

South Central Railway Employees Co-Op. ... vs Registrar Of Co-Operative Societies ... on 13 January, 1998

Equivalent citations: AIR 1998 SUPREME COURT 703, 1998 (2) SCC 580, 1998 AIR SCW 390, 1998 LAB. I. C. 491, 1998 (1) ADSC 334, 1998 (1) SCALE 81, (1998) 2 SERV LJ 266, 1998 ADSC 1 334, 1998 (1) UJ (SC) 346, (1998) 1 JT 60 (SC), 1998 SCC (L&S) 703, (1998) 1 SCT 703, (1998) 1 SERV LR 458, (1998) 1 SUPREME 221, (1998) 1 SCALE 81, (1998) 1 ANDH LT 20, (1998) 2 APLJ 1

Author: S. Saghir Ahmad

Bench: S. Saghir Ahmad

CASE NO.:

Appeal (civil) 4343 of 1988

PETITIONER:

SOUTH CENTRAL RAILWAY EMPLOYEES CO-OP. CREDIT SOCIETY UNION, SECUNDERABAD

RESPONDENT:

REGISTRAR OF CO-OPERATIVE SOCIETIES AND ORS.

DATE OF JUDGMENT: 13/01/1998

BENCH:

S. SAGHIR AHMAD & G.B. PATTANAIAK

JUDGMENT:

JUDGMENT 1998 (1) SCR 85 The Judgment of the Court was delivered by G.B. PATTANAIAK, J. The appellant is a society registered under the Andhra Pradesh Co-operative Societies Act and the members of the society are the employees of South Central Railway. The society in turn maintains certain staff members for running the affairs of the society. The service conditions of such employees of the society governed by the bye-laws of the society. Bye law 33 of the society is empowered the committee of management to frame service regulation pertaining to the service conditions of the officers and the employees of the society. Pursuant to the aforesaid power the society has framed a set of rules with the approval of the Registrar of Co-operative Societies determining the service conditions of the employees of the society. The said rules of society categorically provided that there should be no reservation in promotions of the employees of the society. The private respondents filed a writ petition No. 8051 of 1982 challenging the order of cancellation of their appointment dated 10.8.1982 and that writ petition was allowed by the learned single Judge of the Andhra Pradesh High Court. On an appeal being filed by the present appellant the Division Bench of the High Court dismissed the appeal and affirmed the judgment of the learned single Judge. It may be stated that the private respondents were given promotions on 9.8.1982 to

various promotional posts by applying the principle of reservation for Scheduled Castes and Scheduled Tribes but that order was cancelled by order dated 10.8.1982 on the ground that under the rules of the society dealing with the service conditions of its employees the principle of reservation has no application in the matter of promotion. The learned single Judge came to the conclusion that the rule of reservation applies to the promotional posts also. On appeal, the Division Bench of the High Court interpreted the notification issued by the Governor of Andhra Pradesh in exercise of powers conferred by Section 16 of the Andhra Pradesh Cooperative Societies Act, 1964 and held that the notification in question is wide enough to include all posts in all co-operative including the promotional post to which the principle of reservation should be made applicable and the word appointment in the notification is not necessarily referable only to the stage of initial recruitment. With this conclusion the Division Bench dismissed the appeal filed by the present appellant and confirmed the decision of the learned single Judge. Hence the present appeal.

Mr. A. Subba Rao learned counsel appearing for the appellant contended that under Section 116 B of the Andhra Pradesh Co-operative Societies Act the Government no doubt has the power to give direction to a society or class of societies or appointment committees to make provisions for the reservation of appointment or posts under any such society in any cadre created under the said section in favour or for the grant of any special concession in the matter of appointments to any such posts or cadre to the Scheduled Castes, Scheduled Tribes and Backward Castes and the society or appointment committee shall be bound to comply with such directions and give effect to any provisions so made. But in the case in hand in exercise of such power the notification that has been issued by the Governor of Andhra Pradesh does not bring within its purview the promotional post to which the principle of reservation would get attracted and as such the impugned judgment of the High Court is unsustainable in law. According to the learned counsel for the appellant the High Court while interpreting the notification in question has not considered the later part of the notification which has ultimately vitiated the conclusion arrived at.

Learned counsel appearing for the respondent on the other hand contended that in view of the wide powers of the Government to issue directions contained in Section 116 B of the Andhra Pradesh Co-operative societies Act and in view of the fact that the railways have been following the principal of reservation in promotional posts and further the appellant society itself having followed the principle of reservation for some length of time it would not be in the public interest to hold that the principle of reservation should not apply in respect of promotional posts. The learned counsel further contended that in view of the provisions contained in Article 16(4)(a) of the Constitution, it is a constitutional mandate that the State can make laws for reservation in matter of promotion of any class or classes or post in the service under the State in favour of Scheduled Castes and Scheduled Tribes and such constitutional mandate should be borne in mind while interpreting the relevant notification.

Having heard the learned counsel for the parties and having examined the relevant provisions of the Andhra Pradesh Co-operative Societies Act as well as the notification issued by the Governor of Andhra Pradesh in exercise of power conferred under the provisions of Andhra Pradesh Co-operative Societies Act, we have no hesitation to hold that the Government has wide powers to give directions to the societies for applying the principal of reservation in the matter of promotion to the

posts under the society. But the real question arises for consideration is whether the notification that has been issued by the Governor of Andhra Pradesh did provide for reservation in the promotional posts of the co-operative societies? The notification in question is extracted hereinbelow in extenso:

"Notification; in Exercise of the powers conferred by Section 16 of the Andhra Pradesh Co-operative Societies Act, 1964). (Act 7 of 1964), the Governor (of Andhra Pradesh hereby directs to Societies and the appointment committee constituted under Section 116-A of the Appendix hereto shall be followed with regard to reservation of appointment to all posts in all cooperative institutions, to be filled by direct recruitment on temporary or regular basis.") On a plain reading of the aforesaid notification it is cnstal clear that the direction of the Governor was to follow the principle of reservation in appointment to all posts in all co-operative institutions to be filled by direct recruitment either on temporary or on regular basis. It is an undisputed before that the promotional posts in the societies cannot be filled up by direct recruitment, and therefore, the only conclusion mat can be arrived at is that the aforesaid direction of the Governor to apply the principle of reservation is only in respect of appointments in the initial cadre and not to any appointments in the promotional cadre. The Division Bench of the High Court while giving wide interpretation to the expression 'appointment' in the notification has completely overlooked the latter part of the said notification to the effect 'to be filled by direct recruitment on temporary or regular basis". The interpretation given by the High Court to the notification by giving a wide interpretation to the word 'appointment' makes the latter part of the notification wholly redundant or surplusage. It is a cardinal principle of construction not to brush aside words used in a statute or in a notification issued under a statute and full effect must be given to the entire words of an instrument. Applying the said principle to the notification, which is for consideration before us, we had no hesitation to come to the conclusion is that under the said notification no direction has been given by the Governor to apply the policy of reservation in appointments to the promotional posts. The High Court, therefore, committed serious error of law in interpreting the aforesaid notification and by holding that the policy of reservation has been made applicable to the promotional posts also. We accordingly set aside the impugned judgment of the High Court as well as the judgment of the learned single Judge and hold that though it was open to the Govt, to apply the principle of reservation but by the impugned Notification it has not been made applicable to the promotional posts available in the society. This appeal accordingly is allowed and the writ petition filed by the private respondents stand dismissed. There will be no order as to costs.