

R. R. INAMDAR

A

v.

STATE OF KARNATAKA & ORS.

(Civil Appeal No 1495 of 2016)

NOVEMBER 28, 2019

B

**[DR. DHANANJAYA Y CHANDRACHUD AND
AJAY RASTOGI, JJ.]**

Service Law: Reservation – Solitary post – Appellant-teacher belonged to Scheduled Caste – Fifth respondent-teacher was senior to her – When a post of Lecturer in English fell vacant, appellant was promoted to the said post on the basis of roster points – Fifth respondent challenged the appointment before High Court – High Court held that the post of Lecturer in English was a solitary post and that the appellant could not have been appointed to the post on the basis of reservation and the fifth respondent who was senior to the appellant had a valid claim and entitlement to the post – On appeal, held: There can be no reservation of a solitary post and that in order to apply the rule of reservation within a cadre, there must be a plurality of posts – Where there is no interchangeability of the posts in different disciplines, each single post in a particular discipline has to be treated as a single post for the purpose of reservation within the meaning of Art.16(4) of the Constitution – There was no error in the judgment of High Court – Prayer of the appellant that she continued to work as a Lecturer in English since her appointment in 2002 and during the pendency of appeal, she was also protected by an order of status quo; that the proposal of the management to the State of Karnataka for her appointment to a second post was not acceded to – In view of the prayer of the appellant, the State of Karnataka is requested to consider the matter afresh – Since the appellant has been working as a Lecturer in English since 2002, no recovery be made from her for the period during which she has worked – As regards the fifth respondent, her pay shall be fixed notionally for the purpose of computing the salary which will be payable to her effective from the date of her joining as Lecturer in English and in the ultimate computation of her retiral dues on the date on which she attains superannuation – Fifth

C

D

E

F

G

H

- A *respondent to be considered for promotion in pursuance of the directions issued by the High Court expeditiously – Constitution of India – Art.16(4) – Reservation.*

Disposing of the appeal, the Court

- B **HELD:** 1. There can be no reservation of a solitary post and that in order to apply the rule of reservation within a cadre, there must be a plurality of posts. Where there is no interchangeability of the posts in different disciplines, each single post in a particular discipline has to be treated as a single post for the purpose of reservation within the meaning of Article 16(4) of the Constitution. If this principle were not to be followed, reservation would be in breach of the ceiling governed by the decisions of this Court. A circular cannot take away the binding effect of the decisions of this Court interpreting the policy of reservation in the context of Article 16(4). [Paras 9 and 10][511-A-C]
- D 2. The State of Karnataka is requested to consider afresh the request of the management for the creation of an additional post if such a request falls within the parameters of the rules or regulations of the State of Karnataka. In the event that it is not possible for the State of Karnataka to create another post under its rules and regulations, the State of Karnataka shall consider, in the alternative, the creation of a supernumerary post for such period until a substantive post is made available, having regard to the fact that the fifth respondent is due to attain the age of superannuation. [Para 12][511-F-G]
- F 3. Since the appellant has continued to work as a Lecturer in English since 28 September 2002, it would be appropriate to direct that no recovery should be made from the appellant for the period during which she has worked. Insofar as the fifth respondent is concerned, her pay shall be fixed notionally for the purpose of computing the salary which will be payable to her effective from the date of her joining as Lecturer in English and in the ultimate computation of her retiral dues on the date on which she attains superannuation. The fifth respondent shall be considered for promotion in pursuance of the directions issued by the High Court expeditiously. [Paras 13 and 14][511-H; 512-A-C]
- G
- H

Post Graduate Institute of Medical Education and Research v. Faculty Association (1988) 2 SCC 214 : [1998] 2 SCR 845 – Followed A

State of Karnataka v. K Govindappa (2009) 1 SCC 1 : [2008] 16 SCR 457 – relied on

Dr. Chakradhar Paswan v. State of Bihar (1988) 2 SCC 214 : [1988] 3 SCR 130; State of Uttar Pradesh v. Bharat Singh (2011) 4 SCC 120 : [2011] 4 SCR 525; Sanjeev Kumar v. State of Uttar Pradesh Civil Appeal Nos 6385-6386 of 2010 – referred to B

<u>Case Law Reference</u>			C
[2008] 16 SCR 457	relied on	Para 2	
[1998] 2 SCR 845	followed	Para 3	
[1988] 3 SCR 130	referred to	Para 3	
[2011] 4 SCR 525	referred to	Para 5	D

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1495 of 2016.

From the Judgment and Order dated 17.11.2015 of the High Court of Karnataka, Dharwad Bench in Writ Appeal No. 100790 of 2015 (PRO). E

S.N. Bhat, N.P.S. Panwar, Advs. for the Appellant.

Chandrashekhar A. Chakalabbi, Shiv Pandey, Awanish Kumar, Anshul, V. N. Raghupathy, Manendra Pal Gupta, Prakash Jadhav, Advs. for the Respondents. F

The Judgment of the Court was delivered by

DR. DHANANJAYA Y CHANDRACHUD, J.

1. This appeal arises from a judgment of a Division Bench of the High Court of Karnataka dated 17 November 2015. The High Court, while dismissing the Writ Appeal filed by the appellant, confirmed the judgment of a learned Single Judge dated 1 October 2015 holding that since there was a solitary post of a Lecturer in English, the appellant could not have been appointed to the post on the basis of reservation and that the fifth respondent, who was senior to the appellant, had a valid claim and entitlement to the post. G

H

- A 2. The appeal relates to the services of the appellant and the fifth respondent in an institution known as Sri Jagadaguru Annadaneshwari High School at Mundaragi, Gadag District of the State of Karnataka. The fifth respondent was appointed as a teacher on 2 November 1988 and is senior to the appellant, who was appointed on 1 December 1990.
- B The appellant belongs to a Scheduled Caste. On the retirement of the then incumbent Lecturer in English on 31 March 2002, the post fell vacant. The appellant was promoted to the post on 28 September 2002 on the basis of roster points. The appointment of the appellant was approved by the Director of Pre-University Education on 28 September 2002. The fifth respondent challenged the approval initially by filing a writ petition before the Karnataka High Court. By an order dated 2 March 2005, the fifth respondent was relegated to the remedy of a revision before the Director of Pre-University Education, Bangalore. The revision and a further review came to be dismissed by the Director of Pre-University Education on 3 May 2006 and by the Commissioner on 23 February 2007. The Government of Kerala dismissed the appeal filed by the fifth respondent on 12 November 2008. The fifth respondent then moved the High Court in a writ petition under Article 226 which was allowed by a judgment of the learned Single Judge dated 1 October 2015. The learned Single Judge held that the post of Lecturer in English was a solitary post and in view of the law laid down by this Court in
- E **State of Karnataka v K Govindappa**¹, the post could not have been reserved. This view of the learned Single Judge was approved in a writ appeal by the Division Bench on 17 November 2015 which gave rise to the proceedings before this Court.
- F 3. At the outset, it would be necessary to note that the decision of the two-Judge Bench of this Court in **K Govindappa (supra)**, which has been followed by the learned Single Judge as well as by the Division Bench in appeal, dealt with the issue as to whether all posts of Lecturers taken together constituted a cadre for the purpose of reservation or whether a solitary post of Lecturer in History which was not interchangeable with other posts constituted a separate cadre. The High Court held that the post of a Lecturer in History could not be construed to be a cadre together with all other posts of Lecturer. This Court noted that the Constitution Bench in **Post Graduate Institute of Medical Education and Research v Faculty Association**² had approved the
- G

H ¹ (2009) 1 SCC 1

² (1998) 4 SCC 1

view in **Dr. Chakradhar Paswan v State of Bihar**³ to the effect that there could be no reservation in respect of a single post. This was, however, sought to be distinguished by the State in **K Govindappa (supra)**. This Court held:

“While there can be no difference of opinion that the expressions “cadre”, “post” and “service” cannot be equated with each other, at the same time the submission that single and isolated posts in respect of different disciplines cannot exist as a separate cadre cannot be accepted. **In order to apply the rule of reservation within a cadre, there has to be plurality of posts. Since there is no scope of inter-changeability of posts in the different disciplines, each single post in a particular discipline has to be treated as a single post for the purpose of reservation within the meaning of Article 16(4) of the Constitution. In the absence of duality of posts, if the rule of reservation is to be applied, it will offend the constitutional bar against 100% reservation as envisaged in Article 16(1) of the Constitution.”** (emphasis supplied)

4. The Court held that the case fell within the category of a single or isolated post within a cadre in respect of which the rule of reservation was inapplicable. In other words, each discipline which consisted of a single post was required to be dealt with as a separate cadre for the said discipline, particularly, having regard to the fact that the several disciplines were confined only to one college.

5. A similar issue arose in a subsequent decision in **State of Uttar Pradesh v Bharat Singh**⁴, where this Court held that:

“It is abundantly clear from the above that the attribute of interchangeability and transferability is missing in the case of Principals - in much the same measure as in the case of teachers, in the lower cadre. We have, therefore, no hesitation in holding that there is no cadre of Principals serving in different aided and affiliated institutions and that the Principal’s post is a solitary post in an institution. Reservation of such a post is clearly impermissible not only because the Uttar Pradesh Public Services (Reservation for Scheduled

³ (1988) 2 SCC 214

⁴ (2011) 4 SCC 120

A

B

C

D

E

F

G

H

- A Castes, Scheduled Tribes and Other Backward Classes) Act, 1994 provides for reservation based on the 'cadre strength' in aided institutions but also because such strength being limited to only one post in the cadre is legally not amenable to reservations in the light of the pronouncement of this Court to which we shall presently refer."

B

(emphasis supplied)

6. We may also note at this stage that on 19 January 2017, a two-Judge Bench of this Court in **Sanjeev Kumar v State of Uttar Pradesh**⁵ affirmed a similar view of the Allahabad High Court, observing as follows:

C

"We have heard learned counsel for the parties at length. We are in agreement with the view taken in the impugned judgment. The judgment of the High Court is accordingly affirmed.

The civil appeals are accordingly dismissed. No costs.

D

Pending applications, if any, shall also stand disposed of."

7. These decisions were sought to be distinguished by Mr S N Bhat, learned counsel appearing on behalf of the appellant, by relying on a circular of the State of Karnataka dated 31 May 1991. The following provisions of the circular were in particular sought to be emphasised:

E

"The roster system be maintained unit-wise (i.e, one school or college is an unit even if the management is running more than one school or colleges). The roster should be maintained for the teaching and non teaching staff separately and not subject-wise as is being done now."

F

8. Mr Bhat urged that the above provisions would demonstrate that the roster has to be maintained unit-wise so that each school or college would be treated as a unit in a situation where a management is running more than one institution. Moreover, the roster is to be maintained for the teaching and non-teaching staff separately and not subject-wise. The submission was that the circular dated 31 May 1991 did not fall for consideration before the two-Judge Bench in **K Govindappa (supra)**.

9. We are unable to accept the submission for more than one reason. The circular dated 31 May 1991 is prior to the decision of the Constitution Bench in **Post Graduate Institute of Medical Education**

H

⁵ Civil Appeal Nos 6385-6386 of 2010

and Research (supra). As a matter of fact, the circular is prior to the decision in **K Govindappa (supra)** as well. The principle which has been enunciated by this Court is that there can be no reservation of a solitary post and that in order to apply the rule of reservation within a cadre, there must be a plurality of posts. Where there is no interchangeability of the posts in different disciplines, each single post in a particular discipline has to be treated as a single post for the purpose of reservation within the meaning of Article 16(4) of the Constitution. If this principle were not to be followed, reservation would be in breach of the ceiling governed by the decisions of this Court. A circular, of the nature that has been issued by the State of Karnataka, cannot take away the binding effect of the decisions of this Court interpreting the policy of reservation in the context of Article 16(4). A

10. For the above reasons, we are of the view that the judgment of the High Court cannot be faulted and is consistent with the law which has been laid down by this Court. B

11. However, in the alternative, Mr Bhat has submitted that the appellant has continued to work as a Lecturer in English since her appointment on 28 September 2002 and during the pendency of this appeal, she has been protected by an order of *status quo* since 16 February 2016. He stated that the management has submitted a proposal to the State of Karnataka for the appointment of the appellant to a second post which was not acceded to by the State of Karnataka. C

12. We would request the State of Karnataka to consider afresh the request of the management for the creation of an additional post if such a request falls within the parameters of the rules or regulations of the State of Karnataka. This exercise be completed expeditiously and within a period of two months from the date of receipt of a certified copy of this order. In the event that it is not possible for the State of Karnataka to create another post under its rules and regulations, the State of Karnataka shall consider, in the alternative, the creation of a supernumerary post for such period until a substantive post is made available, having regard to the fact that the fifth respondent is due to attain the age of superannuation in approximately three years and seven months from today. D

13. Since the appellant has continued to work as a Lecturer in English since 28 September 2002, it would be appropriate to direct that E

F

G

H

- A no recovery should be made from the appellant for the period during which she has worked. Insofar as the fifth respondent is concerned, her pay shall be fixed notionally for the purpose of computing the salary which will be payable to her effective from the date of her joining as Lecturer in English and in the ultimate computation of her retiral dues on the date on which she attains superannuation. We are not granting any benefits by way of payment of arrears of salary for the period during which the fifth respondent did not work as a Lecturer in English, since payment has already been made to the appellant.
- B

14. We further direct that the fifth respondent shall be considered for promotion in pursuance of the directions issued by the High Court expeditiously within one month from the date of receipt of a certified copy of this order.

15. The appeal is accordingly disposed of. There shall be no order as to costs.

Devika Gujral

Appeal disposed of.