(1992) 12 KL CK 0034

In the High Court Of Kerala

Case No : W. A. No. 828 of 1987 and Connected Gases

State of Kerala and another — APPELLANT

Vs

C. A. Sreekantan and others — RESPONDENT

Date of Decision : 04-12-1992

Acts Referred:

Kerala State and Subordinate Services Rules, 1958 — Rule 17A

Citation : (1993) 1 KLJ 401

Hon'ble Judges : M. Jagannadha Rao, C.J;Krishnamoorthy, J;K.A. Nayar, J

Bench : Full Bench

Advocate : Cyriac Joseph A.G, for the Appellant; T. P. K. Nambiar, K. P. Dandapani, M.K. Damodaran, S. A. Nagendran, K.A. Abdul Gafoor, B. Kaghunathan, Pirappancode V, Sreedharan Nair, K.P. Satheesan, V. V. Asokan, K. Prabhukaran and P. N. Ravindran, for the Respondent

Judgement

Krishnamoorthy,. J.

1. The question that arises for consideration in these appeals is as to whether the special recruits selected under Rule 17A of the Kerala State and subordinate Services Rule, 1958 (hereinafter referred to as the K.S.S.R.) should be included in the quote reserved for direct recruits when under the Special Rules the method of appointment is both by direct recruitment and transfer/promotion. The facts necessary for the disposal of these appeals, in the light of the contention raised by the Additional Advocate General on behalf of the State, are as follows: These Writ Appeals arise out of a common judgment in the writ petitions filed by the petitioner who had applied for appointment as Sales Tax Officers pursuant to a notification by the Public Service Commission published in the Kerala Gazette dated 20-7-1982. The petitioners were included in the ranked list dated 31-10-1984. Their complaint was that in spite of the prescription of the ratio 1:3 in the Kerala Agricultural income Tax and Sales Tax Service Special Rules issued in G O. MS. 706/94 dated 26-10-1964, the number of vacancies earmarked for direct recruits was not reported to the Public Service Commission, consequent to

which the Departmental promoters were wrongfully, occupying such positions on provisional promotions. According to the petitioners if all the existing vacancies available for direct recruitment were reported to the Public Service commission, the petitioners who were included in the ranked list would have been appointed. It is seen that the ratio of 1:3 between direct recruits and promoters was amended as 1:4 by G.O.(P) 131/85/PD dated 4-11 1985 (Ext. P3) with, retrospective effect from 1-4-1981. The petitioners challenged the virus of the amendment to the Special Rules with retrospective from 1-4-1981 as an indirect attempt to continue departmental promoters who were appointed as sales tax Officers in excess of the ratio. Consequently the petitioners sought the issue of a writ of mandamus directing the respondents to report 25% of the vacancies in the category of Sales Tax Officers which arose subsequent to 1-4-1981 to the Public Service Commission and to appoint direct recruits in the vacancies ear-marked for them in accordance with the Special Rules. Petitioners also sought to quash Ext. P3 amendment of the Special Rules altering the quota available to direct recruits from 25% to 20%.

2. It has come out that the Special Rules for the Kerala Agricultural income tax and Sales Tax Service provided that one out of every four vacancies shall be filled up by direct recruitment; but direct recruitment was made for the first time only in 1973 and only two persons were appointed and all other vacancies including those earmarked for direct recruits were occupied by provisional promotes. The Special Rules were amended as per G. O (P) 141/84/PD dated 4-9 1984 providing that direct recruitment to the category of Sales Tax Officers shall be deemed to have come into force only on 1-1-1974. As a result of this G O. only departmental promotes could be promoted to the vacancies which arose for the period from 1964 to 1974. Thereafter, according to the petitioners, on the basis of the pressure exerted by departmental candidates, Ext. P3 G. O. dated 4-11-1985 was issued, thereby reducing the quota available for direct recruitment to 20% Petitioners challenged the amendment and there was also dispute between the parties as to the number of vacancies available for being directly appointed.

3. The State filed a counter-affidavit supporting the G. O. dated 4-11-1985 and stated therein the number of vacancies available for appointment and the number of vacancies available for direct recruitment.

4. The learned Single Judge came to the conclusion that no grounds are made to quash Ext. P3 GO dated 4-11-1985 whereby Rule 2(1) in Category 3 was amended to reduce the percentage of vacancies available for direct recruits from 25% to 20%. The learned Judge also observed that the figures given in the counter affidavit in regard to the number of vacancies and the number of direct appointments are contradictory to each other and ultimately came to the conclusion that there were 377 vacancies which were available during the period from 1-4-1981 to 31-12-1986 out of which four vacancies have to be reduced as having been filled up by Special Recruitment under Rule 17A of the K.S. S R,

under the Sports Quota and also under the Dying-in-Harness Scheme. On that finding and applying the reduced ratio of 20% earmarked for direct recruits, the learned Judge came to the conclusion that 7 more vacancies have to be filled up by direct recruitment. Accordingly the Board of Revenue was directed to immediately report 7 vacancies to the Public Service Commission within a period not exceeding 10 days from the date of judgment. The learned Single Judge further ordered that on receipt of such report, the Public Service Commission shall advise 7 more candidates from the ranked list for appointment and those candidates will be appointed as Sales Tax Officers, if necessary by reverting the junior most among the provisional promoter who are occupying posts in excess of the posts available to them according to the Special Rules. It was further directed that Board of Revenue will also reassess the actual number of vacancies available for the period from 1-4-1974 to 30-10-87 and that such assessment shall include not only post which arose consequent on retirement, death or creation of vacancies, but also those which became available due to promotion, leave or deputation for periods in excess of six months and all other such substantive vacancies in the permanent cadre as defined in Rule 5 of the K.S. S. R. Learned Single Judge further held that on such re-assessment if it is found that the direct recruits are entitled for appointment against more vacancies the Board of Revenue shall report the matter to the Commission before 30-10-1987 and shall effect appointments from the ranked list of candidates prepared by the Public Service Commission in accordance with the Special Rules and the rules regarding reservation contained in Rules 14 to 17 of the K.S. S. R. The above judgment is challenged by the State.

5. The Additional Advocate General appearing for the state raised only two contentions in the writ Appeals: (I) that the exclusion of candidates recruited under Rule 17A of the K.S. S. R. under the Sports Quota and Dying-in-Harness Scheme from the number of direct recruits to be made under the Special Rules is wrong and (11) that on re-assessment if there is any excess appointment of direct recruits the learned Judge should have allowed the State to adjust such appointments towards future vacancies.

6. Regarding the second contention there is no difficulty, for the sub-mission made by the Additional Advocate General is only to the effect that if on re-assessment as ordered by the learned Single Judge there is any excess appointment of direct recruits, the State shall be allowed to adjust the same towards future vacancies without sending out the direct recruits. That request seems to be reasonable and in the circumstances we are accepting that contention of the additional Advocate General and hold that if on reassessment there is any excess appointment of direct recruits, it should only be adjusted toward future vacancies and that no direct recruit shall be sent out even if their appointment is in excess of quota. If there is excess appointment of promotes, the direction given by the learned Single Judge will stand.

7. The main contention raised by the Additional Advocate General is that the

view taken by the learned Single Judge that special recruitment under the three categories mentioned in the previous paragraph should also have been taken into account in deciding the number of vacancies available for direct recruits as provided for under the Special Rules, is not correct. We shall first consider the position in regard to the special recruits under Rule 17A of the K.S.S.R. Rule 2 of the Special Rules for the Kerala Agricultural income Tax and Sales Tax Service provides that out of the posts of Sales Tax Officers etc, 20% of the successive substantive vacancies shall be filled or reserved to be filled by direct recruitment and the remaining shall be filled or reserved to be filled by transfer of Assistant Sales tax Officers, Sales tax inspectors, Agricultural income tax inspectors, Agricultural income tax and Sales tax inspectors, intelligence inspectors Check post inspectors and Junior Superintendents of the Kerala Agricultural income tax and Sales-tax Subordinate" Service. From the above rule it is clear that 20% of the vacancies shall be filled or reserved to be filled by direct recruitment and 80% shall be filled or reserved to be filled by transfer of the Officers mentioned in the above rule. Rule 17,A of the K.S. S. R. provides for special recruitment from among the Scheduled Castes and Scheduled Tribes. That Rule reads as follows :-

17A Special recruitment from among the Scheduled Castes and Scheduled Tribes. - Notwithstanding anything contained in these rules or in the special rules the State Government may reserve a specified number of posts in any service, class, category or grade to be filled by direct recruitment exclusively from among the members of Scheduled Castes and Scheduled Tribes. This rule shall be deemed to have come into force with effect from 25-11-1959.

The wording of the Rule is categories that a specified number of posts in any service, class, category or grade shall be reserved to be filled by direct recruitment exclusively from among the members of the Scheduled Castes and Scheduled Tribes. The Rule further provides that the reservation is not with-standing anything contained in the K.S.S R or in the Special Rules. The fact that special recruitment can be made from among the Scheduled Castes and Scheduled Tribes notwithstanding anything contained in the Subordinate Service Rules or the Special Rules makes it clear that the direct recruitment contemplated under Rule 17 of the K.S.S R. is to be made outside the purview of the provisions contained in the Subordinate Service Rules and the Special Rules. It is de hors and independent of the Special Rules. It was contended by the learned Additional Advocate General that even special recruitment under Rule 17A has to be made by direct recruitment and accordingly the persons recruited under the above Rule shall also be included in the quota available for direct recruits under the Special Rules. We find it difficult to accept the above contention. First of all, from the wording of the Rule it is clear that the special recruitment contemplated is outside the purview of the Special Rules. Though in common parlance special recruitment under Rule 17 A is also a direct recruitment, it is not recruitment as contemplated under the Special Rules. Special recruitment is confined to a category of persons, namely from among the members of the Scheduled Castes and Scheduled Tribes alone. The direct recruitment contemplated under the special Rules is from the open market and it is not confined to any particular section of the public but from among the general public as a whole, though no doubt, reservation has to be made as provided for under Rules 14 to 17. The direct recruitment under Rule 17 A differs from a direct recruitment under the Special Rules, for the former is confined to Scheduled Castes and Scheduled Tribes alone whereas the latter is open to all people. It is an independent recruitment not governed by the provisions of the Special Rules but to be made in accordance with Rule 17A Even in cases where the appointment is to be made solely by transfer or by promotion alone under the Special Rules, the State Government is entitled to reserve a specified member of posts to be filled by special recruitment from among the Scheduled Castes and Scheduled Tribes under Rule 17A. This also is an indication that the special recruitment under Rule 17A is not an appointment under the Special Rules, has outside the same. The fact that for direct recruitment under the Special Rules a specified number of posts shall be filled by candidates belonging to the Scheduled Castes and Scheduled Tribes under Rules 14 to 17 will not make any difference for Rule 17A is an additional provision for giving appointment to the members of the Scheduled Castes and Scheduled Tribes. in that view of the matter, even though special recruitment under Rule 17A is also by way of direct recruitment, it is district and different from the direct recruitment contemplated under the Special Rules and such special recruitment cannot be taken into account in fixing the quota of direct recruits as fixed under the Special Rules. Special recruitment under Rule 17A has to be treated as a separate category of direct recruits and it will be unfair to accommodate such special recruits exclusively in the quota earmarked for direct recruits. Accordingly we agree with the learned Single Judge that the number of special recruits will have to be deducted from the total number of vacancies and the ratio prescribed for direct recruits and promotes under the special Rules has to be applied for the remaining posts.

8. In the Judgment under appeal the learned Single Judge has followed his decision in O. P Nos. 3255 of 1984 and 2763 of 1985 for coming to this conclusion. in that Judgment the learned Single Judge observed:-

The only common factor between members of other services who are recruited by transfer and the special recruits who are directly recruited is the Public Service, Commission. The process of recruitment by transfer and direct recruitment are totally different, are separately defined in the Kerala State and Subordinate Service Rules and are governed by separate rules in the Rules of procedure of the Public Service Commission. May be they cannot be included in the quota of promotes. For that very reason, they cannot be treated as part of the quota reserved for recruitment by transfer. The three posts of special recruits should there fore stand out of the ratio.

The above judgment was confirmed by a Division Bench of This Court in W. A.

Nos. 119, 185 and 187 of l986 and we are in complete agreement with the view expressed by the leaned Single Judge and confirmed by the Division Bench.

9. Recruits under the Sports Quota or under the dying-in harness scheme also stand on the same footing and such posts also cannot be taken into account in fixing the quota available to direct recruits under the Special Rules Accordingly we hold that the special recruitment under Rule 17A, appointment under Sports Quota and appointment under the Dying-in-Harness Scheme stand outside the Special Rules. To determine the number of posts available for direct recruits and promotes/transferees under the Special Rules, the number of special recruits under the aforesaid three categories will have to be excluded and the ratio applied for the remaining posts.

10. The further question is as to what is the relief that is to be granted in these Original Petitions. The ranked list was published on 31-10-1984 and its validity expired on 30-10-1987. Originally when the writ Appeals were admitted on 13-10-1987. this Court granted an interim order staying the operation of the judgment dated 18-9 1987, in C. M. P. No. 26065/87. Thereafter, by order dated 23-10 1987, that order was modified and this Court directed the Government that 7 vacancies shall be reported to the Public Service Commission on or before 30-10-1987. Whatever may be the reason, no vacancy was reported to the Public Service Commission by the Board of Revenue (which is the appointing authority) pursuant to the order dated 3-10-1987. But in the statement filed by the Public Service Commission as per our direction during the course of the hearing of these appeals, it is stated that after the judgment of the learned Single Judge dated 18-9-1987, 2 vacancies were reported to the Commission by letter dated 29-9-1987 and one vacancy was reported by letter dated 7-10-1987. Accordingly three candidates had been advised against the three vacancies and thereafter no vacancies were reported to the Commission. It is rather unfortunate that in spite of the order of this Court dated 23 10-1987, vacancies were not reported to the Public Service Commission. The direct recruits have a case that the State is always taking a hostile attitude against direct recruits due to the pressure of promotes and in spite of the order of this Court, the vacancies were not reported. Anyhow, it is not necessary to go into that question in the light of the order which we propose to make in these appeals.

11. As stated earlier, this Court directed by State to report 7 vacancies to the Public Service Commission or before 30-10-1987, the last date of the validity of the ranked list By 7-10-1987, 3 vacancies were already reported and those candidates were advised by the Commission against the same. Now there are 4 more vacancies which remain to be reported as per the order of the learned Single Judge. The ranked list having expired, the question of directing the Public Service Commission to advise the petitioners does not arise. The Commission has further stated in their statement that if 4 more vacancies are to be reported, the following candidates would be entitled to be appointed-:

(1)

Rank No. 65 :

Manoharan I.G.

(E)

(2)

Rank No. 78 :

Babu A. M.

(M)

(3)

Rank No. 40 :

Rajan K.

(OC)

(4)

Rank No. 41:

Usha K.

(OC)

it is for no fault of the direct recruits that the vacancies were not reported in time and they were not appointed. In these circumstances, it would be proper to direct the concerned authorities to appoint these four persons and we accordingly direct the appellant-State and the Board of Revenue to appoint the aforesaid four parsons is the quota of direct recruits as expeditiously as possible, if not already appointed. Subject to the above directions, these Writ Appeals are dismissed. There will be no order as to costs. There is a Cross objection filed by respondent No. 6 in W. A. No. 823 of 1987. He challenges the judgment of the learned Single Judge upholding the validity of the G O dated 4-11-1985 amending the Special Rules reducing the quota of direct recruits to 20%. On hearing all parties, we are in complete agreement with the view taken by the learned Single Judge that no grounds are made out to quash the aforesaid G O. amending the Special Rules and accordingly the Cross objection is dismissed.