

(1992) 11 KL CK 0040
In the High Court Of Kerala
Case No : O.P. No. 8382/92 and 8531/92

Dr. K.A. Jose

APPELLANT

Vs

Cochin University of Science and Technology and Others

RESPONDENT

Date of Decision : 18-11-1992

Acts Referred:

Cochin University Act, 1971 — Section 6(2)
Cochin University of Science and Technology Act, 1986 — Section 31(11), 31(12), 7(2)
Constitution of India, 1950 — Article 14, 16 , 46
Kerala State and Subordinate Services Rules, 1958 — Rule 14, 15, 16, 17, 17A

Citation : (1993) 2 KLJ 25

Hon'ble Judges : K.K. Usha, J

Bench : Single Bench

Advocate : M. Sebastian Paul, in O.P. No. 8382 of 1992-W and Govind K. Bhurathan, in O.P. No. 8531 of 1992-H, for the Appellant; C.K. Sivasankara Panicker and K.S. Radhakrishvan, for the Respondent

Final Decision : Dismissed

Judgement

K.K. Usha, J.—Common issues are raised in these two original petitions. The Petitioner in O.P. 8382/92 is a Research Associate in the Department of Election and the Petitioner in O.P. 8531/92 is a C.S.I.R. Research Associate in the department of Physics under the Cochin University of Science and Technology. They challenge the notification dated 12th September 1991 issued by the Respondent-University inviting applications for appointment to the post of Professors, Readers and Lecturers.

2. The challenge in O.P. 8382/92 against Ext. P-1 notification is to the extent it reserves the post of Lecturer in Microwave and Radar Electronics for candidates belonging to Scheduled Caste/Scheduled Tribe Community as illegal. In O.P. 8531/92, Ext. P-1 notification is challenged on the ground that reservation of the post of Reader in Theoretical Physics in favour of Other Backward Communities is untenable in law. In both the Original Petitions Sub-section (11) of Section 31 of the Cochin University of Science and Technology Act, 1986" (31 of 1986) is also

under attack.

Section 7(2) of the Cochin University of Science and Technology Act provides:

In making appointments for all-posts as determined by the Syndicate in any service, class or category under the University, the University shall mutatis mutandis observe the provisions of Clauses (a), (b) and (c) of Rule 14 and the provisions of Rules 15, 16, 17 and 17 A of the Kerala State and Subordinate Service Rules, 1958, as amended from time to time.

Relevant portion of Sub-rule (a), (b) and (c) of Rule 14 of Kerala State and Subordinate Services Rules read as follows:

(a) The unit of appointment for the purpose of this Rule shall be 20, of which two shall be reserved for Scheduled Castes and Scheduled Tribes and 8 shall be reserved for the Other Backward Classes and the remaining 10 shall be filled on the basis of merit:

Provided that out of every five posts reserved for Scheduled Castes and Scheduled Tribes, one shall go to Scheduled Tribe candidate and the remaining four shall go to Scheduled Caste candidates and in the absence of a candidate to fill up the post reserved for Scheduled Tribe candidates, it shall go to a Scheduled Caste candidate and vice-versa.

(b) The claims of members of Scheduled Castes and Scheduled Tribes and Other Backward Classes shall also be considered for the appointments which shall be filled on the basis of merit and where a candidate belonging to a Scheduled Caste, Scheduled Tribe or Other Backward Class is selected on the basis of merit, the number of posts reserved for Scheduled Castes, Scheduled Tribes or for Other Backward Classes as the case may be; shall not in any way be affected.

(c) Appointments under this Rule shall be made in the order of rotation specified below in every cycle of 20 vacancies.

1. Open competition
2. Other Backward Classes
3. Open competition
4. Scheduled Castes and Scheduled Tribes
5. Open competition
6. Other Backward Classes
7. Open competition
8. Other Backward Classes
9. Open competition
10. Other Backward Classes

11. Open competition
12. Scheduled Castes and Scheduled Tribes
13. Open competition
14. Other Backward Classes
15. Open competition
16. Other Backward Classes
17. Open competition
18. Other Backward Classes
19. Open competition
20. Other Backward Classes:

Provided that the fourth turn to the third rotation and the twelfth turn in the fifth rotation shall go to Scheduled Tribe candidates and the fourth and twelfth turns in the first, second and fourth rotations, the twelfth turn in the third rotation and the fourth turn in the fifth rotation shall go to Scheduled Caste candidates and in the absence of a candidate for appointment against the turn allotted for Scheduled Tribe candidates, it shall go to a Scheduled Caste candidate and vice-versa:....

Rule 15 lays down the procedure to be followed in cases where suitable candidates are not available in the particular community or group. It also provides that in no year of reservation including carrying forward vacancies to a category of post shall exceed 50 percent of the total number of vacancies for which selection by direct recruitment to that category is resorted to in that year. Rule 16 provides that, there shall be sub rotation among major groups of other "backward classes. In Rule 17, the grouping of Other Backward Classes for the above purpose is indicated. Provisions are also made therein to distribute the 40 percent reservation allowed to Other Backward Classes among the different groups of Other Backward Classes in the case of direct recruitment to the post included in the Kerala Last Grade Service and to the posts other than those included in the Kerala Last Grade Service. Section 31 of the Cochin University of Science and Technology, provides for the constitution of the selection committee and the manner in which selection has to be made for appointment to the different posts both teaching and non-teaching staff under the University.

Sub-sections (11) and" (12) of Section 31 reads as follows:

(11) Communal rotation shall be followed category-wise treating all the departments as one unit.

(12) The Registrar shall maintain a register containing the list of appointments made indicating the vacancies filled up by open competition and by reservation

to Scheduled Castes, Scheduled Tribes and Other Backward Classes, vacancies remaining to be filled up for want of qualified hands from Scheduled Castes, Scheduled Tribes and Other Backward Classes and vacancies carried forward for want of qualified hands under reservation quota for being filled up in future vacancies and such other details as may be specified in the Statutes.

3. The Petitioners have no case that candidates belonging to SC/ST and candidates belonging to Other Backward Classes are appointed in vacancies set-apart to open merit candidates in violation of the provisions contained under the Act and under the Kerala State and Subordinate Service Rules. On the other hand they admit that the reservation of posts has been made following the provisions contained under the above Act and Rules, but their grievance is against the provisions contained under Sub-section (11) of Section 31. For the "purpose of applying the communal rotation in the matter of reservation of posts the University has classified the posts into three categories as Professor, Reader and Lecturer. The post of Professor in all the Departments are brought under one unit as directed in Sub-section (11) of Section 31. So also the Readers of all Departments are classified into one group and the Lecturers of all Departments are treated as one unit. It is this classification which is mainly challenged by the Petitioners. Before considering the main contention regarding the validity of Sub-section (11) of Section 31, I will deal with a minor point raised by one of the Petitioners.

4. The Petitioner in O.P. 8382/92, it is alleged, is fully qualified for being appointed as Lecturer in Microwave and Radar Electronics in the Department of Electronics under the University. It is stated that Microwave and Radar Electronics is one of the two specialisations offered by the Department of Electronics for M. Tech in Electronics. A plan post, the post of Lecturer in Electronics was reserved for special recruitment from members of Scheduled Caste/Scheduled Tribe. Though it was advertised as such thrice, no suitable candidate was available and the Syndicate at its meeting held on 6th April 1991 resolved to de-reserve the post and notified it for general recruitment. Ext. P-4 is the Photostat copy of the decision of the; Syndicate. The complaint of the Petitioner is that in spite of the above decision, the post was advertised under Ext. P-1 as reserved for members of Scheduled Caste/Scheduled Tribes.

5. In the statement filed on behalf of the 1st Respondent explanation is offered as to how the post was shown as reserved for members of Scheduled Caste/Scheduled Tribe under Ext. P-1 notification. It is true that in the absence of suitable Candidates from among members of Scheduled Caste/Scheduled Tribe the attempt to make special recruitment from among members of Schedule Caste/Schedule Tribe was abandoned and under Ext. P-4 resolution, it was decided to notify the post for general recruitment. Even then applying the principles of communal rotation, it was found that the vacancy in the post of Lecturer in Electronics with specialisation in Microwave and Radar Electronics is the 92nd vacancy which has to be set apart to Scheduled Caste/Scheduled Tribe.

It was under these circumstances the post was shown as reserved for Scheduled Caste/Scheduled Tribe candidates and 3rd Respondent belonging to Scheduled Caste was appointed to the post. Merely because the University has dropped the proposal to resort to special recruitment for members of Scheduled Caste/Scheduled Tribe, it cannot be contended that the post shall be filled up only by general merit candidates. The decision reflected in Ext. P-4 resolution was to bring the post under the general recruitment scheme which in turn is subject to the provisions for reservation in favour of members of Scheduled Caste/Scheduled Tribe and Other Backward Communities. The Petitioner has no case that by applying the principle of communal rotation, the vacancy was wrongly set apart for members of Scheduled Caste/Scheduled Tribe. In the light of the above, I find no merit in the contentions raised by the Petitioner against the appointment of the 3rd Respondent on the ground that under Ext. P-4 resolution it was decided to withdraw the post from Special Recruitment for Scheduled Caste/Scheduled Tribe.

6. The Petitioner in O.P. 8531/92 was an applicant for appointment to the post of Reader in Theoretical Physics. She alleges that she is fully qualified to hold the post and she was ranked first in the interview. Since the vacancy in the above post was reserved for Other Backward Classes, the 3rd Respondent belonging to Backward Community was granted appointment. The Petitioner challenges the appointment as arbitrary and violative of Articles 14 and 16 of the Constitution.

7. The common case of the Petitioners is that the posts of Lecturer or Reader in each department shall be treated as independent units. Petitioners further contend that Lecturer or Reader in each speciality in the particular department has to be treated as separate unit. Thus, as there is only one vacancy in the post of Lecturer in Microwave and Radar Electronics it cannot be reserved for members of Scheduled Caste/Scheduled Tribe. So also the sole vacancy in the post of Reader in Theoretical Physics cannot be reserved for Backward Classes. Such reservation will be vitiated by the vice of 100 percent reservation, frowned upon by the Supreme Court, is the case of the Petitioners.

8. Sub-section (11) of Section 31 of Cochin University of Science and Technology Act, 1986 which permits clubbing of the posts of Lecturers of all Department into one unit and Readers of all Department into Anr. unit is under attack on the ground that such clubbing of posts for the purpose of reservation was held illegal by the Supreme Court in Chakradhar Paswan Vs. State of Bihar and Ors, . The Petitioner in O.P. 8382/92 relies on Anr. decision of the Supreme Court also namely Dr. Suresh Chandra Verma and others Vs. The Chancellor, Nagpur University and others, which decision, according to the Petitioner has confirmed a Full Bench decision of the Karnataka High Court Dr. Raj Kumar v. Gulbarga University AIR 1990 Kar. 320 taking a similar view as in Chakradhar Paswan Vs. State of Bihar and Ors, . Before going into the question as to how far the above decisions would be helpful to the Petitioners to sustain their challenge against Sub-section (11) of Section 31 it has to be pointed out, that the decision, more

appropriate to the facts of the" case is Anr. decision of the Supreme Court The University of Cochin Vs. Dr. N. Raman Nair and Others, . Apart from the fact that the above decision has dealt with the specific situation of clubbing of posts under the Cochin University for the purpose of applying the communal reservation, it is a decision of a Bench of three Judges and therefore even if there is any conflict, between the above decision and the subsequent decisions of the Supreme Court, (both by Benches of two Judges) the dictum laid down in the first decision would be binding on this Court.

9. In The University of Cochin Vs. Dr. N. Raman Nair and Others, the Supreme Court considered the provisions of Cochin University Act (30 of 1971). Sub-section (2) of Section 6 of the above Act contained the same provisions as Sub-section (2) of Section 7 of the 1986 Act, quoted supra. The 1971 Act did not contain a provision analogous to Sub-section (11) of Section 31 of 1986 Act. The Syndicate of the University passed a resolution on 7th July 1972 to the effect that the rules regarding communal reservation as provided under Sub-section (2) of Section 6, be implemented in the case of teaching staff as a class except in the case of the post of Professor which shall be filled up exclusively on consideration of merit. But the reservation quota against this category should be provided additionally in the category of Readers, Lecturers, Teaching Assistants taken collectively. By the above resolution, the University made a deviation from the rule of reservation and allocation of vacancies by rotation to open merit candidates and candidates belonging to the reserved categories. An attempt was made to justify the above action on the wording of Sub-section (2) of Section 6 the University shall *mutatis mutandis*, observe the provisions of Clauses (a), (b) and (c) of Rule 14 and the provisions of Rules 15, 16 and 17 of the Kerala State and Subordinate Service Rules" and it was contended that the above provision empowered the University to make changes in the rules to meet the particular needs in the University so as to enable it to implement the provisions of Section 6(2) of the Act in the way it thought fit.

10. The Supreme Court rejected the above contention holding that the power to apply the rules *mutatis mutandis* does not include the power to amend the substantial provisions in the rules. It was further held that power given under Sub-section (2) of Section 6 would not enable the University to dispense with reservation itself to any particular class or category of service under the University as was directed to be done in the resolution dated 17th July 1972 with regard to the Professors. It was also held that the second part of the resolution, meant to provide for other Backward Classes, a compensatory quota of reserved appointments in a category of other than that of Professors in lieu of removal of the post of Professors from subjection to the rules was also bad since it would alter the scope or ambit of the rotation rule. While considering the application of the rotation rule to different classes or categories of service, it was observed that there is nothing wrong in classifying even the entire teaching staff into one class for the purpose of applying the rule of rotation. In paragraph 5, it was held as follows:

5. Section 6(2) lays down the mandatory duty upon the University to observe Clauses (a), (b) and (c) of Rule 14 as well as Rules 15, 16 and 17 of the rules set out above. But, it does not indicate the manner in which the classification of members of a service under the University has to be made for the purposes of applying these rules. Inasmuch as every, statutory power has to be exercised reasonably, we can say that the classification has to be reasonable. Thus, the University may treat all the teaching posts as belonging to one class for the application of the rules. On the other hand, it may treat only posts of Readers in all subjects or in a particular subject as a category by itself for the application of these rules. It cannot exempt any class or category such as Professors, from the operation of the rules altogether. Only if it so classifies all posts in a service under the University as to make its classification *prima facie* unreasonable, could the validity of the classification made by it be assailed. The power is presumed to be exercised reasonably on the strength of facts and circumstances relevant for purposes intended to be achieved by the classification. These purposes have also to pass the test of legality and constitutionality.

Again in paragraph 13 it was observed as follows:

13. The word "service" does seem to us to denote, as the High Court held, various classes or categories of posts within it. It is obviously the widest class. A classification which puts the whole teaching staff in one class for purposes of applying the rule would seem unassailable. But, one which puts all classes and categories of service from the peons to Professors together may, by destroying the distinction between classes and categories of service, seem to run counter to the words used in Section 6(2). As that question is not before us, we refrain from deciding it. This provision appears to us to be intended to ensure that, whatever may be the kind of post to be held by a person in a service "under the University" principles laid down in Rules 14, 15, 16 and 17 must apply in making appointments to it. We are not called upon to decide here what is meant by a service "under the University" as it is admitted by both sides that this description applies to the post of a Reader. Nor have we to determine here the reasonableness of a classification which may put the teaching and non-teaching staff in one class or category.

Finally while granting the relief, the Supreme Court observed as follows:

15. We have been informed at the Bar that both the 1st and the 3rd Respondents, that is to say Dr. Nair and Dr. Ramchandra Dev are at present holding posts of Readers in the Hindi Department as the needs of the University " have expanded. It may, however, be necessary to determine the order of their appointments after the University has laid down its own method of reasonable classification either of the whole teaching staff of the University collectively or by putting various categories of the teaching staff into separate compartments for the application of the rules. We have held that the University has this power provided it is exercised on good and reasonable grounds. We have only indicated that on such facts as have come to our notice, the particular vacancy for which

both Dr. Raman Nair and Dr. Ramchandra Dev were competing seemed to us to be the first to arise for the purposes of applying Section 6(2) of the Act. As this matter was not fully investigated and the power is vested in the University to make its own classification within the limits indicated by us, we think that it is desirable that the University should be left to make its own reasonable classification in accordance with the principles laid down above by us so as to determine which of the two Readers was entitled to be appointed earlier. In other words, the Syndicate of the University will have to pass a fresh resolution which is in accordance with the law as explained by us and then to apply the rules in conformity with such a resolution in exercise of the powers possessed by the University.

11. The classification of the post as obtained under Sub-section (11) of Section 31 of the 1986 Act is in accordance with the dictum laid down by the Supreme Court in the judgment in the above case. When the 1986 Statute was enacted the legislature had the benefit of the view expressed by the Supreme Court in the above decision where the Supreme Court noted the object of the provisions contained under Sub-section (2) of Section 6, as follows:

Sub-section (2) of Section 6 is meant to ensure equality of treatment between citizens as members of groups, and, in particular, to enable "backward" classes to secure appointments so as to remove the gap between the "advanced" and the "backward". In doing so, it may appear that the principle of equality of opportunity on the basis of individual merit is being modified. Even if that be the result, the wider object is to promote equality between groups of citizens.

In order to achieve the above purpose the Supreme Court found that treating post of Readers in all subjects as a single category for the application of the rules of reservation is justified. It is in the light of the above principle laid down by the Supreme Court the challenge against Sub-section (11) of Section 31 and Ext. P-1 notification on the ground that it has classified Readers of all departments into one unit and Lecturers of all departments into one category has to be examined.

11A. It was contended on behalf of the University that the post of Lecturers or readers or Professors of all department are treated as one class of Lecturer or reader or Professor in order to effectively implement the mandate under Article 46 of the Constitution and of the provisions in Section 7(2) of the Act. To bring about equality among all sections of the public, it was necessary to classify the posts in the above manner and implement the rules for reservation in favour of the members of Scheduled Caste and Scheduled Tribe and Backward Classes. If the posts are not classified as directed under Sub-section (11) of Section 31, it will not be possible to apply the rules of reservation as provided under Rules 14 to 17A of K.S. and S.S.R. It was further submitted that the Petitioners cannot be heard to challenge the classification directed u/s 7(2) of the Act, as such a classification has been approved by the Supreme Court in *The University of Cochin Vs. Dr. N. Raman Nair and Others*, .

12. The question that was considered by the Supreme Court in *Chakradhar Paswan Vs. State of Bihar and Ors*, was whether the post of Director of the Directorate of Indegenous Medicine and three Deputy Directors under different system would constitute one cadre for the purpose of applying the rotation for communal reservation. It was held that even though the above three posts are Class I posts it would not constitute one cadre. It was further held that in the Para Medical System, three posts of Deputy Directors pertaining to three distinct system and therefore each of them is an isolated post by itself. The same principle should apply" in the case of Director also. It was then observed by the learned Judges as follows:

It is a moot point whether the isolated posts like those of the Deputy Directors can be subjected to the 50 point roster by the rotational system. We refrain from expressing any opinion on this aspect, as it does not arise in the present case...

In paragraph 9 of the judgment, their Lordships" referred to the instructions issued by the Government of India in the Brochure on reservation for Scheduled Caste/Scheduled Tribe in service as follows:

Para 2.4 provides that the reservations will be applied to each grade or post separately but isolated posts will be grouped as provided in Chapter 6. Paragraph 6, point 1 of Chapter 6 which is relevant for our purposes, states that in the case where the posts are filled by direct recruitment, "isolated individual posts and small cadres may be grouped with posts in the same class for purpose of reservation, taking into account the status salary and qualifications prescribed for the posts in question". For this purpose, it provides that a cadre or a grade or a division of a service consisting of less than 20 posts may be treated as a small cadre. A group so formed should not ordinarily consist of 25 posts.

It then adds:

It is not intended that isolated posts should be grouped together only with other isolated posts.

That precisely is the situation here. The Government of India instructions clearly show that there can be no grouping of one or more isolated posts for purposes of reservation. To illustrate, Professors in medical colleges are carried on the same grade or scale of pay but the posts of Professor of Cardiology, Professor of Surgery, Professor of Gynaecology pertain to particular disciplines and there fore each is an isolated post.

13. The Petitioner in O.P. 8382 of 1992 contends that, Lecturer in Microwave and Radar Electronics is an isolated post even though it is in the same grade and the scale of pay as Lecturers in other Departments and if that post is reserved for members of Scheduled Caste/Scheduled Tribe, it will amount to excessive reservation and therefore bad for violation of Articles 14 and 16 of the Constitution. Same is the contention raised by the Petitioner in O.P. 8531/92 in respect of the post of Reader in Theoretical Physics. It is true that, if these posts

are taken as isolated posts, it may not be possible to reserve the same either to members of the Scheduled Caste/Scheduled Tribe or Backward Classes as it will "amount to 100 percent reservation and therefore unconstitutional. But as a result of the directions contained in Sub-section (11) of Section 31, the abovementioned posts are classified along with Readers and Lecturers of all departments. In *Chakradhar Paswan Vs. State of Bihar and Ors*, the Supreme Court after referring to the Brochure on reservation for Scheduled Caste/Scheduled Tribe in service issued by the Government of India, observed that those instructions clearly show that there can be no grouping of isolated posts for the purpose of reservation and by way of illustration reference was made to the post of Professors of Medical Colleges in different specialties. It was further observed that "if there is only one post in the cadre there can be no reservation with reference to that post either for recruitment at" the initial stage or for filling up a future vacancy in respect of that post and reservation which come under Act 16(4) presupposes the availability of at least more than one post in that cadre". Relying on the above observation the Petitioner contends that classification of all Readers into one group and all Lecturers into one unit is unconstitutional.

14. Sub-section (2) of Section 7 directs that in making appointment in all posts in any service, class or category under the University, the University shall observe the provisions regarding reservation contained in Rules 14 to 17A of Kerala State and Subordinate Service Rules. In *The University of Cochin Vs. Dr. N. Raman Nair and Others*, the Supreme Court interpreted the word "service" to take in various class or categories of posts within it and it was held that classification which puts the whole teaching staff in one class for the purpose of applying the reservation rule or a classification treating the posts of Readers in all subjects as a single category would be a reasonable classification and it would be unassailable. The decision in *The University of Cochin Vs. Dr. N. Raman Nair and Others*, is not referred in *Chakradhar Paswan Vs. State of Bihar and Ors*, . It cannot be assumed that the above case has overruled the Three Judges Branch decision in *The University of Cochin Vs. Dr. N. Raman Nair and Others*, as was held in *N. Meera Rani Vs. Government of Tamil Nadu and Another*, . The decision in *Chakradhar Paswan Vs. State of Bihar and Ors*, has to be understood in the facts and circumstances of that case. The issue raised in the present case is, on the other hand, directly covered by *The University of Cochin Vs. Dr. N. Raman Nair and Others*, .

15. Reliance is placed on the decision of the Supreme Court in *Dr. Suresh Chandra Verma and others Vs. The Chancellor, Nagpur University and others*, by the Petitioner in O.P. 8382/92 in support of his contentions. It is also submitted by the learned Counsel that the dictum laid down in *Chakradhar Paswan Vs. State of Bihar and Ors*, has been affirmed in *Dr. Suresh Chandra Verma and others Vs. The Chancellor, Nagpur University and others*, . I do not think that the above claim is correct or that the decision is of any help to the Petitioners.

16. The issue considered in the above decision, also by a Bench, of Two Judges,

was entirely different. The Employment Notice issued by the Nagpur University was under challenge in the above case. Even though in the Employment Notice, the Professors, Readers and Lecturers in different subjects were classified category-wise, the Employment Notice made a blanket declaration that six of the posts of Professors, 12 of the posts of Readers and 16 of the posts of Lecturers would be reserved for Backward Castes, without making it clear as to in which of the subjects arid in what number the said posts were reserved. The result was that candidates belonging to the reserved category who wanted to apply for the posts did not know for which of the posts they could apply and whether they could apply for the posts in the subjects in which they were qualified. The Supreme" Court held that the appointing authority was sound to show in the advertisement, the details of the posts and the number of posts meant for the reserved category and invite application for appointment to reserved and unreserved posts with a clear statement in that behalf In the present case, a reference to Ext. P-1 notification would show that the University has specified against each vacancy in each post as to whether it is an open vacancy or reserved for Scheduled Caste/Scheduled Tribe or Backward Classes. The method followed by the University in the present case is the one approved by the Supreme Court in Dr. Suresh Chandra Verma and others Vs. The Chancellor, Nagpur University and others, . Therefore it is clear that the Petitioners cannot draw any support from they above decision of the Supreme Court to sustain their challenge against Sub-section (11) of Section 31.

17. The learned Counsel appearing on behalf of the Petitioner in O.P. 8382/92 further referred to the decision of a Full Bench of the Karnataka High Court in Rajkumar v. Gulbarga University AIR 1990 Karn 320 wherein it has held that, in the case of teaching cadres though the designation and pay scale of the posts of Professors, Readers and Lecturers in different subjects are one and the same, still having regard to the fact that the posts of Professors. Readers and Lecturers in each of the subject is distinct and separate, each subject has to be treated as independent unit for the purpose of recruitment and reservation and it was contended that the above decision has been upheld by the Supreme Court in Dr. Suresh Chandra Verma and others Vs. The Chancellor, Nagpur University and others, . I find it, difficult to accept the above contention. The relevant portion of Paragraph 8 of the judgment in Dr. Suresh Chandra Verma and others Vs. The Chancellor, Nagpur University and others, where the reference is made to Dr. Rajkumar's case AIR 1990 Karn 320 reads as follows:

On behalf of the Appellants reliance was also sought to be placed on a Full Bench decision of the Karnataka High Court in Dr. Raj Kumar v. Gulbarga University ILR (1990) Kant. 2125. We do not see how the decision in question helps the Appellants, for the Full Bench has observed there that general reservation has to be cadrewise and subject-wise. But an exception could possibly be made in cases like the one of professors in which post available in each of the subjects is only one while grouping all of them together for purposes of reservation so that at least in the subjects in which the candidates belonging to the reserved category

are available, they could be accommodated. It is not necessary for us in this case to express our opinion on the correct course to be adopted when only one post is available in a particular subject at a given time. The course to be adopted would depend upon the unit of reservations, the period over which the backlog is to be carried, the number of appointments already made in the said posts, the availability of candidates from the reserved category etc. What is material from our point of view in this case is to point out that even the Karnataka Full Bench has taken the view that generally reservation has to be cadre wise and subjectwise. It was also a case of the filling in of the vacancies in teaching posts in a University.

We are, therefore, in complete agreement with the view taken by the Full Bench that the employment notice dated July 27, 1984 was bad in law since it had failed to notify the reservations of the posts subject wise and had mentioned only the total number of reserved posts without indicating the particular posts so reserved subjectwise.

From the reading of the above it cannot be understood that the Supreme Court had approved the view taken by the Karnataka High Court that there cannot be any clubbing of the posts for the purpose of reservation. On the other hand the observation of the Supreme Court is to the effect that it is possible to group the isolated posts in accordance with the facts and circumstances of each case". It is relevant to note that *The University of Cochin Vs. Dr. N. Raman Nair and Others*, was not referred either in *Dr. Suresh Chandra Verma and others Vs. The Chancellor, Nagpur University and others*, or *Dr. Rajkumar's case* AIR 1990 Karn 320.

18. The contentions taken by the Petitioners that Lecturer or Reader in each speciality in each Department is to be treated as an isolated post and therefore a separate unit for the purpose of applying the rules for reservation cannot be accepted. Even in the absence of a provision like Sub-section (11) of Section 31, such an extreme contention would be untenable.

19. In the light of the above discussions, I find that there is no merit in the challenge against Sub-section (11) of Section 31 of the Cochin University of Science and Technology" Act, 1986 and the notification Ext. P-1 issued by the University, The classification of the posts directed under Sub-section (11) of Section 31 is not bad for violation of Article 14 or 16 of the Constitution. On the other hand, it is in accordance with the dictum laid down by the Supreme Court in *The University of Cochin Vs. Dr. N. Raman Nair and Others*, .