Supreme Court of India
Govt. Of A.P vs Bala Musalaiah on 23 November, 1994
Equivalent citations: 1995 SCC (1) 184, JT 1995 (1) 20
Author: H B.L.
Bench: Hansaria B.L. (J)

PETITIONER:
GOVT. OF A.P.

Vs.

RESPONDENT:
BALA MUSALAIAH

DATE OF JUDGMENT23/11/1994

BENCH:
HANSARIA B.L. (J)
BENCH:
HANSARIA B.L. (J)
KULDIP SINGH (J)

CITATION:
1995 SCC (1) 184 JT 1995 (1) 20
1994 SCALE (4)1036

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by B.L. HANSARIA, J.- The present is an unusual case despite it being related to the usual demand of reservation for Scheduled Castes and Scheduled Tribes. The peculiarity lies in the fact that the demand for reservation herein is not related to appointment, but is relatable to termination.

2.The Government of Andhra Pradesh issued an order (hereinafter referred to as the GO) on 3-8-1967 by which an ad hoc rule was framed in exercise of powers conferred by Article 309 of the Constitution prohibiting termination of reserved category candidates following normal rule applicable in such cases. The GO spells out in what order retrenchment of temporary employees has to take place. The order set out is as below:

> "First Persons, other than those belonging to the Scheduled Castes and the Scheduled Tribes, appointed temporarily, in the order of juniority;

Second Probationers, other than those belonging to the Scheduled Castes and the Scheduled Tribes, in the order of juniority; Third Approved probationers, other than those belonging to the Scheduled Castes and the Scheduled Tribes, appointed temporarily in the order of juniority;

Fourth Persons belonging to the Scheduled Castes and the Scheduled Tribes, appointed temporarily in the order of juniority;

Fifth Probationers belonging to the Scheduled Castes, and the Scheduled Tribes, in the order of juniority;

Sixth Approved probationers belonging to the Scheduled Castes and the Scheduled Tribes, in the order of juniority."

(Explanation not relevant)

3. It came to be assailed before the High Court of Andhra Pradesh to meet its Waterloo. The High Court, after taking note of various decisions of this Court dealing with different facets of reservation, held that the GO did not strike a reasonable balance between the claims of different communities and has sought to introduce by the back door an unlimited form of carry forward rule which it regarded as invalid because of what was held in T Devadasan v. Union of India1 . The Court further stated that the GO does not 1 AIR 1964 SC 179: (1965) 2 LLJ 560 merely postpone the retrenchment of temporary employees belonging to the Scheduled Castes and Scheduled Tribes to temporary employees of other communities, but postpones the retrenchment of the Scheduled Castes and Scheduled Tribes employees to probationers also and, what is worse, even approved probationers of other communities. Because of all these the GO was held to be violative of Article 16(1) of the Constitution and was, therefore, declared as invalid. The State of Andhra Pradesh has preferred this appeal by special leave.

4. A nine-Judge Bench of this Court in Indra Sawhney v. Union of India2 (commonly known as Mandal Commission case) reviewed the entire law on reservation; and as such, no effort is necessary on our part to find out the parameters within which reservation has to operate.

5. The GO being of the year 1967 and the law relating to reservation having come to be crystallised by the decision in Indra Sawhney case2 delivered in 1992, we stated to Shri Raghubir appearing for the appellants that if the State Government were to undertake passing of fresh GO on the subject keeping in mind the view expressed in Indra Sawhney case2, we could dispose of the appeal by allowing the stay order to continue for a period of three months within which the State could pass fresh GO. For want of instructions, Shri Raghubir could not give the undertaking and so we proceeded to hear the appeal instead adjourning the same as prayed for the appeal being of the year 1977.

6. The High Court, as already noted, struck down the GO, inter alia, because of what has been stated in Devadasan case1. In view of the judgment of the majority in Indra Sawhney case2 Shri Raghubir

contends that the judgment of the High Court merits to be set aside. But this is not all that the High Court had said, as would appear from what we have noted above.

7. The first observation we propose to make regarding the GO is that on the face of it the same is arbitrary inasmuch as it requires retrenchment even of approved probationers of general category before even temporary incumbents belonging to the Scheduled Castes and Scheduled Tribes could be retrenched. Such a provision cannot be in tune even with Article 16(1) of the Constitution inasmuch as this sub- article is a facet of Article 14 and though permits affirmative action, as pointed out in Indra Sawhney case2, the same cannot fly in the face of Article 14. This would, however, be so if the GO were to allow to stand as it is, because giving of preference to temporary employees belonging to the Scheduled Castes and Scheduled Tribes as against approved probationers of general category is definitely an unreasonable provision.

8. According to us, the principle and policy behind the reservation would be adequately met and would receive constitutional approval, if, while retrenching the employees, the roster followed while making appointments is adhered to. To elucidate, if the roster is operated backwards (which we shall 2 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385 call recycled) and if the employee to be retrenched as per normal principle be on a non-reserved point, a reserved category candidate would not be retrenched, even if as per general rule of "last in, first out" he would have been required to be retrenched. To state it differently, a reserved category candidate would be retrenched only when on the recycled path the reserved point is reached. This mode of following roster would adequately protect the reserved category candidates inasmuch as their percentage in the service or cadre would remain as it came to be when appointments were made. To explain further, if in the cadre or service reserved category candidates were holding, say seven posts and seven persons are required to be retrenched, the reserved category employees would not be retrenched even when they be the last seven as per the seniority list, which would have otherwise happened on following the normal principle. Instead of the seven reserved category candidates being retrenched as per the normal principle, the reserved category candidate on the recycled roster point alone would be retrenched, because of which the percentage of representation of such candidates in the service, as it got reflected in appointments made following the roster, would remain unaffected.

9. May we mention that the reservation in appointment, to effectuate which roster is prepared, makes an incumbent of the reserved category senior to the general category incumbent, as, though lower in merit the former gets appointed earlier as per the roster point. This in itself protects to some extent the interest of the listed category candidates, as under the normal rule, the retrenchment starts from the junior most employee and it travels back step by step.

10.We, therefore, hold that the GO as framed is not sustainable. It would, however, be open to State Government to recast the GO in the light of what has been stated by us, if deemed necessary by it. As, however, the GO has been in operation for about three decades by now, we do not propose to upset the retrenchments which have already taken place pursuant to what has been provided in the GO. The GO would, therefore, become nonoperative from today.

11.For the aforesaid reasons, the appeal is dismissed subject to the observation regarding prospectivity. No order as to costs.