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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.2223 OF 1995

1. Mr. Uttam E. Sirsat
of Bombay, Indian Inhabitant,
residing at Uttara Apartments, A-1
Jan Kalyan Nagar, Malad (W),
Bombay 400 095.

2. Mr. S. R. Bhatkal
residing at 16/196, Ram Krishna
Nagar, Khar (W),
Bombay 400 052.

3. Mr. R. J. Bhatia
residing at C/93,
Snehadhra Dadabhai Cross
Road No.3, Bombay 400 056.

.. Petitioners

Vs.

1. Union of India
through Ministry of Industry,
Bureau of Public Enterprises,
known as Department of Public
Enterprises situate at
Block no.14, C.G.O. Complex,
Lodhi Road, New Delhi 110 003.

2. Air-India Limited
through Human Resources &
Development Department,
Old Air Port, Santacruz (E),
Bombay 400 029.
also having their Head Quarters
at Air India Building, Nariman
Point, Bombay 400 021.

3. AIR Corporation Scheduled Caste
and Scheduled Tribe Employees
Association having its office at
Old Air Port premises, Santacruz (E),
Bombay 400 029.

.. Respondents

Ms. Prachi Khandge i/b. M.P. Vashi & Asso., for the petitioners.
Mr. Lancy D'Souza with Ms. Deepika Agarwal with Mr. Sudeep
Dasgupta i/b. Bhasin & Co., for the respondents.

**CORAM : A.A.SAYED AND
M.S.KARNIK, JJ.**

RESERVED ON : 29th JUNE, 2017

PRONOUNCED ON : 6th JULY, 2017

JUDGMENT (PER M.S. KARNIK, J.) :-

The petitioners are working as Supervisory staff with the 2nd respondent i.e. Air-India Limited. On 29/6/1987, the Ministry of Industry and Bureau of Public Enterprises issued a Circular clarifying that Time Bound Promotion Scheme ('TBP Scheme' in short) adopted by various Public Sector Undertakings should not be in violation of the instructions issued by the government on the point of reservations. It was clarified that the promotions under the TBP Scheme have been

delinked from vacancies and are available to all eligible employees on completion of the prescribed length of service except those who are found unfit for promotion. The said clarification in fact provided that there is complete absence of vacancy based promotions under TBP Scheme and the promotions under the scheme should be without any specific screening of merit, provision for rosters or zone of consideration which have concomitants of vacancy based promotion as the same are irrelevant to TBP Scheme.

2. The respondent no.2 implemented the TBP Scheme from 1/4/1989 and granted benefit of the Circular to every employee working at supervisory, clerical and other allied category on completion of certain length of service. According to the petitioners, from inception of the TBP Scheme, no reservation was provided in the said scheme, except for promotions from Office Assistant's post to Senior Office Assistant's post.

3. It is the petitioners' case that having regard to the

office Memorandum dated 29th June 1987 issued by the 1st respondent, the reservation policy was not applied by the 2nd respondent in the TBP Scheme. However, by a Circular dated 19/20th May 1995, the 2nd respondent applied the reservation policy in TBP Scheme with retrospective effect from 1st January, 1992. It is the petitioners' case that the petitioners who belonged to the General Category are more likely to be affected by the decision of respondent no.2 applying the reservation policy. In the submission of the learned counsel for the petitioners, they are seriously prejudiced by this. According to him, there should not be no reservation policy in TBP Scheme as directed by Union of India. The respondent no.2 has unilaterally applied the reservation policy to TBP Scheme. In the submission of the learned counsel for the petitioners, the said policy is discriminatory as in respect of other undertakings no reservation is applied to promotions under TBP Scheme. It is further contended that as a result of giving benefits of reservation under the TBP Scheme the permissible limit of reservation has exceeded as this is over and above the benefit i.e. period

available to vacancy based promotion. In the submission of the learned counsel for the petitioners the TBP Scheme is meant to remove stagnation and the benefits under the said scheme are based on the length of the service and, therefore, applying the reservation policy is completely contrary to the object of the scheme.

4. The learned counsel for respondent no.2, on the other hand, invited our attention to the affidavit-in-reply filed on behalf of respondent no.2. He has raised an objection as regards the maintainability of the petition. According to him, all the petitioners are holding posts which are not time bound promotion posts at all. Therefore, they have no locus to file the petition. Moreover, with the passage of time, the petitioner no.1 has since retired as Assistant General Manager and the petitioner nos.2 and 3 are promoted and holding the posts of Assistant General Manager. We find some merit in the objection raised by the learned counsel for the respondent no.2 that the present petition does not deserve to be entertained. In due

course the petitioners are promoted. The apprehension of the petitioners that the reservation policy in TBP Scheme is likely to hamper their prospects of promotion is thus unfounded. This apprehension appears to be the cause for filing this Petition. This itself is a good ground to reject the Petition. We have however examined the petitioners contention on merits as well.

5. Having given an anxious consideration to the submissions advanced by the learned counsel for the parties we find that the respondent no.2 adopted new TBP Scheme on 8/5/1996, pursuant to which the effective date of promotion was to be 1st July, 1996. In accordance with this policy, reservation in promotion is applied to S.C. / S.T. in clerical category upto the grade of Junior Officer to the lowest rung of class 'A' officers, as per the Presidential Directives. All employees joining the Company as Typist Clerks, Traffic Assistants, etc. were to be promoted to the posts of Senior Typist Clerks and Senior Traffic Assistants, etc. on completion of five years of service subject to criteria laid down in promotion policy. This

applies to every category of employees as well. It is the stand of the respondents that promotions are not based on the vacancies but virtually all the eligible employees are promoted on completion of the eligibility service/criteria. The only effect of the roster is that some reserved categories of employees were to get promotion earlier as per the Presidential Directives if they fall on Reserved Roster Point. This does not in any way affect the chance of promotion of the non reserved category of employee who is bound to be promoted on completion of the prescribed length of service. The categoric stand of the respondent no.2 is that the question of the roster system resulting in blocking of any promotion of general candidate does not arise because all candidates whether there are vacancies or not will be promoted to the next higher post provided they complete qualifying years of service and subject to percentage limitation. According to the respondents, the contention of the petitioners that if all the posts are filled up by promoting reserved category candidates, would result in drying up of promotion avenues for general categories, is totally unfounded.

In the light of the policy those eligible candidates who completed certain number of years subject to eligibility criteria are invariably promoted. There is no question of availability of the vacancies.

6. In view of this, we find that the apprehension of the petitioners that they are likely to be affected by the decision of 2nd respondent, as they belong to general category, is completely misconceived.

7. Moreover, reliance on the office memorandum dated 29/6/1987, issued by the Bureau of Public Enterprises, to indicate that the office memorandum applies to respondent no.2 as well, is not correct. The list of Central/Public Sector Undertakings mentioned in the Annexure to the office memorandum does not include the respondent no.2-Air India. Respondent no.2 in any event is not a Central/Public Sector Undertakings but is a statutory corporation. The very basis of the petition is the application of the said office memorandum to respondent no.2. Respondent no.2 has its own scheme, which

scheme was framed after negotiation with the recognized Union, namely, Air India Employees Guild. Paragraph 3 of the said settlement specifically mentions that all promotions would be reviewed every year in January and July in accordance with the policy and the procedure of the Corporation except as otherwise stated. This settlement nowhere excludes reservation for Scheduled Caste and Scheduled Tribes nor does it exclude the maintenance of the roster as is the policy of Air-India.

8. The respondent no.2 is justified in placing reliance on the decision of the Apex Court in the case of **Air India and ors. v. B.R. Age and others [(1995) 6 SCC 359]** and **P. and T. Scheduled Caste/Tribe Employees' Welfare Association (Regd.) and others v. Union of India and others (AIR 1989 SC 139)** to support the contention that the TBP Scheme providing reservation is not violative of the provisions of the Constitution.

9. In any event, we find that no prejudice is caused to the petitioners by applying reservations to the TBP Scheme. We

therefore find no merit in this petition and the same is accordingly dismissed with no order as to costs.

10. Rules to stand discharged.

(M.S.KARNIK, J.)

(A.A.SAYED, J.)