

Post Graduate Institute Of ... vs Faculty Association And Ors.M.L. ... on 17 April, 1998

Equivalent citations: AIR 1998 SUPREME COURT 1767, 1998 AIR SCW 1553, 1998 LAB. I. C. 1582, (1998) 3 ALLMR 118 (SC), (1998) 3 SERV LJ 139, 1998 (3) ALL MR 118, 1998 (2) SCALE 772, 1998 (4) SCC 1, 1998 (4) ADSC 70, 1998 (2) UJ (SC) 96, (1998) 3 JT 223 (SC), (1998) 2 SCR 845 (SC), 1998 UJ(SC) 2 96, (1998) 2 MAH LJ 353, (1998) 2 ALL WC 1300, 1998 SCC (L&S) 961, (1998) 3 GUJ LR 1862, (1998) 4 LAB LN 101, (1998) 2 MPLJ 1, (1998) 2 ORISSA LR 70, (1998) 2 SCT 794, (1998) 2 SCJ 278, (1998) 2 SERV LR 765, (1998) 4 SUPREME 110, (1998) 2 SCALE 772, (1998) 3 ESC 2171, 1998 (2) BOM LR 293, 1998 BOM LR 2 293

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Bench: S.C. Agrawal, S.P. Bharucha, S.Rajendra Babu, G.N. Ray

PETITIONER:

POST GRADUATE INSTITUTE OF MEDICALEDUCATION AND RESEARCH CHA

Vs.

RESPONDENT:

FACULTY ASSOCIATION AND ORS.M.L. SEHGAL AND ORSK. SIVAN AND

DATE OF JUDGMENT: 17/04/1998

BENCH:

S.C. AGRAWAL, G.N. RAY A.S. ANAND, S.P. BHARUCHA, S.RAJENDRA BABU

ACT:

HEADNOTE:

JUDGMENT:

WITH CIVIL APPEAL NO. 2346 OF 1981 WITH CIVIL APPEAL NO.2345 OF 1981 WITH SPECIAL LEAVE PETITION (CIVIL) No 13148 OF 1997 WITH SPECIAL LEAVE PETITION (CIVIL) NO.

2892 OF 1983 WITH SPECIAL LEAVE PETITION (CIVIL) 9252 OF 1981 JUDGMENT G.N. RAY,J.

In all these matters a common question arises for decision as to whether in a single cadre post reservation for the backward classes, namely, Scheduled Castes, Scheduled Tribes and other backward classes can be made either directly or by applying rotation of roster point. These are conflicting decisions of this Court on the question of such reservation in a single cadre post.

The learned counsel for the parties in all these matters have agreed in the question of law as to the constitutional validity of reservation in a single cadre post is to be decided by the constitution Bench and thereafter the cases will be placed before the appropriate Bench for disposal on merits in accordance with decision rendered by this Bench. therefore, the question of constitutional validity of reservation in a single cadre post either directly or by rotation of roster point has been considered by us and we have not taken into consideration other contentions raised in these matters.

In support of the contention that reservation can be made not only in respect of the promotional post but also in respect of a single post in a cadre, Mr. E.C. Agrawala, learned counsel appearing for the appellant in CA No. 2346/81, Mr. Puri, learned counsel appearing for the appellant in CA No. 2345 of 1981, Mr. R.K. Jain, learned senior counsel appearing for the Intervenor in the review petition filed in CA No. 3175 of 1997 on behalf of the Scheduled Castes and scheduled tribes Employees Welfare Association, Post Graduate Institute of medical Education and Research, Chandigarh, and Mr. Andhyarujina, learned Solicitor General appearing for the appellant in SLP [c] No. 13148 of 1997 for the petitioner Union of India have made elaborate submissions. Mr. kapil Sibal, learned senior counsel appearing in support of the review petition in CA No. 3175 of 1997 has opposed the contention that a reservation can be made in respect of a single post cadre. Other learned counsel appearing in these matters have adopted the rival contentions, without advancing any separate argument.

Mr. Kapil Sibal has submitted that there cannot be any reservation either for initial appointment or for an appointment on promotion in respect of a single post cadre either directly or by the device of rotation or roster. Mr. Sibal has contended that the very concept of carry forward or the principle of roster is alien to a single post cadre. he has also contended that the principle of carry forward meaning thereby carrying forward reservation presupposes existence of multi posts cadre. If there is only one post in a cadre, the vacancy for such single post being filled up, there will be no occasion for carrying forward reservation for filling up such vacancy. Mr. Sibal has also contended that the rationale of reservation under Article 16(4) of the constitution is founded on the inadequacy of representation of a class in the service under the state. The question of adequacy of representation does not and cannot arise in a single post cadre because only one person can be accommodated against the single post, leaving no scope for adequate representation of any particular class in such single post.

Mr. Sibal has contended that the impugned judgment cannot be supported because (a) reservation of super speciality is against the decision of a Nine Judges' Bench decision of this Court in *Indra Sawhney etc. Vs. Union of India and Ors.* (1992 Supp. (3) SC 217), and (b) no reservation in a single cadre post is permissible in law. Mr. Sibal has submitted that both in the impugned judgment and

also in the judgment of Union of India and Anr. Vs. Madhav and Anr. (1997 (2) SCC 332) on which reliance has been made in the impugned judgment, the ratio in the decision of Arati Ray Choudhury Vs. union of India and Ors. (1974 (1) SCC 87) was wrongly appreciated and the ratio was wrongly stated. Mr. Sibal has drawn the attention of the Court to the observations of Justice Reddy speaking for majority decision on Article 335 of the constitution as contained in paragraph 112 of the decision in Indra Sawhney's case which are as follows:-

"While on Article 335, we are of the opinion that there are certain services and positions where either on account of the nature of duties attached to them or the level (in the hierarchy) at which they obtain, merit as explained hereinabove, alone counts. in such situations it ma not be advisable to provide for reservations. for example, technical posts in research and development organisations/ departments/institutions, in specialities and super-specialities in medicine, engineering and other such courses in physical sciences and mathematics, in defence services and in the establishments connected therewith. Similarly, in the case of posts at the higher echelons e.g. professors (in Education), Pilots in Indian Airlines and Air India, scientists and Technicians in nuclear and space application, provision for reservation would not be advisable.

x x x Be that as it may we are of the opinion that in certain services and in respect of certain posts, application of the rule of reservation ma not be advisable for the reason indicated hereinbefore.

Some of them are : (1) Defence Services including all technical posts therein but excluding civil posts. () All technical posts in establishments engaged in production of defence equipment.

(3) Teaching posts of professors -

above if any, (4) Posts in super specialities in Medicine, engineering and other scientific and technical subject. (5) Posts of pilots (and co-pilots) in Indian Airlines and air India. The list given above is merely illustrative and not exhaustive. It is for the Government of India to consider and specify the service and posts to which the Rule of reservation shall not apply but on that account the implementation of impugned office Memorandum dated 13th August, 1990 cannot be stayed or withheld.

We may point out that the services posts enumerated above, on account of their nature and duties attached, are such as call for highest level of intelligence, skill and excellence. Some of them are second level and third level posts in the ascending order.

hence, they form a category apart.

Reservation therein may not be consistent with "efficiency of administration" contemplated by Art. 335.

We may add that we see no particular relevance of Article 38() in this context. Article 16(4) is also a measure to ensure equality of status besides equality of opportunity."

Mr. Sibal has also submitted that the reservation for the socially, economically and educationally backward classes is made so that the members of such backward classes do not fail to get adequate representation in public employment on account of facing open competition. but such reservation cannot be and should not be made for posts in higher echelons where merit and expertise are essential and also necessary for discharging the duties and responsibilities of such positions in higher echelons of service. Mr. Justice Reddy in the majority decision, which was also concurred by Justice Pandian, has pointed out that there are some services and positions where either on account of the nature of duties attached to them or the level in the hierarchy at which they obtain, merit alone counts. In such situations, it may not be advisable to provide for reservation and in that context, by way of illustration, enumerated certain positions including the technical posts in the Establishment engaged in Research and Development, the teaching posts of Professors and above, the posts of super-specialities in Medicine, Engineering and other Scientific and Technology subjects, and also posts of pilots and co-pilots in Indian Airlines and Air India. Mr. Sibal has submitted that by and large, in the higher echelons of service, there is a single post cadre. The appointment to the posts of Professors or Readers in the super-speciality of Medicine in an advanced institution like the Post Graduate Institute of Medical Research & Education in Chandigarh appointments must be made strictly on the basis of selection on merits and any attempt of reservation by whatever method will not only be against law laid down by this court but also against the larger interests of the country.

Mr. Sibal has contended that in *M.R. Balaji & Ors. v. State of Mysore* (1963 Supp. (1) SCR 439) this Court struck down the order by which 68% of seats in educational institutions were reserved for the members of Scheduled Castes and Scheduled Tribes and other educationally backward classes. This Court did not suggest any percentage which should be reserved for such backward classes but indicated that the reservation has to be made keeping in mind the interests of the community as a whole and such percentage of reservation would be less than 50%. How much less of 50% is to be reserved, would however depend on the facts and circumstances of a given case.

Mr. Sibal has also submitted that in the Constitution Bench decision of this Court in *T.Devadasan v. The Union of India & Anr.* (1964 (4) SCR 680), the majority view is that in order to effectuate the guarantee contained in Article 16(1), each year of recruitment is to be considered separately by itself for the reservation for backward classes. In *Arati Ray Choudhury's case* (supra) a Constitution Bench of this Court has

clearly held that the reservation for backward community should not be so excessive as to create a monopoly or to disturb unduly the legitimate claim of other communities. It has also been specifically indicated in the said decision that if there are two vacancies to be filled up in a particular year, not more than one vacancy can be treated as reserved. In the decision in Arati Ray Choudhury's case, the earlier decision in M.R. Balaji's case was noticed and followed and no departure from the decision in Devadasan's case was made.

Mr. Sibal has submitted that in *Dr. Chakradhar Paswan v. State of Bihar & Ors.* (1988 () SCC 14) after relying on the decisions in *Arati Roy Choudhury*, *M.R. Balaji* and *Devadasan's* cases, it has been held that for implementing 50-point roster, isolated and separate posts in different specialities cannot be clubbed together. It has also been held that reservation of posts by applying the roster can be made only where there are more than one post and reservation of only one post cannot be made because such reservation would amount to 100% reservation thereby violating Article 16(1) and 16(4) of the Constitution.

Mr. Sibal has submitted that the three-Judges' Bench decision in *Madhav's* case (*supra*) is the principal judgment which has taken a contrary view by holding that even in case of a single post cadre, reservation can be made by applying the principle of rotation and by that process can avoid the bar of reservation of 100%. Such decision is based on a wrong reading of the decision in *Arati Roy Choudhury's* case and on an erroneous appreciation of Articles 16(1), 16(4) and 16(4-A) of the Constitution. The impugned decision in the case of *Post-Graduate Institute of Medical Education & Research* has been made by relying on the decision in *Madhav's* case and following the reasonings contained in the said decision. Therefore, the said decision cannot be sustained and the impugned judgment should be set aside by allowing the review petition.

Mr. E.C. Agrawala, learned counsel for the appellant in C.A. No. 346/1981, has however submitted that the principle of carry forward in a single post cadre is a device which serves the purpose of reservation for the backward classes, consistent with the Directive Principles of the Constitution and the policy of reservation enshrined in the constitution. Such principle of carrying forward in a single post by applying the rotation of roster, affords opportunities for getting appointment of the members of backward classes on some occasions but throwing such appointment for open competition on other occasions by de-reserving the vacancy on such occasions. If such principle of rotation of roster is not applied in the case of single post cadre, the very purpose of reservation under Article 16(4) will be made nugatory. Mr. Agrawala has submitted that since some observation was made against reservation to a promotional post in the decision in *Indra Sawhney's* case, sub Article 4 A of Article 16 has been incorporated by the 77th Amendment of the Constitution. Such amendment clearly reflects the anxiety of the Legislature to ensure reservation at all stages of public employment including promotional posts. Mr. Agrawala has

submitted that in Arati Roy Choudhury's case, the Constitution Bench upheld the appointment of a member of the Scheduled Caste Scheduled Tribe which was reserved for such category even though at the relevant year, there was only one vacancy to be filled up in respect of the post of Head Mistress. Therefore, it will not be correct to contend that the Constitution Bench in Arati Ray Choudhury's case has not upheld reservation of a single vacancy in the cadre in a particular year by applying the principle of roster. Mr. Puri, learned counsel appearing for the appellant in CA 2345 of 1981 has also made similar submissions.

Mr. RK Jain, learned senior counsel appearing for the intervenors in the review petition in the case of Post Graduate Institute of Medical Education and Research has submitted that there is no Government order to the effect that reservation in a single cadre post to be excluded. If, therefore, there is no prohibition under any law for reservation of a single post and if the Government gives effect to Article 16(4) of the Constitution in a single post cadre which helps the case of social justice, consistent with the Directive Principles of the Constitution, this Court should be slow to react against such reservation. He has also supported the contention of Mr. Agrawala that by rotation of roster, the device of 100% reservation is avoided. At the same time, such rotation gives opportunity for appointment of members of socially backward classes in the higher echelons of service even when the post is a single post cadre. Mr. Jain has submitted that in the matter of implementation of rotation of roster in a single post cadre, even if the other view against such rotation is a possible view, such view should not be accepted because in the matter of a course of action which advances the cause of social justice, the view in favour of furtherance of social justice is to be preferred. Mr. Jain has also submitted that reservation is not to the post or the vacancy but reservation must be viewed as a measure of giving adequate opportunity in public employment to the socially and economically backward classes, consistent with Article 16(4) and 16(4)(A) of the Constitution and the Directive Principles. Mr. Jain has submitted that Article 16 does not speak of any post or vacancy but speaks of equality of opportunity in public employment.

Mr. Jain has also submitted that in Chakradhar Paswan's case (supra), the ratio in Arati Ray Choudhury's case was not appreciated and followed. Referring to the decision in Indra Sawhney's case, Mr. Jain has submitted that in Indra Sawhney's case the ratio in Arati Ray Choudhury's case or in Paswan's case was not considered. Therefore, the decision in Indira Sawhney's case is not an authority for the issues involved in the case under consideration. Mr. Jain has submitted that the mechanism of roster has been evolved to balance justice for all segments of the society so that in the higher echelons of service, a single post is also made available to the backward classes by reserving such post only periodically on the basis of rotation of the roster point. Such mechanism does not offend any provision of the Constitution. He has submitted that the three Judges' Bench in Madhav's case has analysed all the decisions having relevance on the question of reservation of a single post cadre, and has upheld such reservation in a single post cadre by applying the roster. Therefore,

the impugned decision in the Post Graduate Institute of Medical Education and Research Chandigarh, does not warrant any interference by this Court.

Mr. Andhyarujina, the learned Solicitor General has also supported the reservation of a single post cadre with the aid of rotation of roster. He has invited in attention of the Court to Office Memorandum No. 3601//96-Estt. (Res) issued by the Ministry of personnel, Public Grievances and Pension (Department of Personnel and Training) of the Government of India in respect of reservation roster for implementation of the Supreme Court judgment in R.K. Sabharwal and ors. Vs. State of Punjab and Ors. (1995 (2) SCC 745). After indicating in short, the purport of the decision of this Court in the said case, it has been indicated in the said Office Memorandum that "with a view to bringing the policy of reservation in line with the law laid down by the supreme Court. it has been decided that the existing 200 point, 40 point and 120 point vacancy-based rosters shall be replaced by post based rosters. All the Ministries/Departments and concerned authorities are requested to prepare the respective rosters based on the principles elaborated in the Explanatory Notes given in Annexure - 1 to this O.M. and illustrated in the Model Rosters annexed to this O.M. as Annexure-II, III and IV. Similarly, the concerned authorities may prepare rosters to replace the existing 100 point rosters in respect of local recruitment to Group C and D posts on the basis of the same principles."

Paragraph 4 of the said O.M. contains the principles for preparing the rosters elaborated in the Explanatory Notes. Clause (e) of the said paragraph 4 indicating the principles for preparing the rosters is relevant for consideration in this case and the same is to the following effect:

"In small cadres of upto 13 posts, the method prescribed for preparation of rosters does not permit reservation to be made for all the three categories. In such cases, the administrative Ministries/Departments may consider grouping of posts in different cadres as prescribed in this Department's O.M. No. 42/21/49-NGS dated 28.1.1952 and subsequent orders reproduced at pages 70 and 74 of the Brochure on Reservation for Scheduled Castes and Scheduled Tribes (Eighty Edition) and prepare common rosters for such groups. In the event it is not possible to resort to such grouping the enclosed rosters (Appendices to Annexures-II, III and IV) for cadre strength upto 13 posts may be followed. The principles of operating these rosters are explained in the explanatory notes.

Appendix to Annexure III contains the model roster for promotion in the cadre strength up to 13 posts; whereas Appendix to Annexure IV contains the roster for direct recruitment otherwise than through open competition for cadre strength upto 13 posts. Charts indicating the Appendix to Annexure III and the Appendix to Annexure IV are set out as hereunder:

Cadre Initial 1st 2nd 3rd 4th 5th 6th 7th 8th 9th 10th 11th 12th 13th

1. UR UR UR UR UR UR SC UR UR UR UR UR UR ST

2. UR UR UR UR UR SC UR UR UR UR UR UR ST

3. UR UR UR UR SC UR UR UR UR UR UR ST

4. UR UR UR SC UR UR UR UR UR UR ST

5. UR UR SC UR UR UR UR UR UR ST

6. UR SC UR UR UR UR UR UR ST

7. SC UR UR UR UR UR UR ST

8. UR UR UR UR UR UR ST

9. UR UR UR UR UR ST

10. UR UR UR UR ST

11. UR UR UR ST

12. UR UR ST

13. UR ST Note: For cadres of 2 to 13 posts the roster is to be read from entry 1 under column Cadre Strength till the last post and then horizontally till the last entry in the horizontal row i.e. "L"

2. All the posts of a cadre are to be earmarked or the categories shown under column initial appointment while initial filling up will be by the earmarked category, the replacement against any of the post in the cadre shall be by rotation as shown horizontally against the last post of the cadre.

3. The relevant rotation by the indicated reserved category could be skipped over if it leads to more than 50% representation of reserved category.

Roster for direct recruitment otherwise than through open competition for cadre strength upto 13 posts. Cadre Initial 1st 2nd 3rd 4th 5th 6th 7th 8th 9th 10th 11th 12th 13th

1. UR UR UR OBC UR UR SC OBC UR UR UR OBC SC ST

2. UR UR OBC UR UR SC OBC UR UR UR OBC SC ST

3. UR OBC UR UR SC OBC UR UR UR OBC SC ST

4. OBC UR UR SC OBC UR UR UR OBC SC ST

5. UR UR SC OBC UR UR UR OBC SC ST

6. UR SC OBC UR UR UR OBC SC ST

7. SC OBC UR UR UR OBC SC ST

8. OBC UR UR UR OBC SC ST

9. UR UR UR OBC SC ST

10. UR UR OBC SC ST

11. UR OBC SC ST

12. OBC SC ST

13. SC ST Note 1. For cadres of 2 to 13 posts the roster is to be read from entry 1 under column cadre strength till the last post and then horizontally till the last entry in the horizontal row i.e. like "L"

2. All the posts of a cadre are to be earmarked for the categories shown under column initial appointment. While initial filling up will be by the earmarked category, the replacement against any of the post in the cadre shall be by rotation as shown horizontally against the last post of the cadre.

3. The relevant rotation by the indicated reserved category could be skipped over it leads to more than 50% representation of reserved category.

Referring to such model roster, the learned Solicitor General has submitted that in case of promotion in a single post cadre, for the initial recruitment, the post will remain 'unreserved'. Similarly, for the 1st 2nd 3rd 4th 5th subsequent vacancies in such single cadre post, such posts shall be treated as unreserved but for the 6th subsequent vacancy, the post will be reserved for scheduled castes. Again from 7th to 12th subsequent vacancy will be treated as unreserved but the 13th vacancy will be treated as reserved for Scheduled Tribes. So far as the roster for direct recruitment, otherwise than through open competition, the Appendix to Annexure IV indicates that if the cadre strength is only one then the initial recruitment and the first and second successive recruitment will be made on the basis of open competition but the third successive vacancy will be reserved for members of the backward classes. The fourth successive vacancies will be treated as unreserved; sixth successive vacancy will be reserved for the members of Scheduled Castes; 7th successive vacancy shall be reserved for members of other backward classes; 8th, 9th and 10th successive vacancies will be filled up by open competition but the 11th successive vacancy shall be reserved for OBCs', the 12th for scheduled castes and 13th for scheduled tribes.

The learned Solicitor General has further submitted with reference to the aforesaid Charts, that the Charts have been prepared for balancing the felt need for reservation of single cadre post, usually in the higher echelons of service in such a manner that the opportunities for employment are shared by the members belonging to the reserved categories and also by the other members i.e. members not belonging to reserved categories. According to him, if the vacancies are filled up in respect of single post cadre by following the aforesaid Charts, the interests of socially and economically backward classes and also other members of the community at large will be met without seriously affecting the interests of either the members belonging to reserved classes or the members not belonging to any of the reserved categories. Under such mechanism, only on certain occasions the vacancies are to be filled up by treating such vacancies 'reserved' for members of a particular class of reserved categories, namely, scheduled castes, scheduled tribes and other backward classes but on other occasions the post in the single cadre will not be treated as reserved.

The learned Solicitor has submitted that the constitutional validity of reservation for socially and economically backward classes has been upheld by this Court. The learned Solicitor has also submitted that after the judgment of this Court in R.K. Sabharwal's case suitable directions have been issued relating to rotation of roster in conformity with the law laid down by this Court. He has submitted if a reference is made to the Chart containing the model roster for appointment by promotion for a single cadre post, it will be crystal clear that the initial recruitment is unreserved and out of subsequent 13 vacancies, only 7th and 13th vacancies are meant for members of scheduled castes and scheduled tribes. Similarly the roster for direct recruitment otherwise than by promotion it is indicated that if it is a single post cadre then not only the initial recruitment but the first and second successive recruitment will be treated as unreserved. Similarly, the 4th, 5th, 8th, 9th and 10th successive vacancies will also be treated as 'unreserved' but the 3rd, 6th, 7th, 11th, 12th, and 13th will be kept reserved for members of other backward classes, scheduled castes and scheduled tribes respectively. The learned Solicitor has submitted that such device of appointment by rotating the roster fulfils the felt need of reservation and also eschews the vice of reservation beyond 50% for the members of the reserved classes. Since the post is a single post in the cadre, unless such device is adopted there will be no occasion for reservation of such post at any point of time.

The learned Solicitor has also submitted that in Arati Roy Choudhry's case, the Constitution Bench has approved the action taken in filling up of a single vacancy which occurred in a particular year for the post of Head Mistress by applying the rotation of roster, because such rotation of roster served the avowed purpose of reservation by delicately balancing the interests of the members of the reserved classes and other members of the community not belonging to any reserved class. The learned Solicitor has further urged that the decision of the three Judges' Bench in Madhav's case has indicated the correct principle by giving very cogent reasons and such decision does not offend any of the provisions of the Constitution and does not come in conflict with the decisions of the larger Bench of this Court. Therefore, no interference is called for against the decision in Madhav's case and the other decisions rendered by following the decision in Madhav's case.

In order to appreciate the rival contentions of the parties, it would be appropriate to refer to the Constitution Bench decisions of this Court made in M.R. Balaji, T. Devadasan and Arati Ray

Choudhary's cases (supra). In Arati Ray Choudhury's case, decision in Balaji and Devadasan were referred to and followed. Since both the sides have relied on the decisions in Arati Ray Choudhury's case, it will also be appropriate to consider the decision in Arati Ray Choudhury's case in some detail.

In Balaji's case, the Constitution Bench has held that the reservation should be allowed to advance the prospects of weaker sections of the society, but while doing so, care should be taken not to exclude admission to higher educational standards of deserving and qualified conditions of other communities. It has also been indicated that reservation under Arts. 15(4) and 16(4) of the constitution must be within a reasonable limit. The interests of the weaker sections of the society, which are a first charge on the States and the Centre, have to be adjusted with the interests of the community as a whole. The objective of Art. 15(4) is to advance the interests of the weaker elements in society. If a provision under Art. 15(4) ignores the interests of the society that is clearly outside the purview of Art. 15(4). It is therefore, quite evident that the Constitution Bench in Balaji's case has clearly indicated that in giving effect to reservations for the Scheduled Castes, Scheduled Tribes and other backward classes, a balance is to be struck so that the interests of the backward classes and the members of the scheduled castes and scheduled tribes are properly balanced with the interests of the other segments of the society, and in order to safeguard the interests of the reserved classes the interest of the community as a whole can not be ignored. In Devadasan's case (supra), the majority decision of four Judges (Justice Subba Rao dissenting) was to the effect that the carry-forward rule as a result of which the applicants belonging to Scheduled Castes or Scheduled Tribes could get more than 50% of the vacancies to be filled up in a particular year, is unconstitutional. It has also been indicated that Art 14 will not be infringed if certain proportion of appointments of the State in order to provide the backward classes an opportunity equal to that of the members of more advanced classes is made, provided that the reservation is not so exercised which would amount to practically deny a reasonable opportunity of employment to the members of the other communities. It was indicated that under Art, 16 (4) of the Constitution, reservation of a reasonable percentage for the Scheduled Castes and Scheduled Tribes is valid and within the competence of the States or the Centre. But it necessary that a reasonable balance between backward classes and other members of the society is to be struck and maintained. In the decision of Devadasan's case (supra) reliance was also placed on the decision in Balaji's case and another constitution Bench decision of this court in General Manager S.E.Railway Vs. Rangachari (1962 (2) SCR

586). In the majority decision in Rangachari's case, it has been held that Arts. 16(1) and 16(2) are intended to give effect to Arts. 14 and 15 of the Constitutional code of guarantees and supplement each other. Art. 16(1) should, therefore, be construed in a broad and general way, and not in pedantic and technical way. When so construed, matters relating to employment cannot mean merely matters prior to the act of appointment nor can 'appointment to any office' mean merely the initial appointment but must include all matters relating to employment, whether prior or subsequent to the employment, that are either incidental to such employment or form part of its terms and conditions.

The short fact in Arati Ray Choudhury's case is that the Railway Board prepared a Roster in 1964 by which 12.5% of the vacancies were reserved for Scheduled Castes and 5% for Scheduled Tribes. It was also mentioned that if there would be only a single vacancy then it should be treated as unreserved and if on account of that a reserved vacancy was to be treated as unreserved then the reservation would be carried forward to the subsequent two recruitment year. In 1966, a vacancy of Headmistress was treated as unreserved on this basis. Another vacancy arose in January, 1969 and the four Assistant Mistresses were called for selection. One of the respondent challenged the selection on the ground that the post should be treated as reserved for Scheduled Caste candidate and such contention was accepted by the High Court. In 1971 the Railways decided to hold a selection to form a panel of two candidates for filling up one post reserved for Scheduled Caste and another to cover unforeseen requirements. At that stage, a writ petition was filed challenging such decision of the Railway Administration and an order of injunction was issued in such writ proceeding. In spite of this, the said respondents was called by the Selection board. The writ petition was ultimately dismissed not on merits but on the ground that such writ petition was barred by the principle of res judicata. This Court however held that since the previous writ petition was not decided on merits, the principle of res judicata or analogous to it was not attracted. Therefore, the Court was competent to consider the case on merits. In Arati Ray Choudhury's case, reference was made to the decisions of Constitution Bench in Balaji's case. Relying on the decision's case the constitution Bench in Arati Ray Choudhury's case has held that in Balaji's decision, this Court had struck down as unconstitutional an order by which 68% of the seats in educational institutions were reserved for Scheduled Castes and Scheduled Tribes and other educationally and socially backward classes. It was indicated in Arati Ray Choudhury's case that following the decision in Balaji's case, in the majority decision in Devadasan's case it was held that in order to effectuate the guarantee contained in Article 16(1), each year recruitment has to be considered separately by itself and "the reservation for backward communities should not be so excessive as to create a monopoly or to disturb unduly the legitimate claims of other communities."

(emphasis added) It has also been indicated in Artai Ray Choudhury's case that the Ministry of Home Affairs issued a Memorandum modifying the carry forward rule so as to comply with the decision in Devadasan's case. By para 2 of the Memorandum, the carry-forward rule was amended by providing that "in any recruitment year, the number of normal reserved vacancies and the `carried forward reserved vacancies together shall not exceed 45% of the total number of vacancies." It was however indicated in the said Memorandum that if there be only two vacancies, one of them may be treated as a reserved vacancy. But if there be only one vacancy it shall be treated as unreserved (emphasis added). The surplus above 45% shall be carried forward to the subsequent year of recruitment, subject however to the condition that the particular vacancies carried forward do not become time barred due to their becoming more than two years old. It has been specifically held in Arati Ray Choudhury's case that in the first place each year of recruitment is to be considered separately and by itself as held in Devadasan's case (supra) so that if there are only two vacancies to be filled in a particular year of recruitment, not more than one vacancy can be treated as reserved. Secondly, if there be only one vacancy to be filled in a given year of recruitment, it has to be treated as unreserved, irrespective of whether it occurs in the Model Roster at a reserved point. the appointment then is not open to the charge that the reservation exceeds 50% for if the very first vacancy in the first year of recruitment is in practice treated as a reserved vacancy, the system may

be open to the objection that the reservation not only exceeds 50% but is, in fact, cent per cent. But, if on this account, that is to say, if on account of the requirement that the first vacancy must in practice be treated as unreserved even if it occurs in the Model Roster at a reserved point, the reservation can be carried forward to not more than two subsequent year of recruitment. Thus, if two vacancies occur, say , within an initial span of three years, the first vacancy has to be treated as an unreserved vacancy and the second as reserved. It has not been held in Arati Ray Choudhury's case that for a single post there can be a reservation for Scheduled Castes, Scheduled Tribes or other backward classes. What has been held in Arati Ray Choudhury's case is that when there was a vacancy at Adra, according to the Model Roster, such vacancy was a reserved point and therefore the other vacancy was strictly a reserved vacancy but there being only one vacancy in that particular year of recruitment, such vacancy had to be treated as unreserved and therefore appointment was given of smt. Biswas, who was not a reserved candidate. Therefore, it had to be compensated by carrying forward the reservation in two subsequent recruitment year when the vacancy in Kharagpur in the financial year 1968-69 arose w.e.f. December 31, 1968.

In Dr. Chakradhar Paswan's case (supra) in the State Directorate of indigenous Medicines, Bihar, initially there three Class I posts for (1) Director of Indigenous Medicines, (2) Deputy Director (Homeopathic) and (3) Deputy Director (Unani). Later the post of Deputy Director (Ayurvedic) had also been added. The post of Director was the highest in the Directorate; being the Director of Indigenous Medicines as a whole and not of any particular speciality of Indigenous Medicines.

By a Circular dated November 8, 1975, the State Government prescribed a 50 point roster to implement the policy of reservation to posts and appointments for members of the backward classes under Article 16(4). It was laid down that if in any grade, there is only one vacancy for the first time, then it will be deemed to be unreserved and for the second time also, if there be only one vacancy, then it will be deemed to be reserved". For the purpose of determining the quantum of reservation according to the roster, the Government grouped together all the Class I posts viz. the posts of Director as well as of Deputy Directors and as the post of the Director had already been filled up treating it to be unreserved, the second post viz. the Deputy Director (Homeopathic) was treated as reserved. Accordingly, the State Public Service commission issued advertisement inviting applications from Scheduled Castes candidates for selection to the same posts and ultimately the State Government appointed a member of Scheduled Caste to the post of Deputy Director (Homeopathic). A general candidate thereafter filed a writ petition before the High Court challenging the advertisement issued by the State Public Service Commission and also the consequent order of appointment. The High Court allowed the petition and quashed the impugned advertisement and the appointment order. Such decision of the High Court was assailed before this Court in Dr. Chakradhar Paswan's case. The appeal was dismissed by this Court by holding that in service jurisprudence, he term 'cadre' has a definite legal connotation. It is not synonymous with 'service'. It is open to the Government to constitute as many cadres in any particular service as it may choose according to the administrative convenience and expediency and it cannot be said that the establishment of the Directorate constituted the formation of a joint cadre of the Director and the Deputy Directors because the post are not interchangeable and the incumbents do not perform the same duties or carry the same responsibilities or draw the same pay. The posts of the Director and those of the Deputy Directors constitute different cadres of the service. The first vacancy in the

cadre of Deputy Directors was that of the Deputy Director (Homeopathic) and it had to be treated as unreserved, the second reserved and the third unreserved. Therefore, for the first vacancy of the Deputy Director (Homeopathic), a candidate belonging to the Scheduled Caste had, therefore, to compete with other. Relying on the decision in Balaji's case, it was held in Chakradhar's case that once the power to make reservation in favour of Scheduled Castes and Scheduled Tribes is exercised, it must necessarily follow that for the purpose of vacancies for which reservation has been made, must be brought into effect and in order to do full justice, a carry forward rule must be so applied that in any particular year there is not more than 50% reservation. The whole concept of reservation for application of the 50 point roster is that there are more than one post, and the reservation can be up to 50%. If there is only one post in the cadre, there can be no reservation with reference to that post either for recruitment at the initial stage or for filling up a future vacancy in respect of that post. A reservation which would come under Article 16(4), presupposes the availability of at least more than one post in that cadre. No reservation could be made under Article 16(4) so as to create a monopoly. Otherwise, it would render the guarantee of equal opportunity contained in Article 16(1) and (2) wholly meaningless and illusory. The reservation of the post of Deputy Director (Homeopathic) amounted to 100% reservation which was impermissible under Article 16(4) as otherwise it would render Article 16(1) wholly elusive and meaningless. Article 16(4) is an exception to Article 16(1) and (2) and therefore the power to make a special provision for reservation of posts and appointments in favour of the backward classes must not be so excessive which would in effect efface the guarantee of equal opportunity in the matter of public employment or at best make it illusory. Reference was also made in Chakradhar's case to the decision in Arati Ray Choudhury's case by indication that in the facts of that case when the open class had reaped a benefit in 1966-67 when a reserved vacancy was treated as unreserved by the appointment of an open candidate, if the carry forward rule had to be given any meaning, the vacancy had to be carried forward for the benefit of Scheduled Castes and Scheduled Tribes until the close of the financial year 1968-69. It was pointed out in Chakradhar's case that the decision in Arati Ray Choudhury's case turned on the carry forward rule and such decision was clearly distinguishable and the same does not support reservation in a single cadre post.

The decision in Chakradhar Paswan's case that for a single post cadre no reservation can be made for the backward classes has also been followed in Chetana Dilip Motghare Vs. Bhide Girls' Education Society (1995 Supp. 1 SCC 157) and it has been held in the said decision that when the post is a solitary post in the cadre, the roster and carry forward scheme underlying any reservation policy cannot apply. A contrary view, however, has been taken in the decision of State of Bihar and Ors. Vs. Bageshwari Prasad and Anr. (1995 Supp. 1 SCC 432), Shri Suresh Chandra Vs. Shri J.B. Agarwal and others (JT 1997 (5) SC 72), and later on in a three Judges' Bench decision in Union of India and Anr. Vs. Madhav (1997 (2) SCC 332). Following the said three Judges' Bench decision in Madhav's case, reservation in a single post cadre by rotation of roster point has been upheld in Union of India and others Vs. Brij Lal Thakur (JT 1997 (4) SC 195) and the decision rendered in the case of Post Graduate Institute of Medical Education Research Vs. Faculty Association and others. The later decision is the subject matter of challenge in the Review Petition before us in C.A. No. 3175 of 1997.

Since the decision in Madhav's case by a three Judges' Bench upholding the reservation for the backward classes even in single post cadre on the basis of rotation of roster point is the main decision, when followed in Post Graduate Institute of Medical Research case, we propose to consider the decision in madhav's case in some detail. The brief facts in Madhav's case may be indicated as follows:

In the national Savings Scheme Service, only one post of Secretary was available. the Government applied the rule of reservation to that post by rotation the vacancies in accordance with the 40-point roster. When point No. 4 vacancy in that post reserved for Scheduled Tribe, was filled by promoting an ST candidate from the post below, such promotion was set aside by the Central Administrative Tribunal on the ground that the post of Secretary being a single point post, granting of reservation was unconstitutional. The correctness or the said decision was assailed in Madhav's case.

It has been held in Madhav's case that (i) appointment to an office or post under the State is one of the means to render socio-economic justice; (ii) Article 16(4-A) of the Constitution introduced in 1995 by the 77th Amendment of the constitution, has resuscitated the objectives of the Preamble to, and Articles 46 and 335 of the constitution of India to enable the Dalit and Scheduled tribe employees to improve excellence in higher echelons of service and a source of equality of opportunity in the matter of social and economic status; (iii) Parliament has removed the lacuna pointed out by the Supreme Court in Indra Sawhney's case (supra) that Article 16(1) and 16(4) do not apply to appointment by promotion but apply to initial appointment.

By the 77th Amendment of the constitution, the legal position enunciated in Rangachari's decision has been restored and reservation of promotion to 50% quota as per the Indra Sawhney's case is available to members of Scheduled Castes and Scheduled Tribes; (iv) the carry forward scheme has been upheld in Indra Sawhney's case; ((v) reservation could be provided even to the isolated posts on the basis of the rule of rotation by relying on the decision in Arati Ray choudhury's case; (vi) extension of reservation is not unconstitutional. On the other hand, such scheme provides opportunity and facilities to Scheduled Castes and Scheduled Tribes for being considered for promotion to hold single post consistent with equality of opportunity on par with others; (vii) In Paswan's case even though it was held that a single post cannot be reserved because such reservation would amount to 100% reservation, the question whether the single post reservation by rotation could be granted and whether it would be violative of Article 16(1) was not gone into and such question has been kept open. In Arati Ray Choudhury's case, the application of rule of carry forward and appointment by rotation of roster in a single post has been approved. (viii) In Sabharwal's case (supra), a Constitution Bench considered whether reservation as per the roster for the purposes of promotion could be valid and consistent with Article 16(1) of the constitution and held in favour of such reservation (ix) Smt. Chetana Dilip Motghare v. Bhide Girls' Education Society (1995 Supp. 1 SCC

157) has not been correctly decided and the decisions in Vidyulata Arvind Kakade v. Digambar Gyanba Surwase and Arati Ray Choudhury's cases were not properly appreciated in Bhide Girls' case

(x) In *State of Bihar & Ors. V. Bageshwari Prasad & Anr.* (1995 Supp. 1 SCC 432), the rule of rotation has been held valid by indicating that the said rule does not offend Articles 14 and 16(1) of the Constitution. (xi) The judgment in *Chakradhar Paswan's* case was also distinguished in *Bageshwari's* decision.

In *Madhav's* case, in support of the view that even in respect of single post cadre, reservation can be made for the backward classes by rotation of roster, the Constitution Bench decision in *Arati Ray Choudhury's* case has been relied on. We have already indicated that in *Arati's* case, the Constitution Bench did not lay down that in single post cadre, reservation is possible with the aid of roster point. The court in *Arati's* case considered the applicability of roster point in the context of plurality of posts and in that context the rotation of roster was upheld by the Constitution Bench. The Constitution Bench in *Arati's* case has made it quite clear by relying on the earlier decisions of the Constitution Bench in *Balaji's* case and *Devadasan's* case that 100% reservation was not permissible and in no case reservation beyond 50% could be made. Even the circular on the basis of which appointment was made in *Arati Ray Choudhury's* case was amended in accordance with the decision in *Devadasan's* case. Therefore, the very premises that Constitution Bench in *Arati's* case has upheld reservation in a single post cadre is erroneous and such erroneous assumption in *Madhav's* case has been on account of misreading of the ratio in *Arati Ray Choudhury's* case. It may be indicated that the later decision of the Constitution Bench in *R.K. Sabharwal's* case (1995(2) SCC 745) has also proceeded on the footing that reservation in roster can operate provided in the cadre there is plurality of post. It has also been indicated in *Sabharwal's* decision that the post in a cadre different from vacancies.

It also appears that the decision in *Indra Swhney's* case has also not been properly appreciated in *madhav's* decision. In *Indra Sawnhey's* case, it has not been held that there can be reservation in a single cadre post. There is not dispute that a carry forward scheme, provided it does not result in reservation beyond 50% is constitutionally valid but that does not mean that by the device of carry forward scheme, 100% reservation on some occasions can be made even when the post is only a single cadre post. In *Madhav's* decision and *Brij Lal's* decision, reliance has been placed on Article 16(4A) of the Constitution for holding that even in respect of single post such reservation can be made with the aid of rotation of roster. In our view, Article 16(4A) relates to reservation in promotional post in the cadre, but the said Article 16(4A) does not deal with the question of reservation in a single cadre post.

There is no difficulty in appreciating that there is need for reservation for the members of the Scheduled Castes and Scheduled Tribes and other backward classes ad such reservation is not confined to the initial appointment in a cadre but also to the appointment in promotional post. It cannot however be lost sight of that in the anxiety for such reservation for the backward classes, a situation should not be brought by which the chance of appointment is completely taken away so far as the members of other segments of the society are concerned by making such single post cent per cent reserved for the reserved categories to the exclusion of other members of the community even when such member is senior in service and is otherwise more meritorious.

Articles 14, 15 and 16 including Article 16(4), 16(4A) must be applied in such a manner so that the balance is struck in the matter of appointments by creating reasonable opportunities for the reserved classes and also for the other members of the community who do not belong to reserved classes. Such view has been indicated in the Constitution Bench decisions of this Court in Balaji's case, Devadasan's case and Sabharwal's case. Even in Indra Sawhney's case, the same view has been held by indicating that only a limited reservation not exceeding 50% is permissible. It is to be appreciated that Article 15(4) is an enabling provision like Article 16(4) and the reservation under either provision should not exceed legitimate limits. In making reservations for the backward classes the State cannot ignore the fundamental rights of the rest of citizens. The special provision under Article 15(4) must therefore strike a balance between several relevant considerations and proceed objectively. In this connection reference may be made to the decisions of this court in The State of Andhra Pradesh and Ors. Vs. U.S.V. Balaram and C.A. Rajendran Vs. Union of India (AIR 1972 SC 1375 and AIR 1968 SC 507). It has been indicated in Indra Sawhney's case (supra) that clause (4) of Article 16 is not in the nature of an exception to Clauses (1) and (2) of Article 16 but an instance of classification permitted by clause (1). It has also been indicated in the said decision that clause (4) of Article 16 does not cover the entire field covered by clauses (1) and (2) of Article 16. In Indra Sawhney's case, this court has also indicated that in the interests of the backward classes of citizens, the State can not reserve all the appointment under the State or even majority of them. The doctrine of equality of opportunity in Clause (1) of Article 16 is to be reconciled in favour of backward classes under clause (4) of Article 16 in such a manner that the latter while serving the cause of backward classes shall not unreasonably encroach upon the field of equality.

In *Triloknath Vs. State of Jammu and Kashmir* (AIR 1967 SC 1283), it has been held by this Court that where the percentage of reservations is not reasonable, having regard to employment opportunities of the general public to the cadre of service in question, the population of the entire State, the extent of their backwardness and the like, the interference by Court against unreasonable reservation is called for.

In a single post cadre, reservation at any point of time on account of rotation of roster is bound to bring about a situation where such single post in the cadre will be kept reserved exclusively for the members of the backward classes and in total exclusion of the general members of the public. Such total exclusion of general members of the public and cent percent reservation for the backward classes is not permissible within the constitutional frame work. The decisions of this Court to this effect over the decades have been consistent.

Hence, until there is plurality of posts in a cadre the question of reservation will not arise because any attempt of reservation by whatever means and even with device of rotation of roster in a single post cadre is bound to create 100% reservation of such post whenever such reservation is to be implemented. The device of rotation of roster in respect of single post cadre will only mean that on some occasions there will be complete reservation and the appointment to such post is kept out of bound to the members of a large segment of the community who do not belong to any reserved class, but on some other occasions the post will be available for open competition when in fact on all such occasions, a single post cadre should have been filled only by open competition amongst all segments of the society.

Mr. Kapil Sibal has contended that in some higher echelon of service in educational and technical institution where special expertise is necessary to hold superior posts, like Professors and Readers there should not be reservation even if there are plurality of posts in such cadre as indicated in the majority view in Indra Sawhney's case. It is, however, not necessary for us to decide the said contention for the purpose of disposal of these matters, where the question of reservation in single cadre post calls for decision.

We, therefore, approve the view taken in Chakradhar's case that there can not be any reservation in a single post cadre and we do not approve the reasonings in Madhav's case, Brij Lal Thakur's case and Bageswari Prasad's case upholding reservation in a single post cadre either directly or by device of rotation of roster point. Accordingly, the impugned decision in the case of Post Graduate Institute of Medical Education Research can not also sustained. The Review Petition made in civil appeal No. 3175 of 1997 in the case of Post Graduate Institute of Medical Education Research, Chandigarh, is therefore allowed and the judgment dated may 2, 1997 passed in civil Appeal No. 3175 of 1997 is set aside.

As we do not propose to consider the facts and circumstances in other cases which have been heard along with the Review Petition, we direct that the said matters be placed before the appropriate Bench for disposal on the basis of this decision in Review Petition in C.A. No. 3175 of 1997. In the facts and circumstances of the case, there will be no order as to costs.