

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

W.P.No.36273 of 2017

ORDER:

Heard the learned counsel for the petitioners, Smt. K.Lalitha, learned counsel for 1st respondent, learned Government Pleader for Endowments for 2nd respondent and Sri S.Lakshmi Narayana Reddy, learned counsel for 3rd respondent.

2. The question which arises for consideration in this Writ Petition is whether the 1st respondent, without framing any rule for grant of consequential seniority benefit to Schedule Caste and Schedule Tribe candidates who were promoted under the Rule of reservation, can grant such benefit.

3. It is not in dispute that the Supreme Court of India in **B.K.Pavitra and others Vs. Union of India and others**¹ held that in the absence of any policy decision by the State for giving consequential seniority to the candidates promoted on the basis of reservation prior to the senior general category candidates, consequential seniority cannot be given. It categorically held that in the absence of provision of consequential seniority, the “catch-up” rule will be applicable and the roster point promotees cannot claim consequential seniority. It observed:

“28. In S. Panneer Selvam v. State of T.N. [S. Panneer Selvam v. State of T.N., (2015) 10 SCC 292 : (2016) 1 SCC (L&S)

¹ (2017) 4 S.C.C. 620

76] , question before the Court was whether in absence of any policy decision by the State for giving consequential seniority to candidates promoted on the basis of reservation prior to a senior general category candidate, claim for consequential seniority could be accepted. Answering the question in the negative, it was held that in absence of provision for consequential seniority, “catch-up” rule will be applicable and the roster point promotees cannot claim such consequential seniority. The senior general candidates will regain their seniority on being promoted. Observations relevant in this regard are as follows: (SCC pp. 312-13, paras 34 & 36)

“34. If we look at the above comparative table of the service particulars of the appellants and the respondents, it is seen that the contesting respondents U. Palaniappan joined the service almost seven years after the appellants, his seniority is automatically accelerated at an unprecedented rate and as on 1-4-2004 his seniority rank as ADE is 150 and seniority of V. Appadurai is 120. The appellants who are qualified and senior than the contesting respondents are placed much below in rank in comparison to the person belonging to the reserved class promotees who were promoted following the rule of reservation. It is to be noted that the private respondents in the present case have been promoted temporarily under Rule 39(a) and Rule 10(a)(i) of the General Rules with the condition that their inclusion in the promotional order shall not confer on them any right whatsoever in the service. Determination of seniority is a vital aspect in the service career of an employee and his future promotion is dependent on this. Therefore, determination of seniority must be based on some principles which are just and fair. In the absence of any policy decision taken or rules framed by the State of Tamil Nadu regarding Tamil Nadu Highways Engineering Service, accelerated promotion given to the respondents following rule of reservation in terms of Rule 12 will not give them consequential accelerated seniority.

36. In the absence of any provision for consequential seniority in the rules, the “catch-up rule” will be applicable and the roster-point reserved category promotees cannot count their seniority in the promoted category from the date of their promotion and the senior general candidates if later reach the promotional level, general candidates will regain their seniority. The Division Bench appears to have proceeded on an erroneous footing that Article 16(4-A) of the Constitution of India automatically gives the consequential seniority in addition to accelerated promotion to the roster-point promotees and the judgment of the Division Bench cannot be sustained.”

(emphasis in original)

29. It is clear from the above discussion in S. Panneer Selvam case [S. Panneer Selvam v. State of T.N., (2015) 10 SCC 292 : (2016) 1 SCC (L&S) 76] that exercise for determining “inadequacy of representation”, “backwardness” and “overall efficiency”, is a must for exercise of power under Article 16(4-A). Mere fact that there is no proportionate representation in promotional posts for the population of SCs and STs is not by itself enough to grant consequential seniority to promotees who are otherwise junior and thereby denying seniority to those who are given promotion later on account of reservation policy. It is for the State to place material on record that there was compelling necessity for exercise of such power and decision of the State was based on material including the study that overall efficiency is not compromised. In the present case, no such exercise has been undertaken. The High Court erroneously observed that it was for the petitioners to plead and prove that the overall efficiency was adversely affected by giving consequential seniority to junior persons who got promotion on account of reservation. Plea that persons promoted at the same time were allowed to retain their seniority in the lower cadre is untenable and ignores the fact that a senior person may be promoted later and not at the same time on account of roster point reservation. Depriving him of his seniority affects his further chances of promotion. Further plea that seniority was not a fundamental right is equally without any merit in the present context. In absence of exercise under Article 16(4-A), it is the “catch-up” rule which fully applies. It is not necessary to go into the question whether the Corporation concerned had adopted the rule of consequential seniority.”

4. In the counter affidavit, filed by 1st respondent, it is not stated that there was any policy decision taken by the State Government adopted by the T.T.D. to give such consequential seniority to Schedule Caste and Schedule Tribe candidates who got promoted on the basis of reservation prior to senior general category candidates like the petitioners.

5. In fact, the stand taken in the counter affidavit is that the 1st respondent had addressed 2nd respondent in that regard through a D.O. letter dt.11-12-2017. When there is no provision for consequential seniority benefit to be given to such candidates promoted on the basis of reservation, the “catch-up” rule will have to be applied and the consequential seniority given to the roster point promotees i.e. the respondent Nos.3 to 5, by 1st respondent, cannot be sustained.

6. Similar view has been taken by the learned Single Judge of this Court in his order dt.29-11-2017 in W.P.No.45732 of 2016 and batch.

7. Accordingly, the Writ Petition is allowed and the action of the 1st respondent in granting consequential seniority to employees promoted under Rule of Reservation like respondent Nos.3 to 5 without there being any such policy decision by the State Government, as adopted by the 7th respondent, is clearly illegal, arbitrary and contrary to law. It is declared that respondent Nos.3 to 5 and other persons similarly promoted like them under the reservation category are not entitled to grant of consequential seniority in the promoted category from the date of their promotion. The senior general candidates, later promoted, like the petitioners, are entitled to regain their seniority; and a direction is issued to the 1st respondent to revise the seniority list in all categories of the posts of 1st respondent by applying the “catch-up” rule and restore seniority to general

category persons over and above employees promoted under reserved category with all consequential benefits like seniority etc. This exercise shall be completed within six months from the date of receipt of a copy of this order. No costs.

8. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 19-02-2018
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