

Supreme Court of India

Mukesh Kumar vs The State Of Uttarakhand on 7 February, 2020

Author: L. Nageswara Rao

Bench: L. Nageswara Rao, Hemant Gupta

Non-Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No. 1226 of 2020
[Arising out of S.L.P. (Civil) No. 23701 of 2019]

Mukesh Kumar & Anr.

.... Appellant(s)

Versus

The State of Uttarakhand & Ors.

. Respondent(s)

WITH

Civil Appeal No. 1227 of 2020
[Arising out of S.L.P. (Civil) No. 22640 of 2019]
Civil Appeal No. 1228 of 2020
[Arising out of S.L.P. (Civil) No. 25508 of 2019]
Civil Appeal No. 1229 of 2020
[Arising out of Dy. No.39572 of 2019 @S.L.P. (Civil) No. 3668
of 2020]
Civil Appeal No. 1230 of 2020
[Arising out of S.L.P. (Civil) No. 27715 of 2019]
Civil Appeal No. 1231 of 2020
[Arising out of S.L.P. (Civil) No. 28039 of 2019]
Civil Appeal No. 1232 of 2020
[Arising out of S.L.P. (Civil) No. 27735 of 2019]
Civil Appeal No. 1233 of 2020
[Arising out of S.L.P. (Civil) No. 28947 of 2019]

JUDGMENT

L. NAGESWARA RAO, J.

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1. The Controversy in the above Appeals pertains to the reservations to Scheduled Castes and Scheduled Tribes in promotions in the posts of Assistant Engineer (Civil) in Public Works Department, Government of Uttarakhand.

2. The Uttar Pradesh Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994 (for short the 1994 Act) provided for reservation in public services and posts in favour of persons belonging to Scheduled Castes, Scheduled Tribes and Other Backward Classes of citizens. Section 3(1) of the said Act stipulated reservation at the stage of direct recruitment. According to Section 3(7) of the 1994 Act, the Government Orders providing reservation for appointment to public posts filled up by promotion which were existing on the date

of commencement of the 1994 Act shall continue till they are modified or revoked. After the formation of the State of Uttarakhand in 2001, the Uttar Pradesh Public Services (Scheduled Caste, Scheduled Tribe and Other Backward Caste Reservation) Act, 1994 was made applicable to the State of Uttaranchal by a Notification dated 30.08.2001 with 2 | Page a modification in the percentage of reservations. 21% reservation for Scheduled Castes was modified to 19% and 2% for Scheduled Tribes was increased to 4%. Likewise, 21% reservation provided in the 1994 Act for Other Backward Classes was altered to 14%.

3. A Division Bench of the High Court of Judicature at Allahabad in *Mukund Kumar Shrivastava v. State of U.P.*¹ upheld the validity of Rule 8-A of the Uttar Pradesh Servants Government Seniority Rules, 1991 (for short the Seniority Rules) which dealt with consequential seniority of persons belonging to Scheduled Castes and Scheduled Tribes. Later, in *Prem Kumar Singh v. State of U.P.*², another Division Bench of the High Court of Judicature at Allahabad, Lucknow Bench held that the judgment in *Mukund Kumar Shrivastava* (supra) is per incuriam and not a binding precedent. In *Prem Kumar Singh's* case (supra), the High Court declared Section 3(7) of the 1994 Act and Rule 8-A of the Seniority Rules unconstitutional. While declaring the correctness of the judgments of the 1 (2011) 1 ALL LJ 428 2 (2011) 3 ALL LJ 343 3 | Page High Court, this Court by its judgment in *Uttar Pradesh Power Corporation v. Rajesh Kumar*³ held that Section 3(7) of the 1994 Act is unconstitutional insofar as it is contrary to the dictum in *M. Nagaraj & Ors. v. Union of India & Ors.*⁴

4. The challenge to Section 3(7) of the 1994 Act, as extended to the State of Uttarakhand, was upheld by the High Court of Uttarakhand in *Vinod Prakash Nautiyal & Others v. State of Uttarakhand & Others*⁵. Relying upon the judgment of this Court in *U.P. Power Corporation* (supra), the High Court of Uttarakhand declared Section 3(7) of the 1994 Act unconstitutional and directed that no promotion can be given by the State by taking recourse to Section 3(7) of the 1994 Act. The application filed for review of the judgment in *Vinod Prakash Nautiyal* (supra) was dismissed. By way of implementation of the judgment of the High Court dated 06.07.2011 in *Vinod Prakash Nautiyal* (supra), a committee was constituted by the Government of 3 (2012) 7 SCC 1 4 (2006) 8 SCC 212 4 | Page Uttarakhand for collection of quantifiable data relating to the backwardness of the reserved communities in the State of Uttarakhand and the inadequacy of their representation in public posts.

5. On 05.09.2012, the State Government decided that all posts in public services in the State shall be filled up without providing any reservations to Scheduled Castes and Scheduled Tribes. All Government Orders to the contrary were superseded by the proceeding dated 05.09.2012. Mr. Gyan Chand who was working as Assistant Commissioner (Civil), State Tax and belonging to Scheduled Caste Community filed a Writ Petition for quashing the proceeding dated 05.09.2012. The High Court by its judgment dated 01.04.2019 struck down the proceeding dated 05.09.2012 as being contrary to the law declared by this Court in *Indra Sawhney v. Union of India & Ors.*⁶ and *Jarnail Singh & Ors. v. Lachmi Narain Gupta & Ors.*⁷ While referring to the judgments of this Court in *M. Nagaraj* (supra) and *Jarnail Singh* (supra), the High Court held that Article 16(4) 6 (1992) Supp.3 SCC 217 7 (2018) 10 SCC 396 5 | Page of the Constitution in an enabling provision. The High Court observed that it is not necessary for the State Government to collect quantifiable data regarding

representation of Scheduled Castes and Scheduled Tribes in State services or regarding their backwardness before providing reservation in their favour in promotion posts. The High Court was of the opinion that the judgment in Vinod Prakash Nautiyal (supra) related to the constitutional validity of Section 3(7) of the 1994 Act alone and the Notifications pertaining to reservation in promotion in favour of Scheduled Castes and Scheduled Tribes were not set aside. The Appeals arising out of Civil Appeal @ S.L.P.(Civil) No.25508 of 2019 and Civil Appeal @S.L.P. (Civil) @ Diary No.39572 of 2019 have been filed assailing the judgment of the High Court dated 01.04.2019.

6. Vinod Kumar and three others belonging to the Scheduled Castes working in the Public Works Department, Government of Uttarakhand filed a Writ Petition in the High Court of Uttarakhand seeking a direction to the Respondent therein to prepare a separate list of eligible candidates as 6 | Page per Rule 5 of the Uttarakhand Promotion by Selection (on posts outside the purview of Public Service Commission) Eligibility Rules, 2003 and to prepare a separate list for each category of eligible candidates of General, Scheduled Castes and Scheduled Tribes for promotion to the post of Assistant Engineer (Civil) in Public Works Department. A further direction to the State Government was sought to hold a departmental promotion committee for promotion to the posts of Assistant Engineers after providing reservation to Scheduled Castes and Scheduled Tribes in accordance with the Government Orders dated 30.08.2001, 31.08.2001 and 17.02.2004 by which reservation was provided in promotion. The Writ Petition was disposed of by the High Court on 15.07.2019 with a direction to the State Government to implement reservations in promotion by promoting only members of Scheduled Castes and Scheduled Tribes in future vacancies to maintain the quota earmarked for the said categories. Civil Appeals @ S.L.P.(Civil) No. 23701 of 2019 and Civil Appeal @ S.L.P. (Civil) No.22640 of 2019 are challenging the judgment dated 15.07.2019.

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7. In the meanwhile, the Respondents in Writ Petition (Civil) No.117 of 2019 i.e. the State of Uttarakhand filed an application for review of the judgment dated 01.04.2019. The High Court realized that it committed an apparent error in its judgment dated 01.04.2019, while deciding the Writ Petition by referring to the judgment of this Court in Jarnail Singh (supra). The High Court clarified that the State Government is obligated to collect quantifiable data regarding inadequacy of representation of the Scheduled Castes and Scheduled Tribes in state services before providing reservation in promotion. The High Court clarified that it is not necessary for the State Government to collect data regarding backwardness of the Scheduled Castes and Scheduled Tribes in the light of the direction of this Court in Jarnail Singh (supra). The High Court also observed that the State is not obligated to provide reservation in promotions to members of Scheduled Castes and Scheduled Tribes as Article 16(4-A) of the Constitution is an enabling provision. However, reservation can be provided by the State Government only after collecting data regarding inadequacy of representation of the Scheduled Castes and 8 | Page Scheduled Tribes in state services. As such, the High Court directed the State Government to collect quantifiable data regarding inadequacy of the representation of the Scheduled Castes and Scheduled Tribes in Government services which would enable the State Government to take a considered decision on providing or not providing reservation. The State Government was directed to take a decision whether to provide reservation or not only after considering the data relating to the adequacy or inadequacy of representation of

Scheduled Castes and Scheduled Tribes in the services of the State within a period of four months from the date of receipt of the judgment. Aggrieved by the order dated 15.11.2019 passed in Review Petition in W. P. (S/B) No.117 of 2019, the Civil Appeal @ S.L.P.(Civil) No.27715 of 2019, Civil Appeal @ S.L.P.(Civil) No.28039 of 2019, Civil Appeal @ S.L.P. (Civil) No.27735 of 2019 and Civil Appeal @ S.L.P.(Civil) No. 28947 of 2019 have been filed.

8. Mr. Ranjit Kumar, learned Senior Counsel appearing for the Appellants in SLP (C) No. 25508 of 2019, Mr. Mukul Rohtagi and Mr. P.S. Narsimha, learned Senior Counsel 9 | Page appearing for the State of Uttarakhand contended that there is no fundamental right to claim reservation in appointments or promotions to public posts. There is no constitutional duty on the part of the State Government to provide reservations. Article 16 (4) and 16 (4-A) are merely enabling provisions. On 15.09.2012, the State of Uttarakhand, after due consideration, decided that there shall be no reservation in promotions. They relied upon the judgment of the High Court of Uttarakhand in Vinod Prakash Nautiyal (supra) by which Section 3 (7) of the 1994 Act was declared unconstitutional. It was submitted by them that the State Government has not brought any law in terms of the judgment of this Court in M. Nagaraj & Ors. (supra). It was urged by the learned Senior Counsel that there is no necessity for collection of any quantifiable data after the Government has taken a decision not to provide reservations. The collection of data, according to them, is required only to justify a decision to provide reservation. It was also submitted by them that according to a judgment of this Court in Suresh Chand Gautam v. State of U.P. 8 no 8 (2016) 11 SCC 113 10 | Page direction can be given by the Court to the State Government to collect quantifiable data on the basis of which a decision to provide reservation should be taken. They placed reliance on the judgment of this Court in M. Nagaraj & Ors. (supra) to argue that the State is not bound to make reservations.

9. On the other hand, Mr. Kapil Sibal, Mr. Dushyant Dave and Mr. Colin Gonsalves, learned Senior Counsel and Dr. K. S. Chauhan, learned counsel, appearing for the reserved category employees submitted that the State cannot refuse to collect quantifiable data regarding the adequacy or inadequacy of representation of the Scheduled Castes and Scheduled Tribes in public services. They submitted that there is an obligation on the State to provide reservations in promotions for upliftment of the members of the Scheduled Castes and Scheduled Tribes as mandated by Article 16 (4) and 16 (4-A) of the Constitution of India. The right to equality of persons belonging to Scheduled Castes and Scheduled Tribes cannot be defeated by the State Government by not discharging its constitutional obligation of implementing Article 16 (4) and 16 (4-A) of the 11 | Page Constitution. They urged before this Court that according to the law laid down by this Court, the State has a duty to decide not to provide reservations only after the State is satisfied that the Scheduled Castes and Scheduled Tribes are adequately represented in public posts on the basis of quantifiable data. According to them, Suresh Chand Gautam (supra) was not correctly decided and needs reconsideration. It was also submitted on behalf of the reserved category candidates that a Committee was constituted by the Government of Uttarakhand to collect quantifiable data regarding the adequacy of representation of persons belonging to Scheduled Castes and Schedules Tribes in public posts in accordance with the judgment of this Court in M. Nagaraj (supra). According to the report submitted by the Committee, there is inadequate representation of the Scheduled Castes and Scheduled Tribes in government services in the State of Uttarakhand. The said report was approved by the State Cabinet. It was contended by the learned counsel that the State Government was duty

bound to provide reservations on the basis of the data that was collected by the Committee.

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10. The central point that arises for our consideration in these appeals is whether the State Government is bound to make reservations in public posts and whether the decision by the State Government not to provide reservations can be only on the basis of quantifiable data relating to adequacy of representation of persons belonging to Scheduled Castes and Scheduled Tribes.

11. Article 16 (4) and 16 (4-A) do not confer fundamental right to claim reservations in promotion. By relying upon earlier judgments of this Court, it was held in *Ajit Singh (II)* (supra) that Article 16 (4) and 16 (4-A) are in the nature of enabling provisions, vesting a discretion on the State Government to consider providing reservations, if the circumstances so warrant. It is settled law that the State Government cannot be directed to provide reservations for appointment in public posts¹⁰. Similarly, the State is not bound to make reservation for Scheduled Castes and Scheduled Tribes in matters of promotions. However, if they wish to exercise their discretion and make such provision, the State has to collect quantifiable data showing ⁹ *Ajit Singh (II) v. State of Punjab*, (1999) 7 SCC 209 ¹⁰ *C.A. Rajendran v. Union of India*, (1968) 1 SCR 721 ¹³ | Page inadequacy of representation of that class in public services. If the decision of the State Government to provide reservations in promotion is challenged, the State concerned shall have to place before the Court the requisite quantifiable data and satisfy the Court that such reservations became necessary on account of inadequacy of representation of Scheduled Castes and Scheduled Tribes in a particular class or classes of posts without affecting general efficiency of administration as mandated by Article 335 of the Constitution¹¹.

12. Article 16 (4) and 16 (4-A) empower the State to make reservation in matters of appointment and promotion in favour of the Scheduled Castes and Scheduled Tribes if in the opinion of the State they are not adequately represented in the services of the State. It is for the State Government to decide whether reservations are required in the matter of appointment and promotions to public posts. The language in clauses (4) and (4-A) of Article 16 is clear, according to which, the inadequacy of representation is a matter within the subjective satisfaction ¹¹ *M. Nagaraj* (supra) ¹⁴ | Page of the State. The State can form its own opinion on the basis of the material it has in its possession already or it may gather such material through a Commission/Committee, person or authority. All that is required is that there must be some material on the basis of which the opinion is formed. The Court should show due deference to the opinion of the State which does not, however, mean that the opinion formed is beyond judicial scrutiny altogether. The scope and reach of judicial scrutiny in matters within the subjective satisfaction of the executive are extensively stated in *Barium Chemicals v. Company Law Board*¹², which need not be reiterated¹³.

13. On the basis of the settled law of this Court pertaining to the scope of Article 16 (4) and 16 (4-A) of the Constitution, we proceed to determine the correctness of the judgments of the High Court. As noted above, the judgment of the High Court in Writ Petition No.117 of 2019 is to the effect that the proceeding dated 05.09.2012 issued by the Government of Uttarakhand by which it was decided to fill up the promotional posts or vacancies without ¹² AIR 1967 SC 295 ¹³ *Indra Sawhney v. Union of*

India (1992) Supp. (3) SCC 217 15 | Page providing reservations to Scheduled Castes and Scheduled Tribes was struck down. It was held by the High Court that the notifications that were issued by the Government of Uttarakhand, providing for reservations, continued to operate. A direction was issued by the High Court that reservation in promotion in favour of the Scheduled Castes and Scheduled Tribes can be made by the State Government without having quantifiable data regarding the backwardness of the Scheduled Castes and Scheduled Tribes or the adequacy of their representation in the Government services.

14. The application filed for review of the judgment in Writ Petition No.117 of 2019 was decided by a judgment dated 08.11.2019 by the High Court. Realising the error committed in its judgment dated 01.04.2019, the High Court modified the judgment by holding that according to the decision of this Court in *Jarnail Singh v. Lachhmi Narain Gupta*¹⁴, the State was obligated to collect quantifiable data regarding the inadequacy of representation of the Scheduled Castes and Scheduled Tribes in public services. 14 (2018) 10 SCC 396 16 | Page The High Court observed that Article 16 (4) and 16 (4-A) of the Constitution are enabling provisions, and the State Government is not obligated to provide reservations in promotion in favour of members of the Scheduled Castes and Scheduled Tribes. The High Court expressed its opinion that reservation in promotion to public posts can be provided by the State Government only after collecting data regarding the inadequacy of their representation in service. In light of the above, the High Court directed the State Government to collect quantifiable data regarding the adequacy or inadequacy of representation of Scheduled Castes and Scheduled Tribes in state services which would enable the State Government to take a considered decision as to whether or not reservation in promotion should be provided in favour of Scheduled Castes and Scheduled Tribes. The collection of quantifiable data was directed to be completed within four months from the date of receipt of the judgment.

15. The High Court committed an error by striking down the proceeding dated 05.09.2012 by which a decision was taken not to provide reservation in promotions without 17 | Page giving any reasons, except stating that the said decision is contrary to the judgments of this Court in *Jarnail Singh* and *Indra Sawhney* (supra). A perusal of the proceeding dated 05.09.2012 would show that the decision taken by the State Government was by way of implementation of the judgment of the High Court of Uttarakhand in *Vinod Prakash Nautiyal* (supra) by which Section 3(7) of the 1994 Act, relating to the provision of reservation in promotion, was struck down. By its judgment dated 10.07.2012 in *Vinod Prakash Nautiyal* (supra), the High Court declared Section 3 (7) of the 1994 Act as contrary to the law laid down by this Court in *M. Nagaraj* (supra). There was a further declaration that no promotion can be given by the State of Uttarakhand by taking recourse to Section 3 (7) of the 1994 Act. However, the State Government was given liberty to bring out another legislation in accordance with the mandate of the Constitution of India, by following the judgment in *M. Nagaraj* (supra). This Court dismissed the SLP filed against the said judgment. At this juncture, it is relevant to mention that certain notifications were issued after the formation of the State of Uttarakhand by which 18 | Page reservation in promotion to public posts as provided in the State of Uttar Pradesh was adapted with certain modifications. As stated above, the Government of Uttarakhand appointed a Committee for collection of quantifiable data pertaining to the adequacy or inadequacy of representation of the members of Scheduled Castes and Scheduled Tribes in public services in the State. The Committee submitted its report, according to which the representation of Scheduled

Castes and Scheduled Tribes is inadequate. The State Cabinet approved the recommendation of the Committee on 12.04.2012. Ultimately, the State Government by a proceeding dated 05.09.2012 decided to set aside all previous Government orders relating to reservation in promotions to Government services in the State. As the Government is not bound to provide reservation in promotions, we are of the opinion that there is no justifiable reason for the High Court to have declared the proceeding dated 05.09.2012 as illegal.

16. The direction that was issued to the State Government to collect quantifiable data pertaining to the adequacy or inadequacy of representation of persons belonging to 19 | P a g e Scheduled Castes and Scheduled Tribes in Government services is the subject matter of challenge in some appeals before us. In view of the law laid down by this Court, there is no doubt that the State Government is not bound to make reservations. There is no fundamental right which inheres in an individual to claim reservation in promotions. No mandamus can be issued by the Court directing the State Government to provide reservations. It is abundantly clear from the judgments of this Court in *Indra Sawhney*, *Ajit Singh (II)*, *M. Nagaraj* and *Jarnail Singh (supra)* that Article 16 (4) and 16 (4-A) are enabling provisions and the collection of quantifiable data showing inadequacy of representation of Scheduled Castes and Scheduled Tribes in public service is a sine qua non for providing reservations in promotions. The data to be collected by the State Government is only to justify reservation to be made in the matter of appointment or promotion to public posts, according to Article 16 (4) and 16 (4-A) of the Constitution. As such, collection of data regarding the inadequate representation of members of the Scheduled Castes and Schedules Tribes, as noted above, is a prerequisite for 20 | P a g e providing reservations, and is not required when the State Government decided not to provide reservations. Not being bound to provide reservations in promotions, the State is not required to justify its decision on the basis of quantifiable data, showing that there is adequate representation of members of the Scheduled Castes and Schedules Tribes in State services. Even if the under- representation of Scheduled Castes and Schedules Tribes in public services is brought to the notice of this Court, no mandamus can be issued by this Court to the State Government to provide reservation in light of the law laid down by this Court in *C.A. Rajendran (supra)* and *Suresh Chand Gautam (supra)*. Therefore, the direction given by the High Court that the State Government should first collect data regarding the adequacy or inadequacy of representation of Scheduled Castes and Scheduled Tribes in Government services on the basis of which the State Government should take a decision whether or not to provide reservation in promotion is contrary to the law laid down by this Court and is accordingly set aside. Yet another direction given by the High Court in its judgment dated 21 | P a g e 15.07.2019, directing that all future vacancies that are to be filled up by promotion in the posts of Assistant Engineer, should only be from the members of Scheduled Castes and Scheduled Tribes, is wholly unjustifiable and is hence set aside.

17. The submission made on behalf of the reserved category candidates that the judgment of this Court in *Suresh Chand Gautam (supra)* needs reconsideration is without substance in view of the findings recorded above. We are in agreement with the decision of this Court in *Suresh Chand Gautam (supra)* in which it was held that no mandamus can be issued by the Court to the State to collect quantifiable data relating to adequacy of representation of the Scheduled Castes and Scheduled Tribes in public services.

18. The High Court was not informed about the appointment of a Committee for collection of quantifiable data and the completion of such exercise by the Committee, which was approved by the State Cabinet. However, the State Government took a conscious decision not to provide reservation in promotions. The direction given by the High Court to collect quantifiable data, therefore, is wholly unnecessary as the State is already in possession of the said data.

19. In view of the aforesaid, the impugned judgments of the High Court in Writ Petition (S/B) No.351 of 2019, Writ Petition (S/B) No.117 of 2019 and Review Application No.389 of 2019 in Writ Petition (S/B) No.117 of 2019 are set aside.

20. The Appeals are disposed of accordingly.

.....J.

[L. NAGESWARA RAO]J.

[HEMANT GUPTA] New Delhi, February 07, 2020.

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