
(1997) 02 GAU CK 0012
In the Gauhati High Court
Case No : Civil Rule No. 570 of 1996

Suniti Nath

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 28-02-1997

Acts Referred:

Constitution of India, 1950 — Article 14, 15(4), 16, 16(4), 330

Citation : (1999) 2 GLT 428

Hon'ble Judges : P.K. Sarkar, J

Bench : Single Bench

Advocate : S. Talapatra, for the Appellant; S. Roy, for the Respondent

Judgement

P.K. Sarkar, J.—The Petitioner Smt. Suniti Nath filed the present writ petition for a direction to appoint the Petitioner in the post of Multipurpose Worker(female) under the Directorate of Health Department in the pay scale of Rs. 970-2400/- with other admissible allowances pursuant to the offer of appointment contained in MemoNo.F2(1-14)MS/ESTT/83(Vol-1)/5984, dated 28.8.91(Annexure-3) from the date on which the other persons were appointed under the same selection process.

2. I have heard Mr. S. Talapatra, learned Counsel appearing on behalf of the Petitioner and Mr. S. Roy, learned Counsel appearing on behalf of the Respondents.

3. It is stated in the petition that the Petitioner is a registered Multipurpose Worker(female) and is entitled to all privileges granted under Tripura Nursing Council Act, 1956. The Petitioner successfully completed the Auxilliary Nursing and Midwifery (revised) Course in the year 1991 from the Multipurpose Worker(female) Training Institute, Kailashahar and thus she qualified herself for the service of Multipurpose Worker(female) as per syllabus and regulations prescribed by the Indian Nurshing Council. In 1991, the Respondent-Government set up a selection board for selection of candidates for the appointment in the

post of Multipurpose Worker(Female). On being selected by the selection board, the Directorate of Health Services, Government of Tripura offered the Petitioner a post of Multipurpose Worker(female) by Memo dated 28.8.91 (Annexure-3). The Petitioner accepted all the terms and conditions of appointment as communicated in the aforesaid Memo dated 28.8.91. By her letter dated 10.9.91 along with her acceptance the Petitioner has submitted all relevant documents to Respondent No. 2. The Multipurpose Workers(female) who were selected for appointment under the same reference No. F. 2(1-14)-MS/ESTT/83(Vol-I), almost all of them were appointed and they are now working as Multipurpose Workers(female) in various parts of the State. But till today, the Petitioner has not been appointed pursuant to the aforesaid offer of appointment dated 28.8.91. It is further alleged that the Petitioner has not been appointed on certain extraneous considerations even though vacancies are available in the department. Thereafter, the Petitioner received a call letter from the Directorate of Health Services on 11.11.96 bearing reference No. F2(1-14)-MS/Estt/91/9792(V-I) dated 15.10.96 (Annexure-5). Before appearing the selection board the Petitioner made it clear to the Respondents that her appearance in the new selection board in 1996 shall not stop her from claiming her appointment to the post of Multipurpose Worker(female) in pursuance of the offer of appointment dated 28.8.91 (Annexure-3). It is further alleged that the Petitioner has been discriminated and she has been deprived of getting the appointment letter in violation of Articles 14 and 16 of the Constitution of India. The Respondents did not cancel the offer of appointment in spite of her intimating the acceptance. The Respondents have violated the provisions of equality before law in the matter of public employment. The Petitioner has time and again approached the Respondents, but they have advised her to wait for some time more. But till the date of filing" of petition she has not been given the appointment in the post of Multipurpose Worker(Female). Having felt aggrieved by the decision of the Government in not appointing the Petitioner in the post of Multipurpose Worker(female) pursuant to offer of appointment dated 28.8.91 (Annexure-3), the Petitioner has filed the present writ petition.

4. The Respondent-State Government and the Director of Health Services filed a joint counter affidavit. It is admitted by the Respondents that on 28.8.91 (Annexure-3) the Petitioner was offered a purely temporary post of Multipurpose Worker(female) under the Directorate of Health Services and the Petitioner accepted the offer of appointment. At the relevant point of time, the Government had an intention to fill up some posts of Multipurpose Worker(female) against the reserved quota for SC and ST candidates by general category candidates having training in the line and in anticipation of getting approval for such filling up of the posts temporarily by general category candidates, offers of appointment were issued in favour of some general category candidates including the Petitioner following the procedure of recruitment prevailing at that time. But as the proposal for utilising the services of general category candidates against the reserved posts of SC and ST candidates were not approved by the Government,

the posts against which offers of appointment were issued to the general category candidates could not be utilised by filling up the posts by general category candidates and for that reason the Petitioner along with some other candidates in the general category could not be appointed through they were offered the posts of Multipurpose Worker(female). It is further averred by the Respondent-Government that in 1991, 103 candidates were offered for the post of Multipurpose Worker(female) and appointments were made in order of seniority-cum-merit. According to the seniority-cum-merit position, the Petitioner's position was at serial No. 86 against 121 candidates awaiting for the job. As there was limited number of vacancies against unreserved quota (general category) all the offered candidates could not be appointed due to shortage of unreserved vacancies. The Petitioner along with others are, therefore, still waiting for the appointment. In 1991, 123 posts were vacant in the grade of Multipurpose Worker(Female) and the Government, out of the said 123 posts, reserved 77 posts for ST candidates and 19 for SC candidates and 27 for general category candidates. Thereafter, the Government has created another 65 posts of Multipurpose Worker(female) and in 1992, 37 general category candidates were appointed and after the aforesaid appointment the position of Petitioner came at serial No. 49 in the select list in order of seniority-cum-merit. After the appointments in 1992, no vacancies are available against unreserved quota and therefore, the Petitioner could not be appointed in the post of Multipurpose Worker(female). It has been stated in the counter affidavit that no persons who are below the rank of the Petitioner in the select list have been appointed by the Government and, therefore, no discrimination has been done to the Petitioner. The Respondent-Government further stated that due to non-availability of posts in unreserved quota, the Petitioner could not be provided with the job. But the Government is considering her case for appointment as and when vacancies will be available. It is further stated that the Government in the Appointment and Services departmentally Memo No. F.1(3)-GA/77 dated 31.5.95 formulated a revised employment policy in making employment to various categories of posts under the Government of Tripura. But the aforesaid Memo, it was decided that 70% of the posts are to be filled up by the candidates on seniority and merit basis and 30% of the posts are to be filled up from amongst the candidates considering their need and poverty. Therefore, for the purpose of selection and appointment of multipurpose Workers(female) the aforesaid policy of the Government will be followed.

5. Mr. S. Roy, learned Counsel for the Respondent-Government and Director of Health Services argued that the Petitioner could not be appointed in spite of giving her the offer of appointment as per Annexure-3 because of non-availability of posts in the general category. Mr. Roy further submitted that in the year 1991, 123 posts of Multipurpose Worker(female) were vacant and out of the said 123 posts only 27 posts were available to be filled up by the general category candidates. Out of the said 123 posts of Multipurpose Worker(female) 77 posts were reserved for ST candidates and 19 posts were reserved for SC candidates.

Mr. Roy further submitted that earlier the posts of Multipurpose Workers(female) could not be filled up by ST and SC candidates according to the roster points because of non-availability of the ST and SC candidates. Therefore, the vacancies of quota for ST and SC candidates were carried forward and in 1991, out of 123 posts 96 (77 for ST + 19 for SC) were reserved being the carry forward vacancies plus the existing quota meant for ST and SC candidates. Mr. S. Roy also submitted that in the year 1991 only 42 posts of Multipurpose worker(female) were filled up. Out of 42 posts, 27 posts were filled up by general category candidates, 13 posts were filled up by ST candidates and 12 posts by SC candidates. The learned Counsel for the Respondent-Government submitted that due to non-availability of ST and SC candidates out of 96(77+19) posts, only 27 posts were filled up by ST and SC candidates. Since the department was suffering from shortage of Multipurpose Worker(female), the Government has created 65 new posts of Multipurpose Worker(female) in the year 1992 and out of 65 posts, 37 posts have been filled up by general category candidates and therefore no posts were available for being filled up by general category candidates. Mr. Roy fairly submitted that the Government has not yet cancelled the select list of 1991 and the Government is considering the appointment of the Petitioner along with the others who were selected by the selection board in 1991 and they will be appointed as soon as the vacancies under unreserved category will be available. Secondly, the learned Counsel for the Respondent-Government submitted that the Government has formulated a policy decision regarding the employment policy. According to the revised employment policy, 70% of the posts will be filled up by the candidates on seniority and merit basis and 30% of the posts will be filled up by the candidates considering then-need and poverty. I can not agree with the submission of the learned Counsel for the Respondent because in the instant case it appears that the panel was prepared by a selection board in 1991 and the aforesaid select list has been prepared on the basis of merit-cum-seniority. From the submission of learned Counsel for the Respondents it further appears that the aforesaid select list is still in force. In such a position, the new employment policy cannot override or cancel the select list already prepared by the department in order of seniority-cum-merit in the year 1991. Therefore, if any appointment is to be made by the government in the post of Multipurpose Worker(female) the Government will have to appoint the candidates whose names appeared in the 1991 select list specially in view of the fact that the aforesaid select list is still in force.

6. As regards the first point regarding the reservation of posts for STs and SCs. Mr. Talapatra, learned Counsel for the Petitioner submitted that the Government has arbitrarily and illegally reserved 96 posts (77 for ST and 19 for SC) out of 123 vacant posts. Mr. Talapatra submitted that in the year 1991, 123 posts were vacant and the Government has created 65 posts in the year 1992. Therefore, in total 188 posts were available to the Government, for filling up of the posts of Multipurpose worker(female) during the year 1991 and 1992. Mr Talapatra further submitted that out of 188 vacant posts, Government can reserve 50% of

the posts for ST and SC candidates including the backlog vacancies for ST and SC candidates. Mr. Talapatra further submitted that reservation beyond 50% in any particular year is without any authority of law and it violates the principles of equality under Article 16 of the Constitution of India. Mr. Talapatra also submitted that according to the admission of the Government that the name of the Petitioner appears at serial No. 86 of the select list. In the year 1991, out of 123 posts, the Government could have reserved 61 posts for STs and SCs which is upto 50% of the reserved vacancies for STs and SCs. Therefore, 62 candidates could have been appointed in general category in the year 1991. But the Government has illegally deprived the general category candidates and filled up only 27 posts from general category candidates in the year 1991. Mr. Talapatra submitted that if the Government would have filled up 62 posts from general category candidates in the year 1991, then the Petitioner's serial number would have come at No. 24 from 86 of the select list in the year 1991. Mr Talapatra further submitted that in the year 1992, the government has created 65 new posts of Multipurpose Worker(female) and after reserving 50% posts for STs and SCs, 33 posts are available for general category candidates. In the year 1992, the Government has appointed 37 candidates from general category candidates. But since 1991 reservation has been made far in excess of 50%, 62 persons from general category candidates could not be appointed by the Government. Out of 188 vacancies available in the year 1991 and 1992 94 vacancies can be reserved for STs and SCs i.e. 50% of the total posts for the aforesaid 2 years and 94 posts are available for general category candidates. The name of the Petitioner appears at serial No. 86. Therefore, Mr. Talapatra submitted that had the government followed the reservation policy according to law and the law settled by the Supreme Court then the Petitioner could have been easily appointed in the post of Multipurpose Worker(female) in the Health Department. Learned Counsel for the Petitioner further submitted that the name of the Petitioner is at serial No. 86 and vacancies available for general category candidates in the year 1991 and 1992 are 94. Therefore, there is no reason (for the Government not to appoint the Petitioner in the post of Multipurpose Worker(female)). The learned Counsel for the Petitioner consequently submitted that injustice and illegality have been done to the Petitioner and his right of equality as enshrined under Article 16 of the Constitution has been violated. Learned Counsel, therefore, submitted that the Government should be directed to appoint the Petitioner in the post of Multipurpose Worker(female) immediately. Mr. Talapatra further submitted that the Government has reserved 96 posts (77 for ST and 19 for SC) for ST and SC candidates which means the Government has reserved more than 72% posts for ST and SC candidates which is not permissible under the law. Mr. Talapatra has drawn my attention to the case law of Indra Sawhney etc. etc Vs. Union of India and others, etc. etc., He also submitted that such illegal reservation of posts beyond permissible limit of 50% should be struck off and the Respondents should be directed to appoint the Petitioner within the vacancies available for the general category candidates.

7. Mr. S. Roy, learned Counsel for the Respondents submitted that according to the provisions of the Tripura Scheduled Castes and Scheduled Tribes (Reservation of Vacancies in Service and Posts) Act, 1991 and the Rules framed thereunder and according to hundred point roster maintained by the Government, the Government has worked out the vacancies for STs and SCs in services and posts after carrying forward the backlog vacancies for STs and SCs. Mr. Roy fairly submitted that earlier ST and SC candidates could not be appointed due to non-availability of ST and SC candidates. Therefore, a huge backlog created and after carrying forward the backlog vacancies in the roster point reservation for STs and SCs, the Government has worked out that out of 123 posts of Multipurpose Worker(female), 77 posts are to be reserved for STs and 19 posts are to be reserved for SCs and 27 posts are available for general category candidates. Mr. Roy, therefore, submitted that the vacancies worked out for STs and SCs are on the basis of existing percentage of reservation along with backlog for STs and SCs. Consequently, Mr. Roy submitted that there is no illegality in reserving 96 posts out of 123 vacant posts of Multipurpose Worker(female) for STs and SCs. I cannot agree with the learned Counsel for the Respondent-State because in providing for reservation of appointments or posts under Article 16(4) of the Constitution, the State has to take into consideration the claim of the members of the backward classes (ST and SC) consistently with the maintenance of the efficiency of administration. It must not be forgotten that the efficiency of administration is of such paramount importance that it would be unwise and impermissible to make any reservation at the cost of efficiency of the administration. That undoubtedly is the effect of Article 335 of the Constitution. Reservation of appointments or posts may theoretically and conceivably lean some impairment of efficiency; but the risk involved in sacrificing efficiency of administration must always be borne-in mind when any State seeks about making a provision for reservation of appointments or posts.

8. The question of maximum percentage of reservation and how the reservation is to be worked out including backlog has been discussed in Part V of the Supreme Court judgment reported in *Indra Sawhney etc. etc Vs. Union of India and others, etc. etc.*, The relevant Part V of the judgment is reproduced below:

Part V (Question Nos. 6, 7 and 8) Question 6: To what extent can the reservation be made ?

(a) Whether the 50% rule enunciated in *Balaji* a binding rule or only a rule of caution or rule of prudence ?

(b) Whether the 50% rule, if any, is confined to reservations made under Clause (4) of Article 16 or whether it takes in all types of reservations that can be provided under Article 16 ?

(c) Further while applying 50% rule, if any, whether a year should be taken as a unit or whether the total strength of the cadre should be looked to ?

93. In *M.R. Balaji and Others Vs. State of Mysore*, A Constitution Bench of this

Court rejected the argument that in the absence of a limitation contained in Article 15(4), no limitation can be prescribed by the Court on the extent of reservation. It observed that a provision under Article 15(4), being a "Special provision" must be within reasonable limits. It may be appropriate to quote the relevant holding from the judgment:

When Article 15(4) refers to the special provision for the advancement of certain classes or Scheduled Castes and Scheduled Tribes, it must not be ignored that the provision which is authorised to be made is a special provision; it is not a provision which is exhaustive in character, so that in looking after the advancement of those classes, the State would be justified in ignoring altogether the advancement of the rest of the society. It is because the interests of the society at large would be served by promoting the advancement of the weaker elements in the society that Article 15(4) authorises special provision to be made. But if a provision which is in the nature of an exception completely excludes the rest of the society, that clearly is outside the scope of Article 15(4). It would be extremely unreasonable to assume that in enacting Article 15(4) the Parliament intended to provide that where the advancement of the Backward classes or the Scheduled Castes and Tribes was concerned, the fundamental rights of the citizens constituting the rest of the society were to be completely and absolutely ignored... A special provision contemplated by Article 15(4) like reservation for posts and appointments contemplated by Article 16(4) must be within reasonable limits. The interests of weaker sections of society which are a first charge on the State and the Centre have to be adjusted with the interests of the community as a whole. The adjustment of these competing claims is undoubtedly a difficult matter, but if under the guise of making a special provision, a State reserves practically all the seats available in all the colleges, that clearly would be subverting the object of Article 15(4). In this matter again, we are reluctant to say definitely what would be a proper provision to make. Speaking generally and in a broad way a special provision should be less than 50%; how much less than 50% would depend upon the relevant prevailing circumstances in each case.

In *Devadasan* AIR 1964 SCJ 79 this rule of 50% was applied to a case arising under Article 16(4) and on that basis the carryforward rule was struck down, in *State of Kerala and Another Vs. N.M. Thomas and Others*, however, the correctness of this principle was seriously questioned. *Fazal Ali, J.* observed.

This means that the reservation should be within the permissible limits and should not be a cloak to fill all the posts belonging to a particular class of citizens and thus violated Article 16(1) of the Constitution Indirectly. At the same time Clause (4) of Article 16 does not fix any limit on the power of the Government to make reservation. Since Clause (4) is a part of Article 16 of the Constitution it is manifest that the State cannot be allowed to indulge in excessive reservation so as to defeat the policy contained in Article 16(1). As to what would be a suitable reservation within permissible limits will depend upon the facts and

circumstances of each case and no hard and fast rule can be laid down, nor can this matter be reduced to a mathematical formula so as to be adhered to in all cases. Decided cases of this Court have no doubt laid down that the percentage of reservation should not exceed 50%. As I read the authorities, this is however, a rule of caution and does not exhaust all categories. Suppose for instance a State has a large number of backward class of citizens which constitute 80% of the population and the Government, in order to give them proper representation, reserves 80% of the jobs for them can it be said that the percentage of reservation is bad and violates the permissible limits of Clause 4 of Article 16? The answer must necessarily be in the negative. The dominant object to this provision is to take steps to make inadequate representation adequate.

Krishan Iyer, J. agreed with the view taken by Fazal Ali, J. in the following words:

I agree with my learned brother Fazal Ali, J. in the view that the arithmetical limit of 50% in any one year set by some earlier rulings cannot perhaps be pressed too far. Overall representation in a department does not depend on recruitment in a particular year, but the total strength of a cadre. I agree with his construction of Article 16(4) and his view about the "Carry forward" rule.

Mathew, J. did not specifically deal with this aspect but from the principles of "proportional equality" and "equality of results" espoused by the learned Judge, it is argued that he did not accept the 50% rule. Beg, J, also did not refer to this rule but the following sentence occurs in his judgment at pages 962 and 963:

If a reservation of posts under Article 16(4) for employees of backward classes could include complete reservation of higher posts to which they could be promoted, about which there could be no doubt now, I fail to see why it cannot be partial or for a part of the duration of service and hedged round with the condition that a temporary promotion would operate as a complete and confirmed promotion only if the temporary promotee satisfies, some tests within a given time.

Ray, C.J. did not dispute the correctness of the 50% rule but at the same time he pointed out that this percentage should be applied to the entire service as a whole.

After the decision in *Thomal*, controversy arose whether the 50% rule enunciated in *State of Kerala and Another Vs. N.M. Thomas and Others*, stands overruled by *M.R. Balaji and Others Vs. State of Mysore*, or does it continue to be valid. In *K.C. Vasanth Kumar and Another Vs. State of Karnataka*, two learned . Judges came to precisely opposite conclusions on this question. Chinnappa Reddy, J. held that *Thomas* has the effect of undoing the 50% rule in *Balaji* whereas Venkataramaih, J. held that it does not.

94. It is argued before us that the observations on the said question in *Thomas* were obiter and do not constitute a decision so as to have the effect of overruling *Balaji*. Reliance is also placed upon the speech of Dr. Ambedkar in the

Constituent Assembly, where he said that reservation must be confined to a minority of seats (See para 28). It is also pointed out that Krishna Iyer, J. who agreed with Fazal Ali, J. in Thomas on this aspect came back to, and affirmed, the 50% rule in Karmachari Sangh (at pp. 241 and 242). On the other hand, it is argued for the Respondents that when the population of the other backward classes is more than 50% of the total population, the reservation in their favour (excluding Scheduled Castes and Scheduled Tribes) can also be 50%.

94A. We must, however, point out that Clause (4) speaks of adequate representation and not proportionate representation. Adequate representation cannot be read as proportionate representation. Principle of proportionate representation is accepted only in Articles 330 and 332 of the Constitution and that too for a limited period. These articles speak of reservation of seats in Lok Sabha and the State legislature in favour of Scheduled Tribes and Scheduled Castes proportionate to their population, but they are only temporary and special provisions. It is therefore not possible to accept the theory of proportionate representation though the proportion of population of backward classes to the total population would certainly be relevant. Just as every power must be exercised reasonably and fairly, the power conferred by Clause (4) of Article 16 should also be exercised in a fair manner and within reasonable limits and what is more reasonable than to say that reservation under Clause (4) shall not exceed 50% of the appointments or posts, barring certain extraordinary situations as explained hereinafter. From this point of view, the 27% reservation provided by the impugned Memorandums in favour of backward classes is well within the reasonable limits. Together with reservation in favour of Scheduled Castes and Scheduled Tribes, it comes to a total of 49.5%. In this connection, reference may be had to the Full Bench decision of the Andhra Pradesh High Court in V. Narayana Rao and Another Vs. State of Andhra Pradesh and Another, striking down the enhancement of reservation from 25% to 44% O.B.Cs. The said enhancement had the effect of taking the total reservation under Article 16(4) to 65%.

It needs no emphasis to say that the principle aim of Articles 14 and 16 is equality and equality of opportunity and that Clause (4) of Article 16 is but a means of achieving the very same objective. Clause (4) is a special provision though not an exception to Clause (1). Both the provisions have to be harmonised keeping in mind the fact that both are but the restatement of the principle of equality enshrined in Article 14. The provision under Article 16(4) conceived in the interest of certain sections of society should be balanced against the guarantee of equality enshrined in Clause (1) of Article 16 which is a guarantee held out to every citizen and to the entire society. It is relevant to point out that Dr. Ambedkar himself contemplated reservation being "confined to a minority of seats" (see his speech in Constituent Assembly, set out in para 28) No other member of the Constituent Assembly suggested otherwise. It is, thus clear that reservation of a majority of seats was never envisaged by the founding fathers. Nor are we satisfied that the present context requires us to depart from

that concept.

From the above discussion, the irresistible conclusion that follows is that the reservations contemplated in Clause (4)"of Article 16 should not exceed 50%.

While 50% shall be the rule, it is necessary not to put out of consideration certain extraordinary situations inherent in the great diversity of this country and the people. It might happen that in farflung and remote areas the population inhabiting those areas might, on account of their bring out of the main stream of national life and in view of conditions peculiar to and characteristic to them, need to be treated in a different way, some relaxation in this strict rule may become imperative. In doing so, extreme caution is to be exercised and a special case made out.

In this connection it is well to remember that the reservations under Article 16(4) do not operate like a communal reservation. It may well happen that some members belonging to say, Scheduled castes get selected in the open competition field on the basis of their own merit; they will not be counted against the quota reserved for Scheduled Castes; they will be treated as open competition candidates.

95. We are also of the opinion that this rule of 50% applies only to reservations in favour of backward classes made under Article 16(4). A little clarification in order at this juncture; all reservations are not of the same nature. There are two types of reservations, which may, for the sake of convenience, be referred to as "vertical reservations" and "horizontal reservations". The reservations in favour of Scheduled Castes, Scheduled Tribes and other backward classes (under Article 16(4)) may be called vertical reservations whereas reservations in favour of physically handicapped (under Clause (1) of Article 16) can be referred to as horizontal reservations. Horizontal reservations cut across the vertical reservations-what is called interlocking reservations. To be more precise, suppose 3% of the vacancies are reserved in favour of physically handicapped persons; this would be a reservation relating to Clause (1) of Article 16. The persons selected against this quota will be placed in the appropriate category; if he belongs to SC category he will be placed in that quota by making necessary adjustments; similarly, if he belongs to open competition (O.C) category, he will be placed in that category by making necessary adjustments. Even after providing for these horizontal reservations, the percentage of reservations in favour of backward class of citizens remains-and should remain-the same. This is how these reservations are worked out in several states and there is no reason not to continue the procedure.

It is, however, made clear that the rule of 50% shall be applicable only to reservations proper; they shall not be indeed cannot be applicable to exemptions, concessions or relaxations, if any, provided to "Backward class of Citizens" under Article 16(4).

96. The next aspect of this question is whether a year should be taken as the

unit or the total strength of the cadre, for the purpose of applying the 50% rule. *M.R. Balaji and Others Vs. State of Mysore*, does not deal with this aspect but *T. Devadasan Vs. The Union of India (UOI) and Another*, (majority opinion) does. *Mudholkar, J.* speaking for the majority says:

We would like to emphasise that the guarantee contained in Article 16(1) is for ensuring equality of opportunity for all citizens relating to employment and to appointments to any office under the state. This means that on every occasion for recruitment the State should see that all citizens are treated equally. The guarantee is to each individual citizen and, therefore, every citizen who is seeking employment or appointment to an office under the State is entitled to be afforded an opportunity for seeking such employment or appointment whenever it is intended to be filled. In order to effectuate the guarantee each year of recruitment will have to be considered by itself and the reservation for backward communities should not be so excessive as to create a monopoly or to disturb unduly the legitimate claims of other communities.

On the other hand, the approach adopted by *State of Kerala and Another Vs. N.M. Thomas and Others*, while not disputing the correctness of the 50% rule, he seems to apply it to the entire service as such. In our opinion, the approach adopted by *Ray, C.J.* would not be consistent with Article 16. True, it is that the backward classes who are victims of historical social injustice, which has not ceased fully as yet, are not properly represented in the services under the State but it may not be possible to redress this imbalance in one go i.e., in a year or two. The position can be better explained by taking an illustration. Take a unit/service/cadre comprising 1000 posts. The reservation in favour of Scheduled Tribes, Scheduled Castes and other backward classes is 50% which means that out of the 1000 posts 500 must be held by the members of these classes i.e. 270 by other backward classes, 150 by scheduled castes and 80 by scheduled tribes. At a given point of time, let us say, the number of members of O.B.C.s in the unit/service/category is only 50, a shortfall of 220. Similarly, the number of members of Scheduled castes and Scheduled tribes is only 20 and 5 respectively, shortfall of 130 and 75. If the entire service/cadre is taken as a unit and the backlog is sought to be made up, then the open competition channel has to be choked altogether for a number of years until the number of members of all backward classes reaches 500 i.e. till the quota meant for each of them is filled up. This may take quite a number of years because the number of vacancies arising each year are not many. Meanwhile, the members of open competition category would become age-barred and ineligible. Equality of opportunity in their case would become a mere mirage. It must be remembered that the equality of opportunity guaranteed by Clause (1) is to each individual citizen of the country while Clause (4) contemplates special provision being made in favour of socially disadvantaged classes. Both must be balanced against each other. Neither should be allowed to eclipse the other. For the above reason, we hold that for the purpose of applying the rule of 50% a year should be taken as the unit and not the entire strength of the cadre, service or the unit, as the case may be.

9. On a plain reading of the aforesaid decision of the hon''ble Supreme Court it is clear that hon''ble Supreme Court has settled the law that reservation can be made in services and posts to the extent of 50% including the carry-forward vacancies. The Supreme Court has further held that for the purpose of applying the rule of 50% reservation a year should be taken as the unit and not the entire strength of the cadre, service of the unit, as the case may be. Therefore, from the aforesaid decision of the Supreme Court it is clear that out of 123 vacant posts of Multipurpose Worker(female) in the year 1991, the Government cannot reserve a more than 61 posts for ST and SC candidates. Therefore, the reservation of 96 posts for STs and SCs in the year 1991 by the Government is clearly illegal and unjustified and not according to law. Therefore, such reservation which is far beyond the permissible limit of 50% is liable to be struck down and accordingly the aforesaid calculation made by the Government reserving 96 posts for STs and SCs which is far beyond the maximum percentage of reservation is cancelled. The Government made appointment of 62 persons from general category candidates. On a calculation of vacancies for the year 1991 and 1992 it appears that the general category candidates are entitled to get appointment against 95 posts. The Petitioner being admittedly at serial No. 86, she is entitled to get appointment in the post of Multipurpose worker(female) specially when the select list has not yet been cancelled by the Government. Further when calculating the reservation including carryforward a year should be taken as unit. In other words, in every year or every recruitment year, out of the total vacancies available for being filled up not more than 50% of the vacancies should be reserved for ST and SC candidates where such reservation is for the said year or for the said year along with carry-forward vacancies.

10. From the counter affidavit filed by the State Government, it appears that in the year 1991. Out of 123 posts available for being filled up, 52 posts were filled up and out of 52 posts, 27 posts were filled up by general category candidates, 13 posts were filled up by ST category candidates and 12 posts were filled up by SC category candidates. After filling up the posts in the aforesaid manner, 71 posts were vacant. In the year 1992, the Government has created another 65 posts which means in the year 1992 136 posts were available for being filled up by the Government out of which 68 posts can be reserved for ST and SC category candidates and Anr. 68 posts are available for general category candidates.

Therefore, during these two years, at least 95 candidates belonging to general category candidates could have been appointed by the government. The Respondents'' plea that due to non-availability of the pots they could not appoint the Petitioner in the post of Multipurpose Worker(female) do not stand for the reasons that the Petitioner''s serial number is 86 in the select list and when 95 posts are available for general category candidates, the Petitioner could have been easily appointed in the post of Multipurpose Worker(female) in the Health Department But due to excessive reservation of posts beyond permissible limit, the Petitioner could not be appointed and the right of the Petitioner under Article

16 of the Constitution has been violated. I am, therefore, of the clear view that on a proper calculation of reservation of posts for STs and SCs, the Petitioner could have been appointed against the offer issued to her vide Annexure-3.

11. Having regard to the facts and circumstances stated above and in view of the law settled by the hon''ble Supreme Court in the aforesaid case law, it is clear that the Petitioner could have been appointed if the Government would have properly calculated the vacancies reserved for STs and SCs. Consequently, the Government's decision reserving 77 posts for STs and 19 posts for SCs out of 123 posts being far excess of 50% is cancelled. Accordingly, the aforesaid calculation made by the Respondent-government reserving the vacancies for STs and SCs are cancelled. I am, therefore, of the view that since the Petitioner's right of equal treatment has been violated she is entitled to get appointment in the post of Multipurpose Workert Temale) in pursuance of the offer and appointment issued by the Government vide Annexure-3.

12. Before parting with the case, I must mention that during argument, Mr. S. Talapatra, learned Counsel for the Petitioner submitted that the Respondent-Government has reserved posts for S Ts and SCs far in excess of 50% in all departments of the Government thereby violating the right of equality of the citizens in the matter of public employment. It that is so, then the Government should calculate afresh the posts which are to be reserved for STs and SCs including the carry-forward vacancies afresh in the light of the decision of this case. The Respondent-Government is, therefore, directed to work out the total vacancies available for being filled up, in a particular year and may reserve posts for STs and SCs not beyond 50% limit including the carryforward vacancies reserved for STs and SCs.

13. With the aforesaid direction and observation, the writ petition is disposed of. The Respondent-Government is directed to calculate the vacancies reserved for STs and SCs in the post of Multipurpose Worker(female) in the Health Department afresh in the light of the decision of this case and consider the appointment of the Petitioner in the post of Multipurpose Worker(female) in pursuance of the offer of appointment issued to her as per Annexure-3. Under the facts and circumstances, I do not make any order as to costs.