
(2022) 04 KL CK 0067
In the High Court Of Kerala
Case No : Writ Appeal No. 1423 Of 2021

Dr.Abdul Haleem .P.P

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 08-04-2022

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 16, 16(4)
Kerala State And Subordinate Services Rules, 1958 — Rule 14(c), 15, 16, 17A

Citation : (2022) 04 KL CK 0067

Hon'ble Judges : A.K.Jayasankaran Nambiar, J;Mohammed Nias C.P, J

Bench : Division Bench

Advocate : George Poonthottam, Nisha George, P.Ravindran, P.K.Ibrahim, I.V. Pramod, A.J. Varghese

Final Decision : Allowed

Judgement

Mohammed Nias. C.P. J.,

1. The question that arises in this Writ Appeal is whether a non-Keralite can claim communal reservation in a Pan India selection process conducted by the 2nd respondent University. The unsuccessful writ petitioner who challenged the selection and appointment of the 5th respondent to the post of Associate Professor in Information Technology in the 2nd respondent University pursuant to Ext. P1 notification, is the appellant before us. The brief facts necessary for the disposal of the Writ Appeal are as follows:-

2. Ext. P1 notification was issued by the 2nd respondent University inviting applications from eligible candidates for the post of Associate Professor in Information Technology ear-marking the said post for the Muslim Category among the other backward classes. By Ext. P3 general instructions for the applicants, it was made clear that the reservation for applicants from SC, ST, OBC (non-creamy layer), and differently abled categories will be applicable as per Kerala Government norms. Applicants seeking reservation benefits available for SC/ST/OBC/differently abled categories were to upload the necessary

documents justifying the claim of respective reservation as per Government of Kerala norms from the competent Authority. The 5th respondent, a native of Karnataka, produced a certificate claiming to be a person belonging to the non-creamy layer of the OBC and the said certificate was issued from the Revenue Department of the Government of Karnataka (Ext. P5). The Writ Petitioner contends that the application of the 5th respondent could not have been entertained as he is a non-domicile hailing from the State of Karnataka and the principle of reservations envisaged under the provisions Kerala State and Subordinate Service Rules ("KS&SSR" for short) will not permit reservation in favour of non-domicile candidates. Further it is the contention of the writ petitioner that as per Kannur University First Statute, 1998 Chapter III Clause (iii) the teachers of the University shall be appointed observing the provisions of Clause (a), (b) and (c) of Rule 14 and Rules 15, 16 and 17A of the KS & SSR as amended from time to time. Since the 5th respondent is not a native of Kerala and not being certified to be an eligible candidate under the OBC by the State of Kerala, his candidature could not have been considered let alone being selected. It is also alleged that the 2nd respondent University has favoured the 5th respondent in the writ petition by extending the last date of submitting the application and also that all the Universities in Kerala State except the 2nd respondent University follows the principle of reservation based on the provisions and stipulations under the KS & SSR. As a matter of fact, even the University of Mysore did not permit the non-domicile candidates to claim reservation as is evident from the document produced. Thus, a writ of a certiorari was sought to quash Exts. P6 and P13, the orders leading to the selection and appointment of the 5th respondent and for a declaration that the 5th respondent is totally ineligible to be considered for selection pursuant to Ext. P1 notification and also for a declaration that only domicile candidates alone be considered for selection to the post which are ear-marked for reserved communities as per the provisions of KS & SSR.

3. The University filed a counter affidavit stating that Ext. P1 notification was for appointment to the single post of Associate Professor in the Department of Information Technology reserved for Muslim Candidate, but contended that as per the UGC Regulation, 2018, direct recruitment for the post of Associate Professor in the Universities and colleges shall be on the basis of merit through an all India test and that there was no bar for a candidate belonging to Muslim Community from any State of India to participate in the selection process and further that the 5th respondent though a native of the State of Karnataka belongs to the Muslim Community which is notified as backward class in the State of Kerala as well as in the State of Karnataka. Accordingly, the University tried to justify the selection of the 5th respondent.

4. The 5th respondent filed a counter affidavit contending that Ext. P1 notification was issued for recruitment through an All India test for the seat reserved for Muslim Community and the said respondent being a member of the Muslim community reckoned as backward class in both the States, was entitled

to apply, being fully qualified for the post as per the notification. A further contention was raised by the 5th respondent that the writ petitioner cannot challenge the selection after having participated in the process and accordingly, prayed for dismissal of the Writ Petition.

5. The learned Single Judge, after considering the rival contentions and noticing the judgments on the point held that Regulation 3.1 of the UGC which is applicable to the 2nd respondent University meant that the application was on an All India basis and therefore, there is no bar for any applicant to submit application and further that there was no exclusion of Non Keralaites in the notification. The learned Single Judge also found that the writ petitioner has participated in the selection, and thus is estopped from challenging the selection process and accordingly dismissed the writ petition.

6. Heard the learned Sr. counsel for the petitioner, the learned Sr. Counsel Sri. P. Ravindran, instructed by the learned Adv. Sri. P.K.Ibrahim for the 5th respondent and the learned Senior Government Pleader Sri. A.J. Varghese.

7. Before us, the learned Senior Counsel for the writ petitioner submits that the judgment under appeal cannot be sustained at all. He submits that if the judgments referred to in the impugned judgment are perused, it could be seen that the conclusion arrived at by the learned Single Judge is contrary to the dictum laid down in those judgments. The learned Senior Counsel also relied on the judgments in Action Committee on Issue of Caste Certificates to S.C. & S.T. v. Union of India (1994) 5 SCC 244, M.C.D. v. Veena and Others [2001 KHC 1599], Pankaj Kumar v. State of Jharkhand & Ors. [Civil Appeal No. 4864 of 2021 (Arising out of SLP (Civil) No. 13473/2020)] and Raj Kumar Meena v. Rankaswami and Others [W.A. No. 414 of 2017] to contend that a candidate who has been certified as belonging to SC/ST/OBC in a particular State cannot claim benefits or privileges on the basis of the said certification in another State.

8. The learned Senior Counsel appearing for the 5th respondent Sri. P.Ravindran, instructed by Sri. P.K.Ibrahim, however, submits that the 2nd respondent University is totally bound by the UGC Regulations and thus the selection being on an All India basis, the only relaxation permissible was a relaxation of the cut off marks for the eligibility and no other concession could be given and therefore, there was no bar at all for the 5th respondent either to apply or to get selected. He also relies on the judgment of the Full Bench of this Court in Radhakrishnan Pillai D. (Dr.) v. Travancore Devaswom Board and Others [2016 (2) KLT 245] in support of his contention that the UGC Regulations are totally binding on the Universities. The learned Senior Counsel further argues that the eligibility of the 5th respondent is not in dispute and that the selection being on an All India basis, his certificate of caste and entitlement to claim reservation can only be certified by the State of Karnataka and not by Kerala State.

9. Having considered the rival contentions and on going through the principles culled out from the above referred judgments, we have no hesitation to hold that

the 5th respondent was not entitled to stake his claim in a reserved seat on the basis of the certificate issued to him from the State of Karnataka. The following observations of the Supreme Court in Action Committee on Issue of Caste Certificates to S.C. & S.T. v. Union of India [1995 KHC 197 : 1994 (5)SCC 244] are relevant and are extracted hereunder:.

"The Constitution Bench has, after referring to the debates in the Constituent Assembly relating to these articles, observed that while it is true that a person does not cease to belong to his caste/tribe by migration he has a better and more socially free and liberal atmosphere and if sufficiently long time is spent in socially advanced areas, the inhibitions and handicaps suffered by belonging to a socially disadvantageous community do not truncate his growth and the natural talents of an individual gets full scope to blossom and flourish. Realising that these are problems of social adjustment it was observed that they must be so balanced in the mosaic of the country's integrity that no section or community should cause detriment or discontentment to the other community. Therefore, said the Constitution Bench, the Scheduled Castes and Scheduled Tribes belonging to a particular area of the country must be given protection so long as and to the extent they are entitled to in order to become equals with others but those who go to other areas should ensure that they make way for the disadvantaged and disabled of that part of the community who suffer from disabilities in those areas.

It is further held:

That is because the concept of backwardness in Articles 15 and 16 is a relative one varying from area to area and region to region and hence it is not permissible to generalise any caste or any tribe as a Scheduled Caste or as a Scheduled Tribe for the whole of the country. Therefore, a person belonging to a Scheduled Caste or a Scheduled Tribe in relation to a State would require necessary protection and benefits in that State to bring about equality but the social environment of the State to which he migrates may not be the same as in the State of his origin and therefore he cannot claim the benefits and privileges available to Scheduled Castes and Scheduled Tribes in the State to which he migrates. Therefore, the contention of the petitioners that on migration the caste or tribe of the person concerned does not change and if such person is denied the concessions, benefits and privileges available to Scheduled Castes and Scheduled Tribes in the State to which he migrates, such a denial would be in violation of Article 14 of the Constitution, in that, the right to equality and equal treatment would be denied, cannot be sustained.

Therefore, said the Constitution Bench, the Scheduled Castes and Scheduled Tribes belonging to a particular area of the country must be given protection so long as and to the extent they are entitled to in order to become equals with others but those who go to other areas should ensure that they make way for the disadvantaged and disabled of that part of the community who suffer from disabilities in those areas.

In the decision reported in [2001] 6 SCC 571] M.C.D. Vs. Veena and Others), the Supreme Court has held:-

"6. Castes or groups are specified in relation to a given State or Union Territory, which obviously means that such caste would include caste belonging to an OBC group in relation to that State or Union Territory for which it is specified. The matters that are to be taken into consideration for specifying a particular caste in a particular group belonging to OBCs would depend on the nature and extent of disadvantages and social hardships suffered by that caste or group in that State. However, it may not be so in another State to which a person belonging thereto goes by migration. It may also be that a caste belonging to the same nomenclature is specified in two States but the considerations on the basis of which they had been specified may be totally different. So the degree of disadvantages of various elements which constitute the data for specification may also be entirely different. Thus, merely because a given caste is specified in one State as belonging to OBCs does not necessarily mean that if there be another group belonging to the same nomenclature in another State, a person belonging to that group is entitled to the rights, privileges and benefits admissible to the members of that caste. These aspects have to be borne in mind in interpreting the provisions of the Constitution with reference to application of reservation to OBCs."

10. The same view has been taken in Raj Kumar Meena v. Rankaswami and Others [W.A. No. 414 of 2017] of this Court, and the Special Leave Petition No.34847 of 2017 filed before the Apex Court against the said judgment has also been dismissed. Incidentally, the above Writ Appeal arose from the judgment in W.P.C. No.36354 of 2015 where one among us (Justice A.K. Jayasankaran Nambiar) categorically held that merely because a given caste is specified in State A as a Scheduled Caste, it would not necessarily follow that if there be another Caste bearing the same nomenclature in another State, the person belonging to the former would be entitled to the rights, privileges and benefits admissible to the members of the Schedule Caste of the latter state, for the purpose of the Constitution. The Supreme Court in the decision in Pankaj Kumar v. State of Jharkhand and Others - [Civil Appeal No. 4864 of 2021 arising out of SLP (Civil) No. 13473 of 2020)] relying on the earlier judgments had also taken the same view that the migrants are not entitled for reservation as other backward classes (OBC) in the State/Union Territories where they have migrated. In view of the above binding and authoritative precedents it has to be held that the 5th respondent, a member of the OBC from the State of Karnataka cannot have a claim for the reserved seat under Ext. P1 notification.

11. It is pertinent to note that the notification to the extent it earmarks the post for the Muslim Community among the OBC is not challenged and as such the 5th respondent cannot be heard to contend that the selection on All India basis on the basis of UGC Regulation makes it incumbent on the 2nd respondent to avoid any kind of social reservation. We do not see as to how the UGC Regulations can

affect the reservation policy of the State. The notification inviting the candidates on an All India basis in accordance with the UGC Regulations cannot mean that the reservation of posts which was in accordance with the Constitutional mandate as implemented within the State is affected in any manner. The Full Bench decision of this Court referred to above cannot be understood in any manner to hold that the reservation policy of a State has to be tinkered with so as to be in line with the UGC Regulation.

12. It is trite that Article 16 (4) of the Constitution of India is an enabling provision which enables the State to provide backward classes including Scheduled Castes and Scheduled Tribes, the reservation in appointments to public services. Such reservation is to be provided on the basis of quantifiable data including the adequacy or inadequacy, as may be of the representation of such classes in government service. Resultantly, such data will vary from State to State and a certification of a particular class as being entitled to reservation in a State cannot ipso facto make it applicable to the other States in the country. The right of the State to provide reservation is unaffected by the Regulations issued by the UGC which determines the qualifications for selection to a post which is binding on the Universities.

13. The finding of the learned Single Judge that the writ petitioner is estopped from challenging the selection process as he has participated in it also cannot be sustained. The ineligibility of the 5th respondent is a matter which the writ petitioner can question and the same had to be considered on merit. Simply because the appellant has participated in the selection process did not mean that the appellant had acquiesced to the illegality in the selection process.

14. The result of the above discussion leads to the inevitable conclusion that the candidature of the 5th respondent in the reserved seat was totally impermissible and illegal and it is declared so. Consequently, the selection of the 5th respondent is set aside, the 2nd respondent University is directed to appoint the writ petitioner, being the second rank holder in the selection, as expeditiously as possible, at any rate, within a period of one month from the date of receipt of a copy of this judgment.

This Writ Appeal is allowed as above.