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VISHWAS ANNA SAWANT AND ORS.

v.

MUNICIPAL CORPORATION OF GREATER BOMBAY AND ORS.

APRIL 22, 1994

B

[K. RAMASWAMY AND N. VENKATACHALA, JJ.]

*Constitution of India, 1950 : Articles 16 and 46—Backward classes—Reservation in promotion—Municipal corporation Resolution dated September 12, 1975—Benefit of—Grant to one employee and denial to others—Held unjustified.*

C

By a resolution dated September 12, 1975 the respondent- Municipal Corporation resolved to provide reservation for backward classes in promotions. In *Municipal Corporation of Greater Bombay & ors. v. Mrs. Kalpana Sadhu Kamble & Ors.*, [1988] Supp. 2 S.C.R. 679, this Court upheld the rule of reservation in promotions. Consequently, the corporation resolved to enforce the rule of reservation in promotions and decided that the names of candidates belonging to backward classes who became eligible for promotion from 1975 onwards would be included in the deemed select list as per rules after they were declared fit for promotion by Selection Committee. Accordingly, the Corporation prepared a senioritywise list of the backward classes employees considered fit for promotion to the post of Asstt. Engineers and gave the fitment in the vacancies available to them at the respective dates in the roster, but they were not given promotion. M, an employee approached the High Court for granting the relief in a 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 approached the High Court by an independent writ petition, the same benefit was not given to them. They preferred appeal before this Court.

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Allowing the appeal and setting aside the order of the High Court, this Court

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HELD : 1. the right to consideration for promotion is a fundamental right guaranteed to scheduled castes and scheduled tribes in fulfilment of the mandate under Article 16(1) read with Article 46 of the Constitution

to render socio-economic justice. The corporation is enjoined to give effect to the constitutional mandate. [659-G-H] A

2. The High Court was not justified in refusing relief to the appellants. The appellants stand in the same position as M and therefore the Corporation cannot take a different and inconsistent stand denying promotion to the appellants who stand on par with M. Appellants 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 post of Asstt. Engineers from the post of Sub-Engineers is clearly illegal. [659-E, 660-A-C] B C

*Municipal Corporation of Greater Bombay & Ors. v. Mrs. Kalpana Sadhu Kamble & Ors.*, [1988] Supp. 2 S.C.R. 678, referred to. D

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4073 of 1994.

From the Judgment and Order dated 6.4.93 of the Bombay High Court in W.P. No. 359 of 1993. E

Ms. Indira Jaising and Sanjay Parikh, for the Appellants.

N.B. Shetye and D.N. Misra for the Respondents.

The following Order of the Court was delivered :

Leave granted. F

Sequential to the resolution dated May 23, 1974 of the Govt. 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 August 12, 1975 to provide reservation in the services of the Corporation at the stage of 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 H

A 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 March 14-15, 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 April 15, 1984, the High Court upheld that the Corporation cannot introduce the principle of interview and allowed the writ petition. In *Municipal Corporation of Greater Bombay & Ors. v. Mrs. Kalpana Sadhu Kamble & Ors.*, [1988] Suppl. 2 SCR 679, upheld the rule of reservation in promotion and by resolution dated March 17, 1979 the Corporation resolved to enforce the rule of reservation in promotion pursuant to the resolution dated September 12, 1975 and resolved that the names of the candidates belonging to backward classes who became eligible for promotion in and from the year 1975 onward 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 senioritywise list of the backward classes employees considered fit for promotion to the post of Asstt. Engineers, as per reservation policy adopted from September 12, 1975 and March 14-15, 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 April 6, 1993. Thus this appeal by special leave.

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 Corporation of Greater Bombay's* 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 dt. Sept. 12, 1975. They have also stated in paragraph 4 therein that the candidates belong to the backward classes who became eligible for promotion in the year 1975 and onwards should be included in the deemed 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 August 14, 1989, the persons who are eligible to be considered for promotion and the papers have been submitted to the Commissioner on March 19, 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, February 6, 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 1978, the policy of the promotion had been withdrawn and the appellants are not entitled to the promotion.

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 S.L.P. 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 fulfilment of the mandate under Art. 16(1) read with Art. 46 of the Constitution to render socio-economic justice. This court has upheld the said right in *Mrs. Kalpana Sadhu Kamble's* case. Thereby the Corporation is enjoined to give the effect to the constitutional mandate. It is seen that when Mr. Mane had

- A 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 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 Asstt. 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. April 24, 1980 from the deemed dates which the Corporation itself had assigned. The parties are directed to bear their own costs.

T.N.A.

Appeal allowed.