

LEGALFOXES LAW TIMES

CASE COMMENT ON T. DEVADASAN V. THE UNION OF INDIA AND ANOTHER

By Avnip Sharma

WRIT PETITION NO. 87 OF 1963

FACT OF THE CASE

MUDHOLKAR J. – Assistant in Grade IV of Central Secretariat Service, who is a Graduate. The Petitioner has been recruited in the year 1956. He became a permanent employee on January 1, 1958. The next post for which the petitioner aimed is that of Section officer (Assistant Superintendent) in the same service. Recruitment for the post of Section Officer shall be made in the following manner:

- 40% by direct recruitment of those candidates receiving lower ranks in the I.A.S etc., examination
- 30% by promotion on the basis of departmental examinations held at intervals by the U.P.S.C from Grade IV to Grade III
- 30% by promotion on the basis of sonority-cum-fitness from Grade IV

On February 6, 1960 the Union Public Service Commission issued a notification to make in effect for the limited competitive examination regarding promotion for the regular temporary instituting of Assistant Superintendents of Central Secretariat Service and would be held in June, 1960. It was further stated in the notification that a reservation of 12% to ½% towards the vacancies is to be made for the members of the Scheduled Castes and 5% towards the members of Scheduled Tribe. The result was announced by the Union Public Service Commission in April, 1961. The Union Public Service Commission commended for the appointment of 16 candidates towards the unreserved vacancies and 28 candidates appointment towards reserved vacancies. Consequently, the U.P.S.C commended 2 more candidates fitting in Scheduled

Castes/Scheduled Tribe for the respective post. It was mentioned that the number of vacancies which are expected to be filled are to be 48 out of that 16 seats were unreserved and the remaining 32 were reserved, though the fact that U.P.S.C commended only 30 candidates towards the vacancies. The government, however, made only 45 appointments out of that 29 candidate were from the Scheduled Caste/Scheduled Tribe.

The Petitioner points out that the marks scored by him was 61% whereas the marks scored by some of the Scheduled Caste/Scheduled Tribe candidates was as low as 35%. The Petitioner put forth his grievance that it was not proficient to the U.P.S.C to prescribe one qualifying standard towards Scheduled Caste/Scheduled Tribe and another for the un-reserved candidates.

The Petitioner, points out that the Union of India and U.P.S.C if would have followed to the quota of 17- ½ % reservation in favor of Scheduled caste/Scheduled Tribe, he would have fair prospect of being selected. In fact the reservation made in this instance is 65% which is far more excessive of that set out in the notification of U.P.S.C.

Issue Involved

1. Whether the carry-forward rule unconstitutional and does it violates the article 16(1) or Article 16(4)?
2. Whether the challenged provision of reservation towards Scheduled Caste/Scheduled Tribe violates Article 16(4)?

Petitioners Arguments

1. U.P.S.C did not have a justified method in respect of appointment of candidates i.e., Different for Scheduled Caste/Scheduled Tribe and different for Rest Candidates
2. The Reservation made in this case rose to 65% which was far more excessive from the mentioned criteria, in the notification of U.P.S.C according to which examination was held.
3. The Union of India and U.P.S.C seeks to be justifying their action by relying upon the rule i.e. "Carry-Forward rule"

Respondents Arguments

1. Taking into account the prayer of the petitioner, the petition is unconstitutional in nature since individuals who would be affected were not included as respondents, it was also contended that petition does not mention any judicial issue.
2. It was also denied that the mentioned “carry-forward rule” was not a denial of equality before law and equal opportunity in the matter of appointments of posts within the state.
3. The right for promotion can't be a basis of the petition in a court of law neither will legal issued be raised related to right to promotion.

Past Precedents of the Supreme Court

The Supreme Court's initial cases vigorously uphold the color-blind opinion.

State of Madras v. Champakam Dorairajan¹ It was the case to be decided by the 7 Judge Bench in 1951. The Policy of Madras Government was in Question, which stipulated admission for the medical and engineering college on the basis of caste and religion, thus was questioned, Inter Alia, under article 15(1) {Article 15(4) didn't existed}. The State claimed that admission done under the reservation into the educational institution was backed up by Article 46, Part of Directive Principles of State Policy, which commanded the State to 'Promote the educational and economic interests of the weaker sections of the people with special care, and specifically people of Scheduled Caste and Scheduled Tribe'². The Court Dismissed the Claims on the basis of Two Reasons:

First: On the very clear view that, the principles of Directive are not enforceable, and

Second: However, It was argued that if reservation may perhaps be justified under Article 46, It will be making Article 16(4) redundant. It followed logically, however, that Article 16(4), which permits the reservation under the much wider equal opportunity scheme of the Article 16, that is an exception to Article 16(1), and Article 16(1) itself doesn't consider reservation by its assurance of fair opportunities, even if it did, it would be not rendering Article 16(4) redundant. In Other Words, the claim of the redundancy will be only enforceable if it is to be believed that Article 16(4) is the government's power source towards making reservations.

¹ [1951] AIR 226, [1951] SCR 525

² Article 46, Directive Principle Of State Policy, The Indian Constitution, 1950

Straight in rejoinder towards the Supreme Court's Judgement, The Constitution introduced an Amendment which made auxiliary of Article 15(4). Article 15(4) reads:

“Nothing in this Article or Neither in Clause (2) of Article 29....shall be forbidding the state from constructing any distinctive endowment towards the encroachment of any of the educationally and economically retrograde classes of Indian citizens or towards the Scheduled Caste/Scheduled Tribe”

This was structured in a similar nature as of Article 16(4), apart from the infinitesimal disparities which are not of grave importance at this level. Like Article 16(4), the phrasing – and the relevant context, Article 15(4) indicated that this shall be an exception towards the general equality clause under 15(1) that empowers the government to do the act that they may not otherwise be doing, i.e. Classifying people on the basis of sex, caste, etc. for a particular reason(Promotion of educationally, socially, economically retrograde classes).

The General Manager, Southern Railway v. Rangachari³

The logic used in ChampakamDoairajan was in play in this case, Among the many issues that were at stake in Rangachari, There was also a question on Article 16 scheme, that does it requires reservation in promotion. Although the court delivered there judgment stating that it did, it was also noted that Article 16(1) and (2) was not incorporated. In particular court held that “even for the favor towards backward classes, there shall be no exception in areas relating to pay increase, pension, and gratuity and retirement age” consistent with color-blind view.

Overview of the Judgment

The rule of carry-forward was challenged, as it was so far excessive as it nullifies or abolishes the rights conferred by clause (1) of Article 16.Relying on Balaji Dictum⁴ of not more than 50% Cap rule and its notion that Article 15(4) & 16(4) are exception to the main clauses, The court by a Majority of 4:1 strucked down the rule as amended in 1955. On observation made through Balaji case it was clear that the rule is prejudice. Indeed also in General Manager Southern

³[1961]AIR Mad 35

⁴M. R. BalajiAnd Others vs State Of Mysore, 1963 AIR 649, 1962 SCR Supl. (1) 439

Railway V. Rangachari⁵ which is case of court upholding the reservation of vacancies to be filled in terms of promotion, Gajendragadkar. J. who gave the judgment observed that:

“It is also unignorably a fact that the reservation made under Article 16(4) is merely intended to secure and provide satisfactory representation to backward community and thus shall not be used to generate injustice or monopoly or unreasonable or illegally damage the sincere interest of other employees.

The courts heavy reliance on Balaji Ratio Decendi was notable in its rationale for affecting a quantity rule to standby jobs according to Article 16(4) of Balaji decision for reservation in educational institution under Article 15(4). While the Balaji decision was in respect of proportion of reservation in educational institution, He had some of the observation in order to equate oth Article 15(4) & 16(4) on the need for a valid and permissible reservation cap.

This orbiter was however considered as excessive and unfair by the majority in T.Devadasan for striking down the challenged carry-forward rule. The court, however didn't found any difference in vocabulary in those two provisions.

The court held that the reservation shall not be practiced in the way that it undermine or nullify the principle of equal opportunity and that the predominant impact of clause (4) on clause (1) and clause (2) of Article 16 shall only be applied in such cases towards a limited no. of reservations of appointments and posts and the method used for securing appropriate representation for retrograde class member shall be striking a fair balance between the retrograde class member claims and other employees claims” As pointed out in balaji Case. The court underlined that each year recruitment would have to be considered by self-monitor in order to carry out the guarantee and quota for retrograde communities shall not be arbitrary in nature so that it doesn't create or establish a monopoly or unduly disrupt the valid claims and opportunities of other communities.

Thus it was held:

“The guarantee mentioned in the article 16(1) shall ensure equal rights and claims for all of the working people and also in appointments to any office within the state. This ensures that state should be guiding hand in order to ensure that all the people are evaluated fairly at any opportunity for recruitment. The grantee extends towards every individual citizen, therefore towards every person pursuing a job or position of an office with the state shall be entitled which

⁵1962 AIR 36, 1962 SCR (2) 586

such opportunity to pursue such jobs or position whenever it is expected to be vacant and open for recruitments”.

The court did not left the matter for open interpretation but proposed some formulations in order to strike a balance between the conflicting claims:

“Whether the object of the law is to provide reasonable provisions for retrograde community members in terms of reservation of certain proportion of appointments in the State’s public services, what state should do in order to provide equal opportunity for member of retrograde classes in terms of appointments for those of the members of more advanced communities of people in public services. If the reservation is so unreasonable and providing injustice and that it effectively excludes the member of other communities a fair opportunity to work, the situation could be well different and it will be opening to a more advanced class communities members to argue that state is to be denying him equality”.

