[2014] 8 S.C.R. 871

ROHTAS BHANKHAR & ORS. A

v.

UNION OF INDIA & ANR.

(Civil Appeal Nos.6046-6047 of 2004)

JULY 15, 2014 B

[R.M. LODHA,CJI, JAGDISH SINGH KHEHAR, J. CHELAMESWAR, A.K. SIKRI, R.F. NARIMAN,,JJ.]

Constitution of India, 1950 - Articles 16(4), 16(4A) and 335 - Reservation for Promotion - Relaxation of standards of C *evaluation for the members of reserved category (SC/ST candidates) in the departmental competitive examination for promotion - Permissibility - In view of judgment in *Vinod Kumar case that provisions for lower qualifying marks/ standard of evaluation was contrary to Art. 16(4), State by its* D *Memorandum of 1997 withdrew the Memorandum of 1970 whereby relaxed standard of evaluation was provided - Validity of the 1997 Memorandum - Held: 1997 memorandum was illegal - Judgment in *Vinod Kumar case was per incuriam as the same was passed without taking into consideration* E *provisions u/s. 16(4A) brought into by Constitution (Seventy-Seventh Amendment) Act, 1995 - Moreover, a proviso has also been appended to Art. 335 by Constitution (Eighty Second Amendment) Act, 2000 - Central Secretariat Service Section Officers' Grade/Stenographers' Grade 'B (Limited* F *Departmental Competitive Examination) Regulations, 1964 - Central Secretariat Service Section Officers' Grade/ Stenographers' Grade 'B (Limited Departmental Competitive Examination) Amendment Regulations, 1998.*

O.M. No. 36012/23/96 - Estt. (Res.) dated 22.7.1997 G **was issued whereby instructions contained in O.M. No. 8/12/69-Estt. (SCT) dated 23.12.1970 were withdrawn which provided relaxing standards in the case of**

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A Scheduled Castes/Tribes candidates in departmental competitive examinations. Accordingly, The Central Secretariat Service Section Officers' Grade/ Stenographers' Grade 'B (Limited Departmental Competitive Examination) Regulations, 1964 were B amended by Central Secretariat Service Section Officers' Grade/Stenographers' Grade 'B (Limited Departmental Competitive Examination) Amendment Regulations, 1998.

The Court below relied on Vinod Kumar's case C wherein it was held that provisions for lower qualifying marks/standard of evaluation was not permissible u/s. 16(4) of the Constitution in view of Article 335 of the Constitution. In appeal to this Court, Division Bench noticing that Kuldeep Singh's case was passed without noticing the Indra Sawhney case and referred the matter D to a Three-Judge Bench. The matter was further referred to the present Constitution Bench, doubting the correctness of judgment in Kuldeep Singh's case.

Allowing the appeals, the Court

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HELD: 1. Article 16(4A) was inserted in the Constitution to undo the observations in Indra Sawhney's case that there can not be dilution of standards in matters of promotion. Though Article 16(4A) F had been brought into Constitution by the Constitution (Seventy-seventh Amendment) Act, 1995 with effect from 17.6.1995, S. Vinod Kumar's case did not take into consideration this constitutional provision. Kuldeep Singh's case was decided by this Court having regard to the constitutional provision contained in Article 16(4A). G Therefore, the view taken by this Court in Kuldeep Singh's case is in accord with constitutional scheme articulated in Article 16(4A). Moreover by the Constitution (Eighty-second Amendment) Act, 2000, a proviso has been appended to Article 335 of the Constitution with

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effect from 8.9.2000. [Paras 3, 4, 9 and 10] [875-C-D; 879-D]

2. The Central Administrative Tribunal has followed S. Vinod Kumar's case which is not a good law and resultantly 1997 O.M. is also illegal. The respondents are directed to modify the results in the Section Officers/ Stenographers (Grade B/Grade-I) Limited Departmental Competitive Examination, 1996 by providing for reservation and extend all consequential reliefs to the appellants, if not granted so far. [Paras 10 and 11] [879-F-H]

S. Vinod Kumar vs. Union of India and Ors. **1996 (7) Suppl. SCR 142 = (1996) 6 SCC 580 - held per incuriam.**

Superintending Engineer, Public Health, U.T. Chandigarh and Ors. vs. Kuldeep Singh & Others **1997 (1) SCR 454 = (1997) 9 SCC 199 - affirmed.**

M. Nagraj and Ors. vs. Union of India and Ors. **2006 (7) Suppl. SCR 336 = (2006)8 SCC 212 - followed.**

Indra Sawhney vs. Union of India and Ors. **1992 (2) suppl. SCR 454 = 1992 Suppl. (3) SCC 217 - referred to.**

Case Law Reference :

1996 (7) Suppl. SCR 142	**held per incuriam**	**Para 2**
1992 (2) Suppl. SCR 454	**referred to**	**Para 6**
1997 (1) SCR 454	**affirmed**	**Para 10**
2006 (7) Suppl. SCR 336	**followed**	**Para 7**

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 6046-6047 of 2004.

From the Judgment and Order dated 06.11.1998 in Original Applications Nos. 499 & 849 of 1998 of the Central Administrative Tribunal, Principal Bench at New Delhi.

A Dr. Krishan Singh Chauhan, Ajit Kumar Ekka, Ravi Prakash, Chand Kiran, Murari Lal for the Appellants.

Ranjit Kumar, SG., P. S. Patwalia, ASG., A. Mariarputham, V. Mohana, Binu Tamta, D.L. Chindananda, Sushma Suri for
B the Respondents.

The Judgment of the Court was delivered by

R.M.LODHA, CJI. 1. On 23.12.1970 (1970 O.M.), the Department of Personnel issued Office Memorandum being
C O.M. No. 8/12/69-Estt.(SCT) relaxing standards in the case of Scheduled Castes/Tribes candidates in departmental competitive examinations and in departmental confirmation examinations. The said O.M. remained operative for about 17 years until O.M. No. 36012/23/96-Estt.(Res) dated 22.7.1997
D was issued whereby the instructions contained in 1970 O.M. were withdrawn. Thereafter by Notification dated 30.11.1998, the Central Secretariat Service Section Officers' Grade/ Stenographers' Grade 'B (Limited Departmental Competitive Examination) Regulations, 1964 (for short "1964 Regulations") were amended by Central Secretariat Service Section Officers'
E Grade/Stenographers' Grade 'B (Limited Departmental Competitive Examination) Amendment Regulations, 1998 (for short "1998 Regulations"). The result of this amendment was that in 1964 Regulations, Regulation 7, sub-regulation (3) was
F omitted on and from 22.7.1997. The explanatory note appended to the above Notification reads as follows:

In compliance with the Supreme Court's judgment in the case of *S. Vinod Kumar vs. Union of India* (JT 1996(8) SC 643), the Central Government decided to omit the provisions
G of regulation 7(3) of the Central Secretariat Service Section Officers' Grade/Stenographers' Grade 'B' (Limited Departmental Competitive Examination) Regulations, 1964 which provides for relaxed qualifying standard in favour of the Scheduled Castes and the Scheduled Tribes candidates to
H make up the deficiency in the reserved quota which has been

rendered legally invalid and unenforceable. This is certified that no one is being adversely affected by giving this amendment retrospective effect.

2. In *S. Vinod Kumar*[1], this Court relying upon *Indra Sawhney*[2] held that provision for lower qualifying marks/ standard of evaluation was not permissible under Article 16(4) of the Constitution of India in view of Article 335.

3. Though Article 16(4A) had been brought into Constitution by the Constitution (Seventy-seventh Amendment) Act, 1995 with effect from 17.6.1995, *S. Vinod Kumar*1 did not take into consideration this constitutional provision. In our view, *S. Vinod Kumar*1 is *per incuriam*.

4. Moreover by the Constitution (Eighty-second Amendment) Act, 2000, a proviso has been appended to Article 335 of the Constitution with effect from 8.9.2000. The proviso reads as follow:

> Provided that nothing in this article shall prevent in making of any provision in favour of the members of the Scheduled Castes and the Scheduled Tribes for relaxation in qualifying marks in any examination or lowering the standards of evaluation, for reservation in mattes of promotion to any class or classes of services or posts in connect with the affairs of the Union or of a State.

5. On 8.10.1999, when special leave petitions, from which these appeals arise, came up for consideration before a two-Judge Bench, the Bench first formulated the point for consideration in the matter, viz., whether it was permissible for the authorities to fix lesser number of qualifying marks for reserved candidates in the matter of 'promotion'. The Bench noticed three judgments of this Court; (1) *Indra Sawhney*[2], (2)

1. (1996) 6 SCC 580, S. VINOD KUMAR & ANOTHER VS. UNION OF INDIA.
2. 1992 Supp (3) SCC 217, INDRA SAWHNEY VS. UNION OF INDIA AND OTHERS.

A *S. Vinod Kumar*[1] and (3) *Kuldeep Singh*[3] and observed that in *Kuldeep Singh*[3] the Court did not notice the observations of majority as well as observations of Sawant, J. in *Indra Sawhney*[2], and the matter needed to be heard by a three-Judge Bench.

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6. On 2.12.1999, the matter came up before a three-Judge Bench. The Bench on that day reiterated what was earlier stated by the two-Judge Bench in the order dated 08.10.1999 that in *Kuldeep Singh*[3], the Bench had not referred to the majority decision in *Indra Sawheny*[2]. The Bench doubted
C the correctness of the decision in *Kuldeep Singh*[3] and referred the matter to the Constitution Bench. In the reference order, the three-Judge Bench also noted the decision of this Court in *Haridas Parsedia etc. vs. Urmila Shakya and others* (Civil Appeal Nos. 6590-6592 of 1999 etc.) dated 19.11.1999
D wherein it was observed that in the case of departmental promotion examination, which is held exclusively for SCs/STs, there could be reduction to the extent of 10% in the passing marks. As regards *Haridas Parsedia* (supra), the Bench observed that in that case, the observations of this Court in
E *Indra Sawhney*[2] wherein it was laid down that there cannot be dilution of standards in matter of promotion was not noticed.

7. It is important to note here that constitutional validity of Article 16(4A) came up for consideration before the
F Constitution Bench in the case of *M. Nagaraj*[4]. In paras 97 to 99 (page 267) of the report, the Constitution Bench observed:

> 97. As stated above, clause (4-A) of Article 16 is carved out of clause (4) of Article 16. Clause (4-A) provides benefit of reservation in promotion only to SCs and STs.
G In *S. Vinod Kumar v. Union of India* this Court held that

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3. (1997) 9 SCC 199, SUPERINTENDING ENGINEER, PUBLIC HEALTH, U.T. CHANDIGARH AND OTHERS VS. KULDEEP SINGH & OTHERS.

4. (2006) 8 SCC 212 M. NAGARAJ AND OTHERS VS. UNION OF INDIA AND
H OTHERS.

relaxation of qualifying marks and standards of evaluation in matters of reservation in promotion was not permissible under Article 16(4) in view of Article 335 of the Constitution. This was also the view in *Indra Sawhney.*

98. By the Constitution (Eighty-second Amendment) Act, 2000 a proviso was inserted at the end of Article 335 of the Constitution which reads as under :

> "Provided that nothing in this article shall prevent in making of any provision in favour of the members of the Scheduled Castes and the Scheduled Tribes for relaxation in qualifying marks in any examination or lowering the standards of evaluation, for reservation in matters of promotion to any class or classes of services or posts in connection with the affairs of the Union or of a State."

99. This proviso was added following the benefit of reservation in promotion conferred upon SCs and STs alone. This proviso was inserted keeping in mind the judgment of this Court in *Vinod Kumar* which took the view that relaxation in matters of reservation in promotion was not permissible under Article 16(4) in view of the command contained in Article 335. Once a separate category is carved out of clause (4) of Article 16 then that category is being given relaxation in matters of reservation in promotion. The proviso is confined to SCs and STs alone. The said proviso is compatible with the scheme of Article 16(4-A).

8. The conclusions recorded by the Constitution Bench in *M. Nagaraj*[4] are also relevant and they read as under:

121. The impugned constitutional amendments by which Articles 16(4-A) and 16(4-B) have been inserted flow from Article 16(4). They do not alter the structure of Article 16(4). They retain the controlling factors or the compelling

reasons, namely, backwardness and inadequacy of representation which enables the States to provide for reservation keeping in mind the overall efficiency of the State administration under Article 335. These impugned amendments are confined only to SCs and STs. They do not obliterate any of the constitutional requirements, namely, ceiling limit of 50% (quantitative limitation), the concept of creamy layer (qualitative exclusion), the sub-classification between OBCs on one hand and SCs and STs on the other hand as held in *Indra Sawhney*, the concept of post-based roster with inbuilt concept of replacement as held in *R.K. Sabharwal.*

122. We reiterate that the ceiling limit of 50%, the concept of creamy layer and the compelling reasons, namely, backwardness, inadequacy of representation and overall administrative efficiency are all constitutional requirements without which the structure of equality of opportunity in Article 16 would collapse.

123. However, in this case, as stated above, the main issue concerns the "extent of reservation". In this regard the State concerned will have to show in each case the existence of the compelling reasons, namely, backwardness

inadequacy of representation and overall administrative efficiency before making provision for reservation. As stated above, the impugned provision is an enabling provision. The State is not bound to make reservation for SCs/STs in matters of promotions. However, if they wish to exercise their discretion and make such provision, the State has to collect quantifiable data showing backwardness of the class and inadequacy of representation of that class in public employment in addition to compliance with Article 335. It is made clear that even if the State has compelling reasons, as stated above, the State will have to see that its reservation

provision does not lead to excursiveness so as to breach the ceiling limit of 50% or obliterate the creamy layer or extend the reservation indefinitely.

124. Subject to the above, we uphold the constitutional validity of the Constitution(Seventy-Seventh (Amendment) Act;1995: the Constitution (Eighty-first Amendment) Act, 2000; the Constitution (Eighty-second Amendment) Act, 2000 and the Constitution (Eighty-fifth Amendment) Act, 2001.

9. We do not think, it is necessary for us to deal with the width and scope of Article 16(4A) any further. Insofar as *Kuldeep Singh*[2] is concerned, we find that the matter was decided by this Court having regard to the constitutional provision contained in Article 16(4A). The view taken by this Court in *Kuldeep Singh*[3] is in accord with constitutional scheme articulated in Article 16(4A). On the other hand, in *S. Vinod Kumar*[1], the Court failed to consider Article 16(4A). As a matter of fact, Article 16(4A) was inserted in the Constitution to undo the observations in *Indra Sawhney*[2] that there can not be dilution of standards in matters of promotion.

10. We are in respectful agreement with the decision in *Kuldeep Singh*[3] and approve the same. Ordinarily, we would have sent the matter to the Regular Bench for disposal of the matter but having regard to the nature of controversy and the fact that the Central Administrative Tribunal, Delhi (for short "the Tribunal") has followed *S. Vinod Kumar*[1] which is not a good law and resultantly 1997 O.M. is also illegal, in our view, the agony of the appellants need not be prolonged as they are entitled to the reliefs.

11. Consequently, civil appeals are allowed. The impugned order is set-aside. 1997 O.M. is declared illegal. The respondents are directed to modify the results in the Section Officers/Stenographers (Grade B/Grade-I) Limited Departmental Competitive Examination, 1996 by providing for reservation and extend all consequential reliefs to the appellants, if not granted so far. No costs.

Kalpana K. Tripathy Appeals allowed.