

(1984) 01 KAR CK 0009
In the Karnataka High Court
Case No : Writ Petition No. 13096 of 1983

Gayathri

APPELLANT

Vs

Karnataka Public Service Commission

RESPONDENT

Date of Decision : 18-01-1984

Acts Referred:

Constitution of India, 1950 — Article 16, 16 (1), 16 (4)

Citation : (1985) ILR (Kar) 4195

Hon'ble Judges : Rama Jois, J

Bench : Single Bench

Advocate : U.L. Narayana Rao, for the Appellant; N. Devadas, HCGP for R-1, 2 and 8, for the Respondent

Judgement

Rama Jois, J.

In this Writ Petition in which the petitioner has questioned the legality of the selection, made by the Karnataka Public Service Commission ("the Commission" for short), of persons for appointment as Lecturers in the department of Collegiate Education of the State Government, the following question of law arises for consideration.

1. Whether in making selection for appointment to the cadre of Lecturers in the Collegiate Education Department of the State Government the reservation of posts provided for by the State Government by an order made under clause (4) of Article 16 of the Constitution should be effected subject wise and whether if it is given on the basis of total number of posts in respect of which selection is made by the Commission, it would be violative of Article 16(1) of the Constitution?.

2. The facts of the case, in brief, are as follows : The petitioner passed M.Sc, Degree in Physics of the Mysore University in I Class. The Commission, by its notification dated 20-1-82 invited applications for 59 (fifty nine) posts of Lecturers in the department of Collegiate Education in different subjects specified

in the notification. The relevant portion of the notification reads :

Statement showing the particulars of the posts for which applications are called for :

XXX

XXX

2. No. of Vacancy is advertised, designation of the vacancy/vacancies and department.

59 posts of Lecturers in the Depart- of Collegiate Education in the following subjects :

English

: 07

Kannada

: 06

Telugu

: 01

Urdu

: 01

History

: 08

Economics

: 07

Political Science

: 06

Sociology

: 02

Geography

: 01

Commerce

: 09

Physics

: 04

Chemistry

: 02

Mathematics

: 02

Botany

: 02

Geology

: 01

3. Scale of pay

Rs. 750-50-1000-60-1300-75-1525.

GROUP-B

4. Minimum qualification prescribed for the posts.

Gazetted : Must be a holder of a degree not lower than a second class Masters''s degree of a University established by law in India with the concerned subject as a major subject at the master''s degree level.

XXX

XXX

XXX

5. Classification of Vacancies

Ex. MP

6 posts

SCs

7 posts

STs

1 post

BTs

3 posts

BCT

4 posts

BSG

8 posts

BCM

10 posts

GM

20 posts

59 posts

Among Ex-MPs SCs-2, STs-1,

BCM-1, BCT-1 and BSG-1.

XXX

XXX

XXX

As may be seen from the notification reservation in favour of backward classes in provided for on the basis of total number of posts.

2a. The petitioner being eligible to compete for selection for the post of Lecturer in Physics submitted her application to the Commission. She was called for interview by the Commission and was interviewed. Thereafter, the list of selected candidates was published as per the notification dated 18th June 1983, copy of which is produced as Annexure-C which has been produced along with memo dated 13-1-1984. The petitioner was not selected. Aggrieved by the said selection, the petitioner has presented this Petition.

3. The challenge to the legality of the selection made by the Commission is on the following basis : The posts of Lecturers in different subjects in the Collegiate Education Department carried an identical pay scale of Rs. 750-50-1000-60-1300-75-1525. A candidate for being eligible for the post of Lecturer in a particular subject has to possess a Master's degree in the concerned subject not lower than second class of a University established by law. Though applications were invited for 59 posts of Lecturers in identical payscale in a common advertisement, still the eligibility of candidates is distinct and separate in respect of each of the subjects. In other words, a candidate possessing Master's degree like the petitioner could compete only for the posts of Lecturers in Physics as she is not eligible for selection for the posts of Lecturer in any other subject. That being the position, the reservation of posts in favour of persons belonging to S.C, S.T. and other backward classes, as provided for by the State Government, should have been provided for subject wise and the failure to do so has resulted in denial of equality of opportunity in matters relating to employment under the State guaranteed to the petitioner under Clause (1) of Article 16 of the Constitution.

4. In order to demonstrate as to how the petitioner has been adversely affected on account of the manner of reservation provided for, the petitioner has furnished a statement consisting of the following particulars.

Subject

No. of POSTS No. of CANDIDATES SELECTED IN EACH CATEGORY

TOTAL

GM

BCT

BT

BCM

BSG

SC

ST

EX. MP

I

2

3

4

5

6

7

8

9

10

11

English

07

7

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7

Kannada

06

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2

1

1

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2

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6

Telugu

01

1

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1

Urdu

01

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2*

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2*

History

08

3

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2

1

2

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8

Economics

07

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2

1

2

2

1

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8

Political Science

06

2

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2

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1

6

Sociology

02

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2

1

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3

Geography

01

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1

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1

Commerce

09

7

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9

Physics

04

1

2

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2

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5*

Chemistry

02

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1

1

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2

Mathematics

02

1

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1

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1

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3*

Botany

02

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1

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1

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1

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3*

Geology

01

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1

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1

23

7

3

11

9

9

2

1

65

In excess of the number of vacancies advertised.

5. Learned Counsel for the petitioner stated that the method of reservation followed by the Commission has resulted in the denial of equal opportunity in relation to selection for appointment and in this behalf submitted as follows: In the subject of English as against 7 posts, all the seven posts have been made available to general merit. Similarly in the subject of Commerce for 9 posts, 7 posts have been made available for general merit. In the case of Physics, though 4 posts were advertised actual selection has been made for 5 posts. In respect of these 5 posts, one candidate belonging to general merit and two candidates each belonging to backward caste and backward community have been selected. If the reservation was effected subject-wise and the Government. Order regarding the roster required to be followed in relation to direct recruitment was observed, as no candidate belonging to backward special group was available for selection against the 5th vacancy earmarked in the roster for back ward special group, the petitioner was entitled to be selected against the said vacancy in view of paragraph 6 of the Government Order dated 4th March 1977 which regulates the reservation of posts.

6. To the Petition, the petitioner has impleaded the five candidates selected for appointment as Lecturers in Physics as respondents 3 to 7. But if the contention of the petitioner that the reservation was required to be effected on subject wise basis were to be accepted, the entire selection would have to be redone by the Commission. In the circumstances, when the matter came up for preliminary hearing on 20th July 1983, the Learned Counsel for the petitioner sought permission to prosecute the Writ Petition in a representative capacity and accordingly made an application under Order 1, Rule 8 of the Code of Civil Procedure.

7. As the question raised in the Petition is one of general importance and affects large number of persons seeking selection for appointment before the Commission wherever reservations are made on the basis of the total number of posts even though the eligibility of candidates is distinct and separate, the application was allowed on 20th July 1983 and the petitioner was permitted to prosecute the Petition in a representative capacity. The petitioner was also directed to take a notice by publication in Deccan Herald English daily, calling upon persons interested either in supporting or opposing the Petition to apply to this Court to be made a party on or before 1st September 1983. In terms of the said order, a public notice has been issued. However, no one has applied for being impleaded as a party.

8. On facts, there is no dispute in this case. If the reservation provided for by the Commission on the basis of total number of posts of Lecturers in respect of which selection is made, is not discriminatory the procedure followed by the Commission as laid down in the Government Order dated 6th October 1981 issued pursuant to the Judgment of this Court in *Annegowda - v. - Karnataka Public Service Commission* 1982 (2) KLJ 216, would be in accordance with law. If, on the other hand, the Commission was bound to follow the roster, prescribed for regulating reservation of posts while making direct recruitments, the petitioner was entitled to be selected against one of the five posts of Lecturers in respect of which the selection has been made by the Commission. It is in view of this position, the question of law set out first arises for consideration.

9. The recruitment to the posts of Lecturers in the Department of Collegiate Education is regulated by the Rules called The Karnataka Education Department Services (Collegiate Education Department) Cadre and Recruitment Rules, 1964. The relevant portions of the Rules concerning the posts of Lecturers reads as follows:

"SCHEDULE

Category of Posts

Method of Recruitment

Minimum qualifications and period of probations.

2

3

XXX

XXX XXX

XXX

9. Lecturers

50% by direct recruitment.

For Direct Recruitment :

50% by promotion of Demonstrators and Tutors subject to their possessing a 11 Class Masters"s degree in respective subjects.

I or II Class Master"s degree. Age : Relaxable upto 33 years in case of persons with teaching experience. No age limit in case of Government Servants in service.

Probation : One year.

There is no dispute that though the entry relating to posts of Lecturers is one entry in the Recruitment Rules, the posts of Lecturers exist in different subjects according to the subject wise requirement of the Colleges as assessed and determined by the Head of the Department. Therefore, whenever requisition is sent by the Head of the Department to the Commission not only the total number of posts of Lecturers required has to be specified, but also the number of posts of Lecturers in each subject has got to be specified. There is also no dispute that a person possessing master"s degree qualification in the concerned subject only, is eligible consequently the competition for purposes of selection would naturally be among the aspirants for the posts of Lecturers in the concerned subject.

10. Now coming to the provision of the Government Order providing for reservation of posts under Clause (4) of Article 16 of the Constitution, the procedure required to be followed in making selection adhering to reservation of posts have been laid down in the Government Order dated 4th March, 1977. The relevant portion of the Government Order reads :

"GOVERNMENT OF KARNATAKA

Sub : Classification of backward classes for purposes of reservation of appointments and posts under Article 16(4) of the Constitution.

READ :

(1) Government Order No. GAD 17 SRR 74, dated 29th July 1974

(2) Government Order No. GAD 6 SBC 75, dated 3rd May 1975.

(3) Official Memorandum No, GAD 6 SBC 75, dated 31st October 1975.

(4) Government Order No. GAD 2 SBC 75, Dated 9th July 1975.

(5) Government Order No. SWL 12 TBS 77 dated 22nd February 1977.

ORDER No. DPAR 1 SBC 77, BANGALORE

DATED : 4th MARCH, 1977.

In the Government Order dated 9th July 1975, orders were issued in supersession of all the earlier orders for making reservations in appointments and posts in the State Civil Services for S.C., S.T. and other Backward Classes of citizens not adequately represented in the State Civil Services. In the Government Order dated 22nd February 1977 Government after considering the recommendations of the Backward Classes Commission, have determined under Article 16(4) of the Constitution of India the backward classes of citizens, who are not adequately represented in the State Civil Services and have directed that reservation in appointments and posts shall be made for these classes to the extent indicated in that order. These reservations will be in addition to the reservations of 15 per cent for S.C. and 3 per cent for S.T.

(2) Accordingly, Government are pleased to direct that reservations in appointment and posts in the State Civil Services shall be made for the following classes of citizens to the extent indicated against them.

I. (1) Scheduled Caste, as defined in the Constitution of India

....15%

(2) Scheduled Tribes, as defined in the Constitution of India

II. Other Backward Classes viz.,

(1) Backward Communities 20%

(2) Backward Castes 10%

(3) Backward Tribes 5%

(4) Special Group5%

The expressions Backward Communities, Backward Castes, Backward Tribes and Special group mentioned in item II above, shall have the same meaning as in the Government Order No. SWL 12 TBS 77, dated 22nd February 77. These are indicated in Appendix-1 to this Government Order.

(3) Appointments and posts in the State Civil Services shall, hereafter, be reserved for the S.C- S.T. and other Backward Classes to the extent of the percentages indicated in para 2. The reservations shall be made for each category of posts, under each appointing authority according to the percentages indicated. For the purpose of making reservations and calculating the number of

vacancies to be reserved for each category of Backward Classes indicated in para 2, a rotation of 100 vacancies shall be followed for each category of posts under each appointing authority. The rotation of vacancies shall be as indicated in Appendix-11 to this Government Order. The rotation of vacancies shall be a running account till the hundredth vacancy is reached. For example, if on the first occasion of recruitment, 21 posts have been filled on the next occasion of recruitment the classification will start from 22nd point and so on. All appointing authorities shall maintain separate Registers indicating the rotation for each category of posts under them. The appointing authorities shall intimate to the Public Service Commission other selecting authorities the number of vacancies to be filled by direct recruitment duly classified in accordance with the rotation indicated in Appendix-II.

4. The Karnataka Public Service Commission or other selecting authorities shall, for the purpose of ensuring proper reservations ordered in this Government Order, follow the mode of selection indicated in Appendix III to this Government Order.

5(a). If in a recruitment to a category of posts or service persons belonging to the S.C. or ST. who are suitable for appointment are not available for being selected for vacancies reserved for such Castes or Tribes such vacancies shall be filled by selection of candidates belonging to the Backward Communities or Backward Castes in the ratio of 2 : 1 as far as possible. If candidates belonging to the Backward Communities or Backward Castes are not available, the said vacancies may be filled up on the basis of general merit. In such cases when the vacancies reserved for S.C. or S.T. are filled by candidates not belonging to these castes or "Tribes, the vacancies lost S.C. or S. T. shall be carried to the next occasion of recruitment to the same category of posts or services.

(b) On the second occasion of recruitment vacancies shall be reserved for S.C. S.T. and other Backward Classes in accordance with the provisions of this Order. Out of the vacancies so reserved for the Backward Communities and Backward Castes, the number of vacancies carried forward in accordance with Clause (a) shall be deducted in the same reason as in the said clause and added to the number of vacancies reserved for S.C. and/or S T. as the case may be. Vacancies so reserved shall be filled as indicated in para (a), if suitable candidates belonging to the S.C. and S.T. are not available. The vacancies filled by candidates not belonging to these Castes and Tribes, shall be carried forward to the next recruitment.

(c) On the third occasion of recruitment to the same category of posts or service, the number of vacancies reserved for S.C. and S.T. carried forward from the second occasion of recruitment in accordance with clause (b) shall similarly be added to the number of vacancies reserved on the third occasion for S.C. and S.T. and the number reserved for Backward Communities and Backward Castes similarly reduced.

(d) If on the third occasion of recruitment the vacancies reserved for S.C. and S.T. on that occasion and those carried forward from the first and second occasions cannot be filled by reason of the non-availability of suitable candidates belonging to the S.C. and S.T. such vacancies shall be filled by selection of suitable persons on the basis of general merit and there shall be no further carry forward of vacancies to the next occasion of recruitment.

(6) In a recruitment to a category of posts or service if persons belonging to the Backward Tribes or the Special group are not available for being selected for the vacancies reserved for them, such vacancies shall be filled by selection of candidates on the basis of general merit."

(Underlined by me)

It may be seen from paragraph-3, the reservation of posts to the extent provided for in the Government Order is required to be made for each category of posts under each appointing authority and in the matter of implementing the reservation of posts the roster prescribed in Appendix-II to the Government Order was required to be followed. Appendix-II annexed to the said Government Order was replaced by Government Order dated 26th September 1979. The Appendix-II to the Government Order 4-3-1977 as substituted by Government Order dated 26th September 1979 reads :

"1.

R : SC

47.

GM

2.

R : ST

48.

R : SC

3.

G : M

49.

R : BCT

4.

R : BCM

50.

GM

5.

R : BSG

51.

R : BCM

6.

R: SC

52.

GM

7.

GM

53.

R : BSG

8.

R : BCT

54.

R : BT

9.

GM

55.

R : SC

10.

R : BCM

56.

GM

11.

R : BSG

57.

R : BCM

12.

GM

58.

GM

13.

R: SC

59.

R : BCT

14.

R : BSG

60.

R : BSG

15.

GM

61.

GM

16.

R : BCM

62

R : SC

17.

R : BCT

63.

R : BCM

18.

R : BT

64.

GM

19.

GM

65.

R : BSG

20.

R : SC

66.

R : ST

21.

R : BCM

67.

GM

22.

GM

68.

R : BCM

23.

R : BSG

69.

R : SC

24.

GM

70.

GM

25.

R : BCM

71.

R : BCM

26.

GM

72.

R : BT

27.

R : SC

73.

GM

28.

:GM

74.

R : BCM

29.

R :BCT

75.

GM

30.

R :BCM

76.

R : SC

31.

GM

77.

GM

32.

R : BSG

78.

R : BSG

33.

R : ST

79.

GM

34.

R : SC

80.

R : BSG

35.

GM

81.

R : BCM

36.

R : BT

82.

GM

37.

R : BCM

83.

R : SC

38.

GM

84.

R : BSG

39.

R : BCT

85.

GM

40.

GM

86.

R : BCM

41.

R : SC

87.

R : BSG

42

R :BSG

88.

GM

43.

GM

89.

R : BCT

44.

R: BCM

90.

R : SC

45.

GM

91.

R : BT

46.

R : BSG

92.

R : BSG

93.

R : BCM

94.

GM

95.

R : BCT

96.

R : BSG

97.

R : SC

98.

GM

99.

R : BCM

100.

R : BCT

NB.

: G.M.

General Merit

34

R

: BCM

Reserved for Backward Communities

18

R :

SC

Reserved for Scheduled Castes.

15

R :

BCT

Reserved for Backward Castes.

10

R

: BT

Reserved for Backward Tribes.

05

R

: BSG

Reserved for Backward Special group

15

R

: ST

Reserved for Scheduled Tribes

03

TOTAL --

100

In Appendix - III to the Government Order Mode of Selection was prescribed. It reads :

MODE OF SELECTION

(a) The appropriate Selecting Authority shall first prepare consolidated list of all eligible applicants irrespective of classes to which they belong arranging them in the order of merit (hereinafter called the First list).

(b) The Selecting Authority will then prepare from out of the First list a Second list (hereinafter called the Second list) containing the names of applicant equal to the number of posts to be filled up on the basis of general merit (i.e. the number of posts other than those reserved in favour of S.C.S.T. and other Backward classes) arranging them in the order of merit commencing with the name in the First List.

(c) The Selecting Authority will then prepare from out of the First List excluding the portion forming the Second List, a Third List, (hereinafter called the Third List) containing the names of applicants belonging to the S C. S.T. Backward-Communities, Backward Castes, Backward Tribes and Special Group equal to the number of vacancies reserved for each category in the order of merit determined in the First List.

"(d) The Selection Authority will then prepare a final list of selected candidates for appointment to the category of posts for which selection is made by arranging the names of candidates included in the Second List and the Third List in the order of merit."

obviously, the above mode of selection was prescribed having regard to the selection required to be made to posts for which common conditions of eligibility were prescribed in the relevant rules of recruitment. Even though the said mode of selection was impracticable and inapplicable to a cadre like that of Lecturers which consisted of posts of Lecturers in different subjects and consequently with different conditions of eligibility the Commission was following the said procedure as no other procedure was prescribed. The following of that procedure had resulted in defeating the reservation of posts. In the circumstances, candidates who were denied selection against posts reserved for the concerned backward class category, to which they belonged, had questioned the legality of the procedure followed by the Commission. That question was considered in the case of Annegowda. Thereafter, again the matter came up for consideration in *Munireddy - v. - K.P.S.C.*, W.P. No. 810 of 1979 Dtd. 11th November 1980. In both these Judgments, it was held that the mode of selection prescribed in

Appendix-III was inapplicable to the cadres which consisted of posts with different conditions of eligibility. It was further held that even though the Commission was effecting reservation of posts on the basis of total number of posts advertised and not on subject wise basis while making selection for the post of Lecturers, the Commission was bound to select such number of candidates belonging to S.C., S.T. and other backward classes as are equal to the number of posts reserved and it was only after providing for available candidates falling under the reserved category in the subjects for which they were eligible, the Commission could proceed to make the selection of candidates under general merit.

11. In implementation of the above Judgment, the State Government has issued the order dated 6th October 1981 on which reliance is placed in the Statement of objections. The said Government order reads:

"PROCEEDINGS OF THE GOVERNMENT OF KARNATAKA

Sub : Reservation of vacancies for SC ST and other categories of Backward Classes under Article 16(4) of the Constitution of India-Mode of selection to teaching posts in the Departments of Collegiate Education and Medical Education.

GOVERNMENT ORDER No. DPAR 42 SBC 81, BANGALORE, DATED : 6TH OCTOBER 1981. (As amended by order dated 2nd Dec. 1982).

READ : Government Order No. DPAR 1 SBC 77, Dt. 4-3-77.

PREAMBLE :

Selections to post under the State Civil Services were being made by Selecting Authorities following the Mode of selection prescribed in Appendix-III to the Government Order dated 4-3-1977 read above. It has come to the notice of Government that there is difficulty in selecting candidates to posts like Lecturers in the Departments of Collegiate Education and Medical Education following the mode of selection prescribed is Appendix-III to Government Order dated 4-3-1977 as while making recruitment to such posts. Classification of vacancies for reservation of posts in favour of S-C./S.T. and backward classes is made on the basis of total number of posts but selection is required to be made subject wise.

The High Court of Karnataka while disposing the case in Writ Petition No. 810 of 1979 has suggested a procedure to be followed in making selection to posts like Lecturers where selection in more than one subject is required to be made and posts are reserved in favour of S.C., S.T. etc., on the basis of total number of posts.

Considering the difficulties and the suggestions made by the High Court as indicated above, Government are pleased to direct that in partial modification of the Orders issued in para 4 of the Government Order No.DPAR 1 SBC 77, dated 4-3-1977 the Mode of Selection to teaching posts in the Departments of

Collegiate Education and Medical Education shall be as indicated below:

Mode of Selection To Teaching Post in Departments Of Collegiate Education And Medical Education.

(a) The appropriate Selection Authority shall first prepare consolidated list of all eligible applications irrespective of classes to which they belong, arranging them in the order of merit (hereinafter called the First List).

(b) The Selecting Authority will then prepare from out of the First List, a Second List (hereinafter called the Second List) selecting the best among the Candidates eligible for selection against the posts reserved for each category namely, S.C., S.T. Backward Communities, Backward Castes" Backward Tribes and the Special Group, but having regard to the subject in which vacancy exists upto the extent of posts reserved for each of these categories.

(c) Thereafter the Selecting Authority will prepare from out of the First list excluding the names forming the Second List, a Third List (hereinafter called the Third list) selecting candidates strictly according to merit, but having regard to the subject in which vacancy exists upto extent of posts reserved for general merit category.

(d) The Selecting Authority will then prepare the final list of selected candidates for appointment to the category of posts for which selection is made by arranging the names of candidates included in the Second List and the Third List in the order of merit.

By Order and in the name of the Governor of Karnataka,

Sd/- A.K. SOMESHWAR, Dy. Secretary to Govt., D. P. A. R, (Service Rules)."

There is no dispute that the Commission has strictly followed the said Government Order in making the impugned selections.

12. As stated earlier, in the earlier two Judgments, referred to above, the reservation of posts provided for on the basis of total number of posts advertised and not on subjectwise basis, was not questioned. The only limited question raised in those petitions was: Whether the procedure prescribed in Appendix-III to the Government Order dated 4th March 1977 was applicable and by following the said procedure the reservation of to the cadre of Lecturers having regard to the Special features of the cadre, namely, subjectwise requirement and subjectwise eligibility. In the said Judgments, it was held that the said procedure was inapplicable and by following the said procedure the reservation of posts provided for was adversely affected and as it was obligatory for the Commission to respect the reservation first and make the selection next the candidates eligible for selection against reserved posts should be selected first to the extent of reservation.

13. In the present case, as already pointed out, the contention of the petitioner is, though the posts of Lecturers constitute one cadre according to the

recruitment rules, having regard to the factual position, namely, that the said cadre consists of Lecturers in different subjects and the constitution of eligibility for being selected for appointment to the post of Lecturer in particular subject is the possession of the Master's degree in the concerned subject, the posts of Lecturers in each subject has to be considered as a separate and distinct category and the reservation has got to be provided for having due regard to the roster fixed in Appendix-II to the Government Order dated 4th March 1977.

14. It appears to me that the contention of the petitioner is well founded. Though the cadre and recruitment rules puts the posts of Lecturers in one entry, it has got to be read as many entries as there are subjects, namely, Lecturers in Chemistry, Lecturers in Physics, Lecturers in English, Lecturers in History and so on, and, for each category of the above costs, the minimum qualification prescribed is First or Second Class Master's degree in the concerned subject. Therefore, when the posts of Lecturers are advertised inviting applications, the Commission should specify the number of posts in each subject and the reservation should also be specified subjectwise following the roster prescribed in Appendix II. This is the only way of ensuring equality of opportunity in matters relating to employment guaranteed under Article 16(1) of the Constitution. To a candidate who belongs to general merit and who applied for the post of Lecturer in a particular subject in which he has the Master's degree, if all the posts of lecturers in that subject are made available for reserved candidates on the ground that candidates belonging to reserved category available have master's degree in that subject the candidate belonging to general merit stands denied of the right guaranteed under Article 16(1) of the Constitution. The fact that in some other subjects all the posts are made available to candidates belonging to general merit is no answer to his plea of denial of equal opportunity. Therefore, the only method by which the right guaranteed under Article 16(1) of the Constitution of India could be ensured is to provide reservations subjectwise.

15. In fact, a similar question, namely, whether the posts of Readers in each subject should be treated as a separate category and the reservation of posts should be effected in respect of each subject separately had come up for consideration in the case of Syda Husna Banu - v. -State, W. P. No. 2013 of 1972 DD. 21st November 1973. The Writ Petition was allowed on 21st November, 1973 and it was held that the posts of Lecturers in each subject has to be treated as a separate category and the reservation should be effected on subjectwise basis. That Judgment was taken in Appeal before a Division Bench of this Court in Writ Appeal No. 63 of 1974, State - v. - Syda Husna Banu. The Writ Appeal was dismissed by Judgment dated 8th April 1983. The relevant portion of the judgment reads:

"6. From the scheme provided for selection it will be seen that the basis for selection of a Reader being the aggregate marks obtained in the qualifying examination plus the marks obtained at the interview, the selection to the post of Reader in Political Science can only be subjectwise. Since the qualifying

examination for Readers in different subjects are quite different, it is not possible to accede to the contention of the Learned Advocate General that all posts of Readers must be taken as one unit for the purpose of making reservation. If such a contention is accepted, then it is conceivably possible that all candidates included in such a list may be those who are qualified to teach only one subject, as against the selection required to be made for different subjects. The resultant position would then be that in the list prepared by treating all the posts of Readers as one unit, irrespective of the subject, candidates qualified in different subjects may not get themselves included in the list. Secondly, if selection of all posts of Readers is treated as an unit and aggregate marks obtained in the qualifying examination and at the interview is the basis of selection, then there might be more number of candidates for teaching a particular subject than the number of vacancies available and thirdly, there may not be a selection of a candidate for certain subjects though the vacancies are available. Thus, the very object of selecting candidates, who have proficiency in particular subject for appointment will be defeated. Hence, we have no hesitation to affirm the view taken by the Learned Single Judge that the selection should be subjectwise.

(7) Next, we will have to examine the mode of giving effect to the reservation orders if the selection is subjectwise.

(8) Para 1 of the Government Order No. GAD 42 SRR 69-1, dated 6th September 1969 issued under Article 16(4) of the Constitution provided for reservation of 3, 15 and 30 per cent in favour of S.C. S.T. and Backward Classes respectively in all appointments and posts under the State Civil Services. As per para 4 of the said Order all vacancies to be filled by direct recruitment were required to be classified and arranged according to the reservation made for S.C, S.T. and Backward Classes, keeping 33 vacancies as an unit, in the manner indicated in Annexure-I of the Order. Annexure-1 set out roster providing the mode in which an appointment can be made to a particular cadre of post.

(9) Paras 4 to 7 of this Government Order were amended by a subsequent Government Order No. GAD 25 STR 71 dated 17-5-1971. The substituted para 4 provided for specification of percentage of reservation made for S.C. & S.T. and other classes, in all vacancies to be filled up by direct recruitment in any calendar year.

(10) Para 7(a) and (b) provided for reservation in favour of the S.C, S.T. and Backward Classes while making appointment by competitive examination to Class I, II and III posts. Para 7(A) which is relevant for the purpose of this case reads thus :

"7(A) Notwithstanding the percentage of reservation specified in paragraph-I:

(a) (i) One vacancy or two vacancies as the case may be shall be reserved for candidates belonging to the S.T. where the total number of vacancies to be filled at any recruitment, is not less than five and not more than twenty or not less than twenty one and not more than forty as the case may be:

(ii) One vacancy or two vacancies. as the case may be shall be reserved for candidates belonging to the S-C where the total number of vacancies to be filled at any recruitment is not less than five and not more than seven or not less than eight and not more than fourteen as the case may be :

(b) When any vacancy or vacancies are reserved for candidates belonging to the S. T. & S. C. under sub-clauses (i) and (ii) or clause (a) such number of vacancies if any shall be reserved for candidates belonging to other backward classes so that the total reservation in favour of S. T., S. C. and other Backward Classes shall not exceed forty-eight percent of the total number of vacancies to be filled in such recruitment.

Annexure-I to the Government Order dated 5th September 1969 was omitted, thereby the process of appointment by roster system stood deleted. The deletion of roster system and insertion of para 7A made it impossible to provide for reservation when the posts are less than the number mentioned therein. It would have been possible for the State Government and the KPSC to adopt roster system, if it had not been deleted, to give effect to reservation treating the recruitment subjectwise. The hindrance created by these Government Orders cannot be a good ground to treat a post as a Department wise instead of subjectwise for the purpose of recruitment. The unworkable procedure provided for in the subsequent order dated 17th May 1971 cannot be the basis for a bad precedent. By reason of deletion of the roster system, as provided in Annexure-I to the Government Order dated 6-9-1969 and insertion of para 7A by the subsequent Government Order dated 17th May 1971, what follows is that the reservation had to be provided depending upon the number of vacancies to be filled up and in that process evidently no reservation could be made in recruitment of two posts of Readers in Political Science.

11. The Government having realised the folly has thereafter re-introduced the roster system in its subsequent reservation Orders the latest of which being the Government Order No. DPAR 1 SBC 77, dated 4th March 1977, Para 3 of the said Government Order reads thus:

"3. Appointments and posts in the State Civil Services shall, hereafter, be reserved for the S,C.,S.T. and other backward classes to the extent of the percentages indicated in para 2. The reservations shall be made for each category of posts, under each appointing authority according to the percentages indicated. For the purpose of making reservations and calculating the number of vacancies to be reserved for each category of backward classes indicated in para 2, a rotation of 100 vacancies shall be followed for each category of posts under each appointing authority. The rotation of vacancies shall be a running account till the hundredth vacancy is reached. For example if on the first occasion of recruitment, 21 posts have been filled, on the next occasion of recruitment the classification will start from 22nd point and so on. All appointing authorities shall maintain separate registers indicating the rotation for each category of posts under them. The appointing authority shall intimate to the Public Service

Commission or other selecting authorities the number of vacancies to be filled by direct recruitment duly classified in accordance with the rotation indicated in Appendix-II."

Under para 4, KPSC or other selecting authority is required to follow the mode of selection as indicated in Appendix-III for the purpose of ensuring proper reservation made in favour of those persons. Appendix-III is the same as Appendix-I to the Government Order dated 17th May 1971, incorporating the principles enunciated by this Court in Partha's case. Para 5 provides for filling up of these reserved vacancies in case candidates belonging to those categories are not available and such other contingencies. The roster system re-introduced thereby under Appendix-II came to be varied by the subsequent Government Order No, DPAR 25 SBC 79, dated 25th September 1979. By the system now in force, there is no difficulty for giving effect to the reservation made for the benefit of the S.C.S.T. and Backward Classes inadequately represented in State Civil Services, treating the recruitment as subjectwise. The procedure to be followed is sell contained in paras 3, 4 and 5 of the Government Order dated 4-3-1977. In view of these changes brought about by the reservation orders issued from time to time by the Government there would be no injustice to the reserved categories. The contention urged to the contrary therefore fails and is rejected."

In the light of the above ruling and for the reasons stated earlier, the question of law set out first would have to be and is answered in the affirmative.

16. Coming to the facts of this case, it may be seen that according to the roster prescribed the reservation should have been effected in the following manner for five posts of Lecturers in Physics for which selection was made:

- (i) Scheduled Caste (SC)
- (ii) Scheduled Tribe (ST)
- (iii) General Merit (GM)
- (iv) Backward Communities (BCM)
- (v) Backward Special Group (BSG).

Now according to the actual selections made, one candidate belonging to General Merit has been selected, namely, the 7th respondent. But in respect of other four posts, two candidates belonging to backward caste and two candidates belonging to backward community have been selected obviously following the Government Order dated 6-10 1981. If the roster prescribed was followed subjectwise, in view of paragraphs of the Government Order, dated 4th March, 1977, the 5th vacancy earmarked for backward special group ought to have been made available for general merit as no candidate belonging to backward special group in the subject of Physics was available. In that event as the petitioner was at Sl. No. 2, according to merit, she was entitled to be selected as against one of the

posts of Lecturer in Physics. The petitioner has been denied equality of opportunity in the matter of selection for appointment to the post of Lecturer only on account of the giving effect to the reservation of posts on the basis of total number of posts advertised though it comprised all posts of Lecturers in different subjects and of specified numbers. Therefore the petitioner is entitled to a direction to the Commission for re-doing the list by giving effect to the reservation of posts subjectwise and by observing the roster prescribed in Appendix-II to the Government Order.

17. At this stage, it is also necessary to "observe that if the reservation of posts is given effect to on subjectwise basis while making selection for the posts of Lecturers, the Commission would have to follow the procedure prescribed in Appendix-III as that would be attracted, as, in that event all the candidates would be eligible for all the posts advertised and the anomaly that had been created and which was considered in the cases of Anne Gowda and Muni Reddy would no longer exist.

18. The only question which remains for consideration is whether there should be a direction to the effect that after re-doing the list if it is found that some of the candidates who are selected are not selected they should be displaced from appointment. As seen from the history of the case commencing from the case of Smt. Syda Husna Banu, the question whether the reservation should be effected in subjectwise basis or on the basis of total number of posts was being debated before this Court. It is seen that the reservation of posts on the basis of total number of posts was being resorted to prior to the introduction of roster, for, if the same was not done it was quite likely that the reservation itself would have been defeated if small number of posts of Lecturers in different subjects were advertised on each occasion. There-fore, it was considered inevitable, even at the cost of some injustice to candidates belonging to general merit in some other subjects, that the reservation should be given effect to on the basis of total number of posts. But after the roster is prescribed as pointed out by the Division Bench in Writ Appeal No. 63 of 1974, the injustice that was likely to be caused by reserving the posts on subjectwise basis had been averted. In this situation, it appears to me that it is not expedient to direct the cancellation of the appointment of candidates already selected but it would meet the ends of justice to direct the Commission and the Government to adjust the candidates who are not selected, consequent on the re-doing of the selectlist, as against vacancies arising after the impugned selection. Similarly, it appears to me that it is not expedient to reopen the manner of reservations of posts made prior to the impugned selection and that a direction to commence the roster from the impugned selections is sufficient.

19. In the result, I make the following order :

(i) Rule made absolute.

(ii) A writ in the nature of mandamus shall issue to the Commission to re-do the

selection made and published in notification dated 18th June 1983 (Annexure-C) for the posts, of Lecturers by giving effect to the reservation of posts on subjectwise basis adhering to the roster prescribed in Appendix-U to the Government Order dated 4th March 77 as substituted by the Government Order dated 26th September 1979.

(iii) For the purpose of adhering to the roster, the Commission is directed to take the present selection as the starting point.

(iv) The Commission shall publish a fresh list of candidates entitled to be selected for the posts of Lecturers in each subject separately.

(v) If candidates who have not been selected in the impugned notification are included in the list of selected candidates prepared pursuant to the writ issued in this Writ Petition, the appointing authority shall proceed to give appointment forthwith to the candidates who are so selected.

(vi) If some of the candidates selected in the impugned notification are not selected, their names shall be shown at the end of the list separately and the categories to which they are entitled to be selected according to the roster shall be specified and they shall be adjusted against the vacancies arising on and after the date of the impugned notification.

(vii) No costs.