

IN THE HIGH COURT OF BOMBAY AT GOA***WRIT PETITION NO.792 OF 2008***

1. Ramdas Yesso Salelkar,
major,
Indian National,
resident of House No.100,
Sitabai Niwas, Kothiwada,
Karapur, Sanquelim, Goa. 403 505.
2. Shashikant Krishna Gaude,
major, Indian National,
resident of House No.1058(2),
Gauthanwada, Priol, Goa 403404.
3. Gangu Rama Kuticar,
major, Indian National,
resident of House No.C-20/1141,
Nagali, Taleigao, Goa 403002.
4. Arvind Babal Dhavalikar,
major, Indian National,
resident of Parshuram Nagar,
Bandora, Ponda Goa.
5. Sangeeta Dhanu Gaunkar @
Sangeeta V. Murgaonkar,
major, Indian National,
resident of House No.312,
Wadi-Talaulim, Ponda Goa.
6. Anil Savlo Gaonkar,
major, Indian National,
resident of Sancorda,
Dharbandora, Ponda Goa.

7. Guno Babuso Gawde,
major, Indian National,
resident of Dhonshi Nageshi,
House No.1130(2),
Bandora, Ponda Goa.
8. Keshav Gajanan Gaude,
House No.224, Honso Wada,
Madkai, Taluka Ponda Goa. Petitioners.

Versus

1. The State of Goa,
through the Chief Secretary,
Government of Goa,
having his Office at Secretariat,
Porvorim, Bardez Goa.
2. The Chief Electrical Engineer,
Electricity Department,
Government of Goa,
having his office at Vidhyut Bhavan,
Panaji Goa.
3. The Goa Public Service Commission,
through its Secretary,
E.D.C. House, Block 'C', 1st Floor,
Dada Vaidya Road, Panaji Goa. 403 001.
4. The Director,
Directorate of Social Welfare,
having the office at Panaji, Goa. Respondents

Ms. A. Agni, Senior Advocate with Ms. E. Estebeiro, Advocate for the Petitioners.

Mr. P. Faldessai, Additional Government Advocate for Respondent Nos.1, 2 and 4.

***Coram: N.M. Jamdar &
Prithviraj K. Chavan, JJ.***

Reserved On: 11 June 2018

Pronounced On : 20 July 2018

Judgment (Per N. M. Jamdar, J)

The central question in this Writ Petition is what should be the methodology for fixing the zone of consideration for promotion in the Scheduled Tribes category from the post of Junior Engineer (Electrical) to Assistant Engineer (Electrical) in the services of Electricity Department in the Government of Goa.

2. The Petition is filed by eight Petitioners who were working as Junior Engineers in the services of Electricity Department of the State of Goa. The Petitioner No.1 was appointed as Junior Engineer on 10 February 1992; Petitioner No.2 was appointed on 31 March 1997; Petitioner No.3 was appointed on 12 May 1998; Petitioner Nos.4, 5, 6 and 7 were appointed on 16 March 2001, and the Petitioner No.8 was appointed as Junior Engineer on 20 February

2004. All the Petitioners are claiming to be members of Scheduled Tribes. It is their grievance that in spite of working for several years as Junior Engineers and in spite of being eligible in terms of the Recruitment Rules, they were not promoted to the cadre of Assistant Engineer.

3. According to Petitioner No.1, he became eligible for promotion as Assistant Engineer on 10 February 1999. According to Petitioner No.2, he became eligible on 31 March 2004. Petitioner No.3 contends that he became eligible on 12 May 2005. It is the case of Petitioner Nos.4, 5, 6 and seven that they became eligible for promotion on 16 March 2008 and that the Petitioner No.8 became eligible for promotion on 20 February 2011.

4. A Memorandum was issued on 7 August 2008 circulating a tentative seniority list of the cadre of Junior Engineers of the Electricity Department inviting the objections. In the seniority list, the Petitioners were shown at serial nos.134, 210, 222, 250, 251, 253, 254 and 288. According to the Petitioners, in the years 2005, 2006 and 2008, total 24 vacancies in the posts of Assistant Engineer had occurred. It is the case of the Petitioners that out of 24 posts, 9 were new posts and 15 replacement posts and one out of nine and one out of fifteen were reserved for the promotion of the candidates

belonging to Scheduled Tribes and eight more vacancies are to be filled in from the Scheduled Tribes category as backlog vacancies. The Petitioners contend that after the year 2004, no Departmental Promotion Committee was created for filling up of the vacancies.

5. The primary grievance of the Petitioners is that in respect of promotion from the Scheduled Tribes candidates, the zone of consideration must consist exclusively of the members belonging to the Scheduled Tribes. They contend that a joint seniority list in which the candidates other than the Scheduled Tribes falling in the zone of consideration, cannot be prepared. It was the case of the Petitioners that by including the candidates belonging to the General category, Respondent-Government fixed a zone of consideration and in this zone, no candidate belonging to the Scheduled Tribes appeared and thus not promoted.

6. On 10 October 2008, Respondent No.2 addressed a proposal to the Respondent No.4 for grant of no objection to de-reserve ten posts for the promotion of the candidates belonging to the Scheduled Tribes category. It is also the case of the Petitioners that the Government proposed to create 97 new posts in the grade of Assistant Engineer, however, the Government has proposed to bring about the amendment to the Recruitment Rules which would exclude the

Petitioners for consideration in respect of these additional posts.

7. The Petitioners, therefore, filed the present petition in December 2008 with various prayers such as setting aside the order dated 24 October 2008, directing the Respondent to fix the zone of consideration for promotion to the post of Assistant Engineer reserved for Scheduled Tribes category exclusively from the members belonging to the Scheduled Tribes category. The directions have also been sought for considering the case of the Petitioners for promotion by restraining the Respondents-Government from de-reserving the posts. For subsequent events, amendments were carried out, which are elaborated later.

8. During the pendency of the petition, all the Petitioners have been promoted and are now working as Assistant Engineers. The Petitioner Nos.1, 2 and three were promoted on ad-hoc basis on 18 September 2012, and on 31 March 2015, they have been promoted on a regular basis. The Petitioner Nos.4, 5, 6 and seven have promoted on 27 October 2017. The Petitioner No.8 is promoted on 27 October 2017. Therefore, the question would be now of deemed dates of their promotion, if held to be eligible to be promoted on the dates on which according to them they first became eligible.

9. Thus, primarily three issues arise for consideration. First, the main one as to what should be the method of promotion for the post of Junior Engineer to Assistant Engineer in the Scheduled Tribes category. Second, whether the action of the Respondent of de-reserving the post is valid. Thirdly, whether the Petitioners should have at least been promoted on 97 posts that were created. The parties have relied upon various decisions and various Memorandums issued on the subject by the Central Government. These Memorandums have been referred to and analysed subsequently in the decision.

10. We have heard Ms. Agni, learned Senior Advocate for the Petitioners and Mr. P. Faldessai, learned Additional Government Advocate for Respondent Nos.1, 2 and 4.

11. For consideration of matters under service law, the Rules, Circulars and the Regulations applicable to the posts to which promotion is claimed, classification of such posts and method of promotion, will have to be kept in mind. The promotion is sought from the post of Junior Engineer to the Assistant Engineer.

12. The Petitioners have relied upon the Office Memorandums dated 27 November 1972, 10 March 1989, 25 April 2008, 29 September 1990. It is their contention that all these Office

Memorandums must be harmoniously read and all actions of the State must be seen on the touchstone of Articles 14 and 16 of the Constitution of India. The basic contention advanced is that since the State has adopted the policy of reservation in promotion, it must be adhered to and the zone of consideration for filling up the post reserved for Scheduled Castes and Scheduled Tribes must be restricted to the candidates belonging to the Scheduled Castes and Scheduled Tribes. Though there are various shades and facets expounded by the learned Senior Advocate for the Petitioners on the interpretation of the Memorandums, this is a central point on which the challenge is based.

13. The State has countered this assertion by contending that there is a difference between the promotion based on the seniority-cum-fitness and the promotion by selection and that the promotion in question is based on selection. The policy of reservation for promotion is given effect by expanding the normal zone of consideration by five times. The State argues that the concept of zone of consideration consisting only of candidates belonging to the Scheduled Castes and Scheduled Tribes cannot be made applicable to the promotion based on the selection for Class A and B posts. It contends that none of the Memorandums relied upon by the Petitioners refer to the promotion by selection in respect of Class B.

14. First to note the Recruitment Rules. The Recruitment Rules for the post of Assistant Engineer have been placed on record. The number of posts is subject to variation dependent on work-load. The position is classified as a Goa General Service Group 'B' Gazetted. The Scale of Pay is Rs.6500-200-10500. The post is a selection post. The educational and other qualifications required are a degree in electrical engineering of a recognized University or equivalent. The period of probation is two years. The method of recruitment is by promotion failing which by direct recruitment. The promotion is from the post of Junior Engineer with 7 years regular service in the grade or Technical Assistants with three years regular service in the grade. That the promotion is by selection is a vital aspect to be kept in mind because of the contention of the State that none of the Office Memorandums relied upon the Petitioners relate to contingency whether the post to be filled in by selection.

15. First, we will examine the Memorandums relied upon by the Petitioners. The Office Memorandum dated 27 November 1972 is issued by the Government of India is with a title "*Reservations for Scheduled Caste and Scheduled Tribes in posts filled by promotion - Promotions on the basis of Seniority subject to fitness.*" The title itself indicates that this Office Memorandum does not relate to selection, but the promotion on the basis of seniority subject to fitness. This

Office Memorandum states that the policy regarding the reservation was reviewed and in supersession of the Office Memorandum dated 11 July 1968, and reservation at 15% for the Scheduled Castes and 7½% for the Scheduled Tribes in promotions made on the basis of seniority subject to fitness will be provided. The procedure where the promotions are to be made on the basis of seniority subject to fitness has been specified. One of the methodologies is according to the points in the roster for vacancies reserved for Scheduled Castes and Scheduled Tribes, a separate list of the eligible Scheduled Castes and Scheduled Tribes officers to be arranged in order of their *inter-se* seniority in the main list. After that, the officers are to be adjudged separately as regards to their fitness, and the selection of the officers in general category and those belonging to Scheduled Castes and Scheduled Tribes is to be merged and thereafter, arranged as per their *inter-se* seniority in the original seniority list of the category.

16. Since the Office Memorandum of 27 November, 1972 referred to the policy laid down in Office Memorandum dated 11 July 1968, a brief reference to the Office Memorandum of 11 July 1968 is also necessary. This Office Memorandum dealt with promotions through limited departmental competitive examinations, promotion by selection method and promotions on the basis of seniority subject to fitness. The Office Memorandum of 11 July

1968, therefore, drew a clear distinction between the promotion by selection method and promotion on the basis of seniority subject to fitness. The Office Memorandum of 1968 while referring to Class A and Class B appointment stated that in promotions made by selection, employees in the zone of consideration should be increased by 5 or 6 times and certain upgradation of remarks was contemplated. As regards the promotion on the basis of seniority- cum-fitness, it was stated that there should be no reservation in the appointment made by promotion on the basis of seniority subject to fitness and certain guidelines were laid down in respect of Scheduled Castes and Scheduled Tribes officers in Class A and Class B appointments.

17. Thus, in the year 1968 itself, even in promotion by selection method, a distinction was drawn between Class A and Class B appointments, and Class C and Class D appointments. Certain instructions were issued regarding filling up of vacancies for Scheduled Castes and Scheduled Tribes. It is this policy that was reviewed in the year 1972, and it was provided that there would be reservation of 15% for the Scheduled Castes and Scheduled Tribes in promotion made on the basis of seniority subject to fitness. The Office Memorandum of 27 November 1972 focuses entirely on the aspect of promotion based on seniority-cum-fitness and reviewed the policy therein for that method. In the present case, we are concerned

with the promotion by selection to the Group B post and, therefore, the Office Memorandum of the year 1972 which does not refer to promotion by selection, has no relevance.

18. Next Office Memorandum relied upon by the Petitioners is of 10 March 1989. This Office Memorandum does not relate to promotion by Selection mode at all. The Department of Personnel issued another OM dated 25 April 1989 in respect of reservation in the post filled by promotion. The question had arisen for consideration of the Government for enlarging the scheme for Scheduled Castes and Scheduled Tribes in the posts filled in by promotion in which element of direct recruitment is more than 66%. A reference was made to an earlier OM in respect of providing 15% and 7½% reservation in the vacancies for Scheduled Castes and Scheduled Tribes in three categories, that is promotions through departmental examination in Group B, C and D, the promotions by selection in Group B, C, and D and from Group B to the lowest rung of Group A and promotion on the basis of seniority subject to fitness in all the groups. These OMs are also of no assistance to the Petitioners.

19. The third OM is of 25 April 1989. This OM communicates a decision of partial modification of the promotion in

the existing scheme to be made applicable where the element of direct recruitment does not exceed 75%. What is primarily modified is the element of direct recruitment. The Office Memorandum of 24 September 1990, also does not specifically refer to the selection but pertains to the promotion on the basis of seniority-cum-fitness.

20. Once a distinction has been made by the Government while issuing Office Memorandums between the selection mode and the promotion based on seniority-cum-fitness, more particularly for Class A and Class B, there is no point multiplying the Office Memorandums which do not cover the contingency at hand. What is necessary is to consider the Office Memorandum which deal with the promotion based on selection. It is also not permissible to draw inferences or borrow few lines from the Office Memorandum in respect of some other method of promotion for some other class of posts.

21. Now we will examine the Office Memorandum relied upon by the Government in respect of promotion by selection method for Class A and Class B appointments. The Office Memorandums which govern this particular method of promotion are Office Memorandums dated 11 July 1968; 24 December 1980; 12 October 1990 and the Circulars dated 14 June 1999 and 10

January 2014. The office guidelines on Departmental Promotion Committee issued on 26 September 1990 are also important.

22. A reference to the Office Memorandum dated 11 July 1968 has already been made earlier. To reiterate, this Office Memorandum clearly brings out the distinction between the promotion through selection method and promotion based on seniority-cum-fitness. The Office Memorandum of 1968 provided that there would be no reservation for Scheduled Castes and Scheduled Tribes in appointments made by promotion on the basis of seniority subject to fitness. As regards the promotion by selection method from Class III to Class II and from Class II to the lowest class has been provided as under :

“B. Promotion by selection method:

(a) Class I and II appointments.

In promotion by selections from Class III to Class II and within Class II and from Class II to the lowest rung or category in Class I, the following procedure will be adopted:-

In promotions made by selection, employees in the zone of consideration numbering 5 or 6 times the estimated number of vacancies are normally considered for inclusion in the select list vide Minister of Home Affairs' Office Memorandum No. F.1/4/5-RPS dated 16/5/1957. After rejecting those who are unfit for promotion, the Departmental Promotion Committee, proceeds to categorise the remaining eligible employees into these

categories namely, 'Outstanding', 'Very Good' and 'Good'. Thereafter, the Committee draws up a Select List placing all employees in the 'Outstanding' category at the top, followed by those categorised as 'Very Good' and then by those categorised as 'Good', the inter SC seniority within each category being maintained. As a measure of improving representation of Scheduled Castes/Scheduled Tribes in services it has now been further decided that:-

(i) If within the zone of consideration, there are any Scheduled Castes and Scheduled Tribes employees, those amongst them who are considered unfit for promotion by the Departmental Promotion Committee will be excluded from consideration. Thereafter, the remaining Scheduled Caste and Scheduled Tribes employees will be given by the Departmental Promotion Committee one grading higher than the grading otherwise assignable to them on the basis of their record of service i.e., If any Scheduled Caste or Scheduled Tribe employees has been categorised by the Committee on the basis of his record of service as 'Good' he should be recategorised by the Committee as 'Very Good'. Likewise, if any Scheduled Caste or Scheduled Tribes employee is graded as 'Very Good' on the basis of his record of service, he will be recategorised by the Committee as 'Outstanding'. Of course, if any Scheduled Caste or Scheduled Tribe employees has already been categorised by the Committee on the basis of his record of services as 'Outstanding', no recategorisation will be need in his case.

The above concession would be confined to only 25% of the total vacancies in a particular grade or post filed in a year from the select list. While making promotions from

the Select List the appointing authority should, therefore, check up that the Scheduled Caste/Scheduled Tribes employees promoted in a year on the basis of this concession are limited to 25% of the posts filled in a year from the Select List prepared according to the procedure outlined above; and

(ii) Those Scheduled Castes/Scheduled Tribes employees who are senior enough in the zone of consideration so as to be within the number of vacancies for which the select list, has to be drawn, should be included in the Select List, if they are not considered unfit for promotion and should also be given one grading higher than the grading otherwise assignable to them on the basis of their record of service and their place in the State List determined on the basis of this higher categorisation. This would imply that even where, in some cases, the Select List was to consist of, say only 'Outstanding' non-Scheduled Caste and Scheduled Tribe candidates, adequate number of them being available from the zone of consideration, those Scheduled Caste and Scheduled Tribes candidates who are high up in the zone of consideration and are within the number of estimated vacancies for which the Select List is being prepared will, even if they are only 'Good' and after higher categorisation by one degree are categorised as 'Very Good', have to be included in the select list, but they will be placed below the 'Outstanding' candidates in the select list.

(b) Class III and IV appointments :

There will be reservation at 12½% and 5% of the vacancies for Scheduled Castes and Scheduled Tribes respectively in promotions made by selection in or to Class III and IV posts, in grades or services in which the

element of direct recruitment, if any, does not exceed 50%.

Select Lists of Scheduled Castes, Scheduled Tribes office should be drawn up separately to fill the reserved vacancies as at present; officers belonging to these classes will be adjudged separately and not along with other officers and if they are filled on promotion, they should be included in the list irrespective of their merit as compared to other officers. Promotions against reserved vacancies will continue to be subject to the candidates satisfying the prescribed minimum standards.”

Therefore, in what manner the zone of consideration has to be prepared has been laid down as above. The methodology specified as above is after the selection is drawn up. Thus a distinction between the promotion by selection and promotion on the basis of seniority subject to fitness, and different application of zone of consideration for these two types of promotion, are in existence since long.

23. The next Office Memorandum for promotion on the basis of selection is dated 24 December 1980. The subject heading of this Office Memorandum is '*Principle for Promotion to the Selection Post.*' This Office Memorandum directly governs the issue of promotion to the selection post. The Union Government had received a large number of requests for clarifications on various aspects while preparing a panel for the posts to be filled up on the

basis of the selection. One of the points raised was an absence of clearly defined limits in the matter of fixation of the zone of consideration. This query was addressed by the Office Memorandum dated 24 December 1980 and it was clarified that where the adequate number of candidates belonging to SC/ST are not available within the normal zone of consideration, the zone of consideration be extended to five times and the candidates belonging to SC/ST coming within this extended zone would be considered against the vacancies reserved for them. This is the methodology adopted by the State of Goa. The State Government while determining the zone of consideration for the post of Assistant Engineer has relied upon the Office Memorandum dated 24 December 1980.

24. Two further Office Memorandums came to be issued by the Government of India dealing with the subject of promotion by selection. Those were Office Memorandums dated 12 October 1990 and 22 April 1992. The title of Office Memorandum dated 12 October 1990 is '*Zone of Consideration for promotion by selection.*' Revised instructions in this Office Memorandum referred to in the earlier Memorandum. This OM modified the zone in respect of a situation where there are four vacancies; however, the provision relating to the extension of the zone of consideration to be five times the number of vacancies in respect of SC/ST, was directed to be

continued. The OM dated 22 April 1992 related to the zone of consideration by selection and clarification was issued wherein the contingency regarding five and above vacancies were also taken care of. The basic premise of the existence of five times zone of consideration was not deviated from.

25. On the part of Government of Goa, it has adopted the above Office Memorandum and has issued Circulars. A Circular was issued on 14 June 1999. This Circular deals with the reservation for SC/ST in the posts filled up by promotion. The attention of the Department was drawn to the detailed procedure in the Office Memorandum dated 11 July 1968. The learned Additional Government Advocate has also brought to our notice a Circular issued by the Government of Goa on 10 January 2014. Though the same has been issued pending the hearing of this petition, since it concerns the promotion to the selection post in respect of SC/ST, we have taken note of the same. This Circular takes a review of the various Office Memorandums issued by the Government of India. Based on these different Office Memorandums, the Government of Goa has directed that while considering the promotion process by selection in relation to SC/ST candidates, first attempt should be to fill up the normal zone of consideration and if not, the same to be filled in from the candidates falling in the extended zone of

consideration.

26. The guidelines on the Departmental Promotion Committee are placed on record. The relevant portion reads thus :

“6.3.2. (i) in promotions by selections to posts/services within Group 'A' which carry an ultimate salary of Rs.5700/- p.m. in the revised scale, the SCs/STs officers, who are senior enough in the zone of consideration for promotion so as to be within the number of vacancies for which the select list has to be drawn up, would notwithstanding the prescription of 'benchmark' be included in that list provided they are not considered unfit for promotion.

(ii) In promotion by selection to posts/services in Group 'B' within Group 'B' and from Group 'B' to the lowest rung in Group 'A', selection against vacancies reserved for SCs and STs will be made on from those SCs/STs officers, who are within normal zone of consideration prescribed vide the Department of Personnel and A.R.O.M.No.22011/3/75-Estt.(D) dated 24th December, 1980. Where adequate number of SCs/STs candidates are not available within the normal field of choice it may be extended to five times the number of vacancies and the SCs/STs candidates coming within the extended field of choice should also be considered against the vacancies reserved for them. If candidates from SCs/STs obtain on the basis of merit with due regard to senior on the same basis as others, lesser number of vacancies than the number reserved for them, the difference should be made up by selected candidates of these communities, who are in the zone of

consideration irrespective of merit and 'bench mark' but who are considered fit for promotion.”

27. The Government of Goa thus has relied on the Office Memorandums which specifically deal with promotion by selection and has extended the zone of consideration by five times for the SC/ST candidates. The insistence of the Petitioners is that even for promotion by selection method to Class B posts, it is not enough that the zone is extended by five times but the zone itself must be exclusively of the candidates belonging to SC/ST. However, the Petitioners have not been able to show any Office Memorandum or Circular which mandates the State Government to take such a course of action. Neither any Office Memorandums or Circulars are challenged. The Government of Goa has relied upon the Office Memorandums issued by the Government of India from time to time dealing with the subject of promotion based on selection, and this approach, therefore, cannot be faulted.

28. The Petitioners then contended that the distinction between the promotion by selection and the promotion based on seniority subject to fitness should not be taken into consideration and all Office Memorandums concerning the zone of consideration to be maintained for ST/SC candidates in the matter of promotion should be read together and harmoniously construed to further the policy of

reservation. Firstly, this argument has to be considered in the context of the prayers made. The prayers in the petition are only seeking a writ of mandamus to direct the Government of Goa to give promotion to the Petitioners. The Petitioners, when the cause of action arose, did not fall in the extended zone of consideration that is five times the normal zone. As per the Recruitment Rules the promotion to the post of Assistant Engineer, a Class B post, is by selection method. For this method of promotion and this class, specific Office Memorandums and Circulars hold the field. Without challenging these Office Memorandums and Circulars, the Petitioners are attempting to introduce the concept of a separate list of SC/ST candidates in promotion meant for Class B posts by selection, by dispensing the concept of five times extended zone. Based on the decision in the case of *R. K. Sabharwal and others Vs State of Punjab and Others*¹, it was contended on behalf of the Petitioners that the adequate representation of the reserved candidates would not be achieved if they have to compete themselves with the general category. It was contended that the State was not right in adopting a formula contained in the Office Memorandums as it would defeat the policy of reservation and principle enshrined in Articles 16(4)(a) and 16(4)(b). In the case of *S. Nagaraj and others Vs State of Karnataka and Another*², the Apex Court observed that Articles 16(4) and 16(4) (a)

¹ (1995) 2 SCC 745

² 1993 Suppl.(4) SCC 595

are enabling provisions to make reservation and power lies within the State to make provision but at the same time the Court cannot issue any mandamus to the State, and it is for the State to act in a given situation to take affirmative action. The State of Goa has adopted the policy of extending reservation in promotion. While providing for reservation in promotion, it has followed the Office Memorandums issued by the Government of India and has provided a different methodology for different types of promotion. The Petitioners have not challenged any of the Office Memorandums which deal with the zone of consideration for promotion based on selection. Therefore, merely by advancing a general proposition, the Petitioners cannot seek a writ of mandamus directing the State of Goa to deviate from the procedure uniformly adopted in the matters of promotion by way of selection.

29. Now to deal with the decisions relied upon by the learned counsel for the parties. Ms. Agni, the learned Senior Advocate for the Petitioners, first relied upon the order passed in Civil Appeal No.4026 of 1988 on 23 November 1994. The arguments before the Apex Court in the said case were concluded on 16 November 1994. The Apex Court made *prima facie* observations regarding the separate zone of consideration for the SC/ST candidates and whether it would be appropriate to club the Scheduled Caste in the general category in

the same zone of consideration. An affidavit was filed by the U.P. State Electricity Board, in which a decision of the Board for preparing separate zone of consideration for SC/ST candidates was annexed. This affidavit was accepted by the Apex Court, and the appeal was disposed of. Though the order dated 23 November 1994 does not contain all the facts, the relevant paragraphs of the affidavit reproduced in the Order show that the promotion in question was on the basis of seniority subject to fitness. Reliance was then placed on the decision of the Division Bench of the Delhi High Court in the case of *Subhash Chander Vs Union of India and others*³. In the case of *Subhash Chander*, the Division Bench relied upon the order passed in the case of *U.P. Rajyavidyut Parishad*. Again this decision is of no assistance to the Petitioners as the Division Bench was concerned, as clear from the paragraph 8, with an interpretation of the Office Memorandum dealing with promotion on the basis of seniority subject to fitness. Same is the position in respect of the decision of the Division Bench of this Court in *Vishwas Anna Sawant Vs Municipal Corporation of Greater Bombay*⁴, where the promotion under consideration therein was on the seniority-cum-subject to fitness. In the case of *Union of India Vs Mahender Singh and others*⁵, rendered by the Division Bench of Punjab and Haryana High Court, there is

³ 2010(5) AD (Delhi) 455

⁴ 1994 SCC (4) 434

⁵ Civil Writ Petition No.5771 of 2008 dated 31 July 2009

no categorical mention as to what kind of promotion was before the Division Bench but it appears from the decision referred to it relates to promotion based on seniority subject to fitness. Again as in the case of Office Memorandum, there is no warrant to rely on the decisions which do not deal with the specific category of promotion.

30. Ms. Agni then relied upon the decision of the Supreme Court in the case of *P. Sheshadri Vs Union of India and another*⁶. It was contended that in this decision, the Supreme Court has laid down that there has to be a separate list of officers belonging to Scheduled Castes and Scheduled Tribes and that list cannot be merged. It was contended that the Supreme Court has laid down that the officers belonging to the Scheduled Castes and Scheduled Tribes will have to be picked up from the selection list of the officers belonging to that category subject to availability of reserved vacancies. As rightly pointed out by Mr. Faldessai what was referred to by the Supreme Court was a list before the Departmental Promotion Committee. Secondly, the question that arose before the Apex Court was whether the Central Administrative Tribunal had correctly interpreted the Office Memorandum dated 27 November 1972. After that, in the entire decision, the discussion is in respect of the promotion based on seniority subject to fitness. This decision,

⁶ (1995) 3 SCC 552

therefore, does not deal with the contingency of promotion by selection.

31. Next decisions relied upon by the Petitioners of the Supreme Court in the case of *Bihar State Harijan Kalyan Parishad Vs Union of India*⁷ and *Syndicate Bank SC ST Employees Association Vs Union of India*⁸, were rendered on an entirely different set of facts. In the case of *Bihar State Harijan Kalyan Parishad*, the issue did not arise from the preparation of a list. The Apex Court found that there was a clear denial of the benefit of reservation in the State. In fact, in this decision, the observations made by the Apex Court indicate that there is a distinction between the promotion by way of selection method and the promotion based on seniority subject to fitness. In the case of *Syndicate Bank*, the bank had not provided for reservation. The bank had taken a stand that there was no reservation at all in the case where the post is to be filled in by promotion based on selection. The Apex Court negated this stand. In the present case, the State of Goa has not taken such a stand. Therefore, none of the decisions cited have any bearing on the subject.

32. In these circumstances, we find that there is no merit in the challenge of the Petitioners. The Petitioners were not falling

⁷ AIR 1985 SC 983

⁸ (1990) SCC Supl. 350

within the extended zone of consideration at the relevant time, and thus they were rightly not promoted. Subsequently, the Petitioners have been promoted. Their date of promotions will have to be counted from the date they were promoted.

33. The Petitioners have also raised two ancillary issues. These are based on the amendments carried out in the Petition.

34. The Petitioners have challenged the Notification published in the Official Gazette on 20 May 2010 whereby the Government has amended the Recruitment Rules for 97 posts of the Assistant Engineer. Rules have been challenged on the ground that they prescribe ten years regular service for degree holders and 12 years regular service for diploma holders in the grade of Junior Engineer. It is contended that increasing number of years in regular service is made to exclude the Petitioners and others similarly situated candidates. Reliance has been placed on the decision of the Apex Court in the case of *Scheduled Castes and Scheduled Tribes Officers' Welfare Council Vs State of U.P. and Another*⁹. The Petitioners as on date have been promoted and are working on the promoted post. The challenge to these amended Recruitment Rules, which seek to increase the years of experience, has been rendered academic in this

⁹ (1997) 1 SCC 701

petition. Even otherwise the Rules have been framed in pursuance to the powers conferred. Affidavit in reply is filed by the Chief Electrical Engineer in which it is stated that a restructuring package proposed for creation of new posts subject to the proposed amendment. It is made clear that the said amendment would be made applicable to such posts and not to the posts which are already existing and as a part of the restructuring package. Therefore, this issue does not arise for consideration in this petition filed by the Petitioners.

35. The second contention is that the dereservation to the post could not have been in the first year itself, when the Office Memorandum dated 6 November 2003 stipulated that it should be after a period of three years. Reliance is also placed on the decision of the Supreme Court in the case of *State of Punjab and others Vs G. S. Gill and Another*¹⁰ to contend that the carry forward Rule cannot be applied in the first year itself and it should be after three years. We have to deal with the submission in the context of the position that the Petitioners were not entitled to be promoted having not fallen in the zone of consideration at the relevant time, and when they fell in the extended zone of consideration, they have been promoted and are working on the promoted posts as on date. Merely because the Petitioners are raising certain legal issues, it is not necessary to

¹⁰ (1997) 6 SCC 129

entertain the debate as no effective relief can be granted to the Petitioners in that regard.

36. To conclude, the primary contention of the Petitioners that a separate list of the Scheduled Caste and Scheduled Tribes candidates in the matters of promotion by selection to the post of Assistant Engineer has to be maintained cannot be accepted. The Respondent-State has followed the Office Memorandums relating to the promotion by selection and have adopted the methodology laid down therein. There is no challenge to any of the Memorandums or Circulars. The other issues raised by the Petitioners have been rendered academic because of their consequent promotion on the post.

37. In these circumstances, the Writ Petition is dismissed. Rule is discharged. No order as to costs.

Prithviraj K. Chavan , J.

N.M. Jamdar, J.