

*** THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO**

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+ WRIT PETITION NOS. 8851, 11944, 16535 OF 2008
AND
6453 OF 2011

% Dated 19.01.2015

W.P.No.8851 of 2008

N. Satyanarayana Murthy, S/o N. Sri Ram Murthy
Occ: Deputy Manager (Marketing)
A.P. Oil Federation, Eluru Petitioner

Vs.

\$ The A.P. Cooperative Oil Seeds Grower's
Federation Ltd,
Rep by its Vice Chairman and Managing Director
Parisram Bhavan, Basheerbagh,
Hyderabad and 2 others Respondents

W.P.No.11944 of 2008

N. Satyanarayana Murthy, S/o N. Sri Ram Murthy
Occ: Deputy Manager (Marketing)
A.P. Oil Federation, Eluru Petitioner

Vs.

\$ The A.P. Cooperative Oil Seeds Grower's
Federation Ltd,
Rep by its Vice Chairman and Managing Director
Parisram Bhavan, Basheerbagh,
Hyderabad and 2 others Respondents

W.P.No.16535 of 2008

K.V. Ranga Reddy, S/o K. Someshwar Reddy
Occ: Deputy Manager (Oil Palm Development)
A.P. Cooperative Oil Seed Growers Federation Limited
Khammam District Petitioner

Vs.

\$ The A.P. Cooperative Oil Seeds Grower's
Federation Ltd,
Rep by its Vice Chairman and Managing Director
Parisram Bhavan, Basheerbagh,
Hyderabad and 3 others Respondents

W.P.No.6453 of 2011

The A.P. Cooperative Oil Seeds Grower's
Federation Ltd,
Rep by its Vice Chairman and Managing Director
Parisram Bhavan, Basheerbagh,
Hyderabad Petitioner

Vs.

\$ The Government of Andhra Pradesh
Rep. by its Principal Secretary
Agriculture Marketing & Cooperation
Department, Secretariat,
Hyderabad and 6 others Respondents

! Counsel for the petitioners : Sri V. Padmanabha Rao

^ Counsel for the respondents : 1. Sri M. Papa Reddy
2. G.P. for Cooperation
3. Sri V. Raja Manohar
4. Mrs. Marie Desai

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? Cases referred

1. AIR 1988 SC 959
2. 2010 (3) SCC pg 119
3. AIR 1974 SC 532

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

**WRIT PETITION NOS. 8851, 11944, 16535 OF 2008
AND
6453 OF 2011**

COMMON ORDER:

W.P.No.8851 of 2008 was instituted by one

Sri N.

Satyanarayana Murthy who was then working as Deputy Manager (Marketing) with the first respondent-Andhra Pradesh Cooperative Oil Seeds Growers' Federation Limited, challenging the appointment of respondents 2 & 3 as Managers through proceedings dated 26.12.2007 without considering his case. The same individual has instituted W.P.No.11944 of 2008 challenging the appointment of the third respondent therein as Manager through proceedings dated 07.05.2008. W.P.No.16535 of 2008 was instituted by one Sri K.V. Ranga Reddy challenging the appointment of the fourth respondent as Manager through proceedings dated 26.12.2007 as bad. The fourth writ petition W.P.No.6453 of 2011 has been filed by the Employees Association of the Andhra Pradesh Cooperative Oil Seeds Growers' Federation, the second respondent therein (henceforth referred to, for short as 'Corporation'), challenging the appointment of respondents 4, 5, 6 and 7 as Managers. All these four cases substantially deal with the same question of law and hence, they are heard together and disposed of by this common order.

Heard Sri C.V. Mohan Reddy, learned Senior Counsel on behalf of Sri V. Padmanabha Rao, learned Counsel for the petitioners and Sri P. Sri Raghu Ram, learned Senior Counsel on behalf of Ms. Mary Desai, learned counsel for the contesting unofficial respondents and Sri T. S. Praveen Kumar, learned counsel on behalf of the Corporation.

The Corporation is a public sector undertaking which was established in the year 1981 in collaboration with National Dairy Development Board to increase the oil seeds production. Initially, the federation used to work at the state level and the cooperative oil seeds unions used to function at divisional level and subsequently the primary agricultural societies at each village level have been added up. Due to the financial crisis, the unions established at Gadwal in Mahabubnagar District and Piler in Chittoor District, have been closed down. Thereafterwards, the cadre strength has been approved by the

Registrar of Cooperative Societies in terms and in accordance with Section 116 (C) of the Andhra Pradesh Cooperative Societies Act, 1964. In pursuance of earlier round of litigation, common seniority list of all categories of employees has been published on 15.05.2007. It is the claim of the petitioners that there are seven different categories of Manager/Divisional Officer which are approved in the cadre of the Corporation. They are:

1. Manager (Personal & Administration or HRD)
2. Manager (Finance)
3. Manager (Marketing)
4. Manager (Plants & Projects)
5. Manager (Procurement & Inputs)
6. Manager (Oil Palm Development) and
7. Manager (Divisional Officer at Field Level)

It is contended that the job requirement of each of these posts being vastly different from one another, though they may carry identical scale of pay, but each is a separate and isolated post by itself in the cadre concerned. All the posts cannot be added together for purposes of applying the principles of reservation amongst various social sectors such as Scheduled Castes, Scheduled Tribes, etcetera. Sri C.V. Mohan Reddy, learned Senior Counsel would submit that, when these posts are isolated posts, they form into 'a single post cadre' and consequently, the question of applicability of principles of reservation would not arise. Any attempt to apply the principles of social reservation amongst various social sectors would amount to reserving 100%, which is impermissible. The learned Senior Counsel would therefore submit that the notification issued by the Corporation on 01.11.2007 inviting applications exclusively from members belonging to Scheduled Castes and Scheduled Tribes treating the vacancies that have arisen in these isolated cadres as backlog vacancies to be filled in by candidates belonging to Scheduled Castes or Scheduled Tribes,

as the case may be, is completely illegal. He, therefore, challenges the very process of recruitment initiated by the notification dated 01.11.2007 inviting applications which fructified ultimately in recruiting the respective unofficial respondents in the writ petitions.

On behalf of the Corporation, Sri Praveen Kumar would contend that the Corporation has framed its own services regulations which were brought into force from 01.06.1983. As per Regulation 9 where the appointments are made by direct recruitment, the Corporation has a right to reserve certain posts for specified categories or classes of persons in keeping with the rules or regulations in force. Therefore, Sri Praveen Kumar would contend that the Corporation and the employees are bound by this principle and hence, there is no tenability behind the challenge to the notification issued by the Corporation on 01.10.2007 inviting applications exclusively from members belonging to SCs/STs. Sri Praveen Kumar would further contend that, when once educational qualifications and age criteria is notified, if internal employees of the Corporation satisfy the said norms, they can also respond to the notification and file their applications. Since the maximum upper age limit is fixed as 43 years, the petitioners have crossed the same, therefore lacked the eligibility to respond to the notification and hence, the petitioners cannot validly challenge the notification issued by the Corporation making resort to direct recruitment.

Sri P. Sri Raghu Ram, learned Senior Counsel would submit that the petitioners have proceeded on the basis of the provisional cadre strength in contending that the posts in question are isolated posts, whereas, the finally approved cadre strength is what is required to be taken into consideration. According to the learned Senior Counsel, the cadre strength of Managers has been raised from 7 to 16 and hence, the principle of reservation in favour of various social sectors is attracted for filling up the posts of Managers. Learned Senior Counsel

would further contend that the posts of Manager/Divisional Officer are included in managerial cadre II services of the Corporation in terms of Regulation 18 of the service regulations of the Corporation. They carry the same scale of pay and hence, they occupy the same status in the service hierarchy of the Corporation and discharge functions and responsibilities of a comparable nature. In view of their inclusion in a common cadre, the fact that there were some dissimilarities in the nature of functions performed by them should not result in treating all of them as distinct and separate posts. Learned Senior Counsel would further contend that, as per Regulation 9 of the service regulations of the Corporation, the reservation amongst various social sectors is the choice of the Corporation and the said choice is a reasonable one intended to carry forward the constitutional mandate of social justice. In this view of the matter, there is no justification for challenging the notification issued by the Corporation for taking recourse to direct recruitment. The learned Senior Counsel would further contend that, when once Corporation has treated them as common cadre posts and the Corporation has not treated them as single cadre posts, the Corporation is justified in taking out the notification for direct recruitment. Taking recourse to the method of direct recruitment instead of promotion is again a choice of the Corporation, which method of recruitment is ideally suited for the efficient functioning of the Corporation is a matter of value based choice of the Corporation and any such decision of the Corporation cannot be ignored. So long as the choice of recruitment is in accordance with Regulation 11 of the service regulations of the Corporation, the petitioners cannot challenge the same excepting on grounds of violation of any of their rights or any fundamental rights guaranteed to them. The learned Senior Counsel would expand this idea by submitting that Regulation 11 left a choice in the hands of the Corporation to fill up the vacancies through any of the methods specified therein which included inviting applications through advertisement and then selection of the candidates, which is

the method known popularly as direct recruitment method. Similarly, the Corporation could have also availed the other method of selection from among the Corporation employees which is by the method of promotion. Since, no fundamental rights or no legal rights are available in favour of the petitioners, the learned Senior Counsel would contend that the petitioners cannot maintain the writ petitions. Finally, the learned Senior Counsel would submit that the petitioners have also earned subsequent promotions as Managers and hence, the issue raised by them has reduced to a pure and simple academic issue and such academic issues are not required to be answered by the Courts. Hence, the learned Senior Counsel would suggest to dismiss the writ petitions.

The notification issued by the Corporation on 01.11.2007 inviting applications for certain posts notified therein is placed at page no.18 of the writ petition paper book in W.P.No.6453 of 2011. It has clearly set out that the vacancies which were existing as on 31.08.2007 in the service of the Corporation which are treated as backlog vacancies to be filled in with candidates belonging to Scheduled Castes and Scheduled Tribes. The upper age limit for the candidates is prescribed as 43 years and the qualifications required to be possessed by them against each post is specified. The post of Manager, which is reserved for women candidate of scheduled castes, required the candidate to possess the following qualifications namely, B.Sc (Agriculture) with experience in procurement of edible oil seeds and distribution activities and experience in oil palm development. The next post of Manager notified for Scheduled Caste (General Category) (i.e. both men and women amongst scheduled castes can respond) required the candidates to possess qualification of any degree. However, those who are possessing M.B.A. degree would be given preference. Thus, in between the two posts of Managers which have been notified, it becomes clear that they do belong to two different disciplines.

Consequently, they are intended to discharge two distinct and dissimilar functions, while one is required to take care of consumer marketing activities, the other is required to perform procurement activities. While the procurement of the oil seeds deals with pre-crushing basic input activity of the Corporation, whereas, the marketing activity of the finished product comes after the production activity is completed at the plant. The functions which are required to be performed by these two Managers are vastly different and they stand at the either end of the rainbow. There is no meeting ground in between these two stages. Similarly, the qualifications required also speak of their divergent professional inputs. One is required to possess the professional qualification of B.Sc Agriculture, while the other could be filled in with any Graduate, not necessarily a Science Graduate such as B.A. or B.Com., and by giving preference to candidates who have possessed M.B.A Degree discipline with marketing as the subject matter of specialized study. Therefore, the contention canvassed by Sri P. Sri Raghu Ram that all the posts are common cadre posts which have been included in the same cadre namely Managerial Grade-II under Regulation 18 of the Employees Regulations does not hold water. I have no hesitation to come to the conclusion that the posts of Managers and Divisional Officers including in the common cadre are each one of them distinct and separate one and consequently, a person recruited as a Manager to discharge one set of functions cannot be transferred and posted against the other. Hence, these posts of Managers belong to distinct and separate disciplines. They are isolated posts and there is common nature of duties performed by them.

For instance, the Manager who has been recruited for purpose of Oil Palm Development cannot be posted as Manager of Consumer Marketing or as Manager (Personnel and Administration). The converse is also true. A person recruited as Manager (Personnel and Administration) cannot similarly be posted as Manager (Plants and

Products) or procurement and inputs or consumer marketing. Each is a distinct and separate post in the same cadre. Where there is only one post in a cadre, the question of applying principles of reservation in favour of various social sectors would not normally arise. If there is only one post and if that one post is reserved exclusively in favour of any of one particular social sector, no other post in that cadre would be available to be filled in by candidates belonging to the other social segment. In other words, a single post in a cadre if it is filled up applying the principles of reservation amongst various social sectors, it would amount to reserving 100%. Providing 100% reservation is wholly impermissible and it directly conflicts with the guarantees held out under Article 14 and 16 of our Constitution.

The Supreme Court in ***Chakradhar Paswan v. State of Bihar and others***^[1] case had occasion to consider the applicability of the principles of reservation in favour of various social sectors and the principle has been spelt out as herein below:

“The main contention of Dr. Y.S. Chitale, learned counsel for the appellant, is that there are four posts in the Directorate of Indigenous Medicines and all the posts are Class I posts and therefore according to the 50 point roster, the post of Director having been treated as unreserved by the rotational system, the post of Deputy Director (Homeopathic) was rightly reserved for a scheduled caste candidate. According to him, the High Court fell into an error in assuming that the reservation of the post of Deputy Director (Homeopathic) for a scheduled caste candidate under Art. 16(4) amounted to 100% reservation and suffered from the vice of offending against the equality clause under Art. 16(1) read with Art. 14 of the Constitution. In answer to the argument Shri L.N. Sinha, learned counsel appearing for respondent No. 4. submits that firstly, the posts of Director and Deputy Directors are not carried in the same cadre and therefore they could not be grouped for purposes of implementing the policy of reservation under Art. 16(4). and secondly, the three systems of indigenous medicines, namely, Homeopathic, Ayurvedic and Unani are distinct and separate systems of medicine and thus the 50 point roster could not be applied.

The questions that fall for our determination are : (1) Is the post of Deputy Director (Homeopathic) an 'isolated post' and therefore reservation of the post for a scheduled caste candidate amounts to 100% reservation and must therefore be

declared to be impermissible under Art. 16(4)? (2) Whether the posts of the Director and the three Deputy Directors could be grouped together for purposes of implementing the policy of reservation, according to the 50 point roster. And (3) Could the posts of the Director and the three Deputy Directors in the Directorate of Indigenous Medicines although they are posts carried on different grades, still be clubbed together for purposes of reservation merely because they are Class I posts?

.....Admittedly, the post of the Director is the highest post in the Directorate of Indigenous Medicines and is carried in the higher pay scale or grade of Rs. 2225-75-2675 while the posts of the Deputy Directors are carried in the pay scale or grade of Rs. 1900-75-2500. In service jurisprudence, the term 'cadre' has a definite legal connotation. In the legal sense, the word 'cadre' is not synonymous with 'service'. Fundamental R. 9(4) defines the word 'cadre' to mean the strength of a service or part of a service sanctioned as a separate unit. THE post of the Director which is the highest post in the Directorate, is carried on a higher grade or scale, while the posts of Deputy Directors are borne in a lower grade or scale and therefore constitute two distinct cadres or grades. It is open to the Government to constitute as many cadres in any particular service as it may choose according to the administrative convenience and expediency and it cannot be said that the establishment of the Directorate constituted the formation of a joint cadre of the Director and the Deputy Directors because the posts are not interchangeable and the incumbents do not perform the same duties, carry the same responsibilities or draw the same pay. The conclusion is irresistible that the posts of the Director and those of the Deputy Directors constitute different cadres of the Service. It is manifest that the post of the Director of Indigenous Medicines, which is the highest post in the Directorate carried on a higher grade or scale, could not possibly be equated with those of the Deputy Directors on a lower grade or scale. In view of this, according to the 50 point roster, if in a particular cadre a single post falls vacant, it should, in the case of first vacancy, be considered as general. That being so, the State Government could not have directed reservation of the post of Deputy Director (Homeopathic) which was the first vacancy in a particular cadre i.e. that of the Deputy Directors, for candidates belonging to the scheduled castes. Such reservation was not in conformity with the principles laid down in the 50 point roster and was impermissible under Art. 16(4) of the Constitution and clearly violative of the, guarantee enshrined in Art. 16(1) of equal opportunity to all citizens relating to public employment. Clause (4) of Art. 16 is by way of an exception to the proviso to Art. 16(1). THE High Court rightly held that the reservation of the post of Deputy Director (Homeopathic) amounted to 100% reservation which was impermissible under Art. 16(4) as otherwise it would render the guarantee of equal opportunity in the matter of public employment under Art. 16(1) wholly elusive and meaningless.

Another serious infirmity in the argument of the learned counsel for the appellant is that it overlooks, the basic principle that if there is only one post in the cadre, there can be no reservation under Art. 16(4) of the Constitution. The whole concept of reservation for application of the 50 point roster is that there are more than one post, and the reservation as laid down by this Court in M.R. Balaji's case (AIR 1963 SC 649) can be up to 50%. The Government cannot, for instance, declare that the post of the Director of Indigenous Medicines shall be reserved for candidates belonging to scheduled castes. The Directorate is a paramedical service with Director as its head and the there Deputy Directors belonging to three distinct and separate disciplines viz. Homeopathic, Unani and Ayurvedic under him. In the para-medical system the three posts of Deputy Directors pertain to three distinct systems and therefore each of them is an isolated post by itself. The same principle should, we think, as in the case of the Director, apply."

Similarly, the same question has fallen for consideration before the Supreme Court once again in ***Jitendra Kumar Singh and Anr.***

Vs. Respondent: State of U.P. and Ors.^[2], wherein, the principle has been enunciated as under clearly:

"From the above it becomes evident that the very premise on the basis of which Madhav case (1997 AIR SCW 3113) was decided has been held to be erroneous. Thereafter it is further observed in paragraph 30 that "it also appears that the decision in Indra Sawhney case (1992 AIR SCW 3682) has also not been properly appreciated in Madhav decision." The conclusion of the judgement is given in paragraph 37 which is as under (Para 38 of 1998 AIR SCW 1553):-

"37. We, therefore, approve the view taken in Chakradhar Case (AIR 1988 SC 959) that there cannot be any reservation in a single post cadre and we do not approve the reasonings in Madhav Case (1997 AIR SCW 3113), Brij Lal Thakur case (1997 AIR SCW 1937) and Bageshwari Prasad case upholding reservation in a single post cadre either directly or by device of rotation of roster point. Accordingly, the impugned decision in the case of Post Graduate Institute of Medical Education and Research, Chandigarh is, therefore, allowed and the judgment dated 2.5.1997 passed in Civil Appeal No.3175 of 1997 is set aside.""

In view of the clear principle spelt out by the Supreme Court, any attempt to apply the principles of reservation to single and isolated posts of Managers would be wholly impermissible.

However, Sri P. Sri Raghu Ram, learned Senior Counsel had

adverted to the aspect that there are more number of posts of Managers in each cadre. The learned Senior Counsel has also criticized that the action of the Corporation which has not specifically adverted to and brought out the final cadre strength approved by the Registrar of Co-operative Societies, in it's pleadings for the Managers categories. It could be due to the failure to grasp the significance and distinction between single cadre and multi member cadre posts in the matter of applicability of principles of social sector reservations. In the absence of any such plea or material produced by the Corporation, it would be hazardous on the part of this Court to record a finding of fact firmly that there is more than one post available in each cadre such as Manager (Personal & Administration or HRD), Manager (Finance), Manager (Marketing), Manager (Plants & Projects), Manager (Procurement & Inputs), Manager (Oil Palm Development) and Manager (Divisional Officer at Field Level). However, on the last occasion, the Corporation seemed to have addressed a communication to its standing counsel, a copy of which Sri Praveen Kumar has circulated for my consideration. It emerges from the contents thereof that the petitioners have been subsequently promoted as Managers. This event of promotion of the petitioners would only leave a hint that there are more number of posts than one available in the cadre of Managers in the service of the Corporation. Otherwise, the petitioners could not have been promoted while the unofficial respondents are still holding the same posts of Managers. Such a promotion could only become possible if only there is one more post of Manager available. Otherwise, two people could not have been appointed and promoted against one single post. It is for the Corporation to sort it out, this factual controversy. However, it is worthy to note that where there are two or more number of posts available in a cadre the principle evolved in Chakradhar Paswan's case (referred supra) will not get attracted. Dealing with this very aspect- where there are two posts of Principals available - the Supreme Court in "**Arati Ray**

Choudhury v. Union of India^[3] case held as under:

“The model roster accompanying the letter of the Railway Board dated 16/01/1964 is designed to meet the requirements of the new situation arising out the rules framed in deference to the judgment in Devadasan's case, (1964) 4 SCR 680 = (AIR 1964 SC 179). Both the letter and the Note appended to the roster state expressly that if "there are only two vacancies to be filled on a particular occasion, not more than one may be treated as reserved and if there be only one vacancy, it should be treated as unreserved". THE words "on a particular occasion" were substituted on 2/09/1964 by the words "year of recruitment". Thus, in the first place each year of recruitment is directed to be considered separately and by itself as laid down in Devadasan's case, (1964) 4 SCR 680, 694-695 = (AIR 1964 SC 1790) so that if there are only two vacancies to be filled in a particular year of recruitment, not more than one vacancy can be treated as reserved. Secondly, and that is directly relevant for our purpose, if there be only one vacancy to be filled in a given year of recruitment, it has to be treated as unreserved irrespective of whether it occurs in the model roster at a reserved point. THE appointment then is not open to the charge that the reservation exceeds 50 Per Cent for, if the very first vacancy in the first year of recruitment is in practice treated as a reserved vacancy, the system may be open to the objection that the reservation not only exceeds 50 Per Cent but is in fact cent per cent. But, if "on this account" that is to say, if on account of the requirement that the first vacancy must in practice be treated as unreserved even if it occurs in the model roster at a reserved point, "a reserved point is treated as unreserved" the reservation can be carried forward to not more than two subsequent years of recruitment. Thus, if two vacancies occur, say, within an initial span of three years, the first vacancy has to be treated as an unreserved vacancy and the second as reserved.

The corporation is a public sector undertaking. When it undertakes direct recruitment, it should be very cautious and careful. If, for any reason, the process of direct recruitment is faulted or vitiated, the candidate who was selected by it and who joined the service will get caught in the cross-fire. A direct recruit candidate cannot be reverted back to any other lower post. He is normally picked up, while competing with the other candidates, from the open market. Therefore, for any reason, the process of direct recruitment is found fault with, then, he will have to be sent out of the service of the Corporation altogether, but cannot be reverted. Same would be the prospect even in

case of an internal candidate. An internal candidate offered his candidature only because he satisfied the recruitment criteria in all respects including the upper age limit. He is required to compete with the candidates drawn from the open market. For all practical purposes, he is standing at par with the candidate drawn from the open market. If, for any reason, when the direct recruitment process fails, he will have to be terminated from the employment of the Corporation like any other candidate drawn from the open market. Therefore, keeping this grave consequence in mind, the Corporation would regulate its affairs properly and carefully from now on.

Accordingly, a declaration is issued that the principle of reservation in favour of various social sectors segments in so far as single cadre posts is impermissible and it will be violative of the concept of equality enshrined under Articles 14 & 16 of our Constitution. The Corporation would accordingly regulate the entire exercise.

The writ petitions stand disposed of with this order. Miscellaneous applications pending shall stand closed. No costs.

JUSTICE NOOTY RAMAMOHANA RAO

Date:19-01-2015
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[\[1\]](#) AIR 1988 SC 959

[\[2\]](#) 2010 (3) SCC pg 119

[\[3\]](#) AIR 1974 SC 532