

Janardhanan Vs. State of Kerala

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SooperKanoon Citation : sooperkanoon.com/723082

Court : Kerala

Decided On : Feb-13-2006

Reported in : 2006(2)KLT607

Judge : M. Ramachandran and; A.K. Basheer, JJ.

Acts : Kerala State and Subordinate Services Rules - Rules 3, 14 to 17 and 20

Appeal No. : W.A. No. 2199 of 2005

Appellant : Janardhanan

Respondent : State of Kerala

Advocate for Def. : P.C. Sasidharan, Adv. and; Vaheeda Babu, Government Pleader

Advocate for Pet/Ap. : P. Chandrasekhar,, S.K. Devi,, K.P. Pradeep (Payyannur)

Disposition : Appeal dismissed

Judgement :

M. Ramachandran, J.

1. Although by separate judgments the claims raised by the petitioners in the respective Writ Petitions stand rejected, the appeals were jointly heard and are disposed of together. The appeals have come to be filed pointing out that the

judgments require to be re-examined, especially in the light of certain precedents, which had been omitted to be noticed.

2. Petitioners in the Writ Petitions had responded to notifications issued by the Kerala Public Service Commission for selection and appointment to the post of Higher Secondary School Teachers (Junior) in different subjects. The facts, excepting in W.A.No. 2199 of 2005, are similar in all respects and we may advert to the pleadings in W.A.No. 2104 of 2005 for the purpose of discussions.

3. The appellants there were the petitioners in W.P.(C) No. 17364 of 2005. They had responded to the notifications and had come to be included in the supplementary list published by the Kerala Public Service Commission, arraying the names of Ezhava candidates, a notified 'Other Backward Community' . However, they were not conferred with appointments in the circumstance that the main list got exhausted, and in the above state of affairs it would not have been possible to advise candidates from the supplementary list. It was not disputed that during the pendency of the rank list, vacancies had been reported but the stand of the Public Service Commission is that such vacancies could be filled up only by candidates selected by a fresh process of selection, as it would not have been permissible for advising candidates from the supplementary list, after the last candidate in the main list stood advised for appointment.

4. The Public Service Commission had drawn sustenance from the observations of the Supreme Court in its judgment in *Nair Service Society v. District Officer, Kerala Public Service Commission* (2003 (3) KLT 1126) and had adopted a stand that it was not permissible for the Public Service Commission to operate a supplementary list, when the candidates in the main list stood exhausted. According to them, a supplementary list had no independent existence; and the contention had found acceptance. However, Sri. P. Chandrasekhar, appearing for the appellants submits that the Supreme Court had not noticed an earlier decision rendered by the Constitution Bench, reported in *P.K. Sabharwal and Ors. v. State of Punjab and Ors.* : [1995]2SCR35 and the position as well as the contentions therefore require to be reexamined. It is not as if, the counsel submits, that the supplementary list is to be altogether ignored, when the principle is well

established that candidates Included in the rank list are entitled to be appointed to the vacancies which are reported during the life period of the rank list. Counsel also refers to the first proviso to Rule 15(c) of the Kerala State and Subordinate Services Rules and points out that the rules had been careful enough to lay down that the prohibition of exceeding 50% of reservation was to be with reference to one year, and in so far as vacancies earmarked to be filled up by reservation candidates alone were requested to be filled up although from the supplementary list, there was no violation of any procedure, as apprehended by the Public Service Commission, since the outcome of the exercise would always be that reservation was well restricted to 50% of the vacancies. This position, according to him, has found recognition in Sabharwal's case. Counsel also submits that there was never any possibility of presence of any excess reservation hands, but the learned Judge erroneously considered him as bound by the judgment in NSS case (cited supra).

Therefore the legal position as above requires to be appropriately clarified.

5. The submission as above, according to the standing counsel for the Kerala Public Service Commission, may not be sustainable, as in effect the request of the appellants is to overlook the impact of the judgment in NSS case where the issue had been directly involved and in any case such an exercise is not within the powers of a Division Bench of this Court. It is pointed out that the observations in the judgment in Sabharwal's case (cited supra) were to be understood with reference to the later decisions and since the above decision referred to general principles, and not with specific reference to the relevant rules. Pointed attention of the Supreme Court to the question had been received only in NSS case (cited supra) and an attempt to draw a distinction therefore might not be justifiable or sustainable.

6. He points out that a due selection had been held and a rank list had been prepared, which was never subjected to any challenge. Further, it was obligatory for the Public Service Commission to follow the procedure prescribed by Rule 14 to 17 of the Kerala State and Subordinate Services Rules. A supplementary list of candidates pertaining to a community is intended to see that the principle of

rotation worked as prescribed by the Rules and the chances of a reserved community were not lost because of paucity of personnel. Supplementary list is constituted of candidates who were not meritorious enough to be included in the main merit list. The principles of rotation always require that alternative vacancy always went in favour of a merit candidate, and when candidates in the main list got exhausted, automatically the supplementary list lost its relevance and became inoperative. According to him, the proviso to Rule 15(c) of the KS & SSR has no application to the facts of the case. We may examine the rival contentions in the aforesaid background.

7. Sri. Chandrasekhar suggested that the decision of the Supreme Court in NSS case had come to be taken without taking notice of all relevant aspects. We are afraid it may not be possible to accept any such contentions. The specific issue highlighted therein was the right of the candidates, included in the supplementary list for appointment, as agitated herein. Also the claims of candidates, who had opportunity to be accommodated against NJD places were the subject matter of the decision. By a reasoned judgment, after taking notice of the Kerala State and Subordinate Services Rules and the PSC Rules of Procedure, in categorical terms the Court had found that it could not have been possible to raise a contention that after the exhaustion of candidates included in the list on the basis of merit, a supplementary list could have been operated. Practically the discussions have to come to an end here.

8. But, we may also notice the mechanism prescribed by the Service Rules. All first appointments to the service shall be made by the appointing authority on the advice of the Commission in respect of specified posts. (Rule 3). Rule 14 of the Kerala State and Subordinate Services Rules provides that generally principles of reservation of appointments are to be applied in respect of appointment by direct recruitment. In fact, Rules 14 to 17 elaborately deal with the manner and method in which such principles are to be applied. The Schedule in Part I of the KS & SSR refers to 68 recognised group of Scheduled Castes in the State. There are as much as 35 categories of Scheduled Tribes entitled to reservation in public employment. Likewise, the number of Other Backward Classes in the State are 76 and there is also reference to reservations as are available regionwise. Rule 14

further provides that the unit of appointment for the purpose of the Rule is 20. Two vacancies are to be reserved for Scheduled Castes and Scheduled Tribes and 8 vacancies are to be reserved in favour of Other Backward Classes. Of course, the reservation is in addition to the rights of candidates belonging to the respective community for claiming selection on the basis of merit. It is made clear that the number of posts reserved are not to be affected by selection of persons belonging to said categories in the merit quota.

9. Under Rule 14(c) of the KS & SSR, appointments are to be made in the order of rotation in a cycle of 20 vacancies. For example, after considering an open competition candidate, the second vacancy goes to an OBC. The third vacancy again is in favour of an open competition candidate and the 4th vacancy is earmarked for SCs and STs. This cycle has been prescribed with due application of mind and certain turns in the rotation also are earmarked to go to candidates as referred to in the rules, which may not be strictly relevant here. Most importantly it could be seen that the last proviso to the Rule has also taken care of the requirement that in every cycle of 20 vacancies the candidates eligible to be selected on open competition basis, namely at turns of 1, 3, 5 etc., up to 19 are to be selected first and then the candidates for reservation turns come to be nominated. Out of those available in the rank list in the particular groups, candidates of the same community obtaining higher ranks are to be suitably provided by interchanging their location to reflect merit. We have referred to these aspects only to highlight the circumstance that much thought and attention had been bestowed so as to ensure a fair selection, as was found required at the time of framing of the Rules.

10. Likewise, there is provision for passing over in the absence of available candidates from the roster point when rotation is applied. The benefit of turns forfeited to a particular community or a group are also to be restored in the manner prescribed. Another important circumstance laid down by the Rule is that there shall be rotation among major groups of Other Backward Classes (See Rule 16). The grouping of the communities for the above purpose could be seen as enlisted under Rule 17.

11. If we take the claims of the appellants in W.A.No. 2199 of 2005, their demand is that as vacancies were reported during the currency of the rank list, the candidates from the supplementary list require to be appointed. They belong to Ezhava community. However, when principle of rotation is to be enforced, it will practically be impossible to suggest that candidates for the remaining reported vacancies are to be confined from the above said list. Such contention has no valid basis, either factually or legally. In fact, the Supreme Court in NSS case (cited supra) had observed that the supplementary lists are not really envisaged by the Rules. We notice that the above observation was warranted, especially noticing the proviso which follows the explanation in Rule 14(c). For the first time, in the Rules, the word 'select list' is used there. When the list of eligible candidates to be appointed are prepared, open merit candidates are to be selected first, and thereafter the candidates in the reservation turns. This is to be out of those available in the ranked list belonging to the particular groups, having regard to their ranks.

12. As pointed out by the standing counsel for the Public Service Commission, the Commission is expected to ensure a balance on rotation at every point and it is not permissible to confer appointment on a group and later attempt for a balancing act by conferring appointments to the other groups. This might be impractical and illegal. Principles of seniority and fairness will have to be compromised, if the suggested method by the appellants are accepted. The Constitution Bench, while deciding Sabharwal's case (cited supra), was not called upon to examine or decide any of such matters, and it will therefore be unsafe to accept the contentions of Sri. Chandrasekhar that the issue had already been given a quietus by above said decision. In this view, we have to uphold the judgments of the learned single Judges rendered on different occasions. What has been denied is a demand for an unreasonable favourable treatment. Of course, we can see that if the main rank list contained additional names, on principles of rotation perhaps some of the persons included in the supplementary list would have had a chance for securing appointment as there were sufficiently good number of vacancies reported to the Public Service Commission. But, that by itself is no reason for us, to hold that in the present case any error had been committed by the Public Service Commission. When there were no candidates in the main list, naturally they have

to resort to fresh recruitment proceedings.

13. The contentions raised by the appellants, on the basis of proviso to Rule 15(c), also are plainly not sustainable. It deals with the contingency when a turn is forfeited by a group of community. He has no answer to the position as canvassed by the Public Service Commission, with reference to Rule 14. Likewise, the counsel has not attempted to examine the impact of Rule 16 as well, viz., that there is requirement of sub-rotation among major groups of OBC candidates. The appellants were blinded by their own cause, and were oblivious to the drastic consequences, if their arguments were accepted.

14. The claims in W.A.No. 2104 of 2005 also do not deserve favourable consideration, since the issue has been given a quietus by the NSS case, to which reference has already been made. The observations by the Division Bench of this Court in Benoy v. Public Service Commission (1997 (2) KLT 492) had been found as not legally acceptable, even in respect of the NJD vacancies. If expeditiously such NJD vacancies had been reported, perhaps before the expiry of the main rank list, it would have been possible for the PSC to forward their names and they would have secured appointments. But that is not a reason for us to give any specific directions as their rights for getting advised after the expiry of the main rank list is plainly not acceptable. They too belong to a supplementary list, and when there is no candidate in the merit list, it is not possible to put them to the pegion holes which were there because of the non-joining of advised candidates.

The Writ Appeals are therefore dismissed. Parties are to suffer their respective costs.