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

Date of hearing and order: 10th February 2015.

+ W.P.(C) 1303/2015 & CM Nos.2303-04/2015
UNION OF INDIA & ANR

..... Petitioners

Through Mr. J.K. Singh, Adv.

versus

PAL SINGH & ORS

..... Respondents

Through Ms. Meenu Mainee, Adv.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

HON'BLE MR. JUSTICE I.S. MEHTA

ORDER

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KAILASH GAMBHIR, J. (ORAL)

C.M. Appl. No. 2304/2015 (Exemption)

Exemption allowed subject to just exceptions.

Application stands disposed of.

W.P. (C) No. 1303/2015 & C.M. Appl. No. 2303/2015 (Stay)

1. By this petition filed under Articles 226 & 227 of the Constitution of India, the petitioners seek to challenge the orders dated 10.10.2014 and 22.04.2014 passed by learned Tribunal in R.A. No.191/2014 and O.A. No.2483/2013, respectively.

2. Assailing the aforesaid order, Mr. J.K. Singh, the learned counsel for the petitioner submits that the petitioners had issued the order of promotion dated 09.07.2013 to fill up both the existing as well as the anticipated vacancies up to 31.12.2013 in the cadre of Loco Pilot Passengers in grade of Rs.9300-34800 with grade pay of Rs.4200 + 500, strictly in terms of the prevailing rules and guidelines on the subject in terms of RBE No.126/2010 relating to reservation in promotion and therefore the said order of promotion could not have been interfered with by the learned Tribunal. The learned counsel for the petitioner further argued that the learned Tribunal wrongly placed reliance on the decision of Hon'ble Supreme Court in the case of *M. Nagaraj & Ors vs. Union of India & Ors*, JT 2006 (9) SC 191 and order dated 02.12.2010 passed by the full Bench of Tribunal in O.A.No. 2211/2008 titled as *All India Equality Forum and Others vs. Union of India*, as in neither of these cases any direction was given to Union of India to fill up the promotional vacancies *de hors* the rules of reservation. The learned counsel for the petitioner also argued that the reservation in promotion has a mandate of Article 16(4A) of the Constitution of India and therefore any policy decision taken in accordance with the scheme of the Constitution cannot be said to be invalid in law.

3. We have heard the submissions made by the learned counsel for the petitioner at considerable length and have also gone through the impugned order as well as material placed on record.

4. The common order was passed by the learned Tribunal while deciding both the applications. In so far as the present writ petition is concerned, the petitioners have challenged the decision of the learned Tribunal in O.A.No. 2483/2013. In the said O.A., the respondents had approached the Tribunal with the grievance that the respondents are Loco Pilots in the pay scale of 9300-34800 with grade pay of Rs. 4200. They were eligible for promotion to the post of Loco Pilots (Passenger Train) in the same grade pay with Rs. 500/- as additional allowance. In terms of the letter No. 756-E/4/Driver Passenger/Selection Part XVII/P-2/UMB dated 09.07.2013, the petitioner No.2 had conducted a suitability test for filling up 69 posts of Loco Pilot (Passenger) out of which 11 have been reserved for SC and 53 have been unreserved. After scrutiny of service records, petitioner No.3 issued notice dated 09.07.2013 by which Loco Pilot (Goods) were ordered to be promoted as Loco Pilots (Passenger) and out of those 69, 27 belonged to SC/ST category. Out of them 10 employees were given promotion in accordance with their seniority whereas 16 were picked from the bottom of the seniority

list ignoring equal number of general candidates. Respondents therein were also amongst those who had been side tracked in order to accommodate them. The respondents therefore sought quashing of the impugned order dated 09.07.2013 and a further direction to the petitioners to fill up the vacancies of Loco pilots in accordance with the seniority subject to the rejection of unfits without allowing any reservation.

5. The learned Tribunal after placing reliance on the Constitution Bench decision of the Supreme Court in *M. Nagaraj & Ors vs. Union of India ** *Ors*, JT 2006 (9) SC 191; *Suraj Bhan Meena and Anr. Vs. State of Rajasthan and Ors*, (2011) 1 SCC 467; *U.P. Power Corporation Ltd. Vs. Rajesh Kumar & Ors.*, 2012 (4) SCALE 687; Order dated 02.12.2010 in O.A.No. 2211/2008 titled as *All India Equality Forum and Ors. v. Union of India and Ors.* and the decision of the Punjab & Haryana High Court at Chandigarh in CWP No.13218 of 2009 (O&M) – *Lachhmi Narain Gupta and ors. Vs. Jarnail Singh and Ors.*, took a view that although the reservation in promotion per se is not unconstitutional but such reservation is subject to the condition that the State shall form its opinion that the schedule caste and schedule tribe are not adequately represented in the service and therefore the Court took a view that a fresh exercise in the light

of the said decisions is imperative and without such an exercise, the State cannot make provision for promotion of schedule caste and scheduled tribe candidates.

6. In the light of the aforesaid settled legal position, in its operative para the learned Tribunal gave the following directions:-

- i) The impugned order dated 30.12.2011 in O.A.No. 755/2012 is quashed and set aside. We also direct the respondents to fill up the vacancies of Passenger Guards strictly in accordance with the seniority subject to the rejection of unfits without allowing reservation.
- ii) The impugned panel dated 28.12.2010 in O.A.No. 2058/2011 is quashed and set aside to the extent that the Applicants' names have not been included therein. We also quash and set aside the order dated 25.4.2012 rejecting the claims of the Applicants for interpolation in the aforesaid panel dated 28.12.2010. we further direct the respondents to fill up the vacancies of Loco Pilots Goods strictly in accordance with the seniority subject to the rejection of unfits without allowing the reservation.
- iii) The impugned order dated 16.10.2012 in O.A.No. 3603/2012 is quashed and set aside to the extent that the vacancies of Mail Train Loco Pilots have been filled by promoting junior staff belonging to SC/ST category in violation of the law laid down by the Supreme Court. We also direct the respondents to fill up the vacancies of Mail Train Loco Pilots strictly in accordance with the seniority subject to the rejection of unfits without allowing any reservation.
- iv) The impugned order dated 09.07.2013 in O.A.No. 2483/2013 is quashed and set aside to the extent that the vacancies of Loco Pilot Passengers have been filled up by reservation as in (O.A.No. 3603/2012)."

7. The order of the learned Central Administrative Tribunal is based on the well settled legal principles laid down and reiterated in the series of decisions of the Apex Court in the case of *M. Nagaraj & Ors vs. Union of India & Ors*, JT 2006 (9) SC 191; *Suraj Bhan Meena and Anr. Vs. State of Rajasthan and Ors*, (2011) 1 SCC 467; *U.P. Power Corporation Ltd. Vs. Rajesh Kumar & Ors.*, 2012 (4) SCALE 687; Order dated 02.12.2010 in O.A.No. 2211/2008 titled as *All India Equality Forum and Ors. Vs. Union of India and Ors.*; and decision of the Punjab & Haryana High Court at Chandigarh in CWP No.13218 of 2009 (O&M) – *Lachhmi Narain Gupta and ors. Vs. Jarnail Singh and Ors*. It is a fairly well settled law that before giving any reservation, the state shall be of the opinion that a particular class is not adequately represented. In the matter of *M.Nagaraj & Ors. vs. Union of India & Ors. (Supra)*, the Hon’ble Supreme Court held as follows:

*“It is submitted that the principle of balancing of rights of the general category and reserved category in the context of Article 16 has no nexus to the basic feature of the Constitution. It is submitted that basic feature consists of constitutional axioms like constitutional supremacy, and democratic form of government, secularism, separation of powers etc. Respondents contend that Article 16(4) is a part of the Constitution as originally enacted. The exercise of the power by the delegate under Article 16(4) will override Article 16(1). It is not by virtue of the power of the delegate, but it is by virtue of constituent power itself having authorized such exercise by the delegate under Article 16(4), that article 16(1) shall stand overruled. **The only limitation on the power of delegate is that it should act within four corners of Article 16(4), namely, backward classes, which in the opinion of the State are not adequately represented in public employment. If***

this condition precedent is satisfied, a reservation will override Article 16(1) on account of the words 'nothing in this Article shall prevent the State'. It is urged that jurisprudence relating to public services do not constitute basic feature of the Constitution. That, the right to consideration for promotion in service matters is not a basic feature.”

8. Hence, we find no infirmity in the impugned order, therefore the impugned orders dated 10.10.2014 and 22.04.2014 passed by learned Tribunal in passed in R.A. No.191/2014 and O.A.No. 2483/2013, respectively are upheld. The present petition is accordingly dismissed being without merit.

9. No costs.

KAILASH GAMBHIR, J

I.S. MEHTA, J

FEBRUARY 10, 2015

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