

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on September 29, 2015

Judgment delivered on October 5, 2015

+ **W.P.(C) 5375/2015 & CM No.9693/2015**

MS. GULSHAN CHAUDHARY Petitioner
Through: Mr.B.B. Sawhney, Sr.
Advocate with Mr.Deepak
Kr. and Mr.Aditya Shandilya,
Advocates

versus

UNION OF INDIA & ANR Respondent
Through: Ms. Bharathi Raju, CGSC for
R-1
Mr. V.N. Kaura, Adv. with
Mr. Sumit Singh, Adv. for R-
2

CORAM:
HON'BLE MR. JUSTICE V.KAMESWAR RAO
V.KAMESWAR RAO, J.

1. The issue which arises for consideration in this writ petition is whether the judgment of the Supreme Court dated March 17, 2015 in W.P (C) No.274/2014, *Ram Singh and Ors. vs. Union of India* and other connected writ petitions, wherein the Supreme Court has set aside the notification No.63 dated March 4, 2014 including the Jats in the Central List of Other Backward Classes for the states of Bihar, Gujarat, Haryana, Himachal Pradesh, Madhya Pradesh, NCT of Delhi, Bharatpur

and Dholpur Districts of Rajasthan, Uttar Pradesh and Uttarakhand, would have a prospective effect so as to save the selection of the petitioner with the respondent No.2.

2. It is argued by Mr. B.B. Sawhney, learned Senior Counsel for the petitioner that the petitioner, is a Chartered Accountant having passed from the Institute of Chartered Accountants of India (ICAI) in the year 2014 and belongs to the Jat community, which was included in the Central list of Other Backward Classes by the respondent No.1 vide notification No.63 dated March 4, 2014. According to Mr. Sawhney, applications were invited through advertisement by the respondent No.2 in the campus placement in the month of January 2015 for the positions of Finance Officers. The petitioner was short listed. It is noted, she had also been short listed for consideration in other companies as well. On February 26, 2015, the respondent No.2 informed the Chairman of the Committee for Member in Industry (CMII) that the appointments to be made by the respondent No.2 shall be subject to the final orders in W.P.(C) 29832/2011 pending before the High Court of Madras. In the month of March , 2015 she was selected by the respondent No.2 in the campus interview, and all the original documents were verified and option for place of posting was also confirmed. He would state that as

per the rules and procedures, the petitioner submitted an undertaking/declaration to the respondent No.2 that she shall not participate in any campus placement programme that will be conducted hereinafter or accept jobs in any of the interviews that have already taken place. On March 7, 2015, the Supreme Court pronounced its judgment in the case of ***Ram Singh vs. Union of India and Ors.*** W.P.(C) No.274/2014 and connected matters and quashed the notification No.63 dated March 4, 2014. He would state, the Government of U.P issued an OBC certificate to the petitioner on March 25, 2015 and the petitioner in her communication with the respondent No.2, on March 25, 2015, inquired about the formalities to be fulfilled by her in terms of her selection on March 17, 2015. According to him, in fact, she had submitted the requisite documents to the respondent No.2 through E-mail on March 26, 2015 and the OBC certificate on April 7, 2015. It was only on April 30, 2015 that respondent No.2 communicated to CMII, ICAI that the selection of the petitioner in the respondent No.2 organization is withdrawn and cancelled due to the judgment of the Supreme Court in ***Ram Singh's case*** (supra). He refers to the continuous representations made by the petitioner seeking appointment in the respondent No.2 organization. On May 8, 2015, the impugned

order herein was communicated by the respondent No.2 wherein, the respondent No.2 had stated as under:-

“a. You were provisionally selected from ICAI, New Delhi center post your interview on 17th March, 2015. Your selection was under ‘relaxed standard’, meaning thereby that you qualified for the said selection as an OBC Category candidate. In other words, there were General Category candidates securing higher marks than you, who were not selected.

b. You belong to ‘Jat’ community from Uttar Pradesh, which was brought under OBC category through the Gazette notification (No.63) dated 4th March, 2014 issued by of the Ministry of Social Justice and Empowerment, Government of India, modifying the Central List of ‘Other Backward Classes’ by including ‘Jats’ of the states of Bihar, Gujarat, Haryana, Himachal Pradesh, Madhya Pradesh, Rajasthan, Uttarakhand, Uttar Pradesh and National Capital Territory of Delhi within the Central List of Other Backward Class (OBC).

c. The Supreme Court of India through its judgment dated 17/03/2015 in the Writ Petition (Civil) No.274 of 2015 in the case of Ram Singh & ors vs. Union of India quashed and set aside the said Gazette notification bearing no.63 dated (sic.) 4/3/2014 issued by the Government of India.

d. The legal implication is that the said law as embodied in the impugned notification dated 4th March, 2014 is never valid and is, therefore, of no effect. By striking down the impugned notification, the Supreme Court invalidated the same law since its inception, as though it never existed”.

3. According to Mr. Sawhney, the reasoning given by the respondent No. 2 is not tenable inasmuch:

- (1) The selection of the petitioner was completed prior to the judgment passed by the Supreme Court in ***Ram Singh's case (supra)***;
- (2) That pursuant to the selection, the petitioner had completed all other formalities of submitting documents, including her caste certificate etc. to the satisfaction of the respondent No. 2 for offer of appointment letter;
- (3) That, had the respondent No. 2 not compelled the petitioner to file any undertaking/declaration, then the petitioner would have joined other company like the Everest and Young LLP Global Services Division;
- (4) The petitioner could not apply to other companies for the interview due to the said undertaking given to the respondent No. 2;
- (5) That, the judgment of the Supreme Court in ***Ram Singh's case (supra)*** would have a prospective effect, not effecting the selection already undertaken, wherein, the respondent had considered the petitioner on relaxed standards and in fact, given the benefit of notification dated March 4, 2014.

4. Mr. B.B. Sawhney, learned Senior Counsel would rely upon the following judgments in support of his contention:-

- (i) ***K. Madhava Reddy and others vs. State of Andhra Pradesh and ors (2014) 6 SCC 537***;
- (ii) ***Baburam vs. C.C. Jacob and ors (1999) 3 SCC 362***;
- (iii) ***Harsh Dhingra vs. State of Haryana and ors (2001) 9 SCC***

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5. On the other hand, Mr. V.N. Kaura, learned counsel for respondent No.2 would submit that vide notification No.63 dated March 4, 2014 of the Government of India, Jats belonging to certain other States (including the State of Uttar Pradesh) were also included in Other Backward Classes (OBCs) for reservations inter-alia in the matter of public employment. Respondent No.1 decided to fill 25 positions of Finance Officers through Campus Recruitment of Chartered Accountants from different campuses of the Institute of Chartered Accountants of India which is the only Body or Institute in India authorized to issue degrees to Chartered Accountants and as per the presidential Directives on reservation, 7 posts were reserved for Other Backward Classes. It is his submission that during the recruitment exercise, 6 candidates belonging to general category, 4 candidates belonging to the OBC category including the petitioner, 3 from Scheduled Caste category and 1 candidate from the Scheduled Tribes category were provisionally selected from ICAI, New Delhi Centre. Out of the Chartered Accountants provisionally short listed for selection through campus recruitment in the OBC category, the petitioner belonged to the Jat Community from Uttar Pradesh covered by the impugned notification.

The impugned notification was challenged, and the challenge was upheld by the Supreme Court in its judgment dated March 17, 2015 in W.P (C) No.274/2014 ***Ram Singh and Ors. vs. Union of India*** by which the impugned notification was quashed and struck down.

6. Mr. Kaura would further submit, on the same day i.e March 17, 2015, without having the knowledge that impugned notification had been struck down by the Supreme Court, respondent No.2 informed the ICAI vide letter dated March 17, 2015 that four candidates, including the petitioner had been provisionally empanelled by the Selection Committee for recruitment in respondent No.2 organization subject to the approval of the competent authority in the respondent No.2 and to the production of a valid certificate of Caste. He would submit, on receiving information about the judgment of the Supreme Court dated March 17, 2015, respondent No.2 decided to exclude from the OBC category, the persons claiming entitlement to OBC reservations under the notification dated March 4, 2014 and to consider them for selection in the General Category. Consequently, in all the ongoing recruitment exercises for recruitment of officers/engineers in respondent No.2, candidates who were due to be short listed for further participation in the selection process involving group discussions/group task and personal interviews

on relaxed standards on the basis of their claiming OBC status were informed about the judgment of the Supreme Court with regard to the impugned notification and were required to communicate whether they claimed OBC status on the basis of the impugned notification. All such candidates who were claiming OBC status at the time of registering their applications were reverted to the general category and were evaluated as general category candidates and only those of such candidates who qualified for group discussion/group task and personal interview in the general category were informed to further participate in the selection process. Similarly, all the candidates belonging to the Jat community under the impugned notification and appraised under the relaxed standards applicable to OBCs were re-appraised as general candidates and only those who qualified for interview under these standards were interviewed.

7. It is further his submission that the petitioner who had been provisionally empanelled through campus selection of Chartered Accountants on relaxed standards applicable to OBC candidates and who claimed OBC status on the basis of the impugned notification was also re-appraised in the General Category. However, she was found ineligible for selection in the General Category since the last candidate

selected in the general category by campus recruitment had scored 7.6 marks against 6.9 marks scored by the petitioner. Further, there were two other general category candidates who had scored 7.3 and 7.2 marks respectively and who had not been selected from the ICAI campus, Delhi. Since the marks obtained by the petitioner (6.9 marks) were lower than the marks scored by the two general category candidates (7.3 & 7.2 marks) who had not been selected, the petitioner could not be considered for appointment as a general category candidate. He would further submit that panels for selection of candidates in all recruitments in respondent No.2 are prepared by Expert Selection Committees. The empanelment of a candidate by the Selection Committee constitutes a proposal to the management of respondent No.2 and does not confer any right of selection. The proposals are then scrutinized by the Senior Management of respondent No.2. If all documents relevant to qualify the selected candidate for the appointment in the category of selection are found to be in order, a final approval of the competent authority is taken on the candidates to be appointed. Hence, the provisional selection and empanelment of the petitioner by the Selection Committee in the OBC category by virtue of the impugned notification according to the standards applicable to that category by itself created no right in her to

be appointed to the position for which she was provisionally empanelled. Petitioner has been treated in the same manner as all other candidates applying for recruitment in OBC category by virtue of impugned notification.

8. Having heard the learned counsel for the parties, it is conceded by the learned Senior Counsel for the petitioner that the Supreme Court has not expressly stated that the quashing of the notification would have a prospective effect. That be so, the position of law in this regard is quite well settled, inasmuch as the Supreme Court for the first time, invoked the Principle of Prospective Over-Ruling to avoid unnecessary hardship and anomalies in the case of ***Golak Nath Vs. State of Punjab, AIR 1967 SC 1643*** while examining the challenge to the constitutionality of the Constitution (17th Amendment) Act, 1964. The Supreme Court reiterated the law in the case of ***Ashok Kumar Gupta Vs. State of U.P., 1997 5 SCC 201***, wherein the Supreme Court has held, it is settled principle, right from ***Golak Nath's case (supra)*** ratio that prospective overruling is part of the principles of Constitutional canon of interpretation. The Supreme Court, noting that ***Golak Nath's case*** ratio on unamendability of Fundamental Rights under Article 368 of the Constitution was overruled in ***Kesavanand Bharti's case***, has held that

the doctrine of prospective overruling was upheld in several decisions. The Supreme Court was of the view that the constitution does not expressly or by necessary implication speak against the doctrine of prospective overruling. Articles 32(4) and 142 are designed of words of width to enable the Supreme Court to declare the law and to give such direction or pass such orders as are necessary to prove complete justice. The declaration of law under Article 141 is wider than the words found or made. The law declared by the Supreme Court is the law of the land. So, the Supreme Court in dealing with the law in supersession of the law declared by it earlier could well restrict the operation of law as declared to the future and save the transactions whether statutory or otherwise that were effected on the basis of the earlier law. The Supreme Court held that it is therefore competent to adjust the competing rights by prospective overruling of the previous decisions in *Rangachari's case*. The decision in *Mandal's case* postponing the operation for 5 years from the date of the judgment is an instance of and on an extension of the principle of prospective overruling following the principles evolved in *Golak Nath's case*.

9. It is clear from the above that the doctrine of prospective overruling can be invoked by the Supreme Court in a given case to avoid

unnecessary hardship and anomalies. In fact, in *Baburam's case (supra)* as relied upon by Mr.Sawhney, the Supreme Court held the prospective declaration of law is a devise innovated by the Apex Court to avoid reopening of settled issues and to prevent multiplicity of proceedings. It is also a devise adopted to avoid uncertainty and avoidable litigation. By the very object of prospective declaration of law, it is deemed that all actions taken contrary to the declaration of law prior to its date of declaration are validated. This is done in the larger public interest. Therefore, the subordinate forums which are legally bound to apply the declaration of law made by it, are also duty-bound to apply such dictum to cases which would arise in future only. In matters where decisions opposed to the set principles have been taken prior to such declaration of law, cannot be interfered with on the basis of such declaration of law. In the facts of that case, the Supreme Court was of the view that both the decisions of the DPC as well as the appointing authority being prior to the judgment in *R.K.Sabharwal's case*, it was of the view that the opinion of the Tribunal, which held, there has been an erroneous application of the principles of reservation resulting in appointment of SC candidates in excess of the quota earmarked for them, was erroneous. The Tribunal erred in applying the decision of *R.K.Sabharwal case*.

Baburam's case has no applicability to this case inasmuch as in *R.K.Sabharwal's case*, the Supreme Court held, the same would have a prospective application. It is because of the said conclusion of the Supreme Court, the Supreme Court in *Baburam's case* has held that those DPCs which have been held before *R.K.Sabharwal's case*, the ratio of the *R.K.Sabharwal's case* would not be applicable.

10. In *Harsh Dhingra Vs. State of Haryana, (2001) 9 SCC 550*, the Supreme Court held that the “*prospective declaration of law is a device innovated by this Court to avoid reopening of settled issues and to prevent multiplicity of proceedings. It is also a device adopted to avoid uncertainty and avoidable litigation. By the very object of prospective declaration of law, it is deemed that all actions taken contrary to the declaration of law prior to the date of declaration, are validated. This is done in larger public interest. Therefore, the subordinate forums which are bound to apply law declared by this Court are also duty bound to apply such dictum to cases which would arise in future. Since it is indisputable that a Court can overrule a decision, there is no valid reason why it should not be restricted to the future and not to the past. Prospective overruling is not only a part of constitutional policy but also an extended facet of stare decisis and not judicial discretion*”.

In ***Sharvarn Kumar Aggarwal Vs. Madan Lal Aggarwal, (2003) 4 SCC 147***, the Supreme Court has held as under:

“15.....The doctrine of ‘prospective overruling’ was initially made applicable to the matters arising under the Constitution but we understand the same has since been made applicable to the matters arising under the statutes as well. Under the doctrine of prospective overruling the law declared by the Court applies to the cases arising in future only and its applicability to the cases which have attained finality is saved because the repeal would otherwise work hardship to those who had trusted to its existence. Invocation of the doctrine of prospective overruling is left to the discretion of the Court to mould with the justice of the cause or the matter before the Court”.

11. Similarly, in ***Rajasthan S.R.T.C. Vs. Bal Mukund Bairwa, (2009) 4 SCC 299***, the Supreme Court relying upon the observation made by Justice Benjamin and Cardozo, in his famous compilation of lectures “The Nature of Judicial Process” that:

“52..... in the vast majority of cases, a judgment would be retrospective. It is only where the (hardships are) too great that retrospective operation is withheld”.

12. The Supreme Court in ***M.A. Murthy vs. State of Karnataka and ors (2003) 7 SCC 517*** has held that normally, the decision of the Supreme Court enunciating a principle of law is applicable to all cases

irrespective of stage of pendency thereof because it is assumed that what is enunciated by the Supreme Court is, in fact, the law from inception. The doctrine of prospective overruling, which is a feature of American jurisprudence is an exception to the normal principle of law. The Supreme Court also held that prospective over-ruling is a part of the principles of constitutional interpretation and can be resorted to by the Supreme Court while superseding the law declared by it earlier. It is a device innovated to avoid reopening of settled issues, to prevent multiplicity of proceedings, and to avoid uncertainty and avoidable litigation. In other words, actions taken contrary to the law declared prior to the date of declaration are validated in larger public interest. The law as declared applies to future cases. The Supreme Court held, it is for the Supreme Court to indicate as to whether the decision in question will operate prospectively. In other words, there shall be no prospective over-ruling, unless it is so indicated in a particular decision.

13. It is noted for benefit, the Supreme Court in the case of ***Ramesh Kumar Soni Vs. State of Madhya Pradesh, (2013) 14 SCC 696*** has invoked the doctrine of prospective overruling by holding that the overruling of the Full Bench decision of the Madhya Pradesh High Court will not effect the cases that have already been tried and are at advance

stage before the Magistrates in terms of the said decision, whereas in the case of ***Bangalore City Co-operative Housing Society Ltd. Vs. State of Karnataka and Ors., (2012) 3 SCC 727***, the Supreme Court declined to invoke the doctrine of prospective overruling on the ground that it would result in conferring legitimacy to the influence of money power over the rule of law which would be edifice to our Constitution.

14. Suffice to state, as conceded by the learned Senior Counsel for the petitioner, the Supreme Court has not invoked the doctrine of prospective overruling. It must be construed that the judgment of the Supreme Court in ***Ram Singh's case (supra)*** quashing the notification dated March 4, 2014, would have the effect that such notification would govern the cases where the benefit of the said notification was given effect to before the judgment of the Supreme Court in ***Ram Singh's case (supra)***. The relief as prayed for by the petitioner would have the effect of this Court holding that the order of the Supreme Court dated March 15, 2015 would be prospective. Such a declaration cannot be given by this Court as the power to invoke the doctrine of prospective overruling is with the Supreme Court in exercise of powers under Article 32(4) and Article 142 of the Constitution of India. That apart, the question whether a High Court has power to invoke the doctrine of

prospective overruling has been left open by the Supreme Court in *A.Madhav Reddy's case (supra)*. It is a different issue that the Supreme Court in *A.Madhav Reddy's case (supra)* has invoked the doctrine of prospective overruling in that case.

15. Insofar as the submission of Mr.Sawhney, that the petitioner having been selected in terms of communication dated March 17, 2015 of the respondent No. 2 to the ICAI (Annexure R-1) and given declaration to the effect that she would not participate in campus placement programme and accept jobs in any of the interview that have already taken place, a right has accrued in favour of the petitioner and the selection as well as appointment pursuant thereto, could not have been cancelled is concerned, suffice to state, that, mere declaration of being selected without being appointed and joining the post of appointment, would not give a accruable right to a candidate to seek a lien on the post. I agree with the submission made by Mr.Koura that it is a settled position of law that mere declaration of the names of successful candidates, would not give an indefeasible right to the candidate to be appointed against the vacancies. In this regard, in the case of *Shankarasan Dash Vs. Union of India, (1991) 3 SCC 47* as relied upon by Mr. Koura, the Supreme Court has held as under:

“7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. (emphasis supplied) Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. (emphasis supplied)

And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in State of Haryana v. Subhash Chander Marwaha and Others, [1974] 1 SCR 165; Miss Neelima Shangla v. State of Haryana and Others, [1986] 4 SCC 268 and Jitendra Kumar and Others v. State of Punjab and Others, [1985] 1 SCR 899.

8. In State of Haryana v. Subhash Chander Marwaha and Others, (supra) 15 vacancies of Subordinate Judges were advertised, and out of the selection list only 7, who had secured more than 55% marks, were appointed, although under the relevant rules the eligibility condition required only 45% marks. Since the High Court had recommended earlier, to the Punjab Government that only the candidates securing 55% marks or more should be appointed as Subordinate Judges, the other candidates included in the select list were not appointed. They filed a writ petition before the High Court claiming a right of being appointed on the ground that vacancies existed and they were qualified and were found suitable. The writ application was allowed. While reversing the decision of the High Court, it was observed by this Court that it was open to the Government to decide how many appointments should be made and although the High Court

had appreciated the position correctly, it had ``somehow persuaded itself to spell out a right in the candidates because in fact there were 15 vacancies''. It was expressly ruled that the existence of vacancies does not give a legal right to a selected candidate. Similarly, the claim of some of the candidates selected for appointment, who were petitioners in Jatendra Kumar and Others v. State of Punjab and Others, was turned down holding that it was open to the Government to decide how many appointments would be made. The plea of arbitrariness was rejected in view of the facts of the case and it was held that the candidates did not acquire any right merely by applying for selection or even after selection. It is true that the claim of the petitioner in the case of Miss Neelima Shangla v. State of Haryana was allowed by this Court but, not on the ground that she had acquired any right by her selection and existence of vacancies. The fact was that the matter had been referred to the Public Service Commission which sent to the Government only the names of 17 candidates belonging to the general category on the assumption that only 17 posts were to be filled up. The Government accordingly made only 17 appointments and stated before the Court that they were unable to select and appoint more candidates as the Commission had not recommended any other candidate.

(emphasis supplied)

In this background it was observed that it is, of course, open to the Government not to fill up all the vacancies for a valid reason, but the selection cannot be arbitrarily restricted to a few candidates notwithstanding the number of vacancies and the availability of qualified candidates; and there must be a conscious application of mind by the Government and the High Court before the number of persons selected for appointment is restricted. The fact that it was not for the Public Service Commission to take a decision in this regard was emphasised in this judgment. None of these decisions, therefore, supports the appellant''.

16. In view of the discussion above, the petitioner is not entitled to any relief. The impugned communication dated May 8, 2005, rejecting

the request of the petitioner for issuance of offer of appointment, is valid.

The writ petition is dismissed with no order as to costs.

CM No.9693/2015

In view of the order passed in the writ petition, the present application is dismissed as infructuous.

(V.KAMESWAR RAO)
JUDGE

OCTOBER 5, 2015

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