

SUPREME COURT OF INDIA

B.Venkataramana

Vs.

State of T.N.

WP(Civil)No.318 of 1950

(H.J.Kania,CJI., Saiyid Fazl Ali and M.Patanjali Sastri,JJ., M.C.Mahajan and B.K. Mukherjea, JJ., S.R.Das and Vivian Bose,JJ.,)

09.04.1951

JUDGEMENT

S.R.Das,J.,

1. This is an appln. under Art. 32, Const. Ind.. complaining of the infringement of the petnr's fundamental right to employment in the State service of resp. 1.

2. By a notfn. dated 16-12-1949, published in the Fort St. George Gazette, dated 20-12-1949, the Madras Public Services Commission invited applns. for 83 posts of District Munsifs in the Madras Subordinate Civil Judicial Service. It was notified that out of the 83 posts to be filled by direct recruitment, 12 were to go to persons already in the service holding certain classes of employment in the Madras Civil Judicial Dept. and that the remaining 71 posts would be filled up from among the Official Receivers, Assistant Public Prosecutors and practising members of the Bar. It was further notified that the selection of the candidates would be made from various castes, religions and communities in pursuance of the rules prescribed in what are popularly described as Communal G. Os., namely, for Harijans 19, Muslims 6, Christians 6, Backward Hindus 10, Non-Brahmin Hindus 32 and Brahmins 11, Different and unequal age limits for candidates of the above mentioned different classes were fixed and no age limit was fixed for Harijan and Backward Hindus.

3. The petnr. is a Graduate having secured a first class degree in Mattheematics. He also passed the B.L. Degree Examination in the second class. He has been practising as an Advocate in Nellore for over seven years. Admittedly, therefore, he possesses the requisite qualifications for being selected as a District Munsif. Indeed, it is admitted that the marks secured by him would entitle him to be selected if the provisions in the Communal G. O. were disregarded. In April and May, 1950, the Madras Public Services Commission interviewed the candidates. It is claimed by the petnr. that he did well in the viva voce examination held by the Public Services Commission in which one of the Judges of the

Madras H. C. was also present as a representative of the H. C. Out of the 83 posts, 12 were selected from the Madras Judicial Dept. The Madras Public Services Commission in its notfn. in the Supplement to Part I-B to the Fort St. George Gazette dated 6-6-1950 published the list of selected candidates under each community: Harijan 1, Muslims 7, Christians 4, Backward Hindus 13, Non-Brahmin Hindus 32 and Brahmins 4. The present Petn. was filed on 21-10-1950 praying for an order declaring that the rule of the communal rotation, in pursuance of which the selection to the posts of District Munsifs was made in the Madras Subordinate Civil Judicial Service, was repugnant to the provisions of the Constitution and therefore, void, for directing the Madras Public Services Commission to cancel the selections already made, prohibiting the State of Madras from filling up the posts from out of the candidates selected in pursuance of the notfn. dated 16-12-1949 and for drawing the disposal of the petnr's. appln. for the said post after taking it on the file on its merits and without applying the rule of communal rotation.

4. The Constitution by Art. 16 specifically provides or equality of opportunity in matters of public employment. The relevant clauses are as follows :

"(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

(2) No citizen shall, on grounds only of religion race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of any employment or office under the State.

(4) Nothing in his article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State."

Cl. (4) expressly permits the State to make provision for the reservation of appointments of posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services of the state. Reservation of posts in favour of any backward class of citizens cannot, therefore, be regarded as unconstitutional. The Communal. G.O. itself makes an express reservation of seats for Harijans and Backward Hindus. The other categories, namely, Muslims, Christians, Non-Brahmin Hindus and Brahmins must be taken to have been treated as other than Harijans and Backward Hindus. Our attention was drawn to a schedule of Backward Classes set out in sch. III to part I of the Madras Provincial and Subordinate Service Rules. It was, therefore, argued that Backward Hindus would mean Hindus of any of the communities mentioned in that Schedule. It is, in the circumstances, impossible to say that classes of people other than Harijans and Backward Hindus can be called Backward Classes, As regards the posts reserved for Harijans and Backward Hindus it may be said that the petnr. who does not belong to those two classes is regarded as ineligible for those reserved posts not on the ground of religion, race, caste, etc. but because of the necessity for making a provision for

reservation of such posts in favour of a backward class of citizens, but the ineligibility of the petnr. for any of the posts reserved for communities other than Harijans and Backward Hindus cannot but be regarded as founded on the ground only of his being a Brahmin. For instance, the petnr. may be far better qualified than a Muslim or a Christian or a Non-Brahmin candidate and if all the posts reserved for those communities were open to him, he would be eligible for appointment, as is conceded by the learned Advocate-General of Madras, but, nevertheless, he cannot expect to get any of those posts reserved for those different categories only because he happens to be a Brahmin. His ineligibility for any of the posts reserved for the other communities, although he may have far better qualifications than those possessed by members falling within those categories, is brought about only because he is a Brahmin and does not belong to any of those categories. This ineligibility created by the Communal G. O. does not appear to us to be sanctioned by cl. (4) of Arts, 16 and is 13 an infringement of the fundamental right guaranteed to the petnr. as an individual citizen under Art, 16 (1) and (2). The Communal G. O., in our opinion, is repugnant to the provisions of Art. 16 and is as such void and illegal. This, in our opinion, is sufficient to dispose of this appln. and we do not consider it necessary to consider the effect at Art. 14 or 15 of the Constitution on the case of the resps.”

5. We are informed that this petn. was made after most of the selected candidates had taken charge of the posts to which they were appointed. As a result of this judgment we do not direct the Madras Public Services Commission to cancel the selections already made in so far as the candidates selected have already taken charge of their posts. We understand, however, that all the posts have not yet been filled up and there will be no difficulty in considering the petnr's. appln. on its merits without reference to the Communal G. O. which offends against the provisions of part III of the Constitution. We, therefore, direct the resps. to consider and dispose of the petnr's. appln. for the post after taking it on file on its merits and without applying the rule of communal rotation. The petnr. will be entitled to his costs of this appln.

6. Petition allowed.