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Allahabad this the 300 day of July 1997

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Applicants

By Advocate Sri S.K. Om.

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Respondents

By Advocate -----

O R D E R

By Hon'ble Dr. R.K. Saxena, Member (J))

with the relief that the ^{order of} rejection of the application for appointment passed on 26.6.1995 be quashed; and, direction be given to the respondents to give the employment to the applicant no.2 on any suitable post

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against 20% loyal quota.

2. The facts giving rise to this O.A. are that the applicant no.1 was employed under the respondents and ultimately retired on 30.6.95 as Deputy Shop Superintendent. The applicants no.2 and 3 are his sons. It is stated that in the year 1974 a call for general strike was given by the railway employees union but the applicant no.1 did not participate in the strike and continued to work. In order to give benefit to those who had worked loyally during strike period, Railway Board had drawn a scheme in May 1974 wherein it was provided that 20% of the vacancies would be reserved for the sons and daughters of the loyal workers. It was further provided that those who would ^{not} avail the benefit of the appointment of their sons and daughters, they would be given one advanced increment or extension of service by one year or cash award. It is stated that the applicant did not avail any of the benefits of the said scheme and ultimately retired on 30/6/95. He now wants that his son- the applicant no.2 should be appointed on suitable post against 20% loyal quota. It is further contended that he had applied for the appointment of applicant no.2 but the same was rejected on the ground that the

benefit of loyal quota was already given to all the persons and thus, no appointment could be given to the applicant no.2. Feeling aggrieved by the said order, this O.A. has been filed.

3. The learned counsel for the applicant Sri S.K. Om was heard on the point of admission. He contends that the applicant was entitled to get benefit of loyal quota and, therefore, the O.A. was not only maintainable but the relief claimed, should also be given. We are not convinced with his contention. This Bench has decided several cases in which it was held that the claim of loyal quota was unconstitutional and the petitions ^{were} ~~is~~ not maintainable. In order to consider the claim of the applicant, we would be required to go through Articles 14, 15 and 16. Article 14 embodies the fundamental right of equality before the law or the equal protection of the laws within the territory of India. Article 15 prohibits discrimination on the grounds of religion, race, caste, sex or place of birth or any of them. Article 16 has 5 clauses. Clause 1 ^{provides} ~~carrying~~ the equality of opportunity for all citizens in matters relating to employment or appointment to any office under the state. Clause 2 prohibits discrimination

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on the grounds of religion, race, caste, sex, descent, place of birth, residence or any of them. The Parliament ^{under Clause 3} his, however, ~~empowered~~ ^{to} make law in regard to a class or classes of employment or appointment to an office, and any requirement as to residence. The State is also empowered under Clause 4 for making any provision for the reservation of any backward class of citizens [&] ~~if~~ it is not adequately represented in the services under the State. Clause 5 is not connected with the dispute before us.

4. After cursory perusal of these articles, it is revealed that Article 14 carries general right of equality while article 15 and 16 are instances of the ~~some~~ rights in favour of the citizens in some special circumstances. Article 16 is related to the matters of employment or appointment to any office under the State. The scope of Article 16 cannot be cut down in an arbitrary manner or in a manner other than as laid down under the Constitution. Article 14 is the embodiment of principle of equality before the law which means that except in a very limited class, a Court administering justice is not concerned with the status or position of the parties appearing before it. The equal protection of law also means the protection of law equally to all persons similarly situated. This equality

has been extended to the opportunities in the public employment. 'Descent' is one of the forbidden² ground; and any Act which violates it, is unconstitutional. Their Lordships of Supreme Court while considering the scope of Section 6(1) of Madras Hereditary Village Office Act, 1895, had the occasion to consider the constitutionality of the provision which provided that in choosing person to fill new office, the Collector should select the person~~s~~ whom he considered a best qualified from amongst the families of the last holders of the offices which were abolished. Their Lordships held the provision void as it had contravened the Article 16(2) in the case 'Gazula Dashrath Ramarao Vs. State of Andhra Pradesh A.I.R. 1961 S.C.564.'. Similar view was taken while considering the constitutionality of Rule 12.14(3) of the Punjab Police Rules 1934 which authorised the granting of preference in favour of sons and near relatives of the persons serving in the Police. Their Lordships held the provision unconstitutional in the case 'Y.P. Singh Vs. Union of India and Others A.I.R. A.I.R. 1987 S.C. 1015.'. It is, thus, clear that any provision either in any Act, Rule, Circular, Order of Assurance if, made, issued, passed or given, which authorises the appointment on the ground of 'descent', is violative of Article 14

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and 16 ² ~~100~~. When we apply this legal position in the present case, we come to the conclusion that the claim of the applicant on the basis of loyal quota, is violative of constitutional provisions.

5. The contention of the applicant is that the assurance was given in May, 1974 when the scheme was drawn by the Railway Board. It is contended that the cause of action had arisen when the applicant no.1 retired and application for appointment of applicant no.2 was made and was rejected. It may be mentioned that the Railway Board had placed the dependants of the loyal railway employees equivalent to the dependants who seek appointment on compassionate ground. This position was illustrated by the Board in the circular dated 13.2.74, which was taken into consideration by the Bench in the O.A. 236 of 1996 Virendra Kumar and Others Vs. Union of India and Others, decided on 23.5.1996. The appointment on compassionate ground after the child got majority, was held by their Lordships of Supreme Court in the case 'Jagdish Prasad Vs. State of Bihar and another 1996(1) S.L.R. 7' to be barred by limitation. Since the appointment on compassionate ground and on loyal quota, have been equated by the

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Railway Board and it has been suggested that appointment in loyal quota is equal to appointment on compassionate ground, this principle of limitation would also apply.

6. On the consideration of all these facts, we come to the conclusion that this O.A. is not maintainable and stands dismissed. No order as to cost.

Shaw
Member (A)

J. Lawrence
Member (J)

/ M.M./