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- (iii) Section 9 of the Act was validly omitted and this Section had not granted any exemption to the petitioners from payment of the tax demanded ;
- (iv) the petitioners are liable to pay the purchase tax on the paddy used by them for husking paddy which was ultimately exported out of the country.
- (v) Annexure P/1, the notice under Section 40 of the Act, is legal, valid and according to law.
- (vi) the impugned notice of assessment and demand under Section 28, 29, 31 and 33 of the Act insofar as it directs the payments of the purchase tax is legal, valid and according to law. However, the petitioners are held not liable to pay the amount of interest as specified in the said notice of assessment and demand. The Assessing Authority shall afresh determine the liability of the petitioners to pay the interest in terms of sub-section 5 of Section 25 of the Act but the interest shall be imposed only from the date of notice of assessment and demand notwithstanding any interim stay granted by any Court in the State of Haryana.

(107) Civil Writ Petition Nos. 6071, 6073, 6072, 7572, 6074, 7575, 7576, 7578, 13981, 7574 of 1993, 11422, 14755, of 1994 and 1996 of 1995 stand disposed of in the above terms. Under the peculiar circumstances of the case there shall be no order as to costs.

J.S.T.

Before Hon'ble Jawahar Lal Gupta & P. K. Jain, JJ.

BHUP SINGH,—Petitioner.

versus

THE STATE OF HARYANA & OTHERS,—Respondents.

C.W.P. No. 8912 of 1994.

6th September, 1995.

Constitution of India, 1950—Arts. 226/227—Reservation—Is a Scheduled Caste member entitled to claim that reserved point in roster be filled by promotion by member of that class inspite of fact

that the prescribed percentage of reservation has already been reached—Held, No, that once prescribed percentage of reservation is achieved roster shall cease to operate and is to be revived only when reservation falls below prescribed percentage.

Held, that the purpose of Clause (4) of Article 16 is to ensure adequate representation for members of Scheduled Castes in the services under the State. On consideration of the relevant material, the State Government has formed an opinion that reservation should be to the extent of 20 per cent. Once this reservation is reached, the State Government is entitled to say that the members of Scheduled Castes are adequately represented and that they will not be entitled to any further benefit under Clause (4) of Article 16 of the Constitution of India or the instructions issued by it.

(Para 12)

Further held. that once the prescribed percentage of reservation has been achieved the roster shall cease to operate and shall be revived only when the reservation falls below the prescribed percentage.

(Para 17)

J. S. Maanipur, Advocate, for the Petitioner.

Jaswant Singh, Advocate, for Respondent Nos. 1 and 2.

Surya Kant, Advocate, for the Respondent.

JUDGMENT

Jawahar Lal Gupta, J.

(1) Is a member of the Scheduled Castes entitled to claim that a reserved point in the roster be filled by promotion of a member of that class in spite of the fact that the prescribed percentage of reservation has already been reached? This is the short question that arises for consideration in this petition. A few facts.

(2) The petitioner is a member of the Scheduled Castes. He is working as an Assistant in the Department of Labour. Under the provisions of Haryana Labour Department (Group 'C') Service Rules, 1982, the posts of Labour Inspectors can be filled-up by promotion

from amongst the members of the establishment like Assistants, Accountants, Head Clerks etc. and by direct recruitment. It is further provided that 50 per cent posts shall be filled-up by promotion and 50 per cent by direct recruitment. There are a total of 44 posts in the cadre.

(3) According to the petitioner, the Government had issued instructions,—*vide* letter dated February 9, 1979 by which 20 per cent posts in the Class III services were reserved for members of Scheduled Castes. A 100 points roster was also prescribed according to which posts at Nos. 4, 8, 14, 18 etc. had to be filled-up from amongst the members of the Scheduled Castes. It is further averred that since the issue of the instructions, posts upto point No. 69 have been filled-up. However, the vacancy at Sr. No. 68 which was reserved for a member of Scheduled Castes was given to a member of the general category. Even the post at No. 69 has also been filled-up by promotion of a person from the same class. Respondents 3 and 4 have been promoted against these posts. As a result, the petitioner complains that the rights of the members of the Scheduled Castes have been adversely affected. This, the petitioner alleges, has been done in view of the instructions issued by the Government on August 22, 1985. A copy of which has been produced as Annexure P-6 with the writ petition. According to the petitioner, the action of the respondents is violative of the decision of a Division Bench of this Court in *Prabhash Chand Jain v. State of Haryana* (1), which has been upheld by their Lordships of the Supreme Court in Civil Appeal Nos. 4224-25 of 1994,—*vide* judgment dated February 23, 1995.

(4) The respondents controvert the petitioner's claim. In the written statement filed on behalf of the State of Haryana and the Labour Commissioner, it has been *inter alia* pointed out that there are a total of 44 posts out of which 22 have to be filled-up by promotion and the remaining by direct recruitment. It has been further pointed out that five persons have already been appointed by way of promotion and four by direct recruitment from amongst the members of the Scheduled Castes. Since 20 per cent posts have been reserved for members of Scheduled Castes, their share of 9 posts has already been given to them. Relying on the instructions issued by the Government,—*vide* letter dated August 22, 1985, it has been pointed out that the action of the Government in not following the "roster

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point where the prescribed percentage of reservation of that particular category has already been reached" is perfectly legal and valid.

(5) To a similar effect is the written statement filed by respondent No. 3. On behalf of the respondent, reliance has also been placed on the decision of their Lordships of the Supreme Court in *R. K. Sabharwal & others v. State of Punjab & others* (2), to contend that the action of the State Government is in strict conformity with the provisions of law.

(6) We have heard learned counsel for the parties. On behalf of the petitioner, Mr. J. S. Maanipur, has contended that the respondents are bound to follow the roster irrespective of the fact that the requisite percentage of posts has already been filled-up from amongst the members of the Scheduled Castes. This claim of the learned counsel for the petitioner has been controverted by M/s Jaswant Singh and Surya Kant, appearing for the respondents. What is the correct position in law ?

(7) Article 16 of the Constitution guarantees equality of opportunity to all citizens in the matter of employment under the State. It further guarantees that there shall be no discrimination in the matter of employment "On grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them....." Clause (4) which permits the State to make reservation for the Backward Class of citizens, is in the nature of an exception. It is an enabling provision. It confers a discretionary power on the State. It does not confer a constitutional right on the members of the backward classes to claim reservation. It also does not impose a constitutional duty on the State to make reservation in favour of a backward class in spite of the fact that its members are adequately represented in the services under the State.

(8) What is the position in the present case ? The State Government issued executive instructions regarding reservation,—*vide* its letter dated February 9, 1979. It provided for reservation to the extent of 20 per cent for members of Scheduled Castes in all the services. In case of promotion, the reservation was confined to the

posts in Class III and IV services only. It was to be admissible for "promotion to Class III and Class IV posts on the basis of selection from a slab of 3 officials..." The roster points were also fixed. It was also provided that "*the aforesaid benefit of reservation will be given till such time as the number of employees belonging to reserved categories in each cadre/grade does not come upto the prescribed percentage.*" (emphasis supplied). A question arose about the interpretation of these instructions. Clarification was sought "as to whether the roster would continue to be followed when the prescribed percentage of reserved categories has been reached." After careful examination, the Government decided that "roster will not be followed at the roster point where the prescribed percentage of reservation of that particular category has already been reached. That roster point of reservation will be extinguished". It was further provided that "the roster shall, however, be revived as soon as the percentage of reservation falls below the prescribed percentage."

(9) It is in the background of these instructions that the question as posed at the outset, has to be examined.

(10) Mr. Maanipur contends that a vacancy at the reserved point has to be given to a member of the Scheduled Castes. He relies on the decision of a Division Bench of this Court in *Prabhash Chand Jain's case* (supra) in support of his submission.

(11) Let us first examine the contention with reference to the instructions issued by the Government. When the State Government makes reservation and prescribed a roster, it should normally follow that every reserved point shall be given to a member of the class for which it has been provided. However, in the present case, we find that even while providing reservation, it was specifically stipulated that the "benefit of reservation will be given till such time as the number of employees belonging to reserved categories in each cadre/grade does not come upto the prescribed percentage." The obvious implication was that the benefit of reservation shall not exceed 20 per cent. In spite of this clear stipulation when doubts were raised and clarifications were sought, the Government specifically stated that the "roster will not be followed at the roster point where the prescribed percentage of reservation of that particular category has already been reached." In order to put the matter beyond any shadow of doubt, it was specifically stated that such a "roster point of reservation will be extinguished" and that the roster

shall "be revived as soon as the reservation falls below the prescribed percentage". It is, thus, clear that the instructions issued by the Government clearly stipulate that the roster has to be followed in a manner that the prescribed percentage is not exceeded.

(12) The purpose of Clause (4) of Article 16 is to ensure adequate representation for members of Scheduled Castes in the services under the State. On consideration of the relevant material, the State Government has formed an opinion that reservation should be to the extent of 20 per cent. Once this reservation is reached, the State Government is entitled to say that the members of Scheduled Castes are adequately represented and that they will not be entitled to any further benefit under Clause (4) of Article 16 of the Constitution or the instructions issued by it. The roster prescribed by the Government has only one purpose to serve namely to prescribe the points at which the members of the Scheduled Castes shall be entitled to claim the benefit. It can't be that all the vacancies arising at a point of time may be given to the members of the Scheduled Castes. This may cause heart burning amongst others. Posts have to be rationally distributed. Even efficiency of the services has to be kept in view. Roster has been prescribed to do away with uncertainty. Vacancies in a service can arise on account of a variety of reasons like retirement, death, dismissal or removal etc. If posts are vacated by members of general category only and the roster is continuously followed, the percentage of vacancies occupied by members of Scheduled Castes or other categories is likely to be exceeded. To ensure that such a situation does not arise, it has been provided that the benefit of reservation shall not be available after the prescribed percentage of posts have been filled-up by reservation. Thereafter, the reserved point has to be extinguished. This is precisely what has been done in the present case. There are a total of 44 posts. 9 posts are admittedly held by members of the Scheduled Castes. They have, thus, got the prescribed share of posts. In view of this position, the roster point has been extinguished. The members of Scheduled Castes including the petitioner can have no legitimate cause for grievance.

(13) Mr. Maanipur contends that such a course of action is not permissible in view of the judgment of the Division Bench in Prabhash Chand Jain's case (supra). Is it so ?

(14) The question that arose for consideration in Jain's case was as to whether or not the policy of reservation could be enforced

in a case where the cadre consisted of only two posts. It was held that under the instructions issued by the Government,—*vide* letter dated February 9, 1979 as clarified,—*vide* letter dated May 8, 1980, the benefit of reservation was available against vacancies and not posts. “The number of posts in a cadre was wholly inconsequential”. It was further found as a fact that the advice given by the Chief Secretary,—*vide* letter dated May 27, 1988 was “only an advice or a view expressed by the Chief Secretary to the Government. This was not a conscious decision taken by the State Government”. In view of this position, the plea raised on behalf of the appellants that there could be no reservation for members of Scheduled Castes and Backward Classes in a cadre consisting of only two posts was negated. This view of the Division Bench, as already noticed, has the imprimatur of their Lordships of the Supreme Court. However, the position in the present case is entirely different. The cadre, as already noticed, consists of 44 posts. Members of the Scheduled Castes have already got their share of 9 posts. Are they entitled to any other reservation? No such question had arisen in the case of *Prabhash Chand Jain's* case (*supra*). That being so, they can derive no advantage from this decision.

(15) We may also notice that Mr. Surya Kant, learned counsel for respondents 3 and 4 had placed reliance on the decision of their Lordships of the Supreme Court in *R. K. Sabharwal's* case and contended that the action of the respondents was in strict conformity with law. He appears to be right. One of the contentions raised in *Sabharwal's* case was “once the posts earmarked for Scheduled Castes/Tribes and Backward Classes on the roster are filled the reservation is complete. Roster cannot operate any further and it should be stopped.” This contention was accepted by their Lordships.

(16) No other point was urged.

(17) We, accordingly, answer the question posed at the outset in the negative and hold that once the prescribed percentage of reservation has been achieved, the roster shall cease to operate and shall be revived only when the reservation falls below the prescribed percentage. In view of our answer, we dismiss the writ petition in limine. There will, however, be no order as to costs.

J.S.T.