

(1978) 02 KL CK 0037

High Court Of Kerala

Case No: O.P. No. 932 of 1977

Raveendra Raju

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision: Feb. 15, 1978**Acts Referred:**

- Constitution of India, 1950 - Article 14, 16, 16(1), 330, 332
- Kerala State and Subordinate Services Rules, 1958 - Rule 14, 17, 17A, 17B

Hon'ble Judges: Balakrishna Eradi, J; Balagangadharan Nair, J**Bench:** Division Bench**Advocate:** K.S. Rajamony, A. Shahul Hameed and Ciby Mathew, for the Appellant; C.S. Rajan, Government Pleader for 1st Respondent and T.P. Kelu Nambiar, for 2nd Respondent, for the Respondent**Final Decision:** Dismissed

Judgement

Balakrishna Eradi, J.

On 28th January 1977 the Kerala Public Service Commission issued the notification Ext. P-1 inviting applications from qualified persons for selection to undergo training in the Diploma Course in Forestry 1977-79 at the State Forest Service College Research Centre, Burnihat (Assam-Meghalaya Border). It was stated in the notification that while the number of candidates to be selected was two, one alone was to be selected from the open market and the other post was reserved for candidates from among the Scheduled Castes and Scheduled Tribes under the Special Recruitment Programme. The writ Petitioner who is a person belonging to a Scheduled Caste, namely Sambava Community, applied in response to Ext. P-1 for recruitment to the reserved post. After conducting a written test, interview, etc., the Public Service Commission published a ranked list -- Ext. P-2 -- containing names of candidates selected under the Special Recruitment Programme. The Petitioner was assigned the first rank in that list. The 3rd Respondent who is a candidate belonging to a Scheduled Tribe was ranked as the fourth in the list. The Public Service

Commission by its memo Ext. P-3 dated 1st March 1977 informed the 3rd Respondent that he had been advised for deputation to the Diploma Course in question and for eventual appointment as Assistant Conservator of Forests in the Forest Department. The Petitioner contends that since there was only one vacancy and he had obtained first rank in the select list the Public Service Commission acted illegally in advising the 3rd Respondent who had secured only a lower rank by relying on certain directions contained in the Government orders evidenced by Exts. P-4 and P-5 purporting to lay down a principle of rotation between the candidates belonging to Scheduled Castes and those belonging to Scheduled Tribes. The Petitioner has sought a declaration that Exts. P-4 and P-5 are inconsistent with the provisions of Rule 17A of the Kerala State and Subordinate Services Rules, and also violative of Article 16 of the Constitution and hence are Illegal and Void. Another prayer in the writ petition is that the memo Ext. P-3 issued by the Public Service Commission to the 3rd Respondent should be quashed and that a declaration should be granted by this Court that the Petitioner is entitled to be selected and deputed for undergoing the training in the Diploma Course in Forestry on the basis of his ranking in the select list Ext. P-2.

2. Rule 17A of the Kerala State and Subordinate Services Rules reads:

Notwithstanding anything contained in these rules or in the special rules, the State Government may reserve a specified number of posts in any service, class, category or grade to be filled by direct recruitment exclusively from among the members of Scheduled Castes and Scheduled Tribes.

In exercise of the power conferred by the above rule, which is obviously an enabling provision the State Government by G.O.(P) 263/70/PD., dated 6th August 1970 ordered that a special recruitment of candidates belonging to Scheduled Castes/Scheduled Tribes should be made to 1 per cent of the gazetted posts and 5 per cent of the non-gazetted posts which are to be filled up by direct recruitment in each department of the Government. Subsequently by another Government Order, dated 13th April 1972 it was further directed that if two or more posts in the gazetted category are so earmarked in a department for such special recruitment one post should be reserved for Scheduled Tribes and it is only if no qualified hands from Scheduled Tribes are available that the said post should be filled up from Scheduled Castes. It is also stated in that G.O. that the rest of the gazetted posts earmarked for special recruitment will be open to both Scheduled Castes and Scheduled Tribes. Some similar directions were issued in respect of non-gazetted posts earmarked for special recruitment in a Government Order, dated 29th November 1973, but since we are not concerned in this case with a non-gazetted post it is unnecessary to advert to the terms of that G.O.

3. It would appear that certain difficulties were experienced by the Public Service Commission in implementing the above orders of the Government in the matter of reserving vacancies to Scheduled Tribes and as a result of such difficulties the

making of special recruitment was being held up. Hence the Public Service Commission had requested the Government for clarification of those aspects. The whole matter was, therefore, re-examined by the Government and a comprehensive order for regulating the special recruitment to both gazetted and non-gazetted posts was issued by the Government as per Ext. P-4, dated 17th January 1976 in supersession of the earlier orders, dated 13th April 1972, 26th June 1972 and 29th November 1973. The operative provisions of the G.O. are contained in Clauses (i) to (vi) thereof. Clause (i) states that if two or more posts are earmarked for special recruitment to gazetted posts in any department, the second turn and thereafter the 7th, 12th, 17th and so on shall be reserved for Scheduled Tribes and if no qualified candidates from Scheduled Tribes are available for recruitment the vacancies reserved for them will be filled by Scheduled Castes. It was further stated in Clause (i) that the Scheduled Tribes are eligible for appointment against the non-reserved vacancies on condition that if a Scheduled Tribe candidate secures appointment against a non-reserved vacancy the next turn of the Scheduled Tribe candidates shall be dereserved. We are not concerned with the provisions of Clause (ii) since it deals with only the procedure for special recruitment to non-gazetted posts. In Clause (iii) the Government approved the proposal of the Public Service Commission that the turns reserved for Scheduled Tribes and filled up by Scheduled Castes can be compensated in the next selection to be made within three years. Clause (iv) deals with the fixation of turns to be reserved for Scheduled Tribes in respect of non-gazetted posts. In Clause (v) Government have issued a direction to all Heads of Departments and other appointing authorities that vacancies for special recruitment are not to be divided by them between Scheduled Castes and Scheduled Tribes and that it is for the Public Service Commission to select Scheduled Caste or Scheduled Tribe candidates as the case may be in accordance with the orders issued by the Government concerning the matter. In Clause (vi) of Ext. P-4 the Government have clarified that the orders regarding the reservation of posts for Scheduled Tribes in special recruitment are to be effective only from 13th April 1972 in the case of gazetted posts and 26th June 1972 in the case of non-gazetted posts. Pursuant to some suggestions received from the Public Service Commission the Government by the order Ext. P-5 -- G.O.(P) 397/76/PD., dated 18th November 1976 -- substituted the following in the place of Clause (i) of Ext. P-4:

(1)(a) In cases where only one vacancy has been earmarked for special recruitment, the candidate who secures the top rank in the ranked list will be appointed to the post whether he belongs to Scheduled Castes or Scheduled Tribes. If the candidate so appointed leaves service after joining duty, the resultant vacancy will be filled up by the next candidate in the ranked list irrespective of the fact whether he belongs to Scheduled Caste or Scheduled Tribe.

(b) If two or more posts are earmarked for Special Recruitment to gazetted posts in any department the 2nd and thereafter the 7th, 12th, 17th and so on shall be reserved for Scheduled Tribes. If no qualified candidates from Scheduled Tribe are

available for recruitment, the vacancies reserved for them will be filled up by Scheduled Castes. The Scheduled Tribes are eligible for appointment against the non-reserved vacancies on condition that if the Scheduled Tribe candidate secures appointment against a non-reserved vacancy on merit, the next turn of the Scheduled Tribe candidate shall be de-reserved in favour of a Scheduled Caste candidate.

Note. -- In case special recruitment is made to 6 gazetted posts and one of the candidates vacates the post after joining duty, the resultant vacancy will be treated as the 7th vacancy and will be filled up by a Scheduled Tribe candidate, provided no de-reservation is necessitated consequent on the filling up of non-reserved turns by Scheduled Tribe candidates, even though there are Scheduled Caste candidates with higher ranks in the select list.

The contention of the Petitioner is that since under the notification Ext. P-1 only one vacancy had been earmarked for special recruitment it is Clause (1)(a) of Ext. P-4 as amended by Ext. P-5 that applied to the present case and the Petitioner who had secured the top rank in the ranked list was entitled to be advised for deputation to the training course irrespective of whether he belonged to the Scheduled Caste or Scheduled Tribe. We do not find it possible to accept this contention.

4. It is clear on an examination of the scheme for special recruitment laid down in the G.O dated 6th August 1970 referred to in Ext. P-4 that what is contemplated thereunder is that certain specified percentages of posts belonging to the gazetted and non-gazetted categories in each department of the Government should be earmarked for special recruitment of persons belonging to Scheduled Castes and Scheduled Tribes. Clause (1)(a) is intended to cover only cases where on the application of the said percentage only one gazetted post has been earmarked in a particular department for special recruitment. It is obvious that in using the expression "one vacancy" in Sub-clause (a) of Clause (1) what was really meant was "one post" because the parent G.O. dated 6th August 1970 does not envisage the reservation of any particular vacancy as such but only the reservation of a definite percentage of the total number of gazetted or non-gazetted posts available in the department.

5. It is not disputed that more than one post in the category of Assistant Conservator of Forests in the Forest Department has been earmarked for special recruitment of Scheduled Castes/Scheduled Tribes candidates by the process of selection for undergoing the Diploma Course. Such a special recruitment for deputation for undergoing the training in diploma course had first been made in 1976. The post notified under Ext. P-1 in January 1977, was the second post earmarked in the Department for such special recruitment to the gazetted category of Assistant Conservator of Forests. Hence, it is the provision contained in Clause (1)(b) of Ext. P-4 (as amended by Ext P-5) that is applicable to the case. Under the said provision the second post is to be reserved for Scheduled Tribe candidates and

it is on that basis that the Public Service Commission has advised the 3rd Respondent who is a candidate belonging to Scheduled Tribes included in the select list. The action taken by the Public Service Commission is, therefore, quite in accordance with the principles enunciated in Exts. P-4 and P-5.

6. The Petitioner has, however, raised a contention that Exts. P-4 and P-5 are inconsistent with the provisions of Rule 17A of the Kerala State and Subordinate Services Rules. The argument is that since the said rules empowers the State Government only to reserve a specified number of posts in any service, class, category or grade to be filled up by direct recruitment exclusively from among the members of the Scheduled Castes and Scheduled Tribes, all personnel fulfilling the aforesaid description of "members of Scheduled Castes and Scheduled Tribes" are to be treated as forming one composite group and it is not permissible to make any distinction inter se as between members of Scheduled Castes and members of Scheduled Tribes in the matter of implementation of the provisions of the rule. It is further contended that the provisions contained in Exts. P-4 and P-5 for reservation of some of the posts earmarked for special recruitment in favour of members of Scheduled Tribes are violative of Article 16 of the Constitution. We do not see any merit in either of the aforesaid contentions.

7. Rule 17A of the Kerala State and Subordinate Services Rules is only an enabling provision conferring power on the State Government to reserve a specified number of posts in any service, class, category, etc., to be filled by direct recruitment exclusively from members of Scheduled Castes and Scheduled Tribes. Article 16 of the Constitution while guaranteeing to all citizens equality of opportunity in matters relating to employment or appointment to any office under the State has expressly saved by Clause (4) thereof the right of the State to make provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State. Provisions in this regard have been made in this State by Rules 14 to 17B of the Kerala State and Subordinate Services Rules. While Rules 14 to 17 provide for application of certain principles of rotation while effecting appointment by direct recruitment, the field of recruitment being unrestricted except by the relevant stipulations relating to age, qualification, etc., and the rules of rotation being applied only at the stage of advising candidates from out of the select list, Rule 17A provides for the reservation of a specified number of posts in any service, class, category, etc., to be filled by direct recruitment exclusively from among the members of Scheduled Castes and Scheduled Tribes. While conferring the general power on the Government to reserve certain posts to be filled up by special recruitment exclusively from members of the Scheduled Caste and Scheduled Tribes the rule has not placed any fetter on the discretion of the Government to decide about the manner in which such reservation should be given effect to. It was, therefore, fully within the legal competence of the Government to lay down by executive orders such procedure for working out the reservation as would, in its

opinion, most effectively help to achieve the purpose underlying the provision for special recruitment incorporated in Rule 17A.

8. It is stated in the counter-affidavit filed on behalf of the State Government that the intention of the Government in issuing Exts. P-4 and P-5 was to ensure justice to the candidates belonging to the Scheduled Tribes who generally are comparatively more backward than those belonging to the Scheduled Castes and therefore are in need of greater protection. It is further mentioned in the counter-affidavit that it is for the purpose of preventing all the vacancies earmarked for special recruitment being filled up only by candidates belonging to the Scheduled Castes which might be the result if candidates belonging to Scheduled Castes and Scheduled Tribes have to compete together on merit for all the posts earmarked for special recruitment that a very small percentage of vacancies has been ordered under Exts. P-4 and P-5 to be reserved for candidates belonging to the Scheduled Tribes by fixing a turn of rotation of vacancies.

9. Even under the Constitution, Scheduled Castes and Scheduled Tribes have been treated as separate classes and not as a composite group. They are defined separately in Clauses (24 and 25) of Article 366 and the separate provisions made in respect of Scheduled Castes and in respect of Scheduled Tribes in Articles 330, 332, 341 and 342, etc., all go to show that the two groups have been dealt with in the Constitution as separate and distinct from one another. It cannot be gain said that members of the Scheduled Tribes are by and large very much more backward socially, educationally and economically than members of the Scheduled Castes. Any scheme of reservation of posts in favour of such backward classes of citizens cannot but take due note of this grim reality. What the State Government has done under the impugned orders Exts. P-4 and P-5 is to effect a classification between candidates belonging to Scheduled Castes and those belonging to Scheduled Tribes after taking into account the greater degree of backwardness from which the latter group suffers and to make provision for a reservation of a small percentage of the posts earmarked for special recruitment in favour of candidates belonging to Scheduled Tribes by stipulating that the second and thereafter every following fifth turn shall be reserved for candidates belonging to the Scheduled Tribes. We do not see any illegality whatever in the provision for such reservation made by Exts. P-4 and P-5. As already pointed out, the members of the Scheduled Tribes being more backward socially, educationally and economically compared to members of the Scheduled Castes there is ample justification for the two groups being classified separately and such a classification has undoubtedly a rational nexus with the object and purpose underlying Rule 17A, namely that of securing adequate representation in the services to the backward classes of citizens and more especially members of the Scheduled Castes and the Scheduled Tribes. As pointed out by the Supreme Court in [State of Kerala and Another Vs. N.M. Thomas and Others](#), the basic concept of the equality guaranteed by Article 16(1) of the Constitution is equality of opportunity for appointment to any office under the State and it is only by giving

preferential treatment for members of backward classes that such equality of opportunity can be really brought about. "Equality of opportunity for unequals can only mean aggravation of inequality." As observed by Ray, C.J. at page 497:

Discrimination is the essence of classification. Equality is violated if it rests on unreasonable basis. The concept of equality has an inherent limitation arising from the very nature of the constitutional guarantee. Those who are similarly circumstanced are entitled to an equal treatment. Equality is amongst equals.

If unequals are treated alike that would amount to a violation of the guarantee of equality of opportunity. No violation of Articles 14 and 16 of the Constitution is, therefore, involved in the provision contained in Exts. P-4 and P-5 for the reservation of a few turns for appointment in favour of members of the Scheduled Tribes. It is relevant to note in this connection that Rules 14 to 16 of the Kerala State and Subordinate Services Rules, which lay down the procedure to be followed in effecting appointments by direct recruitment in cases where the rules of reservation are made applicable by the concerned special rules, have prescribed certain principles of rotation and sub-rotation and also for reservation of turns, in order that the posts reserved for backward classes may be evenly and equitably distributed amongst the various groups of backward classes. It is the same procedure in a much more simplified form that has been prescribed by the Government under Exts. P-4 and P-5 for regulating the special recruitment provided for under Rule 17A. The directions contained in Exts. P-4 and P-5 are not in any way inconsistent with the provision contained in Rule 17A nor are they violative of the principle of equality enshrined in Articles 14 and 16 of the Constitution. The contentions to the contrary advanced by the writ Petitioner will, therefore, stand rejected.

10. We have found that the present case is covered by Clause (1)(b) of Ext. P-4, as amended by the order Ext. P-5, and that the notification Ext. P-1 being in respect of the second post in the gazetted category of Assistant Conservator of Forests earmarked in the Department for special recruitment the turn was of a candidate belonging to the Scheduled Tribes. Since there was such a candidate, namely the 3rd Respondent, included in the select list Ext. P-2, the action taken by the Public Service Commission in advising the 3rd Respondent for the post was perfectly valid and legal.

11. It follows from the foregoing discussion that this writ petition is devoid of merit and that it has only to be dismissed. We do so but, in the circumstances, direct the parties to bear their respective costs.