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**(1971) 12 KL CK 0025**  
**In the High Court Of Kerala**

P.K. Rajappan and Others

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

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**Date of Decision :** 06-12-1971

**Acts Referred:**

Constitution of India, 1950 — Article 14, 16

**Citation :** (1972) 2 LLJ 105

**Hon'ble Judges :** M.U. Issac, J

**Bench :** Single Bench

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**Judgement**

M.U. Isaac, J.—The controversy arising in these four writ petitions is the same, and it relates to the inter se seniority of 31 persons appointed in the cadre of Junior Engineers in the Public Health Engineering Department as per advice of the Kerala Public Service Commission. O.P. No. 2234 of 1971 was treated as the main case ; and arguments were addressed in that case. I shall, therefore, be referring to the facts of this O.P. and the exhibits therein for the purpose of this common judgment.

2. In 1965, the second respondent, the Kerala Public Service Commission made a selection of candidates for appointment in the cadre of Junior Engineers in the P.H.E. Department; and it drew up a list of 100 candidates in the order of merit. On 17-8-1965, it notified a list of 35 candidates in accordance with Rules 14 to 17 of the Kerala State and Subordinate Services Rules, 1958. (hereinafter referred to as the Rules) for appointment to the then existing vacancies. Rule 14 provides for reservation of 10% of the appointments for scheduled castes and tribes, and 40% for backward classes. The remaining 50% shall be appointed on the basis of merit. All appointments have to be made according to order of rotation given in the said rule. Rule 15 provides that, if suitable candidates are not available for appointment in the reserved quota, it would be filled up at the earliest opportunity from duly qualified candidates available within a period of three years, and a corresponding reduction would be made in the appointments on the basis of merit. In other words, the quota reserved for scheduled castes

and tribes and backward classes would be carried over for a period of three years. At the time, when the Public Service Commission notified the list of 35 candidates, there were 9 vacancies which should go to the backward classes according to the principle of carry over. The list, therefore, consisted of 9 candidates on the carry over principle, 14 candidates on the basis of merit, and 12 candidates on the basis of reservation. Only 22 persons turned up for appointment, including 7 carry over candidates ; and they were duly appointed in accordance with the advice of the Commission. On 10-8-1966, the Commission notified another list of 17 candidates for appointment in the remaining vacancies. Of these persons, only 9 joined service. Thus in all 31 persons were appointed; and these are the persons whose inter se seniority is in controversy in these four writ petitions.

3. Three persons included in the Commission's first advice list filed O.P. No. 4550 of 1966 to quash the said list and to direct the second respondent to prepare a fresh list by assigning them ranks in the order of merit. Their main attack was against the inclusion of candidates on the principle of carry over under Rule 15 of the Rules. The three petitioners in O.P. 2234 of 1971 are candidates included in the Commission's second advice list. They intervened in O.P. No. 4550 of 1966 and joined the petitioners therein in their attack against the inclusion of carry over candidates. All except respondents 4, 5 and 8 were parties to that O.P. My learned brother, Govindan Nair, J., by his judgment, Ext. A-1, dated 21-3-1969, upheld the above contention, and directed the Public Service Commission to prepare a fresh list assigning the appropriate ranks to the 31 persons appointed as Junior Engineers in the light of the directions contained in that judgment. Ext. A-1 stated:

It is agreed that all the 31 that have been appointed are entitled to a place and it is not urged that the services of any one of them should be terminated. What is contended is that the application of the principle of carry over must not affect the rights of the petitioners and the intervenors so far as the equal opportunity guaranteed by the Constitution is concerned. This, I am convinced, the complainants are entitled to urge with success. Rule 27(1)(c) of the Kerala State and Subordinate Services Rules, 1958, provides that the seniority of the person appointed to a service will be reckoned with reference to the effective date of advice by the Public Service Commission, and if the advice of more than one person is by the same list, according to the order in which their names occur in that list. It is, therefore, important that the order in the list should first be settled in accordance with the guarantees under the Constitution. This should be done in this manner in so far as this case is concerned. It must first be determined how many of the 31 persons appointed have come on the ground of merit and how many on the ground of reservation and how many of the latter category by the application of the principle of carry over. After determining this, those that have been chosen on the ground of merit must be ranked with those that have been selected on the ground of reservation without applying the carry over principle in accordance with the provisions in Rules 14 to 18. After having ranked these two

categories, the rest of those persons who have been appointed on the ground of reservation coupled with the principle of carry over will be ranked below the combined list of the other two categories already drawn up. This list so settled will determine the order of seniority inter se between the petitioners, the intervenors and the other persons who have been appointed pursuant to the list Ext. P-2 and pursuant to the further advice consisting of 17 names, totalling in all 31 persons, I direct this should be done as early as possible.

Pursuant to the above direction, the Public Service Commission prepared a revised seniority list as per notification, Ext. R-1, dated 12th March, 1971, of the 35 persons which it had advised for appointment. The petitioners in O.P. 2234 of 1971 contend, that this list has not complied with the directions in Ext. A-1. They have, therefore, filed this writ petition to quash Ext. R-1, and to direct the Commission to amend or alter Ext. R-1 in terms of Ext. A-1, and to direct the State of Kerala, the first respondent, and the Commission to assign to the petitioners their legitimate ranks and seniority.

4. O.P. No. 1118 of 1971 has been filed by respondent No. 10 in O.P. 2234, while O.P. No. 1122 of 1971 has been filed by respondents 11 and 12 in O.P. 2234. The petitioner in O.P. No. 1891 of 1971 is one of the petitioners in O.P. No. 4550 of 1966. All the petitioners in O.P. Nos. 1118, 1122 and 1892, seek more or less the same reliefs as sought for in O.P. No. 2234. But the claims that they have put forward in respect of their ranks are somewhat different.

5. The Public Service Commission has filed a detailed counter-affidavit stating, among other things, that Ext. R-1 was prepared on the assumption that a revised list of all the 35 persons had to be prepared, and that, after a careful scrutiny of the various averments in the original petitions in the light of the directions in the judgment, Ext. A-1, the Commission was of the view that a review of the said list was necessary. Thus, it is conceded that Ext. R-1 does not comply with the directions in Ext. A-1. It is admitted by all parties that Ext. R-1 has, therefore, to be quashed.

6. The counter-affidavit of the Public Service Commission states that it is faced with various problems in implementing the directions in Ext. A-1, and that a clear interpretation of the operative portion of the judgment is necessary. Rule 15 of the Rules was amended on 5-5-1967. One of the problems is whether the combined list is to be prepared in accordance with the above rule as it stands now or as it stood before the said amendment. The second problem faced by the Commission is whether the directions in the judgment, Ext. P-1, meant that the seven persons appointed on the principle of carry over should be placed at the bottom of the list disregarding the order of their merit, or that the list has to be prepared by assigning proper ranks to the said seven candidates in accordance with the rules. There are also other problems raised by the Commission; but it is not necessary to refer to them in the light of the points ultimately urged before me by the contesting parties. The Commission has rendered considerable assistance to the Court by preparing seniority lists on the basis of all possible

interpretations that can be put on the judgment. Exts. R-4 and R-6 are prepared by applying Rule 15 of the Rules, as it stood before its amendment on 5-5-1967. Exts. R-7 and R-8 are lists prepared by applying the amended rule. It has been rightly conceded by counsel appearing for the parties that it is Rule 15 as it stood before its amendment that applies to the case. I am, therefore, concerned only with lists Exts. R-4 and R-6. Ext. R-4 has been prepared on the following basis. The 31 persons appointed on the advice of the Commission consists of 24 candidates appointed on the basis of merit and communal reservation, and 7 candidates appointed from the backward classes on the principle of carry over. 24 candidates out of the said 31 persons must be first ranked in accordance with Rule 14 of the Rules, and the remaining 7 candidates belonging to the backward classes should be put below the said 24 candidates in the order of their merit. The basis on which Ext. R-6 has been prepared is the following : In the total appointment of 31 persons, the 7 persons, who were appointed on the principle of carry over, were given ranks over the remaining 24. These seven persons, irrespective of their ranks on the basis of merit, should be placed below the said 24 persons. There is serious controversy as to which of these lists complies with the directions contained in the judgment, Ext. A-1.

7. The petitioners in O.P. Nos. 1891 and 2234 of 1971 contend that Ext. R-6 is the correct list, while the petitioners in the other two petitions contend that Ext. R-4 is the correct one. Respondents 3 to 8 and 13 to 15 in O. P. No. 2234 contend that Ext. R-4 is the correct list. Respondent No. 9 concedes this position, though he would be benefited by adoption of Ext. R-6. The persons who canvass for Ext. R-6 are those whose ranks are lower than the seven candidates advised by the Public Service Commission for first appointment on the principle of carry over. It is conceded that but for the fact that the Commission chose them on the basis of merit from the candidates belonging to the backward classes for appointment on the principle of carry over, they would have got the ranks assigned to them in the list Ext. R-4. But it is contended that the judgment, Ext. P-1, is conclusive in the matter, and that on a true interpretation of that judgment, these seven persons must go at the bottom, irrespective of their merit or lawful claim to get higher ranks. In other words they would forfeit the ranks which they are rightly entitled to get, for the sole reason that the Commission advised them for first appointment on the basis they were entitled to that privilege on the principle of carry over. The point can be illustrated by one example. One Sri K. K. Lazar is No. 5 in the selected list according to merit. He is a Latin Catholic belonging to the backward classes. If appointments were done purely on the basis of merit without any communal rotation, he would have got rank 5. When appointments are made in accordance with the communal reservations provided for in Rule 14 of the Rules, his rank would be 9 as shown in Ext. R-4. But as he happened to be given the first rank on the advice of the Commission according to the principle of carry over, he would get only rank 25 as shown in R-6. In other words several open competitive candidates and backward classes candidates who have got only much lower ranks than Sri Lazar would go above him, because of the unfortunate

advice of the Commission, which This Court found was violative of the constitutional guarantee under Articles 14 and 16. If this is the effect of the judgment, it would be an awful result. No doubt, some of the statements in the judgment, if read literally, are likely to cause doubt; and the Public Service Commission has been confronted with this difficulty. Such an unconscionable and illegal result could have never been intended by the judgment; nor does the language employed therein compel me to construe it in such an absurd manner. If a question of interpretation arises, it has to be interpreted in accordance with the law. When the judgment is read as a whole, it appears to me clear that what my learned brother held is that, since it was agreed that all the 31 persons including the 7 persons appointed on the principle of carry over are entitled to appointments, 7 places may be given for candidates belonging to the backward classes, after ranking 24 persons on the basis of merit and communal reservation in accordance with the rules. Therefore, 24 persons out of the 31 persons have to be first ranked in accordance with Rule 14; and then the remaining 7 persons, who belong to the backward classes should be placed below the 24, in the order of their merit. Ext. R-4 is the list which has been drawn up by the Public Service Commission on the above basis. I, therefore, hold that Ext. R-4 complies with the directions in the judgment Ext. P-1.

8. It was contended by some of the persons included in the first advice list of the Commission that they are entitled to seniority over the persons in the second advice list. This contention was advanced on the basis of Rule 27(c) of the Rules, which provides that seniority shall be determined by the date of first effective advice made by the Commission. This Court rightly held in the judgment, Ext. P-1, that the inclusion of 7 persons in the first advice list for preferential appointment on the principle of carry over was unconstitutional; and it directed the Commission to draw up a combined list of 31 persons in accordance with the directions contained in that judgment. The first advice list was, therefore, bad under law; and the claim put forward for seniority on the basis of that list cannot be sustained.

9. Respondents Nos. 4, 5 and 8 in O.P. 2234 of 1971, who were not parties to the judgment, Ext. P-1, contended that the said judgment is not binding on them, that the appointment of 7 persons on the principle of carry over was unconstitutional, and that they should not, therefore, be included in the advice list of the Public Service Commission. All the 31 persons including the 7 advised on the above principle were appointed in 1965 and 1966. The above respondents have not so far objected to the appointments made on the principle of carry over. Their ranks would not also be affected, as the seven places for appointment on the said principle are given at the bottom of the list. The above contention cannot, therefore, be entertained.

10. In the result, I quash the advice list Ext. R-1, direct the Public Service Commission to prepare and submit to the Government an advice list in accordance with Ext. R-4, and direct the Government to assign to the 31 persons

in the said list the ranks shown therein. The date of the first advice, namely, 17-8-1965, will be treated as the date of effective advice for determining the seniority of the above said 31 persons in the cadre of Junior Engineers. In the circumstances of the case, the parties will suffer their own costs.