

(1979) 07 KL CK 0023
In the High Court Of Kerala
Case No : W.A. No. 288 of 1977

State of Kerala

APPELLANT

Vs

Sivadas and Others

RESPONDENT

Date of Decision : 09-07-1979

Acts Referred:

Kerala State and Subordinate Services Act, 1958 — Section 17A
Kerala State and Subordinate Services Rules, 1958 — Rule 14, 17A

Citation : (1979) 07 KL CK 0023

Hon'ble Judges : V.P. Gopalan Nambiyar, C.J.;G. Balagangadharan Nair, J

Bench : Division Bench

Advocate : C.S. Rajan, Government Pleader, for the Appellant; D.N. Poti, for Respondents 1 to 3 and T.P.K. Nambiar, for Service Commission, for the Respondent

Final Decision : Allowed

Judgement

Gopalan Nambiyar, C.J.—Giving the matter our careful attention, we think the learned Judge should not have interfered with Ext. P-1 notification issued by the Public Service Commission and quashed the same. Ext. P-1 notification stated that the Government proposed to make a special recruitment for Scheduled Castes and Scheduled Tribes candidates. The number of posts for which recruitment was effected was shown as 43. The other particulars we need not concern ourselves with Ext. P-1 notification, dated 11th October, 1976 was issued in pursuance of the power of the Government under Ext. P-2 G.O., G.O. Ms. 263/78/PD., dated 6th August 1970. The said G.O. states that according to Rule 14(a) of the Kerala State and Subordinate Services Rules 8 per cent reservation has been allowed to Scheduled Castes and 2 per cent Scheduled Tribes in public service. Rule 17A empowers the State Government to reserve a specific number of posts in any service, class, category or grade to be filled by direct recruitment exclusively from among Scheduled Castes and Scheduled Tribes. The Rule itself may be quoted:

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 25th November 1959.

The non-obstante clause in the Rule is quite vide and comprehensive and is sufficient to get rid of any other provision in the rules including Rule 14. Two meanings may perhaps be attributed to the non-obstante clause; one that Rule 17A is in displacement of Rule 14 and other Rules; and the other, that it is supplementary to them. We think that the latter is the more reasonable construction, as meant to advance the object of the rule and suppress the mischief which it wanted to avoid. Ext. P-2 order having noticed the rule, proceeded to state that a detailed evaluation of the backlog in representation of the Scheduled Castes and Scheduled Tribes in Government Service from 1950 will be made by the Government; and that pending such evaluation, a special recruitment of Scheduled Castes and Scheduled Tribes would be made to one gazetted post in each Department, where the total number of posts is less than 100, and 1 per cent of the gazetted posts in other Departments. A special recruitment of Scheduled Castes and Scheduled Tribes candidates was directed to be made to 5 per cent of the non-gazetted posts in each Department, filled up by direct recruitment, provided that by such special recruitment the total number of Scheduled Castes and Scheduled Tribes in each category should not exceed the percentages fixed for them under the rules. The writ Petitioners (Respondents 1 to 3 herein) sought to quash Ext. P-1 and prayed for consequential reliefs.

2. The learned Judge noticed the statement in the counter-affidavit that the total number of non-gazetted posts in the Water Transport Department as on 1st April 1976 is 779; and 10 per cent of this was taken to be 78. There were ten persons belonging to Scheduled Castes/Scheduled Tribes in the Department in the non-gazetted cadre. The learned Judge was of the view that the Government was under an erroneous impression that since Rule 14 provides for reservation of 10 per cent by direct Recruitment, the same is a percentage for appointment by special recruitment. The learned Judge took the view that it was only 5 per cent of the non-gazetted posts in each Department that was to be filled up by direct recruitment as envisaged in Ext. P-2 and not the total of all posts in the Department. In calculating the posts as 78, the posts that had been taken into account were not only the posts to which direct recruitment had to be made, but also other posts. Instead of 5 per cent, as required by the proviso, 10 per cent was taken into account, according to the learned Judge. It was in these circumstances that the learned Judge quashed Ext. P-1.

3. We are afraid we cannot accept the reasoning of the learned Judge. As we see

the position, the power of making special recruitment u/s 17A is separate from, and independent of, the power of reservation conceded under Rule 14 of the Kerala State and Subordinate Services Rules. Under Rule 14 reservation upto a total of 10 per cent (8 per cent +2 per cent) for Scheduled Castes and Scheduled Tribes is permitted. The non-obstante clause of Rule 17A permits a special recruitment for Scheduled Castes and Scheduled Tribes despite anything contained in Rule 14 or elsewhere in the Rules. It is in pursuance of the power under this Rule that Ext. P-2 order was issued. Sub-paragraph (2) of Clause 2 thereof is the relevant provision. It directed a special recruitment to 5 per cent of the non-gazetted posts in each Department. The proviso took care to state that as a result of such special recruitment to 5 per cent of the non-gazetted posts, the total number of Scheduled Castes and Scheduled Tribes was not to exceed the upper-limit of 10 per cent fixed under the rule viz. Rule 14. This, we understand to be the meaning and the purport of the above paragraph of Ext. P-2. In that view, we do not think that it in any way conflicts with the provisions of the rules or violates the limit set by Rule 14 or Rule 17A. The learned Judge, in our view, was wrong in holding that Ext. P-1 notification travels beyond the Rules. We allow this writ appeal and set aside the judgment of the learned Judge and direct that O.P. No. 5249 of 1976 will stand dismissed. There will be no order as to costs.