
(2009) 05 KL CK 0097

In the High Court Of Kerala

Case No : WP (C) . No. 24737 of 2008 (R)

C.R. Ranjith

APPELLANT

Vs

High Court of Kerala and Others

RESPONDENT

Date of Decision : 21-05-2009

Acts Referred:

Kerala State and Subordinate Services Rules, 1958 — Rule 14, 15, 16, 17, 17(2)

Citation : (2009) 4 KLT 759

Hon'ble Judges : T.R. Ramachandran Nair, J

Bench : Single Bench

Advocate : S. Karthika, for the Appellant; Krb. Kaimal, for the Respondent

Final Decision : Dismissed

Judgement

T.R. Ramachandran Nair, J.—These two writ petitions concern the challenge against the selection and appointment to the post of Munsiff-Magistrates in the Kerala State Judicial Service. Since common questions arise for consideration, they are disposed of by a common judgment. The relevant facts necessary for the disposal of the writ petitions are the following:

2. The petitioners in both the writ petitions belong to Ezhava community. The petitioner in Writ Petition No. 24737/2008 is serial No. 92 in the list of qualified candidates, viz. Ext.P1 and the petitioner in Writ Petition No. 34668/2008 is serial No. 54 in the same list. Ext.P1 has been published in the gazette, after it was prepared by the High Court and approved by the Government. Ext.P2 is the order issued by the Government appointing 45 persons listed in the notification accompanying it as Munsiff-Magistrates. The said list is one prepared under Rules 14 to 17 of the KS & SSR.

3. The previous selection was in the year 2002 and at that point of time 70 posts of Munsiff-Magistrates were filled up from the rank list prepared by the High Court. Ext.P3 is the main list of 88 candidates found suitable for appointment in that selection and Ext.P4 is the list of 70 Munsiff- Magistrates who were

appointed after applying reservation principles.

4. Mainly it is contended that in the year 2002, seven Ezhava candidates were posted against the passed over turn vacancies of other communities which were compensated in the present selection to those communities which is clearly wrong and illegal. On the basis of the detailed averments in the respective writ petitions and the chart produced therein showing the working out of rotation, it is contended that in the year 2002 six Ezhava candidates who were eligible for appointment in the merit quota were wrongly treated as Ezhava reserved candidates and only two Ezhavas were allotted to Ezhava reservation turn points. Those six persons were wrongly appointed in the Turn Pass Over vacancies. It is pointed out that in the present selection, in the notification the probable number of vacancies is shown as 85 out of which 14 are transfer candidates and hence the remaining to be filled up by direct recruitment is 71. It is thus pointed out that if the reservation rules are correctly applied, six Ezhava candidates ranked in Ext.P1 list, ought to have been appointed to Munsiff-Magistrate posts in the Ezhava reservation points 54, 58, 62, 74, 78 and 82. It is further pointed out in Writ Petition No. 34668/2008 that going by the Bench Decision in *K.P.S.C. v. Dr. T. Beermasthan* 2008 (2) KLT 979, 100 point roster contemplated in Rule 14(a) has to be applied when more than 20 vacancies are reported. In the year 2002 as well as in 2007, as more than 20 vacancies were reported, only 100 cycles have to be followed and accordingly 11 Ezhava candidates have to be appointed in open merit quota and 8 Ezhavas are entitled to be appointed in the reservation point.

5. The main grounds of attack are that the method adopted by granting the benefit of passed over turns to other communities and denying appointment to 7 Ezhava candidates based on the Note to the amended Rule 15(a) of KS & SSR is unconstitutional. It is pointed out that going by the principles of interpretation and the well accepted legal principles settled by various decisions of the Apex Court and this Court, a Note to a rule cannot go against the main part of the Rule and hence the Note to Rule 15(a) providing for the method of filling up of vacancies by accommodating candidates for uncompensated turns of vacancies is illegal. It is pointed out that the notification in the present selection was issued only in the year 2007, after the amendment of Rule 15(a), i.e. on 15.2.2007 and therefore going by the main part of Rule 15(a), the High Court was bound to publish a separate notification to provide candidates belonging to particular communities who were not available for appointment in specified vacancies, when selection was made on previous occasions prior to the bringing into force of the amendment. It is next contended that the passed over turns of earlier selections could not have been compensated without adopting a time factor and the settled principle laid down by the Apex Court that the carried forward vacancies should be filled up at least within a period of three years ought to have been applied. Accordingly, it is contended that unlimited compensation cannot be supported and is not warranted by the rules. It is further contended, relying upon the Full Bench decision in *Mohanani Vs. Director of Homeopathy*, that the

vacancies which arose subsequent to the amendment of Rule 15(a) should have been filled up only based on the provision contained in the main part of the rule itself.

6. It is explained in the counter affidavit filed by the Government and the High Court that in the 2002 selection appointments started at turn 83 of first rotation and ended at turn 52 of the second rotation. There were 23 Ezhava candidates in the list. Seventy vacancies arose during the period of validity of the list. Out of 23 Ezhava candidates, 9 were appointed against open competition turns, 7 against Ezhava reservation turns and the remaining 7 against No Candidates Available turns of other communities passed over to Ezhava candidates and an open competition candidate was appointed due to non availability of Ezhava candidate in the list. It is pointed out that in the present selection appointment started at turn 53 open competition and in the list of 45 candidates, 11 are to be appointed by transfer and 34 by direct recruitment. The number of Ezhava reservation is six, i.e. turns 54, 58, 62, 74, 78 & 82, between 53 to 86. In the 2002 selection 7 reservation turns of other communities were passed over to Ezhava community due to non availability of candidates belonging to these communities in the select list as per the then existing Rule 15(a). In the 1999 selection one reservation turn, i.e. turn 60 of Nadars (Hindu Nadars and SIUC Nadars) was passed over to Ezhava community. This passed over turn could not be restored to Nadars in the 2002 selection since no Nadar candidate was available. In the present selection all the 8 No Candidates Available vacancies, i.e. one of 1999 selection and seven of 2002 selection passed over to Ezhava communities from other communities had to be compensated and restored to the respective communities in the present selection and accordingly they were restored. This was done especially since Ezhava community derived extra benefit during the previous selections of the years 1999 and 2002. It is contended that the Note to Rule 15(a) does not conflict with the main part of the rule.

7. Heard Smt. V.P. Seemanthini, learned Senior Counsel for the petitioners, Shir K.R.B. Kaimal, learned Senior counsel appearing for the High Court, Shri K. Ramakumar, learned Senior Counsel, Shri George Varghese Perumpallikuttiyl and Shri S. Radhakrishnan for the contesting respondents and Shri P. Nandakumar, learned Govt. Pleader for the Government.

8. Learned Senior Counsel appearing for the petitioners contended that the notification itself was published after the amendment of Rule 15(a) of KS & SSR and going by the rule itself, if a suitable candidate is not available for selection from any particular community or group of communities, such vacancies have to be notified separately for filling up by direct recruitment exclusively from those communities. This was not done when the notification was issued. Since the said intend and purpose of the rule had to be given effect to, especially in the light of the non obstante clause, the method presently adopted to compensate the turns of the said communities from Ezhava reservation turns cannot be supported. It is contended that a Note to a Rule cannot go against the main part of the rule,

going by the dictum laid down in various decisions of this Court and the Apex Court.

9. Therefore, the main issue to be decided is whether the Note to Rule 15(a) of KS & SSR (as amended) will survive.

10. A reference to the unamended Rule 15(a) is profitable here. Going by the unamended Rule 15(a), "if a suitable candidate is not available for selection from any particular community or group of communities specified in the Annexure, the said community or group shall be passed over and the post shall be filled up by a suitable candidate from the community or group of communities immediately next to the passed over community or group in the said Annexure in the order of rotation. If no suitable candidate is available for selection in any of the above communities or group of communities, selection shall be made from open competition candidates." Going by sub-rule) of Rule 15, "the benefit of the turn forfeited to a particular community or to a group of community by reason of it being passed over under sub-rules (a) and (b) shall be restored to it, at the earliest possible opportunity, if a suitable candidate from that particular community or group is available for selection by making adjustment against the claims of the particular community or group that derived the extra benefit by reason of such passing over." Going by the first proviso to Sub-rule (c), in no year reservations including carrying forward vacancies to a category of post shall exceed 50% of the total number of vacancies for which selection by direct recruitment to that category is resorted to in that year.

11. There was one provision among the unamended rules in the form of the second proviso to Sub-rule (c) by which a particular period of time was prescribed as far as the right of restoration of the turn was concerned. The second proviso read thus: "Provided further that the right of restoration of the turn shall lapse with the expiry of three years from the date of the passing over." This was omitted by G.O.(P) 220/76/PD dated 12/7/1976. Hence the right of restoration was in tact without any such limit, going by the unamended Rules 15(a) to (c) and the passed over turns shall be restored at the earliest possible opportunity.

12. The impact of the amended Rule 15(a) is two fold: Fresh notification has to be issued to fill up the vacancy earmarked for a particular community or group of communities in a selection year by way of direct recruitment exclusively from among that community or group of communities, if a suitable candidate is not available for selection from those communities. Such re- notification has to be issued repeatedly for not less than two times and even after it, if no suitable candidates are available, the selection shall be made from available other Backward Classes candidates and in their absence, from available Scheduled Castes candidates and in their absence, from Scheduled Tribe candidates.

13. The Explanation to Rule 15(a) gives an idea of a selection year as follows:- "one selection year for the purpose of this rule shall be the period from the date on which the rank list of candidates comes into force to the date on which it

expires." The Note to the rule reads as follows:

All pending uncompensated turns of vacancies such as temporarily passed over, no candidate available and non-joining duty as on the 2nd February, 2006, shall be compensated.

14. Learned Senior Counsel appearing for the petitioners relied upon the principles stated by this Court and Apex Court in *M.P. Chndukutty v. Administrative Officer, Government Medical College, Calicut* 1967 KLT 146, *Radha v. District Educational Officer, Badagara and Ors.* 1975 KLT 617, *Tara Singh and Others Vs. State of Rajasthan and Others*, , *Kunhikrishnan v. State of Kerala* 1982 KLT 13(FB), *20th Century Finance Corpn. Ltd. and Another Vs. State of Maharashtra*, and *Rai Sudhir Prasad v. State of Bihar and Ors.* 2005) 13 SCC 25 to contend for the position that the Note to a rule cannot go against the main part of the rule. 15. In *M.P. Chandukutty's case* 1967 KLT 146, the dictum laid down is the following:

Even if the Note has not the force of the Rule and even if infringement of the Note as such is not justiciable, embodying as it does a fundamental rule of the principles of natural justice when the violation of what is stated in the Note involves the violation of the principles of natural justice as well this Court can interfere.

The question arising here is entirely different. In *Radha's case* 1975 KLT 617, the meaning of the word "prescribed" under Note (i) to Rule 43 of Chapter XIV-A K.E.R. arose for consideration. The Bench was of the view that the word "prescribed in Note (i) to Rule 43 in Chapter XIV-A cannot be given as meaning that only prescribed by rules under the Act and that the prescription in the general sense of the word by an executive order would be sufficient. Therein also, the question decided is slightly different. In *Tara Singh and Others Vs. State of Rajasthan and Others*, , the function of the Notes to a rule was elaborated thus:

The notes are promulgated with the rules in exercise of legislative power. The notes are made contemporaneously with the rules. The function of the notes is to provide procedure and to control discretion. The real purpose of the notes is that when rules are silent the notes will fill up gaps. Notes which are appended to rules are of aid not only in applying the rules but also in interpreting the true import of the rules.

Thus, it is clear that when rules are silent, the Notes will fill up the gaps and it has to be found out whether the Notes are inconsistent with the rules. The above dictum was quoted by the Full Bench in *Kunhikrishnan's case* 1982 KLT 13 (FB). In para 5, while considering a Note to Rule 28 in Chapter XIV-A K.E.R., it was held that " the Note to Rule 28 in Chapter XIV-A of the rules is part of Rule 28 itself and a Government Order cannot override the statutory rules in the K.E.R." In *20th Century Finance Corpn. Ltd. and Another Vs. State of Maharashtra*, , on the facts of the case, the Apex Court held that Note 4 of Section 2(1)(iv) of

Haryana General Sales Tax Act, 1973 had to be read down. In Rai Sudhir Prasad's case (2004) 13 SCC 25, their Lordships held that "a note to rule cannot derogate the explicit words of the substantive provision and must be read as explanatory and in harmony with it."

16. The Note herein to Rule 15(a) has, therefore, to be analysed in the light of the unamended Rules 15(a) to 15(c) and the main part of Rule 15(a) as amended. Going by the facts of this case, as on the date of coming into force of the amended Rule 15(a) (published as per gazette dated 8.3.2006 with effect from 2.2.2006), no rank list was in force. The notification itself was published in the year 2007. The unamended Rules 15(a) to 15(c), as noticed already, provided for restoration of uncompensated turns of vacancies and that too by making adjustment against the claims of the particular community or group that derived the extra benefit. The method of passing over of a vacancy in the absence of candidates from a particular community or group of communities and the filling up of the same by candidates from a particular community immediately next to the passed over community or group is a wellknown one covered by the rules. The integrated cycle combining the rotation in Clause (c) of Rule 14 and sub rotation in Sub-rule (2) to Rule 17 had to be operated in that manner. Thus, the passed over turns available to a particular community had to be restored "at the earliest possible opportunity." In its real sense, the Note to the amended Rule 15 (a) saves the right of those communities for restoration of all uncompensated turns as on 2.2.2006. It is not a right newly created. But it only reiterates the position under the unamended rule.

17. The question therefore is whether after the amendment of Rule 15(a) the High Court was bound to publish a notification to fill up vacancies due to the passed over turns and to restore uncompensated turns, etc. from candidates of particular communities to meet the requirements of the unamended rules 15(a) to 15(c), as contended by the learned Senior Counsel for the petitioners, as a first step itself. The relevant provision in Rule 15(a) as amended comprehends a different situation. It does not envisage issuance of a notification straightaway as an initial step before resorting to the selection process and publication of a list of candidates to fill up the vacancies. The process envisaged therein contemplates that it is for the "selection year" which is prescribed in the Explanation to the rule. Going by the amended rule only if a candidate is not available to fill up the turn from a particular community in the rank list thus published, after the process of selection then alone a fresh notification is envisaged for that selection year to fill up vacancies exclusively from such community/communities. Herein, the rank list is published admittedly only by Ext.P1 dated 13.6.2008. Only when the rank list is operated as per the procedure prescribed in Rules 14 to 17 then alone it can be found out whether a suitable candidate is available or not from a particular community. If such candidates are not available, then the rule envisages publication of a fresh notification for that selection year to fill up such vacancies. Therefore, the contention of the learned Senior Counsel for the petitioners that the High Court ought to have published a notification initially to

fill up the uncompensated turns of candidates in the previous selections, viz. 2002 and 1999, etc. cannot be accepted. That is not the procedure envisaged under the amended Rule 15(a). In that view of the matter, it cannot be said that the Note to Rule 15(a) is inconsistent with the main part of the rule itself. As rightly contended by the learned Senior Counsel appearing for the High Court, the object and purport of the Note actually is to restore the benefit of the turn that was lost to a particular community and it operates really as a saving clause itself. In that view of the matter, I do not find any conflict with the main part of Rule 15(a) and the Note. Even going by the dictum laid down in the above mentioned cases, the Note also forms part of the rule and the note herein is only self explanatory and works in harmony with the main part of the rule. The real purpose of the Note being to fill up the gaps where the rules are silent, the Note to Rule 15(a) only fill up the gaps as far as the question of providing restoration of benefit to a particular community is concerned of the uncompensated turns as on 2nd February, 2006. The main part of Rule 15(a) as amended does not provide a specific procedure of selection for restoring the uncompensated turn as on the date of coming into force of the rule. The note only saves the rights of those communities. The benefit of reservation provided under the relevant rules of KS & SSR is on the basis of the salutary provisions of the Constitution. It has to be given full effect. Therefore, the Note only caters to the said provisions of the rules and it never acts to defeat the rights of any of the candidates belonging to particular communities. If the true effect of the main part of Rule 15(a) is understood thus, the note only works in harmony with it and it never acts against the real purport of the rule. There is no inconsistency as alleged.

18. I am fortified in this view, by the decisions of this Court in *Praseena v. Kerala Public Service Commission* 2009 (1) KLT 570 (DB) and an unreported decision in *Sinu Cletus v. K.P.S.C.* (W.P.(C) No. 16557/2007). In both these cases, the amended Rule 15(a) came up for consideration. In *Praseena's* case 2009(1) KLT 570, the question considered was that when selection is conducted exclusively for a particular community as per a fresh notification and in case candidates belonging to that particular community are available in the rank list for subsequent selection year, whether such a selection exclusively from that community is required. The Bench answered the question after relying on the term "selection year" provided in the explanation. It was held that vacancy kept unfilled in a selection year, cannot be filled up by candidates for another selection year. The facts of the case show that the list was published on 15.10.2004 wherein turns 32, 52 and 64 had to be filled up by SC/ST candidates and since they were not available, those turns were passed over for Ezhava and Muslim. While considering the question of restoration to SC/ST candidates from the subsequent select list, it was held that "therefore as far as turns 52 and 64 are concerned, those turns already given to Ezhava and Muslim will be compensated from the subsequent select list and if candidates belonging to Scheduled Caste community are not available, then alone such vacancies will be treated as NCA vacancies." Therefore, the right of restoration by way of compensation from the

list prepared for the selection year was upheld. In Writ Petition No. 16557/2007, the contention was that the amended rule and the circular issued based on the said rule cannot be used for advising candidates from the existing list. Therein nine turns were to be compensated by Latin Catholics for the extra benefit derived by them due to non availability of ST candidates in the previous rank list. It was held that the diversion of LC vacancies to ST candidates and in their absence, to SC candidates is in accordance with the Rules now in force. The said judgment also does not go against the view taken by me herein, in this case.

19. Another important argument raised by the learned Senior Counsel appearing for the petitioners is that by restoring the benefit to the particular communities, 50% rule will be violated, especially since no time limit is prescribed. It is submitted that while the carry forward rule is applied, the 50% rule cannot be violated and herein because of the application of the Note the same will be violated and therefore the consequent selection will have to be declared as invalid. Reference is made to the principles stated by the Apex Court in *T. Devadasan Vs. The Union of India (UOI) and Another*, *Arati Ray Choudhary Vs. Union of India (UOI) and Others*, *Indra Sawhney etc. etc Vs. Union of India and others, etc. etc.*, *State Bank of India Scheduled Caste/Tribe Employees Welfare Association and another Vs. State Bank of India and others*, *Ranganathan K.D. v. Cochin Port Trust and Ors.* ILR 1997 Ker. 576 and *M. Nagaraj and Others Vs. Union of India (UOI) and Others*, .

20. Before considering the sustainability of the said argument, a reference to the relevant provisions of Rule 15 is apposite. The proviso to Rule 15(c) as it existed then clearly stated that in no year reservations including carrying forward vacancies to a category of post shall exceed 50% of the total number of vacancies. Presently, the said principle is engrafted under Rule 15(d) to the effect that "reservation to a category of posts shall not exceed 50% of the total number of vacancies for which selection is resorted to in a selection year." The two provisos to the said rule are also important, in that 50% ceiling will not apply to the filling up of any number of reserved vacancies kept unfilled and notified separately. As rightly contended by the learned Senior counsel appearing for the High Court, by restoring the benefit of the uncompensated turns from a community which derived extra benefit, the vacancies earmarked for open competition candidates are not affected. If that be so, there is no violation of the 50% rule, since the uncompensated turns are not adjusted against open competition turns.

21. In *T. Devadasan Vs. The Union of India (UOI) and Another*, the carry forward rule permitting reservation of more than 50% vacancies in a year was held unconstitutional as it violated the 50% rule. While considering the validity of the Office Memorandum therein, their Lordships found that reservation would be more than 50% and on that premise itself it was held unconstitutional. The situation herein is totally different as already found. The decision in *T. Devadasan's case (supra)* was followed in *Arati Ray Choudhary Vs. Union of*

India (UOI) and Others, . In *Indra Sawhney etc. etc Vs. Union of India and others, etc. etc.*, also it was held that carry forward rule should not result in breach of 50% rule. The same principle is reiterated in *State Bank of India Scheduled Caste/Tribe Employees Welfare Association and another Vs. State Bank of India and others, , Ranganathan K.D."*s case ILR 1997 Ker. 576 and *M. Nagaraj and Others Vs. Union of India (UOI) and Others, .* Since the 50% rule is not at all violated herein in the sense that there is no question of adjustment against the open competition turns, there cannot be any assumed violation of the said rule. Even though learned Senior Counsel for the petitioners submitted that in certain cases it may result in such violations, as the situation herein, on the basis of the facts analysed as above, does not warrant such a conclusion, hypothetical situations need not be considered for the purpose of deciding the issues arising in this case.

22. Heavily relying upon the decision of the Apex Court in *State Bank of India and Others Vs. Ramesh Dinkar Punde, ,* it was contended that introduction of a time cap is required for the application of the rules regarding restoration of benefit for uncompensated turns. While considering the interpretation of Articles 16(4A) & (4B), 16(4) and 335 of the Constitution of India, the Apex Court held thus in para 100:

Article 16(4-B) lifts the 50% cap on carry-over vacancies (backlog vacancies). The ceiling limit of 50% on current vacancies continues to remain. In working out the carry-forward rule, two factors are required to be kept in mind, namely, unfilled vacancies and the time factor. At one end of the spectrum, there are unfilled vacancies; at the other end, there is a time-spread over a number of years over which unfilled vacancies are sought to be carried over. These two are alternating factors and, therefore, if the ceiling limit on the carry over of unfilled vacancies is removed, the other alternative, the time factor comes in and in that event, a time-scale has to be imposed in the interest of efficiency in administration as mandated by Article 335. If a time-scale is not kept then posts will continue to remain vacant for years, which would be detrimental to the administration. Therefore, in each case, the appropriate Government will now have to introduce a time-cap depending upon the fact situation. This conclusion is also borne out by the service rules in some of the States where the carry-over rule does not extend beyond three years.

In fact, as noted already, the second proviso to Rule 15(c) had provided a time limit of three years earlier and the said provision was omitted by way of amendment in the year 1976. In the explanatory note to the amendment published as SRO No. 800/76, the reason for the amendment was that "so long as 50 per cent rule referred to in the first proviso is adhered to carrying forward of forfeited vacancies beyond 3 years would not offend any constitutional provision. Hence, the decision to delete the second proviso." Herein, the main part of the rule itself, as noted above, had provided a 50% rule while filling up the vacancies. Even going by the dictum laid down in *M. Nagaraj and Others Vs.*

Union of India (UOI) and Others, , it was up to the respective States to provide for particular provisions. This Court cannot legislate on those aspects. Therefore, the argument that in the absence of a time cap the Note to Rule 15 has to be held as unconstitutional, cannot be accepted.

23. This is particularly so in the light of the recent decision of the Apex Court in *Nair Service Society v. Dr. T. Beermasthan and Ors.* 2009 (2) KHC 198 (SC). In para 25, while considering the approach to be made to the interpretation of Rules 14 to 17 of KS & SSR, their Lordships held thus:

In our opinion an accepted practice which has been followed by the P.S.C. for so long a period should not be lightly disturbed, unless there are compelling reasons. If two interpretations of the Rules are possible, the interpretation which favours the practice which was being followed for a long period should ordinarily be preferred unless it is clearly in violation of the Rules.

Therefore, even if two interpretations are possible, as the accepted practice alone has been followed and there is no clear violation of the rule, an interpretation which favours the practice alone can be adopted. Hence, the said argument is rejected.

24. In Writ Petition No. 34668/2008, the petitioner is serial No. 54 in Ext.P1 list. It is pointed out that even if the method adopted by the respondents are correct, the petitioner therein should have been included in Ext.P2. The petitioner contends for the position, by relying upon the decision in *Dr. T. Beermasthan's* case 2008 (2) KLT 979 that a hundred point roster contemplated in Rule 14(a) has to be applied when more than 20 vacancies are reported. It is pointed out that in the year 2002 as well as in 2007 more than 20 vacancies were reported. But while effecting appointment as per Ext.P3 list, the respondents did not follow 100 cycles. If 100 cycles is followed for effecting appointment from Ext.P3 list, 19 Ezhava candidates, i.e. 11 from open merit and 8 Ezhava reservation points are entitled to get appointment from that list.

25. The decision of the Division Bench in *Dr. T. Beermasthan's* case 2008 (2) KLT 979 stands reversed by the Apex Court in *Nair Service Society's* case 2009 (2) KHC 198. While considering the interpretation of Rules 14(a) and 14(b), it was held in para 18 that "the correct interpretation of the Rules is that a common rank list as per merit for all the successful candidates in respect of selection to the vacancies notified by the Public Service Commission should be prepared, and reservation should be applied with reference to units of 20. That is, the first 20 most meritorious candidates, that is, from serial No. 1 to 20 in that common rank list should first be considered for the purpose of reservation. At that stage, candidates from serial No. 21 and below are not to be considered." Therefore, the argument that when more than 20 vacancies are reported, 100 point roster is to be applied, does not merit any consideration. The unit of appointment cannot be changed based on the number of vacancies, as held by the Apex Court in that decision.

26. The petitioner has got a contention that in the previous selection, the selection started at turn 88 which is disputed by the respondents. It is explained in the written submission given by the third respondent that in the year 2002 the appointment started from turn 83 onwards and the last turn filled up was 52nd of the next rotation. The first appointment turn, i.e. the 83rd turn was allotted to a candidate in the general category which was filled up by the person who stood first in the merit list (Shri P.K. Mohandas). It is also explained that as the rotation started at turn 83, the 19th appointment turn was turn one of the next rotation which was allotted to a candidate from the general category. In that turn Smt. Elsamma Joseph was appointed. Therefore, it is stated that the contention of the petitioner that the 19th appointment turn should have been given to Ezhava community, is baseless

27. In the above view of the matter, there is no basis for the claim raised by the petitioner in Writ Petition No. 34668/2008.

28. Learned Senior Counsel Shri K. Ramakumar appearing for the party respondents in Writ Petition No. 24737/2008 submits that the petitioner therein is only serial No. 92 and is nowhere in the reckoning. It is pointed out that the relief sought for by way of issuance of a writ of mandamus cannot be granted without a specific prayer to quash Ext.P4. I see much force in the above contention.

29. The selection of the year 2002 was under challenge in various writ petitions and ultimately it was upheld in the decision of the Apex Court in Civil Appeal Nos. 2539-2540 of 2005 K.H. Siraj v. High Court of Kerala and Ors. 2006 (2) KLT 923. There is nothing to show that Rules 14 to 17 of KS & SSR have been violated in the said selection. The petitioners could not establish that the said rules have been violated while arriving at the turns of reservation of the various communities. In the counter affidavit filed by the High Court and the Government, various details have been pointed out to show that in the year 2002, 23 Ezhavas were appointed when 70 vacancies were filled up. The relevant orders and the rotation chart have been produced as Exts.R1(a) to R1(e). It is clear from the counter affidavit that 20 cycle rule was followed which alone is the permitted mode. It is clear that in the 2002 selection seven vacancies of other communities were passed over to Ezhava community due to non availability of candidates belonging to those communities and in the 1999 selection one reservation turn, i.e. 60 of Nadar community was passed over to Ezhava community which could not be restored in the 2002 selection. It is thus clear that the extra benefit derived by the Ezhava community during the previous selections 1999 and 2002 had to be restored to the respective communities which is permissible under the rules.

Therefore, the writ petitions do not deserve any merit and the same are dismissed.