

## Single post can be reserved

**C**AN a solitary post in a particular cadre be reserved for Scheduled Castes or Scheduled Tribes? Can a reserved post be de-reserved and be filled by appointing a general-category candidate? Is the rule permitting carry-forward of reserved vacancies, constitutional? These are the questions considered by a Bench of the Supreme Court in a recent ruling. (JT 1997(4) SC 750).

In Aarti Ray Chaudhury v. Union of India (1974 1 SCC 87), a Constitution Bench had held that reservation in promotion to a single post is not unconstitutional. The court later re-surveyed the case law in this regard in Union of India v. Madhav (JT 1996(9) SC 320) and held that even though there is only a single post, if the Government has applied the rule of rotation and the roster point to the vacancies that had arisen in the single post, such a rule is not violative of Article 16(1) of the Constitution.

Same view has been reiterated in several subsequent judgments. Thus it is the settled position that reservation provided to a single post on the basis of the rule of rotation is not unconstitutional.

In a recent judgment, the court had held that when a Scheduled Caste candidate is available to fill a post reserved for them, resort to de-reservation is clearly illegal (JT 1997(4) SC 212). Whether or not reserved vacancies should be de-reserved is a matter falling primarily within the administrative discretion of the Government.

But there is no right in general candidates to seek filling of the vacancies belonging to the reserved category and to insist on de-reservation of the reserved

vacancies.

A given rule may say that the unfilled reserved vacancies shall not be filled by unreserved category candidates, but shall be carried forward as such for a period of three years. However, in each recruitment year the carry-forward rule cannot exceed 50 per cent of the vacancies.

The carry-forward rule is constitutionally permissible

ion Bench ruling that a solitary vacancy in the relevant year cannot be treated as a reserved one, as that would amount to reservation of 100 per cent in violation of Articles 14 and 16(1) of the Constitution.

A Division Bench affirmed the order in appeal, taking the view that there could not be any reservation at all in a single-post cadre.

In this case, the Government

## COURT Diary

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because it is an extension of the principle of providing facility and opportunity to secure adequacy of the representation to the dalits and the tribes mandated by Article 335.

Thus, according to the Bench, it is the settled legal position that application of roster to a single-post cadre and appointment by promotion to carry-forward post is valid and constitutional.

In this case, Bhagat Ram, a reserved-category candidate, was appointed by the Punjab Government, to a single post in a cadre in the Department of Industries, reserved for Scheduled Caste candidates as per the roster. G S Gill, a general-category candidate, challenged it contending that since it was the solitary post, reservation in favour of SC would amount to 100 percent reservation violating Article 16(1) and 14 of the Constitution.

A Single Judge of the Punjab and Haryana High Court, though was of the view that constitutionally it was permissible, allowed the writ petition as he was bound by an earlier Divis-

ion Bench ruling that a solitary vacancy in the relevant year cannot be treated as a reserved one, as that would amount to reservation of 100 per cent in violation of Articles 14 and 16(1) of the Constitution.

## Employers' share of ESI

**T**HE Employees State Insurance Act is a piece of social security enactment. It is intended to provide for certain benefits to persons employed in factories and other establishments in case of sickness, maternity, employment-injury, etc. Employers are bound to pay contributions on the basis of wages paid to the employees covered by the ESI Scheme.

Are construction workers employed by an establishment through a contractor for the construction/repairs of its office building, are "employees" within the meaning of section 2(9) of the Act? Is the establishment liable to pay ESI contribution in respect of the amount paid to the contractor for paying wages to the workers?