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Rangachari Vs. the General Manager, Southern Railway, Madras and anr.

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Court : Chennai

Decided On : Mar-03-1960

Reported in : AIR1961Mad35

Judge : Rajagopalan, J.

Acts : [Constitution of India](#) - Articles 16, 16(1), 16(2), 16(4) and 311

Appeal No. : Writ Petn. No. 1051 of 1959

Appellant : Rangachari

Respondent : The General Manager, Southern Railway, Madras and anr.

Advocate for Def. : C.K. Daphtary, Adv. for ;K. Rajah Aiyar, Adv., ;C. Govindaraja Aiyangar and ;B.T. Seshadri, Adv.

Advocate for Pet/Ap. : S. Mohan Kumaramangalam and ;P.S. Madhusudanan, Adv.

Disposition : Petition allowed

Judgement :

ORDER

Rajagopalan, J.

1. The petitioner holds the post which he described as that of a Law Assistant and the correct designation of which would appear to be court inspector, included in class III of the Railway service. From what has been stated in paragraph 3 of the counter affidavit filed by the department, it would be seen that there were four grades of court inspectors, all of them included in class III: (1) Court Inspectors on Rs. 200-300; (2) Court Inspectors on Rs. 260-350; (3) Chief Court Inspectors on Rs. 300-400; and (4) Chief Court Inspectors on Rs. 360-500. Candidates are recruited to the last of these grades, that is, on Rs. 200-300 partly directly and partly by selection, which apparently means selection from other categories of the railway service.

The posts in the three higher grades are filled by promotions; and the posts in the three higher grades have been classified selection posts for the purpose of selecting candidates from the lower grade for promotion to the next higher grade. Such selections for promotion have to be made by a committee constituted under the service rules in force. Seniority of service is only one of the factors to be considered in such selection, in contrast with promotion to non-selection posts, which are governed primarily by seniority of service.

2. The petitioner was recruited to a post in the grade of Rs. 200-300, and he was eventually confirmed in that post on 21-11-1956. He was promoted to the next higher grade on Rs. 260-Rs. 350 between 23-5-1958 and 22-8-1958, and again between 8-12-1958 and 31-12-1958. Apparently these promotions were what is known as ad hoc or provisional promotions, that is, the promotion was on a temporary basis. So was the promotion on the next occasion, 8-4-1959. The petitioner was eventually selected for promotion by the duly constituted selection committee which met on 16-6-1959, and the promotion of the petitioner was 'regularised' by an order issued on 30-6-1959. The petitioner continued to officiate in the grade Rs. 250 (260?)-350 without any break, but his status after the selection was that of a probationer in that grade.

3. The petitioner's promotions, temporary promotions as well as the promotion on a regular basis, were in accord with the policy that underlay the rules in force, that there was and there should be no reservation of posts to be filled by promotion in

favour of subordinates of scheduled castes and scheduled Tribes. That policy was changed. In its letter dated 27-4-1959 the Railway Board issued instructions to the General Manager. The railwayBoard directed:

'There are different grades of Class III posts. Some of these posts are 'non-selection' posts, promotion to which is made on 'seniority-curn-suitability' basis, while in the case of others which are 'selection' posts, promotion is made by a positive act of selection. There will be no quota for Scheduled Castes and Scheduled Tribes candidates in respect of promotion to 'non-selection posts'.

For promotion 'to 'selection' posts, however, there will be the prescribed quota of reservation. The field of consideration in the case of Scheduled Castes and Scheduled Tribes candidates should be four times the number of posts reserved without any condition of qualifying period of service in their case, subject to the condition that consideration should not normally extend to such staff beyond two grades immediately below the grade for which selection is held.'

The further directions of the Railway Board were:

'The decision of the Railway Board providing reservation for Scheduled Castes and Scheduled Tribes in promotion vacancies as laid down above, comes into effect from 4-1-1957. It will, therefore, be necessary to calculate all the number of posts that should have been made available to the Scheduled Castes and Scheduled Tribes during 1957 and 1958 and these should be carried forward to be filled in 1959

The General Manager, Southern Railways, issued a circular on 12-6-1959 to give effect to the direction of the railway Board. After pointing out in paragraph 2(i) of that Circular that the prescribed percentages were 14 per cent and 1 per cent respectively in favour of the members of the Scheduled Castes and Scheduled Tribes, the General Manager directed in paragraphs 2(ii) and 2(iii):

'(ii) The Special Rosters in force for S. C. and S. T. in direct recruitment categories are to be followed to work out the number of posts to be reserved for S. C. and S. T. in promotions made in selection grades and for promotion from Class IV to

Class HI.

(iii) As the Board's Orders have retrospective effect from 4-1-1,957, it is necessary that the promotions made in. each selection grade on your Division Office from 4-1-1957 are reviewed and tha number of posts due to S. C. and S. T. worked out applying the Roster referred to in item (ii) above.'

4. It should be remembered that the Service Rules applicable to the Railway Service are included in the Railway Establishment Code. Jt was not made clear to me whether the directions given by the Board, which, the General Manager directed should be implemented, have been incorporated in the statutory rules themselves.

5. It was common ground that the selections made by the Committee on 16-6-1959 were under the old rules and the old policy that underlay them, that there should be no reservation in favour of members of the Scheduled Castes and Tribes for promotions from one grade to the next higher grade. Whether on a reivew of all the promotions made to the grade Rs. 260-350 from 4-1-1957 any specific reservation was made in favour of the members of the Scheduled Castes and Tribes is not clear from the material placed before me. At the selection on 16-6-1959, the petitioner and one Parthasarathi were selected for promotion, while Hiriyanna, a member of the Scheduled Castes, who was junior to them in service, was not selected.

The petitioner, who, had been appointed already to fill an existing vacancy, continued to fill it. Par-thasarathi's name was included in the panel, which meant that he would be promoted in the next vacancy that arose. After the issue of the General Manager's Circular dated 12-6-1959, which I have referred to above, a selection committee was constituted, and it summoned Iliriyanni lor an interview to be held on 18-11-1959, apparently to decide whether he was fit for promotion to a reserved vacancy.

The petitioner asked for information from the department, whether he was likely to be reverted it Hiriyanna was selected as 6t for promotion. That information was nut vouchsafed to him. He there-upon presented an 'application under Article 226 of

the Constitution and applied for and obtained a rule nisi on 16-11-1959 ' to issue a writ in the nature of a writ of mandamus directing the respondents to forbear from enforcing the directive contained in Circular.....dated 12-6-1959.' As the petitioner also obtained an interim stay, the selection committee apparently did not meet on 18-11-1959 as originally programmed.

6. Even in the counter affidavit that the respondents filed, there was no clear indication of what were the limits of the retrospective operation of the direction to effect reservations in favour of subordinates of Scheduled Castes and Tribes. There was no indication that the review of the promotions made from 1957 was not likely to lead to the reversion of the petitioner from the grade in which he was officiating. During the arguments before me the department produced a copy of the circular issued by the General Manager on 11-9-1959, clarifying the instructions that had been issued earlier on the basis of the directions issued by the Railway Board. Question (viii) of the points to be clarified ran:

'Do the instructions issued in the Board's letter contemplate reversion of staff already promoted to selection posts after 4-1-1957 to accommodate SC/ STS according to the percentage basis?'

The answer to that given by the General Manager was:

'The orders do not contemplate such reversion. But the short-fall should be made good against the existing as well as future vacancies.'

I suggested to the learned Solicitor-General, who appeared for the respondents, that a further affidavit could be filed by the respondents, to explain with the precision possible what the position of the petitioner was under the revised policy of reservations. The relevant portion of that affidavit, filed on 11-2-1960. ran:

'..... persons who have already been promoted on the basis of earlier regular selections before the implementation by the Southern Railway of the directives of the Government of India in the Ministry of Railways in their letter.... dated 27-4-1959 are not to be reverted as a consequence of the said implementation.'

Thus the petitioner has now the assurance, that even if Hirianna is eventually selected for promotion to any reserved vacancy, that would not lead to the reversion of the petitioner or. affect his right as a probationer to be continued in that grade in pro-ference to Hirianna.

7. The main contention of the petitioner was that the reservations in favour of members of the Scheduled Castes and Tribes for promotion from one grade to another in the categories of posts included in class III of the railway service was unconstitutional, as it offended against the fundamental right guaranteed to the petitioner and others similarly placed by Article 16 of the Constitution.

8. While Article 16(1) provides for equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State, Article 16(2) directs :

'No citizen shall on grounds only of religion, race, caste, sex, descent, place of birth, residence of any of them be ineligible for or discriminated against in respect of any employment or office under the State.'

These provisions are however subject to Article 16(4), which provides:

'Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which in the opinion of the State is not adequately represented in the Services under the State.'

9. That promotions from the lower to the higher grades in Class III of the Railway Service, for example, promotions of Court Inspectors, came within the scope of Clauses 1 and 2 of Article 16 was never in issue. It was never the contention of the learned Solicitor General that such promotions were outside the scope of the Constitutional guarantees for which Clauses 1 and 2 of Article 16 provided.

10. After I had reserved judgment in this case, I came across the as yet unreported judgment of the Supreme Court in Petition No. 126 of 1958: (since reported in : [1960]2SCR311), All India Station Masters' and Asstt. Station Masters' Association v. General Manager, Central Railway in which their Lordships

left open without decision the question, whether promotions came within the scope of the expression 'matters relating to employment' in Article 16(1) of the Constitution. So I have to deal with that question at some length, though as I recorded earlier, the arguments before me proceeded only on the basis, that such promotions were well within the scope of Clauses 1, and 2 of Article 16.

11. In my opinion the equality of opportunity which Article 16(1) guarantees, and the prohibition against discrimination embodied in Article 16(2) apply also to promotions of civil servants from one post to another when both are included in the same service.

12. Article 16(1) guarantees equality of opportunity (1) in matters relating to employment under the State, and (2) in matters relating to appointment to any office under the State. The ban against discrimination imposed by Article 16(2) is (1) in respect of any employment under the State, and (2) in respect of any office under the State. 'In respect of any office under the State' in Article 16(2) really means in this context 'in respect of any appointment to any office under the State'. I shall show later in this judgment that the scope of Article 16(4) is more limited than that of Clauses 1 and 2 of Article 16 and that promotion is neither an appointment to a service nor an appointment to a post as those expressions have to be understood in the context of Article 16(4).

I have necessarily to anticipate at this stage my decision on the scope of Article 16(4), Though promotion from one post to another in the same service is not appointment to a service, nor appointment to a post not included in any service, it is appointment to an office within the meaning of Clauses 1 and 2 of Article 16. The post to which the person is promoted is obviously an office under the State. In my opinion, 'employment under the State' is more comprehensive than 'appointment to any office under the State'. 'Employment' denotes continuity of service and does not end with the initial act of appointment of a person to a civil post, whether or not that post is included in a civil service.

A person appointed to an office or post is employed in that office or post from the date of his appointment till he ceases to be in service, however the termination of his services is brought about, for example, superannuation, resignation or

dismissal. The entire period of service is the period during which he is employed. The statutory expression 'employment' in Clauses 1 and 2 of Article 16, in my opinion, covers the entire period of service of a civil servant. Throughout his service, that is, throughout his employment under the State, a citizen is entitled to the rights guaranteed by Clauses 1 and 2 of Article 16.

13. 'In matters relating to' and 'in respect of' are not restrictive phrases. They really enlarge the scope of what follows. The ambit is wide. But even without recourse to these enlarging phrases, each of the expression 'employment' and 'appointment to any office' includes promotions within its scope.

14. I am clearly of opinion that promotions are within the ambit of Clauses 1 and 2 of Article 16. As I said, the learned Solicitor-General did not contend that promotions fell outside the scope of Clauses 1 and 2 of Article 16. His endeavour was to establish that promotions also came within the scope of the exception for which Article 16(4) provided.

15. Therefore, the real question for determination is, whether the reservation ordered by the Railway Board in favour of members of the Scheduled Castes and Tribes, which the General Manager has to implement and has taken steps to implement, is protected by Article 16(4) of the Constitution.

16. One of the contentions of the learned counsel for the petitioner was that, even if the reservation ordered by the Railway Board in favour of the members of the Scheduled Castes and Tribes is valid and within the scope of the protection afforded by Article 16(4), these directions were unlawful, as they were in contravention of the earlier notification issued by the Government of India, specifically directing that there should be no such reservation for promotion from one grade to another. Basu in his Commentaries on the Constitution of India set out at page 527 of Vol. II, the resolution of the Government of India, and he added that it was a resolution made by the Government under Articles 335 and 336 of the Constitution. .

On verification from the publication in the Gazette itself, it was found that that statement by the learned author was factually incorrect. The Notification published,

in the Gazette of India on 16-9-1950 was not in the purported exercise of any power that could be exercised under Article 335 or Article 336 of the Constitution. No doubt, it was a declaration of policy published in the Official Gazette, but it was not embodied in any of the statutory rules governing the conditions of service of the Railway employees or others.

17. Even if what had been set out in the resolution constituted statutory rules and they had been violated by the reservation effected under the directions issued by the Railway Board, that would not itself make the issue justiciable. It should be taken as well settled now, as far as this court is concerned, that a mere violation of one of the service rules, statutory or otherwise, governing or regulating conditions of service of a civil servant, who holds his office at the pleasure of the President or the Governor, with nothing more, cannot confer any justiciable rights on the civil servant, enforceable in a court of law.

All that has been established, however, in this case is a change in the policy and not even a violation of any statutory service rule. So, independent of the question of the Constitutional validity of the directions providing for reservation of promotions in favour of members of the Scheduled Castes and Tribes, no question of illegality might arise for consideration in this case.

18. The constitutional validity of the directions given by the Railway Board, which the General Manager seeks to implement, was challenged principally on two grounds. (1) Article 16(4) in express terms does not provide for any reservation for the benefit of the members of the Scheduled Castes and Tribes. (2) Even if it did, it would not authorise the reservation of vacancies to be filled by promotions from one grade to another in the same service, for example, Class III of the Railway Service.

19. Article 16(4), it should be remembered, runs :

'Nothing in this Article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which in the opinion of the State is not adequately represented in the Services under the State.'

No doubt the express reference in Article 16(4) is only to backward classes, with the further requirement, that in the opinion of the State that class for which reservation is made is not adequately represented in the services under the State. That members of the Scheduled Castes and Tribes satisfy that requirement could never really be in issue.

All the special provisions made in the Constitution for promoting the Welfare of the members of the Scheduled Castes and Tribes are based on the recognition of the factual position, that they are the most backward among the citizens of India, more backward than other members of what is comprehensively called the backward classes. Article 318 of the Constitution provides for safeguarding the rights guaranteed by the Constitution to the members of the Scheduled Castes, and Tribes. The scope of Article 340, however, is permissive, and it obviously applies to Backward Classes other than Scheduled Castes and Tribes. Article 338(8) directs,

'Under this Article, reference, to Scheduled Castes and Scheduled Tribes shall be construed as including reference to such other backward classes as the President may on receipt of the report of a Commission appointed under Clause (1) of Article 340 by an order specify, and also to the Anglo-Indian community.'

The reference there is to other backward classes, that is, other classes that are backward besides the Scheduled Castes and Tribes and the Anglo-Indians. There is really no basis for any argument, that the members of the Scheduled Castes and Tribes did not belong to backward classes.

20. The learned counsel for the petitioner pointed out that the Constitution itself marked the distinction between backward classes and Scheduled Castes and Tribes. He pointed out that Article 15(4) expressly referred both to the backward classes and Scheduled Castes and Tribes, while Article 16(4) expressly referred only to backward classes. I am unable to accept the argument, that any deliberate exclusion of the members of the Scheduled Castes and Tribes from the scope of Article 16(4) was designed or achieved by the Constitution makers. It should be remembered that Article 335 runs :

'The claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State.'

That direction can have no meaning, if the Constitution intended to exclude members of the Scheduled Caste and Tribes from the protection for which Article 16(4) provided. What underlies Article 320(4) is that the special protection which Article 335 was designed to achieve was linked up with Article 16(4), and that the latter provided the Constitutional means to give effect to the direction in Article 335 of the Constitution.

21. Taking the scheme of the Constitution as a whole I am clearly of opinion that the expression 'backward classes' in Article 16(4) includes members of the Scheduled Castes and Scheduled Tribes.

22. What Article 16(4) authorises is a reservation of appointments and posts in favour of members of the backward classes, which includes as I have pointed out above. Scheduled Castes and Scheduled Tribes. Whether promotions from one grade to another of persons who hold the posts of court inspectors, who do not constitute a separate service by themselves but who are all included in class III of the Railway Service, fall within the purview of Article 16(4) is the question that remains for consideration.

23. Neither of the expressions 'appointments' or 'posts' has been defined by the Constitution. The learned counsel for the petitioner, is, however well founded in his contention, that these are virtually terms of art, which have to be interpreted and understood in the light of the legislative history of the constitutional enactments that preceded the Constitution, and in accordance with the scheme that underlies the provisions of the Constitution, which have reference to the civil services and civil servants in this country.

24. Article 309 of the Constitution refers to recruitment and conditions of service of persons 'appointed to Public services and posts'. Leaving the Defence Services of the Country out of account, and confining ourselves to the civil services of

the Union, we find that the reference in Article 310 is to a person who is a member of a civil service of the Union or an All India Service or who holds any civil post under the Union. Article 311 uses similar phraseology; a member of a civil service of the Union or an All India Service or a person who holds a civil post under the Union. Article 314 applies only to persons who have been appointed to a 'civil' service in India. There is no reference in Article 314 to the holder of any civil post as such.

An all-India service like the Indian Administrative Service includes within it a number of specified posts of different grades. In fact, normally it is not possible to envisage a service without any posts. A civil service obviously takes within its scope all the posts included in that service. Therefore, when the Constitution refers to 'civil service' and 'posts' as two distinct heads, it should be obvious that the expression 'posts' in such a context is confined to civil posts other than the civil posts included in any of the civil services.

25. That followed the pattern of the statutory provisions in the Government of India Act, 1935. The reference in Section 241(1) of that Act was to appointment to the civil services and civil posts. The phraseology of Section 266(3) was 'services and posts to which appointments are made' by the Secretary of State. Sub-clause (a) and (b) of Section 266(3) referred to recruitment to civil services and for civil posts, and appointments to civil services and posts. Section 266(3)(b) also referred to promotions and transfers from one service to another and marked off promotions and transfers from appointments. Section 247 unlike Article 314, referred to persons appointed to a civil service or civil post by the Secretary of State.

Section 246(1) is of even greater significance in understanding the scope of the statutory expression 'appointment to a civil service or civil post'. Section 246(1), besides referring to persons appointed by the Secretary of State to a Civil service and to persons appointed by the Secretary of State to a civil post also refers to the civil posts which have to be filled either by persons appointed to a civil service or by, persons appointed to a civil post. Section 246(1) is a clear example of specific provision being made for filling a post included in a service, but for which such a post would obviously be outside the scope of either of the expressions

'appointment to a civil service' or 'appointment to a civil post'.

26. The same phraseology was used in the statutory rules governing the conditions of service. Fundamental Rule 45A, which has continued in force from before the Constitution, refers to members of the services, to Government servants who hold the posts borne on the cadre of the services and to Government servants holding (specified) posts. Again, in the Central Services (Classification, Control and Appeal) Rules, 1957, Rule 2 (a) (i) refers to appointments to the services, while Rule 2(e), which defines a Government servant, takes in both a member of a service and a person who holds a civil post. These, I have taken, only as illustrative examples to understand the scope of the expression 'appointment to a service or post.'

27. Thus, both before and after the Constitution, when the expression used in the Constitutional enactment or in the statutory service rules was 'appointment to a service or post', the phrase appointment to a post was really confined to appointment to a post not included in any service. Appointment to a post borne on the cadre of any service could fall only within the scope of the statutory provision 'appointment to a service' and not within the scope of the alternative statutory expression 'appointment to a post.'

It should be obvious that whatever be the number of posts included in a service and whatever be the number of grades into which those posts have been - classified, whether on the basis of scales of pay applicable or on any other basis, appointment to a specified service can take place but once in the case of every person.

After such an initial appointment to the service, the directions issued from time to time to a given civil servant to fill one or the other of the posts included in that service, whether in an officiating capacity or substantive capacity, will not amount to appointments to a service. Nor will they amount to 'appointments to posts' in contradistinction to the statutory expression 'appointments to a service.' It follows that promotion from one post to another, both of which are included in the same service, is neither 'appointment to a service' nor 'appointment to a post', as those statutory expressions have to be understood.

The words 'appointment' 'service' and 'post' especially in conjunction with each other have acquired a precise connotation sanctioned by long usage both in enactments and in service rules, and they are really terms of art. The words 'appointments and posts' as used in Article 16(4) of the Constitution cannot now be given the ordinary dictionary meaning, isolating Article 16(4) from the rest of the Constitution for that purpose.

It was on similar considerations that the Supreme. Court has repeatedly laid down that the words 'dismissal', 'removal' and 'reduction' in rank as used in Article 311 should bear the meaning the service rules have always given them. - Dismissal, for instance, means only dismissal as a punishment and not every case of termination of service. There was a legislative background to the Constitution against which some of the expressions used in the Constitution without any definition have to be understood. The Constitution itself furnishes the further background against: which the expressions used in Article 16(4) have to be understood.

28. Article 16(4), as I said, authorised in express terms the reservation of appointments and posts. That phraseology is in marked contrast with the expression 'appointment to any office under a State' which is used in Clauses (1) and (2) of Article 16. I have already pointed out that in the case of members of Scheduled Castes and Tribes, Article 16(4) provides in effect the machinery for giving effect to the direction in Article 335. What Article 335 provides for is a consideration of the claims of members of the Scheduled Castes and Tribes to 'appointments to services and posts'. While Article 335 is confined to members of Scheduled Castes and Tribes, Article 16(4) is wider, and it applies to all backward classes.

The expressions 'appointments' and 'posts' in Article 16(4) have really to be read as 'appointments to services' and 'appointments to posts'. The word appointment implies appointment of a person to something either to a service or to a post. If, for example, the expression in Article 16(4) was 'reservation of any office under a State' as in Article 16(1) or 16(2), or 'reservation of civil posts' or 'reservation of appointments to civil posts' instead of 'reservation of appointments or posts' there

might have been a basis for an argument, that promotion of a person from a lower to a higher grade to fill up a civil post in the same service would also be a case of 'appointment to any civil post'. As it is, the ambit of Article 16(4) is narrower than that of Article 16(2). While Article 16(2) applies to all civil posts and all appointments thereto, that is, all offices under the State, Article 16(4) is confined only to 'appointments to a service' and appointments to a post.'

29. I have already said that the statutory expression 'appointment to a service' cannot include within it appointment to any of the posts included in the services apart from the initial appointment to the service itself, though even at that stage the appointment could well be to one of the posts included in the services. Similarly, the statutory expression 'appointment to a post' would cover only appointment of a person to any post not included in any service or not. 'Appointment to a post' cannot therefore be considered to mean appointment of a person to a post whether it is included in any service or not. 'Appointment to a post' cannot be equated to 'appointment to any office under the State.' I have also said that the words 'appointments' or 'posts' in Article 16(4) should really be interpreted to mean appointments of persons to services, and appointments of persons to posts. Learned Solicitor-General urged that the expression 'appointment' as it occurs in Article 16(4) should be construed to mean (1) appointment to a service, (2) appointment to any post included in a service and (3) appointment to a post not included in any service, and that the expression 'posts' as it occurs in Article 16(4) should be construed to mean posts included in any service and also posts not included in any service.

When we talk of 'reservation of post' we really mean that the post is reserved to be filled by appointing a person of a specified description to that post, for example, a member of the backward classes. There can be no abstract reservation of a post, any more than an abstract reservation of an appointment. If the Constitution makers had intended to place on the words 'appointments' or 'posts' as they have been used in Article 16(4), the extended meaning the learned Solicitor-General urged for acceptance it would have been easier to avoid all duplication of phraseology and provide only for reservation of appointments to civil posts, and employ the same phraseology as in Sub-clauses (1) and (2) of Article 16, that is

'any office under the State', or language analogous to that used in Section 246(1) of the Government of India Act, 1935, would have been employed. No doubt some words have to be used in Article 16(4) to understand the statutory expressions 'appointments' or 'posts'. But only such words can be read into Article 16(4) as the Constitution uses in similar contexts elsewhere. The expressions 'appointments to services' and 'appointments to posts' have that sanction, and that was why I said that the statutory expressions 'appointments' or 'posts' in Article 16(4) should be construed to mean 'appointments to a service' or 'appointment to a post.'

In neither case will it take in a promotion from one post to another of a higher grade in the same service. I shall illustrate my point with reference to the Indian Administrative Service and the posts included in that service. The posts of Assistant Collector, Sub-Collector and Collector among others are held in this State by members of the Indian Administrative Service. Under Article 16(4) there can be a valid reservation of a specified number of vacancies to be filled by appointment but only at the stage of appointment to the service. Article 16(4) will not authorise reservation of a specified number of posts of Collectors to be filled by promoting members of the backward classes among the members of the service, that is, members who have already been appointed to that service. The position could be different, if for instance Collector like District Judges in Madras were to constitute a separate service.

30. The phrases 'appointment by promotion' and 'appointment on promotion to the higher grade' have no doubt the sanction of official usage. But the statutory expression 'appointment' in Article 16(4) in that context can only mean appointment to a service, while the other statutory expression 'post', again in that context, can only mean appointment to a post not included in any service. As I have already stated, neither of the statutory expressions 'appointments' or 'post' will include within its ambit promotion from one post to another in the same service. While such promotions are within the scope of the ban against discrimination imposed by Article 16(2), they are outside the protection from that ban secured by Article 16(4) of the Constitution.

31. The reservation ordered by the Railway Board for filling up selection posts in class III like those of Court Inspectors in the grade of Rs. 260-350 is unconstitutional. It offends against the fundamental right guaranteed by Article 16(2) and is not saved by Article 16(4):

32. The petitioner will therefore be entitled to a writ of mandamus restraining the respondents from giving effect to the direction of the Railway Board ordering reservation of selection posts in class III of the Railway Service in favour of members of the Scheduled Castes and posts and Tribes, and in particular the reservation of selection posts among the Court Inspectors in Class III, one of which the petitioner is now holding.

33. The rule nisi will be made absolute to the extent indicated above, and the petition will stand allowed. There will however be no order as to costs.

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