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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.3805 OF 2006
WITH
CIVIL APPLICATION NO.2397 OF 2008
WITH
CIVIL APPLICATION NO.892 OF 2009
WITH
CIVIL APPLICATION NO.1943 OF 2010
WITH
CIVIL APPLICATION NO.1944 OF 2010

Union of India and Ors.

... Petitioners

Vs.

R.R. Sidgiddi and Ors.

... Respondents

Mr. Suresh Kumar for the Petitioners and for Applicant in
CAW/2397/2008 and CAW/1943/2010.

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CORAM : A.S.OKA AND M.S. SONAK, JJ.

DATE : 30th AUGUST 2018.

ORAL JUDGMENT (Per A.S.Oka, J.)

1 Called out for final hearing. Heard the learned counsel appearing for the petitioners who are the first to third respondents before the Central Administrative Tribunal (for short “the said Tribunal”). The first to sixth respondents are the applicants in the Original Application. In paragraphs 10 and 11 of the impugned judgment and order, the Tribunal held thus :-

“10. As per facts of this case only 20% of posts have been upgraded to higher scale and there is no addition in the number of posts. Therefore in view of the verdicts of the Apex Court in the case of V.K. Sirothia (Supra) and All India Non Scheduled Caste/Scheduled Tribe Employees Association (Railways) (Supra) the provisions of providing reservation to SC/ST will not apply while

giving the benefit of higher pay scale to 20% of the existing incumbents. The Railway Board circular no doubt, have a statutory force but if some portion is repugnant to the law of land it has to be struck down as was done in the case of restructuring scheme of 1993 by Chandigarh Bench of CAT and such action was also confirmed by the Punjab & Haryana High Court. Application of reservation policy even to meet the backlog is not admissible as per law laid down by the Apex Court.

11. In view of discussions hereinabove, we hold that for filling up 20% posts by upgradation method, the policy of providing reservation to SC/ST is not applicable. The respondents are directed to carry out the exercise of upgradation de novo by not applying policy of reservation. The earlier list based on giving benefit of reservation policy while filling up the upgraded posts is not legally sustainable. The respondents are directed to finalize the action in the matter and issue necessary orders in the light of our observations within a period of three months from the date of receipt of a copy of this order. The OA is disposed of accordingly leaving the parties to bear their own costs.”

2 Our attention is invited to a decision of the Apex Court in the case of *Union of India Vs. Pushpa Rani and Others*¹. Paragraph 1 of the said decision shows that the issue involved in this petition squarely arose before the Apex Court. Paragraph 1 reads thus :-

- “1. Whether the policy of reservation of posts for Scheduled Castes/Scheduled Tribes can be applied at the stage of giving effect to cadre restructuring exercise undertaken pursuant to Letter No.PC-III/2003/CRC/6 dated 9-10-2003 issued by the Railway Board is the question which arises for determination in the abovenoted appeals filed against the orders of the Punjab and Haryana High Court which upheld the decision of the Chandigarh Bench of the Central Administrative Tribunal (hereinafter referred to as “the Tribunal”) to quash Para 14 of the said letter and the

1 2008 (9) SCC 242

direction given for making appointments de hors the policy of reservation. The special leave petition filed by the Union of India against the order of the Allahabad High Court is being disposed of along with appeals because the issue arising therein is similar.”

3 After having perused the decision of the Apex Court, we find that the view taken by the Tribunal in paragraphs 10 and 11 is completely contrary to the law laid down by the Apex Court. Paragraphs 31 to 33 of the decision of the Apex Court read thus:-

- “31. In legal parlance, upgradation of a post involves the transfer of a post from the lower to the higher grade and placement of the incumbent of that post in the higher grade. Ordinarily, such placement does not involve selection but in some of the service rules and/or policy framed by the employer for upgradation of posts, provision has been made for denial of higher grade to an employee whose service record may contain adverse entries or who may have suffered punishment – *D.P. Upadhyay v. N.R. Baroda House*.
32. The word “promotion” means “advancement or preferment in honour, dignity, rank or grade”. “Promotion” thus not only covers advancement to higher position or rank but also implies advancement to a higher grade. In service law the expression “promotion” has been understood in the wider sense and it has been held that “promotion can be either to a higher pay scale or to a higher post” - *State of Rajasthan v. Fateh Chand Soni*.
33. **Once it is recognised that the additional posts becoming available as a result of restructuring of different cadres are required to be filled by promotion from amongst the employees who satisfy the conditions of eligibility and are adjudged suitable, there can be no rational justification to exclude the applicability of the policy of reservation while effecting promotions, more so because it has not been shown that the procedure for making appointment by promotion against such additional posts is different than the one prescribed for**

normal promotion. In *Fateh Chand Soni* case this Court interpreted the provisions contained in the Rajasthan Police Service Rules, 1954, which regulate appointment to the selection scale in the service and held that such appointment constitutes promotion. The Court then considered two earlier judgments in *Lalit Mohan Deb v. Union of India* and *Union of India v. S.S. Ranade* and declared that the High Court was in error in holding that appointment to the selection scale does not constitute promotion.”

(emphasis added)

4 In the circumstances, the petition must succeed and we pass the following order :-

ORDER

- (i) Rule is made absolute in terms of prayer clause (a);
- (ii) There is no order as to costs;
- (iii) Pending Civil Applications do not survive and the same are disposed of.

(M.S. SONAK, J.)

(A.S.OKA, J.)