

(1998) 11 KL CK 0017
In the High Court Of Kerala
Case No : O.P. No. 2234/94 N

Dr. A.T. Suresh and Others

APPELLANT

Vs

Secretary to Government and Others

RESPONDENT

Date of Decision : 05-11-1998

Acts Referred:

Kerala State and Subordinate Services Rules, 1958 — Rule 14, 15, 16, 17, 17A

Citation : (1998) 11 KL CK 0017

Hon'ble Judges : K.A. Abdul Gafoor, J

Bench : Single Bench

Advocate : P.V. Mohanan, O.V. Maniprasad and P.R. Ramachandra Menon, for the Appellant; O.V. Radhakrishnan, for 4th Respondent and A. Jayasankar, Govt. Pleader for Respondents 1 to 3, for the Respondent

Final Decision : Dismissed

Judgement

K.A. Abdul Gafoor, J.—Petitioners are included in Ext. P-1 list. That is a list prepared by the Public Service Commission for appointment to the post of Medical Officer in the Department of Homeopathy on special recruitment from among the Scheduled Caste. Petitioners have approached this Court seeking a direction to immediately report the existing nine vacancies of Medical Officers for appointment from the said list.

2. It is an admitted fact by the Petitioners before me that in the notification issued by the P.S.C. inviting applications which led to preparation of Ext. P-1 list only one vacancy had been notified for special recruitment from Scheduled Caste and Scheduled Tribe candidates. It is stated that there are several backlog vacancies of Scheduled Caste available when Ext. P-1 list was in existence and therefore, if such vacancies had been reported, the Petitioners would have been advised for appointment from out of Ext. P-1 list. The Petitioners seek to substantiate this contention based on the fact that when a list for general recruitment was brought in subsequent to Ext. P-1 and when about 44 candidates had been advised, about 14 persons who belonged to Scheduled

Caste included in the general list had been advised. They also contend that there were backlog vacancies available for S.C. candidates even during the currency of Ext. P-1 list. In such case, such vacancies would have been accounted for the candidates included in Ext. P-1. There is an interim order already, directing reporting of three vacancies during the currency of Ext. P-1 list. Such vacancies shall be reserved for appointment of the Petitioners. All Petitioners except 3 and 5 got appointment. So, the case of the Petitioners 3 and 5 are only alive at present.

3. I am unable to accept the contention of the Petitioners. Special recruitment is based on an enabling provision contained in Rule 17A of the K.S. and S.S.R. which reads as follows:

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

As per this rule, the recruitment can only be to the specified number of posts reserved by Government to be filled up by special recruitment. In other words there shall be an order by Government reserving certain fixed number of posts for such recruitment. In this case, admittedly, it was only one and one candidate had already been appointed from out of Ext. P-1 list. Merely because there is a statement that three vacancies had been reported to Government and only one candidate had been advised, it does not mean that the Petitioners shall be advised.

4. Backlog arises when candidates belonging to any particular community in terms of the provision provided in Rules 14 to 17 of the K.S. and S.S.R. are not available for appointment from out of the existing operative list for general recruitment. Even during general recruitment, Scheduled Caste candidates are entitled for reservation. If on prior general recruitment vacancies earmarked for Scheduled Caste candidates based on the reservation available in Rules 14 to 17 of the General Rules had been passed over to candidates of other communities due to non-availability of Scheduled Caste candidates in the general recruitment, when vacancies reserved for such community arises in the next general recruitment, if there are Scheduled Caste candidate available in that list, necessarily, they shall be preferred against the vacancies reserved for such communities which did get selection in earlier recruitment. Merely because there are backlog vacancies available due to the non-availability of Scheduled Caste candidates during the process of the general recruitment, that does not mean that the Petitioners shall be appointed against those vacancies. Special recruitment can be made by the P.S.C. only to the extent of the number of posts specifically set apart for such recruitment in accordance with the orders of the Government as provided for in Rule 17(A). Here, no order is brought to my notice as to whether more than one vacancy had been reserved during the process for the preparation of Ext. P-1 list. The Original Petition therefore, fails.

Dismissed. No costs.