

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 10738 of 2013

SURAJAN KAPARDAR

Appellant(s)

VERSUS

SHASHI BHUSHAN SHARMA

Respondent(s)

WITH

CIVIL APPEAL NO. 10739 of 2013

O R D E R

Respondent Nos.1 to 3 filed a writ petition in the High Court of Jharkhand for a declaration that Section 4(6) of the Jharkhand Reservation of vacancies in Posts and Services (S.C., S.T. and OBC) Act, 2001 as ultravires being violative of Article 16 of the Constitution of India. They also challenged a memo dated 13.06.2007 by which the provisional seniority list of Executive Engineers was prepared. In the said seniority list, certain Executive Engineers belonging to the reserved categories were given the benefit of the 85th Amendment of the Constitution of India. The writ petitioners sought a further direction to the State not to grant promotions to the Scheduled caste and Scheduled Tribes officers in excess of their quota.

The complaint of the writ petitioners was that the ratio of the judgment in M.Nagaraja Vs. Union of India reported in 2006 (8) SCC 212 was not followed by the State in the preparation of the provisional seniority list and in the matter of promotions of persons belonging to the reserved categories.

Section 4 (6)(Ka) of the Jharkhand Reservation of vacancies in Posts and Services (S.C., S.T. and OBC) Act, 2001 which was in challenge before the High Court pertains to the exchange of vacancies between the Scheduled Caste and Scheduled Tribes in case suitable officers are not available for promotion. The High Court allowed the writ petition and declared Section 4 (6) which provide for exchange of the vacancies as arbitrary and violative of Article 14 and 16 of the Constitution of India.

By the impugned judgment, the High Court declared the notification dated 29.06.2007 issued by the Water Resources Department, Government of Jharkhand as contrary to the roster that had to be maintained for promotions. The notification by which Executive Engineers were appointed on current duty charge was quashed by the High Court. While issuing notice, this Court by an order dated 23.06.2008 directed the official respondents not to disturb the services of the appellants. We are informed by Mr. Satyam Reddy, learned senior counsel appearing for the

appellant that the petitioners are continuing to work actually as Executive Engineers pursuant to the order dated 23.06.2008. On 06.03.2019, we enquired from the State as to whether the point involved in these cases survives for our consideration in view of the passage of ten years time after the appeals were filed. The state of Jharkhand has filed an affidavit in which it is stated that except three persons, all the others have either been either promoted or have retired from service or have been declared ineligible in view of vigilance enquiries against them.

Neither the appellants nor the State is aggrieved by the declaration of Section 4(6) of the Act as unconstitutional. The appellants do not intend to pursue this matter insofar as such declaration is concerned. The appellants are interested in continuing to work on current duty charge as Executive Engineers as they have not been considered for promotion to the higher post of Superintendent Engineer.

Mr. Sunil Kumar, learned senior counsel appearing for the State of Jharkhand submits that the appellants have not been disturbed in view of interim order passed by this Court. He also submits that their cases have been assessed and they have not been found fit for promotion. He also submits that disciplinary proceedings could not be initiated in view of the pendency of this appeal in this Court from 2008.

None can claim any right to continue on current duty charge. Taking into account the fact that the appellants have been continuing as current duty incharge for the past eleven years, we direct the government to consider them for promotion to the higher post of Superintending Engineer, if they are otherwise eligible and suitable. Mr. Satyam Reddy, learned Senior Counsel, submits that the first appellant has a clean record of service and unlike the other two appellants, there is no vigilance enquiry against the first Appellant. The State Government may verify this aspect while considering the Appellants for promotion as Superintending Engineers.

The appeals are disposed of in terms of the directions given above. Pending application(s), if any, stand disposed of.

.....J.
(L.NAGESWARA RAO)

.....J.
(HEMANT GUPTA)

NEW DELHI;
06th August, 2019

ITEM NO.109

COURT NO.10

SECTION XVII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s).10738/2013

SURAJAN KAPARDAR

Appellant(s)

VERSUS

SHASHI BHUSHAN SHARMA

Respondent(s)

WITH

C.A. No.10739/2013 (XVII)

Date : 06-08-2019 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE L. NAGESWARA RAO
HON'BLE MR. JUSTICE HEMANT GUPTA

For Appellant(s) Mr. Satyam Reddy, Adv.
 Mr. Abhijeet Sinha, AOR
 Mr. Sheshagiri, Adv.
 Mr. Venkat Reddy, Adv.
 Mr. Vishal Arun, AOR

For Respondent(s) Mr. Sunil Kumar, Sr. Adv.
 Mr. Anil K. Jha, AOR

 Mr. Ashok Kumar Singh, AOR

 Ms. Nisha Bagchi, Adv.
 Mr. Vikas Mehta, AOR
 Mr. Vishal Kumar, Adv.
 Ms. Pooja Sharma, Adv.

 Mr. Abhijeet Sinha, AOR

UPON hearing the counsel the Court made the following
O R D E R

The appeals are disposed of in terms of the
signed order.

(B.Parvathi)
Court Master

(Sunil Kumar Rajvanshi)
Court Master

(Signed order is placed on the file)