

**(1982) 02 KAR CK 0030**  
**In the Karnataka High Court**  
**Case No : W.A. 629 to 632/81**

State of Karnataka and Another

APPELLANT

Vs

Harish and Others

RESPONDENT

**Date of Decision :** 10-02-1982

**Acts Referred:**

Karnataka State Civil Services (General Recruitment) Rules, 1957 — Rule 9

**Citation :** (1982) 2 KarLJ 345

**Hon'ble Judges :** D. M. Chandrashekhar, C.J.;N. Venkatachala, J

## **Judgement**

Chandrashekhar C.J.-These appeals are from the common order of Rama Jois, J., in W.P. Nos. 1637 to 1639 and 3725 of 1980. Respondents 1 and 2 therein, the State of Karnataka and the Karnataka Public Service Commission (hereinafter referred to as the Commission), have presented WAs Nos. 629 to 632 of 1981. WAs. Nos. 2097 to 2100 of 1980 have been presented after obtaining the leave of the Court by four persons who were not parties to writ petitions but felt aggrieved by the order of the learned single Judge therein.

2. The writ petitioners (who will hereinafter be referred to as the petitioners) are ex-servicemen and were candidates at a competitive examination conducted by the Commission for making selection for appointment by way of direct recruitment to certain categories of Class-I and Class-II posts in certain specified Departments of the State Government, under the provisions of the Karnataka Recruitment of Gazetted Probationers (Class-I and Class-II Posts Appointment by Competitive Examinations) Rules, 1966 (hereinafter referred to as the Gazetted Probationers Recruitment Rules). In the writ petitions, the grievance of the petitioners was that the Government and the Commission had reserved to Ex-servicemen lesser number of posts than the number required to be reserved under Rule 9 of the Karnataka State Civil Services (General Recruitment) Rules, 1957 (hereinafter referred to as the General Recruitment Rules).

3. Though there are separate Cadre and Recruitment Rules for most of the Departments of the Government the Gazetted Probationers Recruitment Rules

provide for a common direct recruitment to certain categories of Class-I and Class-II posts in those Departments on the basis of a common competitive examination to be held by the Commission.

4. By its Notification dated 1-7-1978 (published in the Kar. Gaz. on 6-7-1978), the Commission invited applications for direct recruitment of Gazetted Probationers for Class-I and Class-II posts in certain departments under the Gazetted Probationers Recruitment Rules. In that notification, a total number of posts to be filled by such direct recruitment in each Department, the numbers of posts reserved for Ex-military personnel and various categories of Backward Classes, had been set out as hereunder:

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5. The petitioners were among the candidates in such competitive examination. They appeared for the written examination and the viva-voce. Their grievance is that they were not selected in view of the reduction of the number of posts reserved for Ex-Military personnel under the subsequent notification issued by the Commissioner in pursuance of the Government Order, G.O No. DPAR 28-SBC 79 dated 25-9-79. That Government Order substituted, a new roster for the roster under the earlier Government Order, G.O.No. DPAR 1 SBC 77 dated 4-3-1977. Under the latter notification of the Commission, the reservation for Ex-Military Personnel and various categories of Backward Classes, was as follows:

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6. As against 4 posts in Class-I reserved under the earlier notification, only 1 post was reserved under the later notification, for Ex-Military personnel.

7. In the writ petitions, the petitioners contended that the reservation under the later notification was not in accordance with Rule 9 of the General Recruitment Rules and that 4 posts in Class-I category and 7 posts in Class-II category, should have been reserved for Ex-Military personnel. On the other hand, he reservation made under the later notification of the Commission was sought to be justified by learned Counsel for the respondents in the writ petitions. The learned single Judge substantially upheld the contention of the petitioners, allowed the writ petitions and issued a mandamus directing the Commission to revise the list of selected candidates prepared by it on the basis of the competitive examination and to reserve for Ex-Military personnel ten per cent of the total number or Class-I posts advertised and. ten per cent of Class-II posts advertised. He gave a further direction to the Commission to take into account for purposes of reservation for Ex-Military Personnel such number of posts in the respective categories which were not taken into account for purposes of reservation in the earlier selection to these cadres and to publish a revised list of selected candidates for class I and class II posts

8. The correctness of the order of the learned single Judge has been challenged in these appeals.

9. Before dealing with the rival contentions of learned Counsel, we shall set out sub-rule (1) of Rule 9 of the General Recruitment Rules which provides for reservation for Ex-servicemen:

"(1) Notwithstanding anything contained in the rules of recruitment specially made in respect of any service or post, if in such rules of recruitment direct recruitment is prescribed as one of the methods of recruitment, the percentage or number of vacancies set apart for that method shall be reduced by ten per cent or by such number as is equal to ten per cent of the vacancies and the percentage or number so reduced shall be filled by direct recruitment from among ex-servicemen and members of the families of persons who, while serving in the Armed Forces of the Union, were either killed or permanently disabled.

Explanation,-For the purpose of this sub-rule "members of the family" means the wife or husband, as the case may be, and children and step children wholly dependent on the person who served in the Armed Forces of the Union.

10. Sub-rules (1) and (2) of Rule 3 of the Gazetted Probationers Recruitment Rules, read:

3.Application: (1) The provisions of these rules shall be applicable in respect of direct recruitment to the cadres in State Civil Services Class I and Class II specified in column 3 of the Schedule to these rules relating to the services specified in the corresponding entry of Column 2 of the said Schedule.

(2) These rules shall have effect notwithstanding anything to the contrary contained (i) in the Cadre and Recruitment Rules for the time being in force applicable to the Cadres in the State Civil Services referred to in sub-rule (1), or (ii) in the Mysore (Karnataka) State Civil Services (General Recruitment) Rules, 1957.

11. The Schedule to the Gazetted Probationers Recruitment Rules sets out the services and categories of posts therein for which recruitment of Probationers can be made under those Rules.

12. The material question that arises in these appeals is, while making a common or combined recruitment for certain categories of Class-I and Class-II posts in several services or departments, whether the reservation for Ex-Military personnel should be made, on the basis of the total number of Class-I posts and the total number of Class-II posts in all such services or departments, or whether such reservation should be made on the basis of the number of Class-I or Class-II posts in, each service or department. The State Government and the Commission have done the reservation on the latter basis, but the learned single Judge held that such reservation should be done on the former basis.

12a. The argument on behalf of the State and the Commission has been summarised by the learned single Judge thus: Though Rule 9 requires that ten per cent of direct recruitment vacancies should be reserved in favour of ex-Military Personnel, such reservation has to be made on the basis of the number

of posts in each cadre under each appointing authority and not on the basis of total number of posts in various cadres in different departments of the State Government. In the present recruitment of Gazetted Probationers, as regards Class I Posts, it was only in the cadre of Assistant Commissioners the number of posts to be filled exceeded 10 and in each of the other cadres the number of Class I posts to be filled was less than 10. Therefore, only one Class I post was required to be reserved for Ex-Military Personnel in the cadre of Assistant Commissioners. Similarly as regards Class II posts, it was only in the cadres of Tahsildar, Assistant Commercial Tax Officers and Assistant Registrars of Co-operative Societies the number of posts in each of those cadres exceeded 10. On the basis of the numbers of such posts, 3 posts, 1 post and 2 posts respectively were reserved for Ex-Military personnel. As the number of Class-II posts to be filled in other departments was less than 10, no class II post could be reserved in any of those other Departments.

13. However, the above) contention was not accepted by the learned single Judge, whose reasoning reads thus: The condition of eligibility of candidates for recruitment to all the posts for which a combined recruitment is made, are common and the selection is required to be made on the basis of the combined competitive examination as prescribed in the Gazetted Probationers Recruitment Rules. Though several posts in respect of which recruitment is sought to be made, are in different departments of the State Government, the Gazetted Probationers Recruitment Rules are specially made in respect of all Class I and Class II posts in respect of which recruitment is provided under those Rules. Therefore, in view of Rule 9 of the General Recruitment Rules, 10 per cent of the total number of Class I posts to be filled and 10 per cent of Class II posts to be filled under the common recruitment should be reserved for Ex-Military personnel.

14. It is instructive to examine how the reservation for Backward Classes is worked out in direct recruitments to State service's. Separate reservation has been provided for Scheduled Castes Scheduled Tribes, Backward Castes, Backward Communities, Backward Tribes and Backward Special Groups at separate percentages varying from 3 to 20 per cent. Appendix II to the Government Order No. DPAR. 1 SBC 77 dated 4.3.1977 sets out a roster. Taking a cycle of 100 appointments, the roster provides the order in which appointments,, should be made from the several categories of Backward Classes and the unreserved category (General Merit) . That roster is as follows:

1. General Merit
2. Scheduled Castes
3. Backward Communities
4. General Merit
5. Backward Castes.

15. The roster system ensures that the separate reservation for all categories of

posts, is given full effect over a period, though it is not possible to give effect to such reservation in each recruitment on account of smallness of the number of posts for which recruitment is made at a time.

16. Sri H.B. Datar, learned Counsel for the appellants in W.A Nos. 2097 to 2100 of 1980, invited our attention to the roster set out in Appendix II to the Government Order, G.O.No.DPAR 28 SBC 79 dated 25.9.79, which ensures that every tenth post in each category of posts, is filled by a candidate belonging to the category of Ex-Military Personnel. The relevant part of that roster, is as follows:

1. Scheduled Caste
2. Scheduled Tribe
3. General Merit.
4. Backward Community
5. Backward Special Group
6. Scheduled Caste
7. General Merit
8. Backward Caste
9. General Merit
9. (A) Ex-Military Personnel.

17. All that Rule 9 of the General Recruitment Rules provides is that if rules of recruitment in respect of any service or post, prescribe direct recruitment also, one-tenth of the vacancies set apart for such direct recruitment, shall be reserved for Ex-Military personnel. The Rule does not specifically provide that where there is a common or combined direct recruitment for different categories of posts in several services or Departments the number of posts reserved for Ex Military Personal should be reckoned on the basis of total number of posts in all services or departments for which such combined direct recruitment is made. In the absence of such specific provision, it is open to the Government to give effect to such reservation in any reasonable manner. If the roster system in respect of each category of posts in each service or department, is a reasonable method of giving effect to the reservation for several categories of Backward Classes, there is no reason to hold that such a roster system is not a reasonable method for giving effect to the reservation for Ex-Military personnel.

18. No doubt, the adoption of the roster system may result in postponement and consequent delay in Ex-Military personnel in getting the percentage of posts reserved for them, as it has happened in the present case. The learned Advocate General pointed out that the method of reservation ordered by the learned Single Judge may result in uneven distribution of candidates of reserved categories in

different services or departments-too many of them in certain services or departments and too few of them in certain other services or departments and that the roster system ensures uniform distribution of reserved categories of candidates in all services and departments. In our opinion, this argument of the learned Advocate General is well founded.

19. We are unable to agree with the conclusion of the learned single Judge that where a combined or common direct recruitment for any category of posts in several services or departments is made the reservation for any reserved category should be worked out on the basis of the aggregate of the number of posts in all such services or departments for which such combined recruitment is made and that it is not permissible to apply the percentage of reservation to the number of posts in each service or department.

20. As it is permissible for the State Government and the Commission to adopt a roster system for giving effect to the reservation for Ex-Military personnel, the direction given by the learned single Judge-to take into account the number of posts in the respective categories which were not taken into account for the purposes of reservation in the earlier recruitment to those cadres, is, in our opinion, redundant.

21. In the result, we allow these appeals, reverse the impugned common order of the learned; single Judge and dismiss the writ petitions.

22. In these appeals, we direct the parties to bear their own costs.

23. In para-13 of his order, the learned single Judge has noticed that a submission was made by the learned Counsel for the petitioner that the name of Lingamaiah who claimed reservation in favour of Ex-Military Personnel, had been included in the list of selected candidates, though he had intimated the Commission that he was not pressing his application. The learned single Judge observed that this was a matter which the Commission should look into.

24. The aforesaid observation of the learned" single Judge remains undisturbed by this judgment.