

(Non-Reportable)

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

TRANSFER PETITION (CIVIL) NO. 2592 OF 2019

Sunil Rathee & Ors. . .PETITIONERS

VERSUS

The State of Haryana & Ors. . .RESPONDENTS

J U D G M E N T

ANIRUDDHA BOSE, J.

The petitioners in this proceeding seek transfer of a writ petition registered as CWP No 7607 of 2019 (O & M) (the writ petition) pending in the High Court of Punjab and Haryana to this Court. The main ground on which such plea is made is that this Court is hearing certain appeals on near identical point to the one which forms subject of controversy in the aforesaid Writ Petition. The said appeals are registered as Civil Appeal Nos. 9546-9549 of 2016 (**State of Gujarat and Ors. etc. Vs. Ms Dulari Mahesh Basagre & Anr. etc**). In the writ petition, under challenge is a notification issued by the State of Haryana bearing no. 733 SW (1)- 2013 dated 27th September 2013

providing for 10% vertical reservation for economically backward persons in general category in certain fields of public employment. According to the petitioners, such reservation would take the total number of reserved posts beyond the 50% limit laid down by this Court in the cases of **Indra Sawhney Vs. Union of India** [1992] Supp (3) 217] and **M. Nagaraj Vs. Union of India** [2006 (8) SCC 212]. The petitioners' specific grievance is in relation to such reservation in recruitment of shift attendants, category-I for which posts they are aspirants from the general category. The process of such recruitment was initiated by a recruitment advertisement issued by the Haryana Staff Selection Commission (the Commission) on 20th February 2016. It appears from the pleadings in the writ petition, a copy of which has been annexed to the present petition, that out of the 2426 posts of "shift attendants" in category-I advertised, 674 posts were for general category and the rest were reserved.

2. The writ petitioners have participated in the selection process for category I of shift attendant which was initiated by a public advertisement issued on 20th February 2016. There was 10% reservation for economically backward persons category, commonly

referred to as (EBPG category) in terms of the said notification of 2013. The petitioners in their writ petition have contended that they are hopeful of being selected for the job in the event the 10% reservation of the EBPG category is removed. It is in this perspective they brought the writ petition before the Punjab and Haryana High Court questioning the reservation provisions contained in the said notification of 2013. I am apprised by the learned counsel appearing for the parties that several other writ petitions have also been filed in the same High Court with similar grievances. The main reason for pressing the present petition under Article 139A of the Constitution of India is that on identical point the Gujarat High Court has, in the case of **Dayaram Khemkaran Vs. State of Gujarat and Others**, invalidated an ordinance issued by the State of Gujarat (Gujarat Ordinance No. 1 of 2016) providing reservation of seats in the educational institutions in that State and of appointments and posts in the services under the state in favour of economically weaker sections of the unreserved categories and that decision is under appeal before this Court. The Gujarat High Court has relied on, inter-alia, the case of **Indra Sawhney** (supra), for coming to such conclusion in the

judgment under appeal. Leave has been granted by this Court under Article 136 of the Constitution of India in the petitions for special leave to appeal filed by the State of Gujarat (C.A 9546-49/16) and these appeals involve the same or similar constitutional and legal questions on the basis of which the writ petition has been instituted before the Punjab and Haryana High Court.

3. The State of Haryana has opposed the plea for transfer and reliance has been placed on their behalf on a decision of this Court in the case of **Commissioner of Services Tax vs. Sri Selvaganapathy and Co.** [2018(4) SCC 578]. In this case, it has been observed:-

“The ground that the same issue is pending before this court in Civil appeal No. 2013 of 2014 is not sufficient ground for transfer of the writ proceedings from the High Court to this Court in as much as once the decision of this Court is rendered in the aforementioned civil Appeal, the same can be brought to the notice of the High Court and in the meantime the High Court can be requested to defer the proceedings in the writ petitions pending before it.”

4. It has been urged on behalf of the State respondents that the petitioners ought to wait for the judgment in the Civil Appeals instead

of skipping one layer of the judicial hierarchy. It has also been argued on behalf of the State that the petitioners had approached the High Court after 4 years of issue of the notification dated 27th September 2013. The other authority relied upon by the State is the case of **Lunawat Construction vs. Union of India** [2019(5) SCC 467]. In this case, it has been held that no prejudice would be caused to the parties if there is adjudication of the matter by the High Court at the first instance instead of the Supreme Court. But that observation was made in a writ petition filed under Article 32 of the Constitution. That authority does not assist the State respondents. There are three applications for impleadment by Saurabh Nagwan (I.A. No. 10146 of 2020), Shrikant (I.A. No. 49252 of 2020) and Deepak (I.A. No. 49255 of 2020). They claim to be amongst the successful candidates from the EBPG category for the said posts and they make this claim on the basis of result declared on 8th March, 2019 by the Commission in respect of the same selection process. On their behalf, it has been argued that they have vital interest in the subject matter of this proceeding as their engagement to the posts is held up because of the pendency of the present transfer petition. They have sought to

distinguish the legal position between the writ petition of which transfer is sought for vis-à-vis the legal and factual basis of Civil Appeal Nos. 9546-9549 of 2016 pending before this Court. It has been pointed out on their behalf that the Gujarat High Court has decided the matter prior to introduction of Article 15 (6) and Article 16 (6) to the Constitution of India by way of Constitution (One Hundred and Third Amendment) Act, 2019, enabling the State to provide for 10% reservation of economically weaker sections of the citizens.

5. It has also been urged by the intervenors that in course of hearing of the writ petitions before the High Court, the learned Advocate General of Haryana on 16th May 2019 made a statement that status-quo in respect of appointment in EBPG category would be maintained by the State as it existed on that date till the next date of listing, which was 12th July, 2019. It appears that the same position still continues. The intervenors also seek to distinguish the factual basis of pending appeal from that of the subject writ petition in that the 10% reservation made by the Gujarat Ordinance and the Haryana notification were on the basis of recommendations from different

bodies and the case from the State of Gujarat had been finally decided by the High Court whereas the aforesaid writ petition is still pending. It was also outlined by the intervenors that the writ petitioners had participated in the selection process and on being unsuccessful, they were challenging the selection process. On this count, certain authority has been cited. But these are really submissions on merit. So far as the plea of the petitioners before this Court in the present proceeding is concerned, such submissions on merit are not of much relevance.

6. The provision of Article 139A of the Constitution relating to withdrawal of a case from a High Court to this Court on the ground of pendency before this Court of a case involving same or similar questions of law contemplates fulfilment of two conditions. First, in the case pending before this Court, the questions of law involved ought to be the same or substantially the same as those involved in the case in the High Court, the withdrawal of which can be asked for. Secondly, this Court, while exercising the jurisdiction vested in it under Article 139A of the Constitution must be satisfied that such questions are substantial questions of general importance. Such

satisfaction can be on this Court's own motion, on an application made by the Attorney General or on the basis of an application made by a party to any such case. One of the key points involved in the appeal of the State of Gujarat in the case of **Ms Dulari Mahesh Basagre & Anr** (supra) is as to whether the Ordinance involved therein is contrary to the ratio laid down by this Court in the case of **Indra Sawhney** (supra) or not. The writ petition before the Punjab and Haryana High Court is also anchored on the same authority, in assailing the notification of 27th September 2013. I am also satisfied that the writ petition pending before the Punjab and Haryana High Court as also the appeal in the case of **State of Gujarat (supra)** involve substantially the same questions of law and these questions are of general importance. The fact that the Gujarat Ordinance was promulgated before coming into effect of the Constitution (One Hundred and Third amendment) Act, 2019 does not have significant distinguishing impact so far as the questions forming the basis of the said Civil Appeal and the Writ Petition pending before the Punjab and Haryana High Court are concerned. I have already referred to the key

point forming the subject of controversy in the said Appeal and the Writ Petition.

7. The decision in the case of **Sri Selvaganapathy** (supra) was cited by the State respondents in support of their contention that the pending writ proceedings could wait for the final outcome of the Civil Appeal. On behalf of the petitioners, on the other hand, the case of **L.K. Venkat vs. Union of India** [2012 (5) SCC 292] was referred to. This was a case arising out of a Writ Petition filed in the Madras High Court for quashing of order of rejection of clemency petition by the President. In that case, one of the grounds for seeking transfer was that the questions raised in the writ petition was identical to the question raised in two other cases pending before this Court, being Writ Petition (Criminal) D. No. 16039 of 2011 and S.L.P (Criminal) No. 1105 of 2012. This Court found in the case of **L.K. Venkat** (supra) that the common question was whether long delay in deciding a mercy petition entitled the convict to seek commutation of death sentence or not. The petition was allowed by this Court.

8. Article 139A vests this Court with jurisdiction to direct transfer or withdrawal of a case pending in a High Court to this Court on two grounds, to which I have referred earlier. On satisfaction of these conditions, this Court can make direction in exercise of its discretion for withdrawing the case for disposal of the same by itself. The manner in which such discretion would be exercised would vary from case to case. The decision of this Court in **Sri Selvaganapathy and Co.** (supra) cannot be held to have laid down any absolute proposition of law guiding transfer or withdrawal of a case from a High Court to this Court. The course mandated by this Court in the case of **Sri Selvaganapathy and Co.** (supra) was in the facts of that particular case. So far as the three intervention applications are concerned, in dealing with a petition under Article 139A of the Constitution of India, I do not find any reason to allow the applicants' plea for being impleaded. I do not see any possibility of their interest being prejudiced if I direct withdrawal of the writ petition from the Punjab and Haryana High Court to this Court. Once the writ petition is withdrawn or transferred to this Court, they can always come back

with similar plea for impleadment. All the three applications for intervention shall accordingly stand dismissed.

9. The points involved in the said Civil Appeal and the Writ Petition pending in the High Court of Punjab and Haryana require adjudication of substantially the same questions of law. These questions have arisen in two different States and in my opinion these are substantial questions of general importance.

10. I accordingly direct withdrawal of CWP No. 7607 of 2019 (Sunil Rathee and Ors. Vs. State of Haryana & Ors.) pending in the High Court of Punjab and Haryana to this Court for disposal of the said Writ Petition.

11. Let the records of the said case be transferred to the Registry of this Court by the Registrar General, High Court of Punjab and Haryana forthwith. On receiving the records, the same shall be placed before the Hon'ble Bench before hearing Civil appeal No. 9546-49 of 2016 for appropriate direction. The Transfer Petition stands allowed.

12. All other connected applications shall also stand disposed of in the same terms.

13. There shall be no order as to costs.

.....J.
(Aniruddha Bose)

New Delhi

Dated: 23rd July, 2020