

Supreme Court of India

Vishwas Anna Sawant vs Municipal Corpn. Of Greater ... on 22 April, 1994

Equivalent citations: 1994 AIR 2408, 1994 SCC (4) 434

Author: K Ramaswamy

Bench: Ramaswamy, K.

PETITIONER:

VISHWAS ANNA SAWANT

Vs.

RESPONDENT:

MUNICIPAL CORPN. OF GREATER BOMBAY

DATE OF JUDGMENT 22/04/1994

BENCH:

RAMASWAMY, K.

BENCH:

RAMASWAMY, K.

VENKATACHALA N. (J)

CITATION:

1994 AIR 2408

1994 SCC (4) 434

JT 1994 (3) 573

1994 SCALE (5) 841

ACT:

HEADNOTE:

JUDGMENT:

ORDER

1. Leave granted.

2. Sequential to the resolution dated 23-5-1974 of the Government of Maharashtra to provide reservation for backward classes in promotions, namely Scheduled Castes and of their converts to Buddhism, Scheduled Tribes and the Denotified Tribes and Nomadic Tribes at 13%, 7% and 4% respectively in Fifty Point Roster, the first respondent resolved on 12-8-1975 to provide reservation in the services of the corporation at the stage of + From the Judgment and Order dated 6-4-1993 of the Bombay High Court in W.P. No. 359 of 1993 promotion. It carried into effect to make promotions on the basis of seniority subject to fitness. During 1980, the Sub-Engineers belonging to reserved classes became eligible, but were not promoted. A representation in that behalf was made to give them appointment by promotion in accordance with the above resolution. Writ Petition No.

176 of 1980 was filed by Vishnu Des Patel and others in a representative capacity questioning the policy of reservation in promotion. Equally Writ Petition No. 968 of 1990 was filed by Manti Lal Mahadev Mane and others in a representative capacity, seeking implementation of the reservation. In the meanwhile the corporation adopted the principle of interview for considering the claims of the reserved employees for promotion and rejected their claims on that basis. The High Court in its judgment dated 14/15-3-1984 partly allowed the writ petition negating the reservation in promotion in certain posts and upheld in respect of others. The matter was carried in appeal to this Court. In Writ Petition No. 545 of 1979, by judgment dated 15-4-1984, the High Court upheld that the corporation cannot introduce the principle of interview and allowed the writ petition. In Municipal Corpn. of Greater Bombay v. Mrs Kalpana Sadhu Kamblel upheld the rule of reservation in promotion and by resolution dated 17-3-1979 the corporation resolved to enforce the rule of reservation in promotion pursuant to the resolution dated 12-9-1975 and resolved that the names of the candidates belonging to backward classes who became eligible for promotion in and from the year 1975 onwards should be included in the deemed select list as per rules after they are declared fit for promotion by the selection committee by screening confidential history sheets of the respective employees, if they are not already declared fit by the promotion committee. In furtherance thereof, the corporation prepared seniority wise list of the backward classes employees considered fit for promotion to the post of Assistant Engineers, as per reservation policy adopted from 12-9-1975 and 14/15-3-1989 and gave the fitment in the vacancies available to them at the respective dates in the roster, but they were not given promotions. Mr Mane filed a contempt petition in the High Court pursuant to which he was given promotion, but denied the same to the other employees. Consequently the appellant filed Writ Petition No. 359 of 1993 which the High Court dismissed on 6-4-1993. Thus this appeal by special leave.

3. Though notice was issued to the contesting respondents and served on them, they are neither appearing in person, nor represented through a counsel. The municipal corporation, pursuant to the judgment of this Court in Municipal Corpn. of Greater Bombay case' gave reservation to the backward class employees in promotions namely Scheduled Castes, Scheduled Tribes and Denotified Tribes and Nomadic Tribes at the percentage mentioned in their circulars pursuant to the Resolution No. 567, dated 12-9-1975. They have also stated in paragraph 4 therein that the candidates belonging to the backward classes who became eligible for promotion in the year 1975 and onwards should be included in the deemed 1988 Supp SCC 747 : 1989 SCC (L&S) 130: 1988 Supp (2) SCR select list as per the rules, after they are declared fit for promotion by the promotion committee, by screening the confidential sheets of the respective employees. If they are already declared fit for promotion by the promotion committee, the exercise need not be reiterated. Pursuant to that, the respondent-corporation prepared the memo in which they have stated that they have worked out, pursuant to circular of the Bombay Municipal Corporation dated 14-8- 1989, the persons who are eligible to be considered for promotion and the papers have been submitted to the Commissioner on 19-3-1990 for approval and the approval was awaited. They have also stated to a representation made by the appellants that they are still awaiting the approval from the Commissioner. In the letter of the City Engineer, 6-2-1992 since promotion was not given to them and similar benefit was extended to one Mr Mane co-employee belonging to the backward class, they have filed the above writ petition but denied the relief on the ground of delay as well on the ground that from 19-7-1982, the policy of the promotion had been withdrawn and the appellants are

not entitled to the promotion.

4. We have heard the counsel on both sides and we find that the High Court was not justified in refusing relief to the appellants. It is seen that pursuant to the resolution referred to above, there was no independent exercise done by the corporation declaring the appellants not fit for promotion. On the other hand, they were noted in the sheets prepared by them which is marked as Statement 'T' in the SLP paper-book that instead of conducting fresh exercise, they relied on the screening done in 1976, 1980 etc. and they reiterated that they are not found fit. That is the justification now sought to be given by the respondent in not giving promotion to the appellants. We find that the stand taken by them is wholly unjustified. The right to consideration for promotion is a fundamental right guaranteed to Scheduled Castes and Scheduled Tribes in fulfillment of the mandate under Article 16(1) read with Article 46 of the Constitution to render socioeconomic justice. This Court has upheld the said right in Mrs Kalpana Sadhu Kamble case. Thereby the corporation is enjoined to give the effect to the constitutional mandate. It is seen that when Mr Mane had approached the High Court for granting the relief in the previous writ petition which was filed in a representative capacity not only for himself but also for all backward class citizens, he was given the benefit of promotion, when he initiated the contempt proceedings. But when the appellants had approached the High Court by an independent writ petition, the same benefit was not given to them. The appellants stand in the same position as Mane and that therefore the corporation cannot take a different and inconsistent stand denying promotion to the appellants who stand on a par with Mane. It is seen from the record that they were not declared unfit for promotion by any resolution passed by the Corporation Promotion Committee or competent officer. On the other hand the Corporation relied on the interview conducted by it, which method or principle was declared by the High Court to be illegal. Under these circumstances, the action of the respondent-corporation in not giving promotion to the appellants to the posts of Assistant Engineers from the posts of Sub-Engineers is clearly illegal. The appeal is allowed. The order of the High Court is set aside. The writ petition is allowed as prayed for and respondent-corporation is directed to give promotion to the appellants with all consequential benefits w.e.f. 24-4-1980 from the deemed dates which the corporation itself had assigned. The parties are directed to bear their own costs.