. Even if the State has compelling reasons, 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. [Para 19] [345-E-H; 346-A-E]

1.2 The rules pertaining to the reservation and promotion list is 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, has to expressly specify, as per the rules of interpretation of statutes. In the instant petition, the appellants failed to establish the nature with regard to retrospective effect of the notification/rules. The High Court was fully justified in granting the present interim order and there is no infirmity in the same. [Para 20] [346-E-F]

1.3 Since the interim order passed by the High Court has not been interfered with, it is clarified that the grant of interim order and any observation made by the High Court while granting interim order and any observations made by this Court in this order shall not influence the

A **High Court to decide the writ petition on merits. [Para 22] [346-G-H; 347-A]**

1.4 These appeals have been filed 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 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. [Para 23] [347-B-C]

M. Nagaraj and Ors. v. Union of India & Ors. **(2006) 8 SCC 212, relied on.**

Indira Sawhney v. Union of India **AIR 1993 SC 447, referred to.**

Cases Law Reference :

AIR 1993 SC 447	**Referred to.**	**Para 7**
(2006) 8 SCC 212	**Relied on.**	**Para 10**

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 6187 of 2009.

From the Judgment & Order dated 04.12.2007 of the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow in WP. No. 1496 (SB) of 2007.

WITH

C.A. No. 6188 of 2009.

P.S. Patwalia, A.S. Pundir, Shail K. Dwivedi, AAG., T.N. Singh, P.N. Gupta, Chandra Prakash Pandey, for the Appellants.

A.K. Ganguli, Kumar Parimal, Rajan Roy, Aniruddha P.

Mayee, Sunil Kumar Jain, A. Mittal, Rahul Kaushik, Shilpi Kaushik, Pradeep Misra, Daleep Kr. Dhayani, Ashok Kumar Singh, for the Respondents. A

The Judgment of the Court was delivered by

TARUN CHATERJEE, J. 1. Leave granted. B

2. These two appeals are directed against an interim order dated 4th of December, 2007 passed in Writ Petition No. 1496(S/B) of 2007 by a Division Bench of the High Court of Allahabad, Lucknow Bench, Lucknow whereby the High Court C 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. D Government Servants Seniority (3rd Amendment) Rules, 2007 shall not be disturbed in pursuance of the Rules by way of the aforesaid impugned order.

3. The relevant facts leading to the filing of these appeals may be summarized as under: - E

In the year 1973, the Government Orders providing reservation in the matter of promotion for the Scheduled Castes and Scheduled Tribes were issued. Subsequently, the U.P. Jal Nigam adopted the U.P. Government Servants Seniority Rules F 1991. The aforesaid rules were notified by the State Government vide Notification dated 20th of March, 1991 which consisted of provisions of the aforesaid Rules of 1991. The respondent no. 2, namely, U.P. Jal Nigam is a Statutory Corporation created under the U.P. Water Supply and G Sewerage Act, 1975 and the service conditions of the employees of the Nigam are governed by the U.P. Jal Nigam (Public Health Branch) Service Regulations, 1978. The aforesaid regulations were made in exercise of power conferred on the U.P. Jal Nigam under Sections 97(2) and H

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 Schedule Caste, Schedule 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 10th of October, 1994 the percentage of reservation in the matter of Schedule 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 17th of June, 1995, which reads as under :-

> "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 class 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"

6. Article 16(4-A) of the Constitution, which was inserted in the Constitution on 17th of June, 1995, as noted herein earlier, was incorporated by the Constitution (77th Amendment) Act, 1995, thereby introducing an enabling provision for providing reservation in the matter of promotion.

7. However, this Court in its Judgment dated 16th of November, 1992, in the case of *Indira Sawhney vs. Union of India* [AIR 1993 SC 447], 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. A

8. Further in the year 2002, the U.P. Government Servants Seniority (1st 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. B C

9. Further in the year 2005, the U.P. Government Servants Seniority (2nd Amendment) Rules, 2005 were introduced by which Rule 8(A) referred to above was omitted. D

10. On 19th of October, 2006, the aforesaid reference was decided by the Constitution Bench in *M.Nagaraj & Ors. vs. Union of India & Ors.* [(2006) 8 SCC 212] 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. 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 of Article 335 of the Constitution of India. It is 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. E F G

11. Further, after the passing of aforesaid judgment by the Constitution Bench, the U.P. Government issued a Notification H

A on 14th of September, 2007 by which the U. P. Government Servants Seniority (3rd Amendment) Rules, 2007, were issued which runs as under :

> "Rule 8-A :- Entitlement of consequential seniority to a person belonging to scheduled castes and scheduled tribes : Notwithstanding anything contained in Rules 6, 7 or 8 of these rules, a person belonging to the SC or ST 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".

12. After the issuance of the aforesaid notification, the State Government vide letter dated 3rd of October, 2007 directed the various Development Authorities including the appellants to take necessary action in accordance with the Notification dated 14th of September, 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.

13. On 17th of October, 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 reason, 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. A

14. The aforesaid Notification dated 14th of September, 2007 was adopted vide order dated 19th October, 2007 by the Chairman of Jal Nigam and was given immediate effect thereto. Thereafter, the U.P.Jal Nigam issued the tentative joint seniority list of Chief Engineer Level-1, Chief Engineer Level-II (Civil) and Superintending Engineer (Civil) and the tentative Seniority List of the Executive Engineers of U.P. Jal Nigam dated 3rd of November, 2007 in furtherance of the aforesaid notification dated 14th of September, 2007. B C

15. On 6th of November, 2007, the validity of the aforesaid Rule 8(A) of Uttar Pradesh Government Servants' Seniority (3rd Amendment) Rules, 2007 was challenged by the Engineers of the Irrigation Department by way of a Writ Petition No. 1389 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 issued a notice to the Advocate General of the State vide order dated 6th of November, 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 (3rd Amendment) Rules, 2007 shall not be disturbed in pursuance of these Rules and no reversion shall be effected. D E F

16. 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 (3rd Amendment) 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 G H

A through roster/rule of reservation. In the aforesaid Writ Petition, the respondents further assailed the validity of the Notification dated 14th of September, 2007 of the U.P. Government Servants Seniority (3rd Amendment) Rules, 2007 made effective from 17th of June, 1995. They also challenged the B order dated 19th of October, 2007 by which the aforesaid Notification dated 14th of September, 2007 was adopted. The respondents also challenged the aforesaid tentative Seniority List dated 3rd of November, 2007: issued by the U.P. Jal Nigam in furtherance of the Notification.

C 17. The aforesaid Writ Petition No.- 1496 (S/B) 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. D However, the Division Bench, following the reasons mentioned in the order passed in Writ Petition No. 1389(S/B) 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 (3rd Amendment) Rules, 2007 shall not be E disturbed in pursuance of the Rules.

18. Further in the meantime, some of the Executive Engineers also filed a Writ Petition No.81/2008 thereby challenging the consequential validity of Rule 8-A of the U.P. F Government Servants Seniority (3rd Amendment) Rules, 2007. In the present writ petition, the Division Bench of the High 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 G Servants Seniority (3rd Amendment) Rules, 2007, shall not be disturbed in pursuance of these rules. Subsequently, the U.P. Avas Evam Vikas parishad, Lucknow, which was a party in the aforesaid writ petition, aggrieved by the aforesaid interim order dated 17th of January, 2008, filed a Special Leave Petition (c)

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No. 3097 of 2008 before this Court challenging the aforesaid interim order of the High Court. This Court, vide order dated 22nd of February, 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 C.M. 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 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 respondent Nos. 4 to 8 in the array of the parties. Further on 5th of March, 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 3rd of April, 2008, the present special leave petition was filed.

19. In the present case and in the facts and circumstances stated herein earlier, 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 prenequisites for making such a provision as required under Article l6 (4-A) of the Constitution of India. The ceiling-limit of 50%, the concept of creamy layer and the compelling reasons,

A 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" B 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. As observed in *M. Nagaraj and Ors. vs. Union of India & Ors.* (Supra), it has been held C that the State is not bound to make reservation for SC/ST in matter 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 D in addition to compliance of Article 335 of the Constitution. It is 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. E

20. The rules pertaining to the reservation and promotion list is 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, has F 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.

21. In the light of the reasons above-mentioned, we are of G the view that the High Court was fully justified in granted the present interim order and there is no infirmity in the same.

22. 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 H 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 by us in this order. A

23. There is one another 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. B C

24. 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 months from the date of supply of a copy of this order to it. D

25. The appeals are thus dismissed. There will be no order as to costs. E

N.J. Appeals dismissed.