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**(1995) 03 SC CK 0119**

**In the Supreme Court Of India**

**Case No :** Civil Appeal No's. 615 to 620 of 1979, 120-122 of 1988, 2670 of 1989 and 3813 of 1990

State of Karnataka

APPELLANT

Vs

Kumari Gowri Narayana Ambiga etc.

RESPONDENT

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**Date of Decision :** 27-03-1995

**Acts Referred:**

Constitution of India, 1950 — Article 16(1), 16(4), 309, 335  
Karnataka State Civil Services (General Recruitment) Rules, 1957 — Rule 4

**Citation :** AIR 1995 SC 1691 : (1997) 10 JT 568 : (1995) LabIC 2085 : (1995) 2 SCALE 499 : (1995) 2 SCC 560 Supp : (1995) 2 SLJ 152 : (1995) 2 UJ 1

**Hon'ble Judges :** Kuldeep Singh, J;B. L. Hansaria, J

**Bench :** Division Bench

**Final Decision :** Dismissed

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## Judgement

Kuldeep Singh, J.—These appeals are directed against the judgment of the Division Bench of the Karnataka High Court declaring the Karnataka State Civil Services (Direct Recruitment of Scheduled Castes, Scheduled Tribes, and Backward Tribes to Class III Posts) (Special) Rules, 1977 (the Special Rules) as violative of Articles 16(1) read with Article 335 of the Constitution of India. This Court while granting special leave on March 9, 1979 stayed the operation of the impugned judgment of the High Court.

2. We may briefly state the necessary facts. The Karnataka Civil Services Rules define 'local candidate' to mean 'a temporary government servant not appointed regularly as per Rules of Recruitment to that service'. The local candidates appointed from time to time, subject to their possessing the prescribed qualifications were regularised by the State Government either by way of executive orders, or by framing Rules under Article 309 of the Constitution of India. By the Officer Memorandum dated May 23, 1973 the State Government ordered that no further appointments of local candidates be made. Later on by Officer Memorandum dated June 13, 1974 the embargo was relaxed in respect of the Scheduled Castes and the Scheduled Tribes for appointments to Class III

posts. The Office Memorandum dated December 19, 1975 further provided that 3% of the vacancies be filled up by appointing local candidates belonging to Backward Tribes. Following these orders, a large number of local candidates belonging to Scheduled Castes, Scheduled Tribes and Backward Tribes were appointed. It is not disputed that despite prohibition, candidates from other categories were also appointed as local candidates. The local candidates were given opportunity to apply to the Public Service Commission/ Departmental Recruitment Committees for recruitment to Class III cadres in the State services. Those rejected by the Commission/Committees and those who did not apply were liable to be terminated from the posts held by them as local candidates. On February 1, 1977, the Government, however, directed the continuance of such local candidates belonging to Scheduled Castes, Scheduled Tribes and Backward Tribes in service, till further orders.

3. On February 25, 1977 the Special Rules were framed under Article 309 of the Constitution of India. Rule 2(b) of the Special Rules which defines 'local candidate' is as under:

'Local candidate' means any person belonging to any of the Scheduled Castes or Scheduled tribes as defined in the Constitution of India or Backward tribes specified in Annexure I to the government Order No BGAD 2 SBC 75 dated 9th July, 1975 and appointed to any of the categories of Class-III posts by an appointing authority by direct recruitment otherwise than in accordance with Rule 4 of the Karnataka State Civil Services (General Recruitment) Rules, 1957, or the Special Rules of recruitment applicable to such posts, but does not include any person, -

- (i) selected by the Karnataka Public Service Commission or a Recruitment Committee or any other Selecting. Authority and appointed to and assumed charge of any such post in pursuance of such selection; or
- (ii) appointed temporarily for a fixed period or for any item of work; or
- (iii) whose services have been terminated due to resignation or under the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957.

Rule 3 of the Special Rules states that notwithstanding anything to the contrary contained in any other Rules relating to recruitment to any of the categories of Class III posts, direct recruitment to Class III posts in State Civil Services shall be made by the appointing authority concerned in accordance with the Special Rules by the appointment of those local candidates who were not disqualified by the provisions of the Karnataka State Civil Services (General Recruitment) Rules, 1957, on the date of entry into service. Rule 4 provides that Class III posts which were left over after the appointment of regular candidates selected by the Public Service Commission/ Recruitment Committees shall be filled up by appointing local candidates who were in service on the commencement of the Special Rules. Sub-rule (2) of Rule 4 provides for the appointment of those local candidates whose services had been terminated before the coming into force of the Special

Rules.

4. It is thus obvious that the Special Rules provide for appointment of local candidates belonging to Scheduled Castes, Scheduled Tribes and Backward Tribes. These Rules did not cover local candidates belonging to any other category. The Government issued instructions dated March 8, 1977 whereunder the procedure to be followed in making the appointments to Class III posts was prescribed. Under the Special Rules, read with the Instructions, the Administrative Heads of various departments were left with no option but to terminate the services of local candidates who did not belong to Scheduled Castes, Scheduled Tribes and Backward Tribes. Those local candidates, whose services were terminated, or likely to be terminated, approached the Karnataka High Court challenging the vires of the special Rules. As stated above, a Division Bench of the High Court struck down the Special Rules holding the same to be violative of the constitutional provisions.

5. Based on the rival contentions of the parties, the High Court posed the following two questions for its consideration:

(1) Whether the Special Rules providing for appointment of only local candidates belonging to Scheduled Castes, Scheduled Tribes and Backward Tribes are violative of Article 16(1) read with Article 335 of the Constitution?

(2) Whether the services of local candidates belonging to Scheduled Castes, Scheduled Tribes and Backward Tribes have been regularised by the Special Rules, and if so, whether such regularisation is valid and permissible under law?

The High Court answered the first question in the affirmative, and in favour of the writ petitioners. The High Court primarily accepted the contention raised by the petitioners that a separate procedure under the Special Rules for recruitment of candidates belonging to Scheduled Castes, Scheduled Tribes and Backward Tribes and that too without regard to merit and suitability would be discriminatory and not at all consistent with the maintenance of efficiency of administration.

6. It would be useful to refer briefly to various sets of statutory rules which are operating in the State of Karnataka. The Karnataka State Civil Service (General Recruitment) Rules, 1957 provide that recruitment by competitive examination is to be made in the order of merit, from the list of candidates prepared by the Public Service Commission or other examining authority. It is further laid down in the said Rules that recruitment by selection after giving such adequate publicity as the appointing authority may determine, is to be made in the order of merit of candidates as determined by the Public Service Commission/Selection Committee/Appointing Authority. Similarly, the Karnataka State Civil Services (Recruitment to Ministerial Posts), Rules 1966 regulate the method of direct recruitment to the cadres of Assistants, First Division Clerks, Junior Assistants, and Second Division Clerks in the Karnataka State Civil Services. Rule 4 of the said rules provides that the recruitment shall be made on the basis of merit

determined by competitive examination conducted by the Public Service Commission. There is yet another set of Rules called the Karnataka State Civil Services (Direct Recruitment by Selection) Rules, 1973. These Rules provide that recruitment to various posts under the Rules is to be made on the basis of the merit-list prepared as a result of the qualifying examination. The viva-voce test is also provided and the candidates are to be called on the basis of the merit secured by them in the qualifying examination.

7. It is thus obvious that the direct recruitment to various cadres in Class III service in the Karnataka State is on the basis of merit prepared on the basis of competitive examination or selection made on the basis of objective criteria provided in the various Rules. The Special Rules on the other hand provide entry into various cadres of Class III service to Scheduled Caste, Scheduled Tribe and Backward Tribe candidates without undergoing the process of selection. They are appointed as local candidates in the first instance and thereafter under the Special Rules they are inducted into various cadres of Class III service without going through the process of selection.

8. We have no hesitation in agreeing to the conclusion reached by the Division Bench of the Karnataka High Court that the procedure provided under the Special Rules is not consistent with the maintenance of standards of efficiency in the State Services. Even otherwise, we are of the view that the Special Rules cannot be protected under Article 16(4) of the Constitution of India and they infract Article 16(1) of the Constitution of India. The High Court struck down the Rules on the following reasoning:

It is admitted by counsel on both sides that the Public Service Commission alone is the Selecting Authority for recruitment to Class III ministerial and non-ministerial posts. The Public Service Commission is therefore required to select candidates on the basis of merit by applying the same standard to all candidates called for interview including the candidates belonging to Scheduled Castes, Scheduled Tribes and Backward Tribes.

But no such procedure is provided under the Special Rules for recruitment of local candidates. Their initial appointment as local candidates was admittedly not in accordance with the procedure prescribed by the aforesaid rules of recruitment. The assurance of efficiency implicit in competitive selection thus became the first casualty. These irregular candidates are now sought to be regularly recruited without a chance to put the efficiency-standard to any test whatsoever. The argument that this would seriously impair the standard of efficiency of administration and would weaken the ramparts against inefficiency in public services cannot be rejected. The candidates may have the minimum educational qualification prescribed for the post, but that only satisfies the eligibility test and not the suitability test. The basic eligibility is quite distinct and different from suitability. Suitability could be considered only by competitive test with an application of the same yardstick to all candidates with a prescription of a minimum standard.

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The purpose of every competitive examination must be to select the worthiest person. The interview or the examination must be held for the assessment of candidates competence, proficiency and attainment and in other words to measure merit. Only those persons who possess the required standard of excellence assessed on no other basis than their performance in the examination or interview prescribed in that behalf can be considered to be suitable.

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If different standards are prescribed under the Rules for different classes, then it would plainly run counter to the doctrine of equality before law and would be inconsistent with equality of opportunity in matters relating to employment or appointment as guaranteed under Article 16(1).

9. We see no infirmity in the reasoning and the conclusions reached by the High Court. It is no doubt correct that reservation of posts in Civil Services is permissible under Article 16(4) of the Constitution of India for Scheduled Castes, Scheduled Tribes and Backward Tribes to the extent and the manner laid down in the Nine-Judge Bench judgment of this Court in *Indra Sawhney and Others Vs. Union of India (UOI)*, . But the Special Rules in this case neither provide for any reservation nor any other affirmative action permissible under Article 16(4) of the Constitution of India.

10. Having agreed with the reasoning and conclusions reached by the High Court on the first ground, it is not necessary for us to go into the second ground of attack dealt with by the High Court.

11. As mentioned above, this Court while granting special leave stayed the operation of the impugned judgment of the High Court. Since we are upholding the High Court judgment it would be necessary for us to protect the rights of Scheduled Caste, Scheduled Tribe and Backward Tribe candidates who have been appointed/ regularised during the pendency of these appeals. Keeping in view the facts and circumstances of this case, we direct that the High Court judgment, as upheld by this Court, shall be operative prospectively from the date of this judgment.

12. We, therefore, dismiss the appeals on the above terms. No costs.