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Court : Allahabad

Decided On : Aug-04-1993

Reported in : [1995(70)FLR89]; (1994)IILLJ740All

Judge : S.N. Sahay and ;B.C. Saksena, JJ.

Acts : Constitution of India - Articles 16, 141, 142 and 144

Appeal No. : W.P. No. 3088/1993

Appellant : Ashok Kumar Gupta and anr.

Respondent : State of U.P. and ors.

Disposition : Petition dismissed

Judgement :

S.N. Sahay, J.

1. The petitioners who are Assistant Engineers in the Public Works Department have filed this writ petition to challenge selection proceedings of the Departmental Promotion Committee dated January 27/30, 1993 for the post of Executive Engineer. Rule 8 of the U.P. Service of Engineers (Public Works Department) (Higher) Rules, 1990 provides that recruitment to the cost of Executive Engineer shall be made on the basis of seniority subject to rejection of unfit through a Selection Committee constituted under the said rule. The appointing authority shall

prepare an eligibility list of the candidates in accordance with the U.P. Promotion by Selection (for posts outside the purview of the Public Service Commission) Eligibility List Rules, 1986 and place the same before the Selection Committee along with their character rolls and such other records pertaining to them as may be considered proper. The Selection Committee shall consider the cases of the candidates on the basis of the records referred to above and shall prepare a list of selected candidates arranged in order of seniority as it stood in the cadre from which they are to be promoted and forward the same to the appointing authority. Rule 6 lays down that reservation for the candidates belonging to Scheduled Castes, Scheduled Tribes and other category shall be made in accordance with the orders of the Government in force at the time of recruitment. Rule 18 of the said rules provides that nothing in these Rules shall affect reservations and other concessions required to be provided for the candidates belonging to the Scheduled Castes, Scheduled Tribes and other special categories of persons in accordance with the orders of the Government issued from time to time in this regard. The relevant Government orders regarding reservation have been filed as An-nexures 2, 3, 4 and 5 to the writ petition.

2. The U.P. Promotion by Selection (for posts outside the purview of the Public Service Commission) Eligibility List Rules, 1986 has been given overriding effect. Rule 5 of the said Rules provides that where the criterion for promotion is seniority subject to rejection of unfit the appointing authority shall prepare three lists to be called the eligibility lists of the senior-most eligible candidates from each of the category, namely, General, Scheduled Castes and Scheduled Tribes separately in the light of vacancies available for each of the said category containing names so far as may be, in the following proportion, that is to say, for 1 to 5 vacancies 2 times the number of vacancies subject to a minimum of 5 and for over 5 vacancies 1^ times the number of vacancies subject to a minimum of 10. Rule 5 further provides that the provisions contained in proviso to Rule 4 shall mutatis mutandis apply in preparing an eligibility list under this Rule For the sake of ready reference it may be stated that the proviso to Rule 4 says that if recruitment is to be made for vacancies occurring during more than one year of recruitment, separate eligibility lists will be prepared in respect of each such year and in such a case while preparing the eligibility list for second and subsequent years of recruitment, the

number of candidates to be included in the eligibility list shall be for the second year the number according to the said proportion plus the number of vacancies in the first year; and for the third year the number according to the said proportion plus the number of vacancies in the first and second years and so on : and further that candidates who arc not considered suitable prima facie for promotion shall not be taken into account in calculating the said proportion and a note to the effect that they are not so considered shall be added against their names.

3. The learned counsel for the petitioner stated that he will not raise any question of fact and that he will address arguments on question of law only and hence the writ petition may be finally disposed of. The learned Standing Counsel appearing on behalf of respondents Nos. 1 and 2 and the learned counsel for respondents Nos. 3 and 4 stated that they will not file any counter affidavit and agreed that the writ petition may be finally disposed of. Respondents Nos.3 and 4 were impleaded on their application. In view of the above statements, the writ petition has been heard on merits and is being finally disposed of at the admission stage itself.

4. For the proper appreciation of the arguments raised by the learned counsel of the parties, it will be necessary to state that in Indra Sawhney v. Union of India : [1992]6SCR321 , popularly known as Mandal Commission case, the Constitutional validity of Office Memorandum dated August 13, 1990 and Office Memorandum dated September 25, 1991 issued by the Government of India with regard to recommendations of the vSecond Backward Classes Commission (Mandal Report) reservation for socially and educationally backward classes in services under the Government of India were assailed. Under the first mentioned Office Memorandum dated August 13, 1990, orders were issued to the following effect:-

'(i) 27% of the vacancies in civil posts and services under the Government of India shall be reserved for SEBC.

(ii) The aforesaid reservation shall apply to vacancies to be filled by direct recruitment. Detailed instructions relating to the procedure to be followed for enforcing reservation will be issued separately.

(iii) Candidates belonging to SEBC recruited on the basis of merit in an open competition on the same standards prescribed for the general candidates shall not be adjusted against the reservation quota of 27%.

(iv) The SEBC would comprise in the first phase the castes and communities which are common to both the list in the report of the Mandal Commission and the State Governments' lists. A list of such castes/communities is being issued separately.

(v) The aforesaid reservation shall take effect from August 7, 1990. However, this will not apply to vacancies where the recruitment process has already been initiated prior to the issue of these orders,'

5. The aforesaid Office Memorandum was amended by the second Office Memorandum dated September 25, 1991. It was provided as follows:-

'(i) Within the 27% of the vacancies in civil posts and services under the Government of India reserved for SEBCs, preference shall be given to candidates belonging to the poorer sections of the SEBCs. In case sufficient number of such candidates are not available, unfilled vacancies shall be filled by the other SEBC candidates.

(ii) 10% of the vacancies in civil posts and services under the Government of India shall be reserved for other economically backward sections of the people who are not covered by any of the existing schemes of reservation.

(iii) The criteria for determining the poorer sections of the SEBCs or the other economically backward sections of the people who are not covered by any of the existing schemes of reservations are being issued separately.'

6. As stated in the Report, at the inception of arguments, as stated in para 679 of the Report, the learned counsel for both the sides put their heads together and framed eight questions arising for discussion. Question No. (VIII) was to the effect, would reservation of appointments or posts in favour of any backward classes be restricted to the initial appointment to the post or would it extend to promotions as well. It is further stated in para 680 of the Report that the questions were re-

framed and question No. (VII) as re-framed was whether Article 16 permits reservation being provided in the matter of promotions.

7. From a perusal of the judgments delivered in that case it will appear that his Lordship Mr. Justice S. Ratnavel Pandian expressed his views on the above question in the following words in para 246 'Hence, I share the view of my learned brother B.P. Jeevan Reddy, J. holding the 'Art. 16(4) does not permit provision for reservation in the matter of promotions and that this rule shall, however, have only prospective operation and shall not affect the promotions already made, whether made on regular basis or on any other basis' and the direction given by him that wherever reservations are provided in the matter of promotion such reservation may continue in operation for a period of five years from this day.'

8. In Para 312 his Lordship Dr. Justice T.K. Thommen has indicated his views that in whichever post that a member of a backward class is appointed, reservation provisions are attracted at the stage of his initial appointment and not subsequently. Further promotions must be governed by common rules applicable to all employees of the respective grades. Further in para 326(9) it has been stated that reservation has no application to promotion. It is confined to initial appointment, whichever be the level or grade at which such appointment is made in the administrative hierarchy and whether or not the post in question is borne on the cadre of the service. Again in para 327-D it is provided that reservation is confined to initial appointment to a post and has no application to promotion.

9. In a separate judgment in para 382 his Lordship Mr. Justice Kuldip Singh has recorded his conclusion that Article 16(4) permits reservation of appointments or posts in favour of any backward class of citizens only at the initial stage of entry into the State services. Article 16(4) does not ermit reservation either to the selection posts or in any other manner in the process of promotion. He has accordingly observed that the interpretation given by the majority in Rangachari's case The General Manager, Southern Railway v. Rangachari (1970-II-LLJ- 289) to the effect that it permits reservations in the process of promotion, is not permissible and as such cannot be sustained.

10. It has been observed by his Lordship Mr. Justice P.B. Sawant that none of the impugned Government memoranda provides for reservations in promotions. Hence the question does not fall for consideration at all and any opinion expressed by this Court on the said point would be obiter. However, if it becomes necessary to answer the question, it will have to be held that the reservations both under Articles 16(1) and 16(4) should be confined only to initial appointments. In para 553 under question 8 he has recorded his views as under: -

'It is not necessary to answer the question since it does not arise in the present case. However, if it has to be answered, the answer is as follows:

The reservations in the promotions in the services are unconstitutional as they are inconsistent with the maintenance of efficiency of administration.

However, the backward classes may be provided with relaxations, exemptions, concessions and facilities etc. to enable them to compete for the promotional posts with others wherever the promotions are based on selection or merit-cum-seniority basis.

Further, the committee or body entrusted with the task of selection must be representative and manned by suitable persons including those from the backward classes to make an impartial assessment of the merits.

To ensure adequate representation of the backward classes which means representation at all levels and in all grades in the service, the rules of recruitment must ensure that there is direct recruitment at all levels and in all grades in the services.'

11. It has also been held by his Lordship Mr. Justice R.M.Sahai that reservation is to be confined to initial appointment only. In para 632(6) under the heading 'Conclusions' it is stated as follows:-

'Reservation in promotion is Constitutionally impermissible as, once the advantaged and disadvantaged are made equal and are brought in one class or group then any further benefit extended for promotion on the inequality existing prior to be brought in the group would be treating equals unequally. It would not be

eradicating effects of past discrimination but perpetuating it.'

12. His Lordship Mr. Justice B.P. Jeevan Reddy has delivered the judgment for himself and on behalf of their Lordships Mr. Justice M.H. Kania, Chief Justice of India, Mr. Justice M.N. Venkatachaliah and Mr. Justice A.M Ahmadi. While considering question No. 7 as reframed referred to above, it has been observed that his Lordship Justice Mr. Ahmadi was of the opinion that this question does not arise for consideration in these writ petitions and hence need not be answered. Accordingly the opinions expressed and conclusion recorded are those of the Chief Justice M.N. Venkatachaliah and B.P.Jee-wan Reddy, JJ. only. In para 851 it has been observed that 'We find it difficult to agree with the view in Rangachari that Article 16(4) contemplates or permits reservation in promotions as well. It is further stated in para 852 that it is true that Rangachari has been the law for more than 30 years and that attempts to re-open the issue were repelled in Karamchari Sangh. It is further stated that it may equally be true that on the basis of that decision, reservation may have been provided in the matter of promotion in some of the Central and State Services but we are convinced that the majority opinion in Rangachari, to the extent it holds that Article 16(4) permits reservation even in the matter of promotion, is not sustain-able in principle and ought to be departed from. It is also observed that, however, taking into consideration all the circumstances, we direct that our decision on this question shall operate only prospectively and shall not affect promotions already made, whether on temporary, officiating or regular/permanent basis and it is further directed that wherever reservations are already provided in the matter of promotion, be it Central Services or State Services, or for that matter services under any Corporation, authority or body falling under the definition of 'State' in Article 12, such reservations shall continue in operation for a period of five years from this day and within this period it would be open to the appropriate authorities to revise, modify or reissue the relevant rules to ensure the achievement of the objective of Article 16(4). The same view has been reiterated in para 880(7) and para 881(8) as follows:-

'880(7). Article 16(4) does not permit provision for reservations in the matter of promotion. This rule shall, however, have only prospective operation and shall not affect the promotions already made, whether made on regular basis or on any

other basis. We direct that our decision on this question shall operate only prospectively and shall not affect promotions already made, whether on temporary, officiating on regular/permanent basis. It is further directed that wherever reservations are already provided in the matter of promotion, be it Central Services or State Services, or for that matter services under any Corporation, authority or body falling under the definition of 'State' in Article 12, such reservations may continue in operation for a period of five years from this day. Within this period, it would be open to the appropriate authorities to revise, modify or re-issue the relevant rules to ensure the achievement of the objective of Article 16(4). If any authority thinks that for ensuring ade quate representation of 'backward class of citizens' in any service, class or category, it is necessary to provide for direct recruitment therein, it shall be open to it to do so, (Ahmadi, J. expresses no opinion on this question upholding the preliminary objection of Union of India). It would not be impermissible for the State to extend concessions and relaxation to members of reserved categories in the matter of promotion without compromising the efficiency of the administration (Paras 843 to 851).'

'881(8) Reservation of appointments or posts under Article 16(4) is confined to initial appointment only and cannot extend to providing reservation in the matter of promotion. We direct that our decision on this question shall operate only prospectively and shall not affect promotions already made, whether on temporary, officiating or regular/permanent basis. It is further directed that wherever reservations are already provided in the matter of promotion, be it Central Services or State Services, or for that matter services under any Corporation, authority or body falling under the definition of 'State' in Article 12, such reservations may continue in operation for a period of five years from this day. Within this period, it would be open to the appropriate authorities to revise, modify or re-issue the relevant rules to ensure the achievement of the objective of Article 16(4). If any authority thinks that for ensuring adequate representation of 'backward class of citizens' in any service, class or category, it is necessary to provide for direct recruitment therein, it shall be open to it to do so.

(As pointed out at the end of the paragraph 101 of this judgment, Ahmadi, J. having upheld the preliminary objection raised by Sri Parasaran and others has

not associated himself with the discussion on the question whether reservation in promotion is permissible. Therefore, the views expressed in this judgment on the said point are not the views of Ahmadi, J.)'

13. After making the above observations the following directions were given to the Government of India, the State Governments and the Administration of Union Territories vide paras 882 to 886 in the following terms:-

'882. The Government of India, each of the State Governments and the Administrations of Union Territories shall, within four months from today, constitute a permanent body for entertaining, examining and recommending upon requests for inclusion and complaints of over-inclusion and under-in-clusion in the lists of other backward classes of citizens. The advice tendered by such body shall ordinarily be binding upon the Government.

(B) Within four months from today the Government of India shall specify the basis, applying the relevant and requisite socio- economic criteria, to exclude socially advanced persons/sections ('creamy layer') from 'Other Backward Classes'. The implementation of the impugned O.M. dated September 13, 1990 shall be subject to exclusion of such socially advanced persons ('creamy layer').

This direction shall not however apply to States where the reservations in favour of backward classes are already in operation. They can continue to operate them. Such States shall however evolve the said criteria within six months from today and apply the same to exclude the socially advanced persons/sections from the designated 'Other Backward Classes'.

(C) It is clarified and directed that any and all objections to the criteria that may be evolved by the Government of India and the State Governments in pursuance of the direction contained in Clause (B) of Para 882 as well as to the classification among backward classes and equitable distribution of the benefits of reservations among them that may be made in terms of and as contemnlated by Clause (1) of the Office Memorandum dated September 25, 1991 as explained herein, shall be preferred only before this court and not before or in any other High Court or other Court or Tribunal. Similarly, any petition or proceeding questioning the validity,

operation or implementation of the two impugned Office Memoranda, on any grounds whatsoever, shall be filed or instituted only before this Court and not before any High Court or other Court or Tribunal.

883. The Office Memorandum dated August 13, 1990 impugned in these writ petitions is accordingly held valid and enforceable subject to the exclusion of the socially advanced members/sections from the notified 'Other Backward Classes', as explained in para 882(B)

884. Clause (i) of the Office Memorandum dated September 25, 1991 requires to uphold its validity to be read, interpreted and understood as intending a distinction between backward and more backward classes on the basis of degree of social backwardness and a rational and equitable distribution of the benefits of the reservations amongst them. To be valid, the said clause will have to be read, understood and implemented accordingly.

885. Clause (ii) of the Office Memorandum dated September 25, 1991 is held invalid and inoperative.

886. The Writ Petitions and Transferred Cases are disposed of in the light of the principles, directions, clarifications and orders contained in this judgment.'

14. It will appear from the above discussion that all the Hon'ble Judges except two have held that there can be no reservation in matters of promotion. However, three Hon'ble Judges have taken the view that the existing provisions with regard to reservation in promotion shall continue to be valid and operative for the period of five years from the date of the judgment. It is contended on behalf of the petitioners that the view of the three Hon'ble Judges is minority view and no reservation can be made in promotions in view of the majority judgment. Therefore, the selection held by the respondents by granting reservation quota to Scheduled Castes and Scheduled Tribes candidates in the matter of promotion to the post of Executive Engineer is wholly illegal and void and ab initio being violative of Article 16 of the Constitution. It is further contended that when criterion for promotion is seniority subject to rejection of unfit and it has been unanimously held in Indira Sawhney's case that there is no occasion for reservation where

promotion is to be made on the basis of the said criterion the benefit of reservation in favour of the Scheduled Castes and Scheduled Tribes candidates for promotion to the post of Executive Engineer is wholly unconstitutional. In this manner the petitioners have asserted that Annexures-2 to 5 to the writ petition are unconstitutional and ultra vires being violative of Article 16 of the Constitution. It may be mentioned that Annexure-2 is a Government order dated March 8, 1972, which contains the relevant provisions with regard to reservation in favour of Scheduled Castes and Scheduled Tribes candidates in vacancies to be filled up by promotion. Copies of Government orders dated March 20, 1974, December 27, 1974 and July 5, 1984 of the same subject are contained in Annexures-3, 4 and 5. It may also be stated that Uttar Pradesh Promotion by Selection on Posts out- side purview of the Public Service Commission Eligibility Rules, 1986 and the Uttar Pradesh Service of Engineers (Public Works Department) (Higher) Rules, 1990 are annexed as Annexures-6 and 7 to the writ petition. Rule 5 of the 1986 Rules relates to the preparation of eligibility list where the criterion is seniority subject to the rejection of unfit. It lays down that in such cases the appointing authority shall prepare three lists to be called the eligibility list of the senior-most eligible candidates from each of the category, namely, General, Scheduled Castes and Scheduled Tribes separately in the light of the vacancies available for each of the said category in accordance with the provisions contained therein. Rule 6 of the 1990 Rules provides that reservation for the candidates belonging to Scheduled Castes, Scheduled Tribes and other categories shall be made in accordance with the orders of the Government in force at the time of recruitment. Rule 8 of the same rules provides that recruitment to the posts of Executive Engineer (Civil, Electrical and Mechanical) shall be made on the basis of seniority subject to rejection of unfit. The Government orders contained in Annexures- 2 to 5 derive their validity and strength from the aforesaid statutory rules contained in 1986 and 1990 Rules, which have been made under the proviso to Article 309 of the Constitution.

15. The learned standing Counsel has on other hand contended that it was not an issue before the Supreme Court in Indira Sawhney's case whether reservation may be made in promotion. In this connection the learned Standing Counsel has specifically referred to the observations made by their Lordships Mr. Justice Ah-

madi and Mr. Justice Sawant. The learned Standing Counsel has accordingly submitted that the opinion of six Hon'ble Judges on the question of reservation in promotion can only be regarded as obiter dictum. He has further contended that the provision regarding continuance of the existing Rules on reservation in promotion for a period of five years is not a minority view. According to the learned Standing counsel it is a rider on the view taken by the majority that there can be no reservation in promotion. The provision of five years cannot be said to be inconsistent with the majority view but is only in addition to that. The learned Standing Counsel has also contended that the said provision was made because the earlier decision in Rangachari's case was being overruled and in order to ensure workability it was decided by four Hon'ble Judges that a time frame of five years should be laid down so that the State may provide infrastructure within a reasonable time and the State action may not be challenged every time.

16. The learned counsel appearing on behalf of the respondents Nos. 3 and 4 has contended that the provision regarding five years has been made in the judgment in Indira Sawhney's case for effecting changes in the existing rules and to avoid confusion and dislocation during the interim period. He has further contended that it is not really a separate direction but it is part and parcel of the conclusion arrived at by the four Hon'ble Judges that reservation cannot be made in promotion. The learned counsel has drawn this distinction between conclusion and direction in order to justify that the existing Rules regarding reservation in promotion also are still and shall continue for a period of five years to be valid and operative. It is, thus, contended by the learned counsel that as required by the aforesaid Rules and executive orders reservation is valid and the petitioners, who belong to the category of General candidates, are not eligible and cannot be considered.

17. In view of the contentions of the parties, the point arising for consideration is as to what is the law declared by the Supreme Court within the meaning of Article 141 of the Constitution, with regard to reservation in favour of backward classes, including Scheduled Castes and Scheduled Tribes in the matter of promotion. It may be observed at the very out set that the contention of the learned Standing Counsel cannot be accepted as correct that no issue regarding reservation in promotion had really arisen in the said case and whatever observations have been

made in that connection is nothing but obiter dicta. The issues raised in the said case have been clearly stated and catalogued in para 681 of the Report as published in the Judgment Today and it will clearly indicate that the issue on the above subject was specifically raised and formulated as Question No. 8. It is no doubt true that his Lordship Mr. Justice Ahmadi declined to answer the question, as in his opinion it did not actually arise. His Lordship Mr. Justice Sawant also expressed a similar view, but he proceeded to discuss the matter and expressed his considered opinion on the said issue. Under these circumstances we find it difficult to accept as correct the contention of the learned Standing Counsel that the opinion expressed by the majority of the Hon' ble Judges on the said issue is merely obiter dicta. The reference made by the learned Standing Counsel to Dias on Jurisprudence (Pages 69 and 71) and to Patton on the same subject at page 180 for an exposition of the meaning and scope of obiter dicta is inapposite. The same is the case with the view expressed by Seervai in his famous work, Constitutional Law, Volume II pages 2037 and 2422 which have also been referred to by the learned Standing Counsel.

18. Even after rejecting the contention of the learned Standing Counsel, the question still remains whether, and if so, to what extent the various opinions expressed by the learned Judges can be regarded as law within the meaning of Article 141 of the Constitution. It is provided in Article 145(5) of the Constitution that no judgment and no opinion shall be delivered by the Supreme Court save with the concurrence of the majority of the Judges present at the hearing of the case. Therefore, any statement of law must have the support of the majority of the learned Judges constituting the Bench deciding the matter, before it can be regarded as law declared by the Supreme Court under Article 141 of the Constitution. There can be no doubt with regard to the fact that all the Hon'ble Judges constituting the Bench except one held that no reservation can be made in promotion under Article 16 of the Constitution. So far as that part is concerned, it is the view of the majority and amounts to law declared by the Supreme Court under Article 141. But with regard to the other part, which lays down that the existing Rules shall continue to be operative for a period of five years, the position is not so. The majority does not subscribe to that part as it is the view taken by only four out of nine Hon'ble Judges constituting the Bench. In John Martin v. State of West

Bengal : 1975 CriLJ637 the contention of the petitioner was that the representation of petitioner in a case of preventive detention should Slave been considered by an impartial Tribunal constituted by the State Government and it was not sufficient compliance with the requirement of Article 22(5) of the Constitution that it should have been considered only by the State Government. This contention was sought to be supported by reference to certain observations of their Lordships Faji Ali and Mahajan, JJ. in A.K. Gopalan v. State of Madras : 1950 CriLJ1383 Their Lordships refused to recognise the observations of the said learned Judges as law and held that 'We do not think that these observations made by two out of six learned Judges can be regarded as laying down the law on the point.'

19. The learned counsel for petitioner has also contended that the earlier decision in Ran-: gachari's case that reservation may be lawfully made in matters of promotion was expressly overruled in Indira Sawhney's case and cannot, therefore, be regarded as good law binding on the Courts. In this connection he has referred to the case of Ramdas Bhikaji Chaudhari v. Sadanand : 1980 CriLJ111 , in which it has been held-

'It is well settled that whenever a previous decision is overruled by a larger Bench, the previous decision is completely wiped out and Article 141 will have no application to the decision which has already been overruled, and the Court would have to decide the cases according to law laid down by the latest decision of this Court and not by the decision which has been expressly overruled.'

20. The learned counsel has also relied on A.S. Gauraya v. S.N. Thakur : 1986 CriLJ1074 , which lays down that the law laid down by the Supreme Court applies to all pending proceedings and all Courts are bound to give effect to it under Article 141.

21. The situation which emerges from the above discussion is that the law declared by the Supreme Court, which is binding on all Courts under Article 141 and applies to all pending and future proceedings, is that no reservation can be made in matters of promotion as it will be violative of Article 16 of the Constitution. If that were the only thing then there would have been no difficulty in holding that the existing provisions contained in the statutory rules made under Article 309 of

the Constitution or executive orders contained in Annexures 2 to 7 which have been challenged in the present writ petition, shall have no effect. But, as already indicated, it has been laid down by four Hon'ble Judges that the existing provisions regarding reservation in matters of promotion shall remain operative for a period of five years. This amounts to a direction under Article 142 of the Constitution and would have effect accordingly. No order or direction to the contrary has been issued by any other Hon'ble Judge. We do not agree with the learned counsel for respondents Nos.3 and 4 that it is not a direction but it is part and parcel of the conclusion arrived at in the matter of reservation in promotion. As indicated above, it is a direction being separable from the enunciation of the Constitutional position that no reservation can be made in matters of promotion.

22. Article 142 provides that the Supreme Court in the exercise of its jurisdiction may pass such decree or may order as is necessary for doing complete justice in any cause or matter pending before it and any decree so passed or order so made, shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament and until provision in that behalf is so made in such manner as the President may by order prescribe. In Delhi Judicial Service Association v. State of Gujarat : 1991 CriLJ3086 it was held as follows:-

'This Court's power under Article 142(1) to do complete justice is entirely of different level and of a different quality. Any prohibition or restriction contained in ordinary laws cannot act as a limitation on the Constitutional power of this court. Once this Court has seisin of a cause or matter before it, it has power to issue any order or direction to do complete justice in the matter. This Constitutional power of the Apex Court cannot be limited or restricted by provisions contained in statutory law..... No enactment made by Central or State Legislature can limit or restrict the power of this Court under Article 142 of the Constitution, though while exercising power under Article 142 of the Constitution, the Court must take into consideration the statutory provisions regulating the matter in dispute. What could be the need of complete justice in a cause or matter would depend upon the facts and circumstances of each case and while exercising that power the Court would take into consideration the express provisions of a substantive statute. Once this Court

has taken seisin of a case, cause or matter, it has power to pass any order or issue direction as may be necessary to do complete justice in the matter.'

23. In Union Carbide Corporation v. Union of India : AIR 1992 SC248 it has been held by a Constitution Bench that the expression 'cause or matter' in Article 142(1) is very wide covering almost every kind of proceedings in Court. It has been further held that the power under Article 142(1) cannot be whittled down even by Article 139A. The purposed constitutional plenitude of the powers of the Apex Court to ensure due and proper administration of justice is intended to be co-extensive in each case with the needs of justice of a given case and to meet any exigency. In this connection the observation made in an earlier case Harbans Singh v. State of U.P. : 1982 CriLJ795 was quoted with approval 'that this Court retains and must restrain, an inherent power and jurisdiction for dealing with any extraordinary situation in the larger interests of administration of justice and for preventing manifest injustice being done.'

24. It may, therefore, be held that it is a direction of the Supreme Court issued under Article 142 of the Constitution that the existing provisions with regard to reservation in matters of promotion shall continue to be in force for a period of five years. It was contended by the learned counsel for the petitioners that in case the aforesaid direction is taken to be a direction issued under Article 142, even then it cannot be enforced because it will infringe the fundamental right of the petitioners under Article 16 of the Constitution and no direction impairing a fundamental right can be issued. He has referred to Prem Chand Garg v. Excise Commissioner U.P. : AIR 1963 SC996 , Naresh S. Mirajkar v. State of Maharashtra 0044/1966 : [1966]3SCR744 and A.R. Antulay v. R.S. Nayak : 1988 CriLJ1661 in support of his contention.

25. It may be mentioned that in the case of Delhi Judicial Service Association cited above, both the cases of Prem Chand and A.R. Antulay were referred to and thereafter the law was laid down as indicated above. However, it must be borne in mind that Article 142 itself provides that a decree passed or order made under that Article shall be enforceable throughout the territory of India. It is the constitutional obligation of all authorities Civil and judicial, in the territory of India, created under

Article 144 of the Constitution to act in aid of the Supreme Court. If it is held that it is open to an authority to examine a decree or order of the Supreme Court for the purpose of finding out whether or not it is violative of the provisions of the Constitution relating to fundamental rights or otherwise, Article 144 will have no meaning and will not serve the purpose for which it was embodied in the Constitution. The scheme of the Constitution makes it abundantly clear that the decrees and orders of the Supreme Court shall have a sanctity of their own and must be given effect as such. In case a person feels that an order passed by the Supreme Court has the effect of taking away or abridging any of the fundamental rights under the Constitution or that it is violative of any other provision of the Constitution or law, it is the duty of that person to i approach the Supreme Court itself as advised for the redress of his grievances and to seek the directions of the Supreme Court by initiating appropriate legal proceedings. When once it has been shown that a direction has been issued by the Supreme Court under Article 142 of the Constitution to the effect that the existing provisions regarding reservation in matters of promotion shall remain operative for a period of five years, it has to be given effect and implemented by all authorities in the country. No Court can sit in appeal and examine whether the said direction is unenforceable on account of alleged inconsistency with any fundamental right or any other provision of the Constitution, particularly when it is not in dispute that the said direction has been issued by the Supreme Court in exercise of jurisdiction vested in it. It may be observed that the right to move the Supreme Court for the enforcement of a fundamental right is itself a guaranteed fundamental right under Article 32 of the Constitution. In this view of the matter, we are of opinion that the contention of the learned counsel for petitioners must fail. We are also of opinion that the impugned rules made under Article 309 of the Constitution and the impugned executive orders, as contained in Annexures 2 to 7 to the writ petition, cannot be held to be unconstitutional at this stage in view of the aforesaid direction of the Supreme Court and that no interference can be made with the selection held by the respondents for promotion to the post of Executive Engineers by reason of reservation having been made in favour of Scheduled Castes and Scheduled Tribes candidates in accordance with the aforesaid impugned rules and orders. The petitioners are not entitled to any relief in the present proceedings.

26. For the above reasons the writ petition fails and is hereby dismissed.

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