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**(1981) 08 KAR CK 0048**  
**In the Karnataka High Court**  
**Case No : WP 939 to 944/81 etc**

Narasimhaiah

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

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**Date of Decision :** 13-08-1981

**Acts Referred:**

**Citation :** (1981) 2 KarLJ 554

**Hon'ble Judges :** P. A. Kulkarni, J;K. Jagannatha Shetty, J

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## **Judgement**

Jagannatha Shetty, J.-This batch of writ petitions raises common questions of fact and law and has, therefore, been heard together and is being disposed of by a common judgment. The primary question involved relates to the validity of the select list dated December 17, 1980 prepared by the Karnataka Public Service Commission in regard to the Gazetted Probationers, Class I and Class II Cadre in the State Civil Services.

The events leading to these petitions are these:

As the salient features of all the petitioners are similar, we may, for the sake of convenience, refer to the facts in WP Nos. 939 to 944 of 1981.

The Karnataka Public Service Commission, ("the P.S.C.") for the purpose of selecting candidates for different categories of posts of Gazetted Probationers in various Departments, published a Notification dated July, 1, 1978 in the Karnataka Gazette dated July 6, 1978 inviting applications from candidates with the prescribed qualifications. The total number of posts then advertised were 39 in Class I; and 77 in Class II. But by a corrigendum dated September 13, 1978 they were reduced to 37 and 70 respectively. The petitioners and respondents Nos. 3 to 107 among others applied to those posts.

The P.S.C. was required to make the selection after holding written examination and viva voce test and prepare the select list as per the Government Order dated March 4, 1977. The said order was issued under Art. 16(4) of the Constitution of India by which the following reservations were provided for:

Backward Communities ... 20%

Backward Castes ... 10%

Backward Tribes ... 5%

Special Groups ... 5%

Scheduled Castes ... 15%

Scheduled Tribes ... 3%

Thus the total reservation was 58%.

Appendix-II to the said Order contains a roster which is required to be followed by all the selecting authorities for the purpose of preparing a select list and Appendix-III there under provides detailed procedure for preparing such a list.

The percentage of reservation for the Backward Communities consequent upon the decision of this Court in W.P. No. 4371 of 1977 and connected cases was reduced by 2 per cent without however, disturbing the reservations made to other Castes, Groups of Tribes.

By Government Order dated June 27, 1979, the reservation for the Special Groups was increased from 5 to 15% and that was followed by another Government Order dated July 9, 1979 revising the roster prescribed under Appendix-II to the Government. Order dated March 4, 1977. It was directed thereunder that the amended roster should come into force immediately and should apply to all pending recruitments in which the interview of candidates has not yet commenced. Thereupon, the P.S.C. in turn further reclassified the vacancies and issued a corrigendum dated July 23, 1979 for information of the applicants.

We are only concerned in this writ petition about the reclassification of the posts reserved for Scheduled Castes and Scheduled Tribes, since all the petitioners belong to that category. Originally the posts classified for Scheduled Castes and Scheduled Tribes as per roster under Appendix II to the Government Order dated March 4, 1977 are as follows:

"In Class I: 5 for S.Cs. and 1 for S.Ts.

In Class II: 10 do and 1 do Consequent upon the alteration in the percentage of reservations for Backward Communities and Special groups, the vacancies reclassified by the P.S.C. are as under:

"In class I: 5 for S.Cs. and 1 for S.Ts.

"In Class II: 9 for S.Cs. and 1 for S.Ts.

During the pendency of the applications before the P.S.C., the State Government had another look at the said roster. The Government was of the opinion that Scheduled Castes and Scheduled Tribes were not getting adequate

representation thereunder and it was necessary to revise the roster to provide first and second vacancies in favour of the persons belonging to Scheduled Castes and Scheduled Tribes respectively. On September 25, 1979 the Government accordingly issued an order revising the roster.

Consequent upon the Government Order dated September 25, 1979 the P.S.C. again issued another corrigendum dated November 8, 1979 reclassifying the posts reserved for Scheduled Castes and Scheduled Tribes as follows:

"In Class I: 10 for S.Cs. and 4 for S.Ts.;

In Class II: 15 for S.Cs. and 7 for S.Ts.;"

It will be observed that the Scheduled Castes and Scheduled Tribes have gained some more seats, of course all within the quota reserved for them and not in excess of the quota prescribed.

By September 1979, the P.S.C. had already conducted the written examinations for the candidates. The interview commenced on November 12, 1979 and in January, 1980 the interview was also completed. It is necessary to note in this context that even before the interview, the P.S.C. had taken care to reclassify the posts reserved for S.Cs. and S.Ts. and notify the same for information to all the candidates.

On February 3, 1980 the P.S.C. prepared a list of the selected candidates (which we call as "the first list") in accordance with the roster revised by the Government Order dated Sept. 25, 1979 and in that list all these petitioners were found included either under Class I or under Class II Cadre.

Incidentally, it may be stated that the P.S.C. almost at the same time prepared another select list of the Assistant Lady Medical Officers following the same revised roster.

Both the said select lists were forwarded to the State Government. The Government accepted the select list of the Lady Medical Officers, but rejected that pertaining to the Gazetted Probationers. The Government directed the P.S.C. to redo the latter list following the roster which was operative immediately prior to the Government Order dated September 25, 1979.

Following the said direction the P.S.C. much to its regret prepared another list dated December 17, 1980 (which we will call as "the second list") and forwarded the same to the Government. In this list, the petitioner barring three of them did not find a place. Even among those three, there were fluctuations in their fortunes. L. Rathod-the petitioner in W.P. No. 23743 of 1980 who was selected as Commercial Tax Officer in the first list, has been now selected as Tahsildar. Narasimhaiah-the petitioner in W.P. No. 939 of 1981 who was earlier selected as Tahsildar now finds himself in the category of Assistant Registrars of Co-operative Societies. G.P. Chabbi the petitioner in W.P. No. 2850 of 1981 who was first selected as Deputy Superintendent of Police now finds himself in the

company of Tahsildars.

Aggrieved by the second list, the petitioners have moved this Court for relief under Art. 226 of the Constitution.

The State while justifying the preparation of the impugned list and also justifying its direction to the P.S.C. to prepare it has filed a return contending inter alia;

That the Government order dated September 25, 1979 has no retrospective effect and therefore the P.S.C. ought not to have followed the revised roster thereof, in cases where classification of vacancies was already done and advertisement calling for applications was already issued prior to September 25, 1979. The P.S.C. being the recruiting agency could not arrogate itself the powers of the appointing authority to reclassify the posts available for recruitment. It is bound to select the candidates in accordance with the classification of posts communicated to it by the respective appointing authorities. To clear the doubts, if any, in regard to the applicability of the revised roster, the Government issued an Official Memorandum dated May 9, 1980 expressly stating that the revised roster has no retrospective effect and does not attract the applications pending before the P.S.C. The Government has a right to state from what date its order dated September 25, 1979 should come into operation and the P.S.C. is bound to follow the direction issued in that behalf.

It was, however, urged for the petitioners that the question of giving retrospective operation to the said Government Order does not arise in this case and the P.S.C. was bound to prepare and publish a select list as per the roster existing at the time of selection. It was also urged that the corrigendum dated May 9, 1980 issued by the Government long after the P.S.C. prepared the first list cannot, have the effect of excluding the operation of the order dated September 25, 1979 to pending applications.

The answer to these rival contentions turns on the scope and effect of the Government Order dated September 25, 1979 and the corrigendums dated October 26, 1979 and May 9, 1980 issued by the State.

It is now necessary to set out in full the Government Order dated September 25, 1979, it reads: "Preamble:

In the roster annexed to the Government Order No. DPAR 1 SBC 77 dated 4th March, 1977 as Appendix II, the first point is treated as general merit and the second point is reserved for persons belonging to Scheduled Castes and the 33rd point is reserved for persons belonging to Scheduled Tribes. In view of the inadequate representation of persons belonging to Scheduled Castes and Scheduled Tribes in the State Civil Services, Government consider that it is necessary to revise the roster to provide for reservation of the first and second vacancies in the roster in favour of persons belonging to Scheduled Castes and Scheduled Tribes respectively and to revise consequently the roster fixing the appropriate points for others.

Order No. DPAR 28 SBC 79 Bangalore, Dated 25th September, 1979.

Government are accordingly pleased to direct that the roster annexed as Appendix II to the Government Order dated 4th March, 1977 as amended from time to time be substituted by the roster annexed to this Order with immediate effect.

By Order and in the name of the Government of Karnataka.

Sd/- Narasimha Rau,

Chief Secretary to Government."

It may be seen from this order that the roster annexed to the Government Order dated March 4, 1977 as Appendix II stood substituted with immediate effect by the amended roster. The reasons for the said substitution are set out in the preamble of the order. The inadequate representation to the persons belonging to Scheduled Castes and Scheduled Tribes was the cardinal consideration thereunder. The first and second points in the roster were directed to be reserved in favour of the said persons as against the first point to the general merit student and the 33rd point to the candidate from Scheduled Tribes.

There is no indication in the order that it was not applicable to the pending applications. On the contrary, it expressly provides that the revised roster be substituted with immediate effect. That means it came into operation with effect from September 25, 1979 proprio vigore without any kind of limitation in regard to its applicability. That is as plain as a pikestaff.

The learned Advocate General also did not dispute and in fact he has conceded that the revised roster came into force with effect from September 25, 1979 and the appointing authorities ought to have taken note of and reclassified, the vacancies. He however, said that it was not the business of the P.S.C. to do the work of the appointing authorities and it must faithfully proceed to select the candidates as per the classification already made.

Before we consider the contention of learned Advocate General, it will be convenient to refer to one other contention urged by Sri H.B. Dater who appeared for some Of the respondents. He urged that the order dated Sept. 25, 1979 came to be amended by the Government excluding its applicability to the applications pending before the P.S.C. In support of the contention, the counsel depended solely upon the Official Memorandum dated May 9, 1980. He urged that although it was styled as an Official Memorandum signed by the Joint Secretary to Government, it was in fact an order of the Government satisfying all the requirements of Art. 166 of the Constitution. The counsel for the petitioners, however, urged to the contrary. They also urged in the alternative that even if it was a Government Order, it was issued by way of clarification to dispel some of the doubts entertained by the recruiting authorities regarding the effect and operation of the order dated September 25, 1979 and not by way of an amendment to the said order.

We will assume for a moment to avoid unnecessary further discussion that the said Official Memorandum reflected the decision of the Government and not a mere letter signed by its Joint Secretary as it purports to be. The records also reveal that the Cabinet took that decision first and the Joint Secretary issued the said Official Memorandum later. The question still to be examined is whether it was issued by way of amendment to the order dated September 25, 1979 so as to exclude its applicability to the applications pending before the P.S.C. For a proper consideration of this aspect of the matter, we now read the relevant portion of the said Official Memorandum.

Para 2 of the Official Memorandum dated May 9, 1980:

"2. In Official Memorandum No. DPAR 28 SBC 79 dated 26th October, 1979..... (not clear) have been issued with regard to application of the revised roster to the classification of vacancies to the fresh direct recruitments. In spite of this clarification, certain doubts have been further raised. It is, therefore, considered necessary to issue further clarifications in this behalf."

Para 3:

"3. Under para 3 of Government Order No. DPAR I SBC 77 dated the 4th March, 1977 the Authority competent to classify the vacancies required to be filled by direct recruitment is the concerned appointing authority. The action for classification of vacancies arises when it sends proposals to the appropriate recruiting agencies for selection of candidates. Once the recruiting agencies advertise the vacancies in accordance with the classification indicated by the appointing authorities the action in that behalf is completed. In view of this position the revised roster issued under the Government Order dated the 25th September, 1979 would not be applicable to the cases where the vacancies have already been classified and advertised by the appropriate recruiting agency before the 25th September, 1979 since the order dated 25th September, 1979 had no retrospective effect."

Then there follows para 4:

"All the appointing authorities and recruiting authorities are requested to note this clarification and guidance"

From the dissection of this Official Memorandum, it becomes clear that some persons or authorities raised some doubts regarding the applicability of the order dated September 25, 1979 and in order to clear those doubts, the Government issued the Official Memorandum by way of clarification. That is clear from paras (3) and (4) thereunder. A reference has also been made to para 3 of the Government Order dated March 4, 1977. It states that once the recruiting authorities advertised the vacancies in accordance with the classification indicated by the appointing authorities, the action in that behalf is completed and the roster revised by the Government Order September 25, 1979 would not be applicable to such cases, since the said order has no retrospective effect. These

statements are no more than the mere opinion or understanding of the Government on the effect or applicability of the order dated September 25, 1979 and cannot at all be construed as an amending order. The Government like anybody else is entitled to have its own opinion even on its own order but that opinion is not binding on the parties whose accrued rights are affected thereby. The order is as much binding on the Government as on others so long as it is in force, but not its opinion which is contrary to the order. We cannot, therefore, accept the contention of Shri Datar that the said Official Memorandum has amended the Government Order dated September 25, 1979 excluding its applicability to the applications pending before the P.S.C.

That apart, there is an inherent infirmity in the argument of Shri Datar. His contention presupposes that the order dated September 25, 1979 was applicable to the pending applications, but its operation was excluded by the alleged amendment. It is pertinent to remember in this context that the P.S.C. has prepared the first list on February 8, 1980 and published it on February 21, 1980 whereas the Government issued the Official Memorandum on May 9, 1980. Even if it is assumed that the said Official Memorandum was by way of amendment to the said Government Orders, we fail to understand how it could affect the list prepared by the P.S.C. long before the said Official Memorandum.

This takes us to the most important question in this case. The question is whether the P.S.C. was bound to take note of the revised roster and prepare the final select list even though the appointing authorities did not further reclassify the posts in accordance with the Government Order dated September 25, 1979. Counsel for the respondents in support of their contentions relied upon para 3 of the Government Order dated March 4, 1977. It runs as follows:

"3. Appointments and posts in the State Civil Services shall, hereafter, be reserved for the Scheduled Castes, Scheduled Tribes 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-II 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 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."

It is no doubt true that it is for appointing authorities to intimate the P.S.C. the

number of vacancies to be filled by direct recruitment after a classification of the vacancies in the manner indicated in Appendix-II. But what should happen if the appointing authority ignores the revised roster and fails to reclassify the vacancies and fails to intimate the P.S.C. Whether the P.S.C. should follow blindfold a roster which is not operative on the date of selection? Whether the P.S.C. is precluded from following the roster existing on the date of preparing the select list?

Our meticulous methods of statutory construction should not lead us astray. We should not concentrate too much on one part of the order and pay too little attention to the other part. We should read the order as a whole so as to effectuate the purpose for which it was intended. The purpose was to give adequate representation to the Scheduled Castes and Scheduled Tribes and other weaker sections of the Society. The P.S.C. was charged with the duty to give effect to that purpose while preparing the select list. In our opinion, it is not only proper but also obligatory for the P.S.C. to prepare the select list as per the roster in Appendix II and in the manner provided in Appendix-III. That becomes clear if we read Appendix-III. It provides:

"(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 applicants equal to the number of posts to be filled upon the basis of general merit (i.e., the number of posts other than those reserved in favour of Scheduled Castes, Scheduled Tribes, and other Backward Classes) arranging them in the order of merit commencing with the first 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 (herein-after called the Third List) containing the names of applicants belonging to the Scheduled Castes, Scheduled Tribes, 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 Selecting 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."

It will be seen therefrom that the roster prescribed under Appendix-II would be germane for the purpose of preparing a select list. It would be germane not only for appointing authorities to classify the vacancies, but also for recruiting agencies to selecting candidates. That becomes clear when we read the entire order dated March 4, 1977. No select list could be prepared without reference to the rotation indicated in Appendix-II. The P.S.C. in the instant case was,

therefore, justified in following the said revised roster and preparing the first list.

If the revised rotation is made applicable for the existing or pending applications, it should not be construed as giving a retrospective effect. The order did not recall any selection, nor it affected the rights of any applicant. Till the selection is made and the list is published, no applicant gets any vested right.

There are two decisions of this Court which may be usefully referred to in this context. In *Krishna Rai v. State of Mysore*, (1963) 1 Mys.L.J. supp. 261. Bench of this Court while examining the binding nature of an amendment to recruitment rules made when the process of selection was still going on before the P.S.C. observed:

"When those amendments were made, the Public Service Commission had made no selection and all that it had done was to conduct the viva voce examination. If selection had been made by the Commission that selection was what would have vested in the successful candidates the right to be appointed under Rule 8 of the Special Rules. But so long as the selection was still in the melting pot, it was, in our opinion clearly within the power of the Governor to so amend the Rules of Recruitment as to make that selection no longer possible."

In *Kulkarni N.D. v. State of Karnataka*, (1980) 1 Kar.L.J. 159, while following the above principles, Rama Jois, J., observed at page 160:

"So long as the Public Service Commission had not finalised the list of selected candidates, any amendment made to the recruitment rules is binding on the Commission and on and after the amendment, the Commission has to take steps in accordance with the amended rules."

These decisions also clearly lay down that the Public Service Commission is bound to follow the recruitment rules amended from time to time before the select list is prepared. So much so, the Public Service Commission, in our opinion, is also bound to follow the revised rosters prescribed for preparing the select list.

No account of this affair can be concluded without a reference to the official Memorandum dated October 26, 1979. It provides as follows:

"There appears to have been a doubt on whether the roster appended to the Government Order dated 25th September, 1979 should be adopted for the purpose of classification of direct recruitment vacancies as from 25th September, 1979 or the roster appended to Government Order No. DPAR 1 SBC 17 dated 4th March 1977, if already in operation should be completed and only thereafter the roster prescribed in the Government Order dated 25th September, 1979 should be introduced. Consequently some enquiries are being made by Certain appointing authorities in this regard.

It is hereby clarified that any classification of vacancies for fresh direct recruitment in respect of any category of posts on or after 25th September. 1979

should be based on the roster prescribed in the Government Order dated 25th September, 1979 irrespective of whether the roster is in force prior to 25th September, 1979 had been utilised upto a certain point only.

Sd/- K.P. Surendranath,

Joint Secretary to Govt., Dept.

Dept. of Personnel and

Administration Reforms.

It is clear from this order that the P.S.C. was required to follow the rotation from the first point for preparing the select list of the candidates for fresh direct recruitment. If the P.S.C. has to follow the roster from the first point as it ought to, we fail to understand how it could follow the superseded roster. It must naturally reclassify the vacancies as it did for the purpose of arranging the candidates in the select list. That, according to us, would be the inevitable consequence. Viewed from any angle, the P.S.C. therefore cannot be found fault with for preparing the first list and the Government was not justified in issuing a direction to redo the said list.

We will now examine the contentions urged on behalf of respondent Nos. 68 and 78. They claim to be Ex-servicemen. They are amongst the ten persons selected by the P.S.C. in the second list. Their contention is that they were given legitimate representation only in the second list and if this Court comes to the conclusion that the second list is not legal, the reservation which they are entitled to, should not however, be disturbed. In this context, it is necessary to state that respondent No. 78 Hiremath along with few others filed WP Nos. 1637 to 1639 and 3725 of 1980 challenging their exclusion in the first list inter-alia contending that under Rule 9 of the Karnataka Civil Services (General Recruitment) Rules, 1957 they are entitled to reservation of 10 per cent of the total number of vacancies available for recruitment and that 10 per cent should not fall for consideration in the roster. Those writ petitions were allowed by the learned single Judge of this Court and W.A. Nos. 2097 to 2100 of 1980 are pending against that decision. In view of the pendency of the Writ Appeals, we do not want to express any opinion on the contention urged for respondent Nos. 68 and 78. We, however, make it clear that our decision in these petitions should be subject to the decision in the said Writ Appeals so far as it relates to the claim of the persons belonging to Ex-servicemen.

In the result, the rule is made absolute and a direction shall issue against the P.S.C. to recall the second select list dated December 17, 1980 (Annexure Q) and a further direction to the State Government to withdraw its letter dated May 17, 1980 written by the Chief Secretary to the Secretary of the P.S.C. (Annexure N). It is needless to state that the Government shall now proceed in accordance with law with the first list, that is, the select list prepared by the P.S.C. on February 8, 1980 published in the Gazette dated February 21, 1980 (Annexure J).

In the circumstances of the case, we make no order as to costs.

On behalf of respondents 4, 91 and 105 in WP Nos. 939 to 944 of 1981, Sri Ramanujam made an oral application seeking leave to appeal to the Supreme Court. In our opinion, the case does not involve a substantial question of law of general importance which needs to be decided by the Supreme Court.

The certificate prayed for is therefore refused.