

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 2281 OF 2007

All India General Insurance Scheduled
Caste/Scheduled Tribe Employees Welfare
Association, Regd. No. Bom593-81-GBBS.
PT.F.8349, through its Working President
Mr. Ajay Govindrao Sonkamble,
Aged about 42 years, R/o Plot No.110,
Pitru-Chhaya Apartment, Laxmi Nagar,
Nagpur.

.... **PETITIONER**

VERSUS

- 1) The New India Insurance Co. Ltd.,
through its Chairman-cum-Managing
Director, 87 M.G. Road, Mumbai-400 001.
- 2) The Oriental Insurance Co. Ltd.,
through its Chairman-cum-Managing
Director, Oriental House, P.B. No. 7037,
A-25/27, Asaf Ali Road, New Delhi-110 002.
- 3) National Insurance Co. Ltd.,
through its Chairman-cum-Managing
Director, 3, Middleton Street,
Kolkatta – 700 071.
- 4) United India Insurance Co. Ltd.,
through its Chairman-cum-Managing
Director, 24, Whites Road, Chennai-14.
- 5) General Insurance Corporation of India,
through its Chairman-cum-Managing
Director, 'Suraksha', 170, Jamshtji Tata
Road, Charchgate, Mumbai.
- 6) National Commission for Scheduled
Caste, New Delhi.

7) National Commission for Scheduled Tribes, New Delhi.

8) Union of India,
through its Secretary, Department of
Personnel and Training, North Block,
New Delhi.

(Respondent Nos.6 to 8 are added as
per Hon'ble Court's order dated
25-6-2007 & Word 'Ministry of
Finance' deleted as per Hon'ble Court's
order dated 20-7-2007).

9) Union of India,
through its Secretary, Ministry of Finance,
Department of Insurance, North Block,
New Delhi.

.... **RESPONDENTS**

Ms. D.V. Sapkal, Counsel for the petitioner,
Mr. S.K. Pardhy, Counsel for respondents 1, 3, 4 and 5,
Ms. Neerja G. Chaubey, Counsel for respondents 8 and 9.

CORAM : ROHIT B. DEO & ANIL L. PANSARE, JJ.
DATED : 30th AUGUST, 2022

ORAL JUDGMENT : (PER : R.B. DEO, J.)

Petitioner is registered association of All India General Insurance
Scheduled Caste/Scheduled Tribe Employees. Members of the
petitioner-association are/were employees of respondents 1 to 5
insurance companies.

2. The petitioner-association has sought the following relief :

“1) quash and set aside the impugned promotional policy for Officers-2006 at Annexure No.1 issued by the respondents.

2) by way of ad interim relief stay the effect and operation of the promotional policy for Officers-2006 and restrain the respondents from holding the written test during the pendency of the petition.

2-A) restrain the respondents for declaring the result of the written test fixed on 27-5-2007.

2-B) direct the respondents to implement reservation in promotion and further direct to fill up the backlog since 1972.

2-C) by way of ad interim relief direct the respondents to implement reservation in promotion and further direct to fill up the backlog since 1972 before filling up any promotional post.

3) grant ad interim ex party order in terms of prayer clause No.2 or 2-A.

4) direct the respondents to produce all relevant record for the perusal of this Hon’ble Court.

5) allow the petition with costs and grant any other relief which this Hon’ble Court deems fit and proper in the interest of justice.”

3. Inasmuch as the learned Counsel for the petitioner-association has canvassed submissions restricted to prayer (1), we restrict the consideration to the submission of the petitioner-association that the impugned promotion policy, to the extent a written test is prescribed for consideration for promotion in the officers’ cadres, is arbitrary and illegal. We note that the impugned policy is amended on 04-1-2019 and the written test, which is the bone of contention, is done away with. We further note that vide order dated 31-7-2007, while issuing Rule, the promotions made during the pendency of the petition are

made subject to the decision of the petition. It is in this view of the matter, that notwithstanding that the written test is done away with, the validity of the impugned policy will have to be considered on merits.

4. The broad case of the petitioner-association is that the impugned promotion policy for officers-2006 (impugned policy) is adopted by the respondents-insurance companies with effect from 02-2-2007. Earlier, the criterion for promotion was seniority-cum-merit and merit was assessed on the basis of service record. The impugned policy, however, introduced written test which is a marked departure from the promotion policy of 1990 which did not prescribe written test and prescribed seniority-cum-merit as the criteria.

5. The petitioner-association contends that Clause 15 of the impugned policy is a special provision for officers belonging to the Scheduled Caste and Scheduled Tribe and the insurance companies have agreed to be bound by the instructions issued by the Government from time to time. The petitioner-association contends that the impugned policy, to the extent a written test is prescribed, militates against the reservation policy.

6. The petitioner-association contends that vide Office Memorandum dated 27-2-1972 issued by the Government of India, every Government establishment and authority was asked to fill in the promotional posts reserved for Scheduled Caste and Scheduled Tribe in Class-I to IV on the basis of seniority-cum-fitness. The petitioner-association submits that prior to the framing of the impugned policy, there was neither interview nor written test prescribed for promotion from Scale-I to Scale-IV and merit was assessed on the basis of the service record/confidential reports.

7. The petitioner-association contends that insurance companies are under the administrative control of the Finance Department of Government of India and are bound by the guidelines issued to the Finance Department. The petitioner-association then refers to the guidelines dated 28-11-1986 issued by the Government of India, Department of Economic Affairs, which direct the banks to implement reservation in promotion. According to the petitioner-association, the said guidelines clarify that seniority-cum-merit is assessed on the basis of written test or both and seniority-cum-fitness is assessed on the basis of confidential reports.

8. The petitioner-association contends, that the introduction of the

written test in the impugned policy is contrary to binding instructions issued by the Government of India and is otherwise bad in law since the service conditions cannot be altered to the detriment of the members of the petitioner-association, particularly by prescribing written test, which was not the requirement till 2007.

9. Respondents-insurance companies have filed affidavit-in-response dated 12-6-2007. It is contended that the association is claiming reservation within the Category-A (Class-I). It is stated in the affidavit-in-response that as per the decision taken by the Government of India on 01-11-1990, there is no reservation in promotion by selection within Group-A. It is emphasized that the decision of Government of India *supra* is not challenged by the petitioner-association.

10. It is then stated in the affidavit-in-response that the promotion policy for officers was framed in 1990. In the said policy, no reservation is provided for promotions within Group-A (Class-I). The 1990 policy provides promotion on the basis of selection to be done by the promotion committee. Even the impugned policy provides that the promotion shall be selection based with the additional criterion of written test. It is stated in the affidavit-in-response that written test is introduced to ensure that the officers in Class-I should get themselves

acquainted with Rules, Regulations, Laws and the changing business environment particularly in the context of the liberalization and need to compete with private sector insurance companies. It is further averred that the impugned policy was uploaded on the website of the insurance companies in 2007. Elaborate instructions were issued informing the employees about the nature of the written test etc. and special training programmes were organised for candidates belonging to Scheduled Caste and Scheduled Tribe community. Most of the employees belonging to the Scheduled Caste and Scheduled Tribe attended the training programmes and 90% of Scale-I officers appeared for written test which was conducted by National Insurance Academy, which is an autonomous and independent organisation.

11. The petitioner-association has filed re-joinder to the affidavit-in-response filed by the insurance companies. It is submitted that the Office Memorandum dated 01-11-1990 reference to promotion by selection within Class -I. The petitioner-association submitted that the said Office Memorandum dated 01-11-1990 is irrelevant since the earlier policy was not based on selection but was based on seniority-cum-merit and merit was assessed on the basis of service record and confidential reports.

12. Respondents-insurance companies have filed additional affidavit dated 05-7-2007 reiterating that even the earlier promotion policy was based on selection and all that is done in the impugned policy is introduction of additional requirement of written test. It is further asserted that the reservation policy does not apply to promotions within Class-I cadre.

13. We have heard the learned Counsel for the petitioner-association Ms. D.V. Sapkal, the learned Counsel for the insurance companies Mr. S.K. Pardhy and the learned Counsel for respondents 8 and 9 Ms. Neerja Chaubey.

14. The short question which is involved in the petition is whether, assuming *arguendo*, that reservation is applicable to promotions within the Class-I cadre, the policy suffers from the voice of arbitrariness or illegality since written test is introduced in the selection process.

15. The preface to the policy impugned notes the changes which have taken place in the insurance industry, and the emerging challenges due to the opening up of the sector to provide competitive environment. The 1990 policy falls short of the expectations of the organisation in the emerging competitive scenario and requires replacement by new policy,

is further noted. The stated objective of the policy is to provide requisite man power competent to hold positions at various levels in the company to meet the challenges of the contemporary scenario while providing reasonable opportunities of career growth to deserving and capable officers.

The policy is made applicable to promotions of officers upto the cadre of Scale-VII. The bone of contention is Clause 9.2 which prescribes written test for promotions upto the cadre of Scale-V. It is provided that all officers included in the zone of considerations in terms of Clause VIII for promotion from Scale-I to Scale-II, Scale-II to Scale-III, Scale-III to Scale-IV, Scale-IV to Scale-V shall be required to qualify in a written test conducted by an independent professional examining body of repute before being included in further process for consideration of promotion. Qualifying marks in the written test is 50 (Fifty) or more from the total marks 100 (Hundred). In the context of the issue involved, it would not be necessary to refer to the criterion for promotions in cadre of Scale-VI to Scale-VII.

16. The sum and substance of the challenge, which is mounted to the policy impugned, is that the prescription of written test changes the service condition of the employees unilaterally and that the benefit of the reservation policy is taken away. We are unable to accept either

limb of the submission canvassed. It is trite law that an employee has no vested right to promotion. The right of the employee is to be fairly considered along with the others on the basis of the prevailing policy. The methodology of selection is best left to the employer, and if the employer in its wisdom is of the view that a written test be prescribed, the policy decision cannot be interfered with, particularly since no manifest arbitrariness in the decision making is demonstrated.

17. In *Hardev Singh v. Union of India and Another*, AIR 2012 SC 286, it is emphasized that it is always open to an employer to change its policy in relation to giving promotion to the employees and the Court would normally refuse to interfere in such decisions. In *Hardev Singh* reliance is placed *inter alia* on the decision in *Balco Employees' Union (Regd.) v. Union of India and others*, (2002) 2 SCC 333. *Balco Employees' Union* holds that a policy decision taken by the Government cannot be struck down merely because the Court feels that another policy would have been fairer or wiser or more scientific or logical.

18. The petitioner-association has not established that reservation is required to be provided for promotions upto Class-V cadre. We may further note the observations of the Hon'ble Supreme Court in *K. Samantaray v. National Insurance Co. Ltd.*, AIR 2003 SC 4422, which

decision considers the challenge to denial of promotion.

“While laying down the promotion policy or rule, it is always open to the employer to specify area and parameter of weightage to be given in respect of merit and seniority separately so long as policy is not colourable exercise of power, or has the effect of violating of any statutory scope of interference and other relatable. The decision in B. V. Sivaiah case (supra) is clearly distinguishable on facts and in law. That was a case where statutory rules governed the field. This Court, inter alia, held that fixing terms which are at variance with the statutory rules is impermissible. In the case at hand, prior to the formulation of policy in February, 1990, there were no codified prescriptions. It was the stand of the respondent-employer that prior to the formulation of the policy, certain guidelines existed and the objectives of the policy were to rationalize and codify the existing guidelines relating to promotions within officers cadre. There is no statutory rule operating. It is for the employer to stipulate the criteria for promotion, the same pertaining really to the area of policy making. It was, therefore, permissible for the respondent to have their own criteria for adjudging claims on the principle of seniority-cum-merit giving primacy to merit as well, depending upon the class, category and nature of posts in the hierarchy of administration and the requirements of efficiency for such posts.”

19. We have already noted that the written test is done away with. However, that is an administrative and policy decision, as was the decision to introduce the written test as criterion for promotion. The fact that the employer subsequently decided to do away with the written test is no reflection on the merits of the introduction of the written test in the promotion process. We do not see infirmity whatsoever, muchless such infirmity in law as warrants interference in

writ jurisdiction, in the policy impugned.

20. We are further not impressed by the submission that the petitioner-association is entitled to claim reservation within the Class-I cadre. Articles 16(4-A), (4-B) and 16(4) of the Constitution of India are enabling in nature and the employer cannot be forced to make reservations in the matters of promotions. The Notification dated 01-11-1990, which is referred to by the petitioner-association, clarifies that promotion by selection within Group-A posts shall not attract reservation. We have no hesitation in observing that the promotions in the present case are indeed by selection and therefore the Notification dated 01-11-1990 does not take the case of the petitioner-association any further.

21. In the light of the decision *supra*, we find that the petition is without substance and is liable to be dismissed, and we order accordingly.

(Anil L. Pansare, J.)

(Rohit B. Deo, J.)

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