

The University of Cochin

Vs

Dr. N. Raman Nair, and Others

Civil Appeal No. 855 of 1974

(M. H. Beg, N. L. Untwalia, V. R. Krishna Iyer JJ)

30.10.1974

JUDGMENT

BEG, J. -

1. The University of Cochin was granted special leave to appeal to this Court against the judgment and order of the Kerala High Court allowing a writ petition of the respondent Dr. N. Raman Nair who had applied unsuccessfully on October 15, 1972 for the post of Reader in the Department of Hindi after coming into force of the Cochin University Act 30 of 1971 (hereinafter referred to as 'the Act'). The High Court had quashed a resolution, passed by the Syndicate on January 6, 1973, for appointing Dr. A. Ramchandra Dev to the post. The High Court had also quashed the resolution of the Syndicate of the University passed on July 7, 1972, the relevant part of which runs as follow :

Resolved that -

1. the rules mentioned under Section 6(2) of the Cochin University Act, 1971, be implemented in the case of teaching staff as a class except in the case of post of Professor which shall be filled up exclusively in consideration of merit; but the reservation quota against this category should be provided additionally in the category of Readers, Lecturers, Teaching Assistant, etc. taken collectively.

It had directed the University to make appointments in conformity with Section 6(2) of the Act. Section 6 lays down :

6. University open to All Classes and Creeds. - (1) No person shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence, language, political opinion or any of them, be ineligible for, or discriminated against in respect of any employment or office under the University or membership of any of the authorities or bodies of the University or admission to any degree or course of study in the University.

(2) In making appointments to posts in any service, class or category under the University, the University shall mutatis mutandis, observe the provisions of clauses (a), (b) and (c) of Rule 14 and the provisions of Rule 15, 16 and 17 of the Kerala State and Subordinate Service Rules as demanded from time to time.

2. Section 6 of the Act, read as a whole, indicates that it was meant to eliminate unjustifiable discrimination. The provisions of Section 6(1) are directed against discrimination against particular individuals on any of the grounds given there. Section 6(2) is meant to ensure equality of treatment

between citizens as members of groups, and, in particular, to enable "backward" classes to secure appointments so as to remove the gap between the "advanced" and the "backward". In doing so, it may appear that the principle of equality of opportunity on the basis of individual merit is being modified. Even if that be the result the wider object is to promote equality between groups of citizens.

3. Rule 14, mentioned in Section 6(2) lays down a rule of rotation in making appointments. Rule 15 indicates that the principle of minimum qualifications to determine whether candidates are suitable for selection is not abandoned. Rule 16 provides for a "sub-rotation" among sub-groups of major backward classes. This concept is further explained and elaborated in Rule 17. These rules are set out below in toto :

14. Reservation of appointments. - Where the Special Rules lay down that the principle of reservation of appointments shall apply to any service, class or category, or where in the case of any service, class or category for which no special rules have been issued, the Government have by notification in the Gazette declared that the principle of reservation of appointments shall apply to such service, class or category shall be made on the following basis :

(a) The unit of appointment for the purpose of this rule shall be 20, of which two shall be reserved for Scheduled Castes and Scheduled Tribes and 8 shall be reserved for the Other Backward Classes and the remaining 10 shall be filled on the basis of merit.

Provided that one out of every five posts reserved for Scheduled Castes and Scheduled Tribes shall go to a Scheduled Tribe candidate and only in the absence of a Scheduled Tribe candidate, it shall go to a Scheduled Caste candidate.

(b) The claims of members of Scheduled Castes and Scheduled Tribes and Other Backward Classes shall also be considered for the appointments which shall be filled on the basis of merit and where a candidate belonging to a Scheduled Caste, Scheduled Tribe or Other Backward Class is selected on the basis of merit, the number of posts reserved for Scheduled Castes, Scheduled Tribes or for Other Backward Classes as the case may be, shall not in any way be affected.

(c) Appointments under this rule shall be made in the order of rotation specified below in every of 20 vacancies :

#1. Open Competition.2. Other Backward Classes.3. Open Competition.4. Scheduled Castes and Scheduled Tribes.5. Open Competition.6. Other Backward Classes.7. Open Competition.8. Other Backward Classes.9. Open Competition.10. Other Backward Classes.11. Open Competition.12. Scheduled Casts and Scheduled Tribes.13. Open Competition.14. Other Backward Classes.15. Open Competition.16. Other Backward Classes.17. Open Competition.18. Other Backward Classes.19. Open Competition.20. Other Backward Classes.##

Provided that the fourth turn in the third rotation and the twelfth turn in the fifth rotation shall go to Scheduled Tribe candidates and in the absence of Scheduled Tribe candidates, they shall go to Scheduled Castes candidates.

Provided that the rule shall not apply in the case of appointments of near relatives of military personnel killed, permanently disabled or reported to be missing in action if they are or have been wholly dependent on such personnel and they shall be given preference, in the matter of appointment to Government service provided, they possess the prescribed qualifications and subject to the condition that preference in the matter of appointment shall be given only to one relation in the case of each such personnel.

Explanation :- The term "Near Relatives" means the widows/wives, sons, daughters, sisters, brothers, father, mother, nieces and nephews of the military personnel.

15. If there is no suitable candidate for selection from a particular community classified as "Other Backward Classes" or from the group of communities classified as "Scheduled Castes and Scheduled Tribes" in the turn allotted for them in the integrated cycle combining the rotation in clause (c) of Rule 14 and the sub-rotation in sub-rule (2) of Rule 17, the said community or group shall be passed over and the post shall be filled up in the following manner :

If a suitable candidate is available for selection in a community or group immediately next to the passed over community or group in the said cycle, he shall be selected. If no such candidate is available in that community or group, selection shall be made from the community or group in the said cycle, he shall be selected. If no such candidate is available in that community or group, selection shall be made from the community or group next following, strictly in the order of rotation. If no suitable candidate is available for selection in any of the said communities or groups, selection shall be made from among the open competition candidates. The benefit of the turn thus forfeited to a community, or group by reason of it being passed over shall be resorted to it, at the earliest possible opportunity, if a suitable candidate from that community or group is available for selection by making adjustment against the claims of the community or group that derived the extra benefit by reason of such passing over :

Provided that in no year reservations including carrying forward vacancies to a category of post shall exceed 50% of the total number of vacancies for which selection by direct recruitment to that category is resorted to in that year :

Provided further that the right of restoration of the turn shall lapse with the expiry of three years from the date of the passing over :

Provided also that the said right of restoration shall not extend to a case where the selection has gone, to an open competition candidate.

Note : The year of reservation referred to above shall be from June 15, of a calendar year to June 14 of the succeeding calendar year. The rotation referred to above shall commence from June 15, 1967 and the outstanding compensation due to communities in the cycle of rotation upto June 15, 1967 will be treated as lapsed.

16. There shall be sub-rotation among major groups of Other Backward Classes.

17. (1) The grouping of Other Backward Classes for the above purpose shall be as indicated below :

#1. Ezhavas and Thiyyas. 2. Muslims. 3. Latin Catholics. S.I.U.C. and Anglo-

Indians.4. Scheduled Caste converts to Christianity.5. Other Backward Classes put together, i.e. Communities other than those mentioned in Items 1 to 4 above included in the list of "Other Backward Classes".##

(2) The 40% reservation allowed to Other Backward Classes shall be distributed among the different groups of Backward Classes in the following proportion :

Out of every 40 appointments 14 shall be given to Ezhavas and Thiyyas, 10 to Muslims, 5 to Latin Catholics, S.I.U.C. and Anglo-Indians, 1 to Scheduled Caste converts to Christianity and 10 to Other Backward Classes put together.

The following shall be the rotation by which posts reserved for Other Backward Classes will be distributed among the various groups coming under the class :

#1. Ezhavas and Thiyyas.2. Muslims.3. Latin Catholics, S.I.U.C. and Anglo-Indians.4. Other Backward Classes.5. Ezhavas and Thiyyas.6. Muslims.7. Ezhavas and Thiyyas.8. Other Backward Classes.9. Latin Catholics, S.I.U.C. and Anglo-Indians.10. Muslims.11. Ezhavas and Thiyyas.12. Other Backward Classes.13. Ezhavas and Thiyyas.14. Muslims.15. Latin Catholics, S.I.U.C. and Anglo-Indians.16. Other Backward Classes.17. Ezhavas and Thiyyas.18. Muslims.19. Scheduled Caste converted to Christianity.20. Other Backward Classes.21. Ezhavas and Thiyyas.22. Muslims.23. Ezhavas and Thiyyas.24. Other Backward Classes.25. Ezhavas and Thiyyas.26. Muslims.27. Latin Catholics, S.I.U.C. and Anglo-Indians.28. Other Backward Classes.29. Ezhavas and Thiyyas.30. Muslims.31. Ezhavas and Thiyyas.32. Other Backward Classes.33. Ezhavas and Thiyyas.34. Muslims.35. Ezhavas and Thiyyas.36. Other Backward Classes.37. Latin Catholics, S.I.U.C. and Anglo-Indians.38. Muslims.39. Ezhavas and Thiyyas.40. Other Backward Classes.##

Explanation : The expression "Other Backward Classes" referred to in Items 4, 8, 12, 16, 20, 24, 28, 32, 36, and 40 shall mean Backward Classes referred to in Item 5 under sub-rule (1) of this rule.

4. It is not disputed that the petitioner-respondent No. 1 Dr. Nair, stood first in the order of merit as determined by the Board of Appointments for the post of Reader in the Department of Hindi in the University. The petitioner-respondent's case was that the post of Reader in Hindi is in itself a particular category. He also said :

If the principle for reservation of appointments provided in Rules 14 to 17 of the General Rules is applied to the post of Reader in Hindi, the petitioner alone is entitled to get it since he secured the first rank in the selection and since the first post is reserved for open competition [on merits as provided in sub-rule (c) of Rule 14].

The petitioner submitted that the principle of reservation had been wrongly interpreted by the University in its resolution of July 17, 1972 (Ex. P2) when it laid down that principles of reservation for appointment should be applied to posts in a service, or class or category collectively and not separately. The whole case, therefore, hinged round an interpretation of Rules 14 to 17 and their impact on the principle of rotation as applied to "service, class or category under the University".

5. Section 6(2) lays down the mandatory duty upon the University to observe clause (a), (b) and (c) of Rule 14, as well as Rules 15, 16 and 17 of the rules set out above. But, it does not indicate the

manner in which the classification of members of a service under the University has to be made for the purpose of applying these rules. Inasmuch as every statutory power has to be exercised reasonably, we can say that the classification has to be reasonable. Thus, the University may treat all the teaching posts as belonging to one class for the application of the rules. On the other hand, it may treat only posts of Readers in all subjects or in a particular subject as a category by its for the application of these rules. It cannot exempt any class or category, such as Professors, from the operation of the rules altogether. Only if it so classifies all posts in a service under the University as to make its classification prima facie unreasonable, could the validity of the classification made by it be assailed. The power is presumed to be exercised reasonably on the strength of facts and circumstances relevant for purposes intended to be achieved by the classification. These purposes have also to pass the test of legality and constitutionality.

6. Clause (c) of Rule 14 lays down a scheme of rotation for every block of 20 vacancies. But, it does not specifically say that the rule of rotation will be applied in the order in which vacancies occur. We, however, think that, by necessary implication, the rule is intended to be applied to vacancies in the order in which they occur. It could not be meant to be applied with reference to the date on which a vacancy is announced or advertised because these are fortuitous matters over which those in power in the University may, if so inclined, be able to exercise control. The whole object of such rules is to introduce fixity of principle and of the method of its application so as to remove, so far as possible uncertainty and opportunities for abuse of power. That being the object of such a rule, it seems obvious to us that the rule must have been intended to operate with reference to the dates on which the vacancies occur and not with reference to some other events such as the dates of declaration or advertisement of the vacancies.

7. The rules were made by the Government in 1967. Hence, the note occurs at the bottom of rule 15 that the rotation provided for will commence from June 15, 1967. This could not obviously be done under the Cochin University Act 30 of 1971, which was published in the State Gazette on August 13, 1971. Therefore, for the purposes of applying these rules to the University, the rotation could only apply to vacancies existing on the date when the Act came into force and in the order in which they had occurred.

8. It appears that the Syndicate of the University appointed a Standing Committee to draw up a list of the vacancies, in the class of posts with which we are concerned, at the time when the Act came into force, under which the appointments were to be made in accordance with the rotation rules. This list (Ex. P3) drawn up at a meeting of the Standing Committee of the Syndicate held on January 1, 1973 giving the number and designations of vacant posts, dates of vacancies, and allocation for the purposes of the rotation rule and the names of the candidates appointed, runs as follows :

Regarding the appointments made so far and the appointments to be made from among those who have been selected after advertisement and interview, the Committee examined the details of allocations. The following is the result of the review :

#	Sl. No.	Name of post	Date of Allocation	Name of candidate
1	1	Lecturer, SMS	10-7-1971	Mrs. Annie George
2	2	Lecturer, SMS	9-12-1971	Dr. K. C. Sankarana Narayanan
3	3	Professor in Hindi	17-7-1971	Dr. N. E. Viswanatha Iyer
4	4	Professor in SMS	10-7-1971	Dr. N. Parameswaran
5	5	Open	17-7-1971	Nair

APPOINTMENT MADE ON 17-7-19721. Lecturer, SMS 10-7-1971 Open Mrs. Annie George.2. Lecturer, SMS 9-12-1971 Res Ezhava Dr. K. C. Sankarana Narayanan3. Professor in 17-7-1971 Open Dr. N. E. Viswanatha Hindi Iyer. APPOINTMENT MADE ON 6-11-19724. Professor in SMS 10-7-1971 Res. Sch. C & T Dr. N. Parameswaran converted as open. Nair Sch. C & T.5.

Professor in SMS 16-8-1972 Open Sri N. Ranganatha Reddiar Not joined.6. Reader in SMS 16-8-1972 Muslim Dr. K. N. Nair, Res. Muslim.7. Lecturer in SMS 16-8-1972 Open converted Dr. Jose Thomas Payyapally Sch. Sch. as Sch. C & T. C & T c/o. is lost and it is filled by open.8. Lecturer in SMS. 16-8-1972 Res. (L.C.) N.A. Dr. C. N. Purushotha- man Nair, L.C. Not joined No. c/o. as it is filled by open.9. Lecturer in SMS. 16-8-1972 Open Sri Alex. P. Lukose. POST TO BE FILLED ON 6-1-197310. Reader in Hindi 10-7-1971 Res. O.B.C. This vacancy has occurred earlier.11. Research Asstt. 10-7-1971 Open in Law.12. Lecturer in 3-5-1972 Res. Sch. C & T. Physics.13. Lecturer in 10-12-1972 Open. Physics.-----###

9. The above mentioned document was signed by the Pro Vice Chancellor of the University. It indicates that the vacancy of a Reader in the Department of Hindi was the first to occur. But, instead of allocating it to the open competition class, for the purposes of applying the rotation rule, it was allocated to the reserved block of posts. This was also an illegality complained of by the respondent Dr. Nair.

10. The stand of the University was that it has followed the rotation rule according to which appointments were to be made alternately by a general or open competition and by choice restricted to backward groups. Dr. A. Ramchandra Dev, however, took up the position that the University could even alter the rules, inasmuch as it had the power to apply them mutatis mutandis, according to situations as they arose. It appears that, at the time of arguments in the High Court, the University adopted the stand of Dr. A. Ramchandra Dev on this question. It seems to have been contended in the High Court on behalf of the University that it was empowered to make the changes in the rules to meet the particular needs of the University so as to enable it to implement the provisions of Section 6(2) of Act in the way it thought fit.

11. We think that the High Court was right in holding that the power to apply the rules mutatis mutandis does not include the power of amending the substantial provisions in the rules. The High Court held : "Formal and inconsequential changes for dovetailing the rules into the frame-work of the Act, alone seem to be contemplated". We think that the High Court was right in confining the power of the University to making only what are necessary "adaptations" so as to make the rules applicable to those in the service of the University in place of the Government servants for whom they were promulgated. It could include a power to ignore only such parts as may be inapplicable or in conflict with the Act itself. An instance of this would be, as pointed out above, commencement of the application of the rules after the Act came into force instead of in 1967 when, according to a note in Rule 15, the Rules had to be enforced. The High Court rightly held that the Syndicate could not, in any case, alter the provisions of Section 6(2) of the Act itself which made it incumbent on the University to apply the rotation rule, as contemplated under the rules, to every "service, class or category under the University". It held that

if Section 6(2) were to operate on its own terms, selection to the post of Reader, for the first time made by the University should, in the first turn, go to the candidate adjudged best on open competition, and only on the next turn or turns to candidates on the principle of communal rotation.

12. If the post of Reader in the Department of Hindi was the first to arise in service under the University, as appears to be the position from Ex. P3, an application of the rotation principle would compel the first appointment to take place on the basis of an open competition. That principle could certainly not be modified by the University by taking shelter behind the words mutatis mutandis. It has been stated by the learned Counsel for the University that the validity of the impugned resolution may be doubtful so far as the withdrawal of the post of Professor from the application of

the above mentioned rules is concerned, but, learned Counsel submitted, we need not decide that question as we are not concerned here with an appointment to the post of a Professor. If, however, the Professors and Lecturers and Readers were all to fall in one class it may become necessary to consider this question also. Moreover, as indicated below, the two parts of the resolution do not seem to be separable. It is true that Section 6, sub-section (2) lodges in the University a power to determine what should constitute a class or category of service under the University. No rigid formula to fit all circumstances can be laid down and the authority concerned must be left to define, subject to constitutional limitations, what should be a class or category. But, this power would not, in our opinion, enable the University to dispense with the application of the rotation principle itself to any particular class or category of service under the University as appears to have been the real object of the resolution of July 17, 1972 with regard to Professors.

13. The word 'service' does seem to us to denote, as the High Court held, various classes or categories of posts within it. It is obviously the widest class. A classification which puts the whole teaching staff in one class for purposes of applying the rule would seem unassailable. But, one which puts all classes and categories of service from the peons to Professors altogether may, by destroying the distinction between classes and categories of service seems to run counter to the words used in Section 6(2). As that question is not before us, we refrain from deciding it. This provision appears to us to be intended to ensure that, whatever may be the kind of post to be held by a person in a service "under the University", principles laid down in Rules 14, 15, 16 and 17 must apply in making appointments to it. We are not called upon to decide here what is meant by a service "under the University" as it is admitted by both sides that this description applies to the post of a Reader. Nor have we to determine here the reasonableness of a classification which may put the teaching and non-teaching staff in one class or category.

14. It was submitted by learned Counsel for the University, that the resolution of July 17, 1972 was intended to do no more than to categories "Readers, Lecturers and Teaching Assistants", by putting them into a single class or category, for applying the rules to them "collectively". If that is all it was meant to do, apart from attempting to place posts of Professors outside Rules 14 to 17, the intention is expressed in very unsatisfactory and misleading language. It is, of course, open to the University to pass a resolution which does not contravene Section 6(2) of the Act. A resolution which merely classifies or categorises posts in a reasonable manner would not offend against statutory provisions. The resolution of July 17, 1972 is, however, at least partly invalid, on the face of it, by attempting to place appointments to the post of Professor outside the reservation and rotation rules, altogether, and it is partly at least ambiguous so that it is difficult to decipher its exact meaning. The second part seems designed, in so far as one may guess its meaning, to provide for "Other Backward Classes" a compensatory quota of reserved appointments in a category other than that of Professors in lieu of the removal of posts of Professors from subjection to the rules. If this is the real object, as it seems to be, the intention was to alter the scope or ambit of the rotation rule. The second part is apparently a consequence of the exclusion of the Professors from the operation of the rules - which is itself not permissible - and not an adaptation for the purposes of applying the rules to the University. Thus, the two parts seem to be inseparable. We, therefore, consider the resolution to be wholly invalid. The validity of Section 6(2) has not been questioned either in the High Court or here.

15. We have been informed at the Bar that both the first and the third respondents, that is to say, Dr. Nair and Dr. Ramchandra Dev, are at present holding posts of Readers in the Hindi department as the needs of the University have expanded. It may, however, be necessary to determine the order of their appointments after the University has laid down its own method of reasonable classification either of the whole teaching staff of the University collectively or by putting various categories of

the teaching staff into separate compartments for the application of the rules. We have held that the University has this power provided it is exercised on good and reasonable grounds. We have only indicated that, on such facts as have come to our notice, the particular vacancy for which both Dr. Raman Nair and Dr. Ramchandra Dev were competing seemed to us to be the first to arise for the purposes of applying Section 6(2) of the Act. As this matter was not fully investigated, and the power is vested in the University to make its own classification within the limits indicated by us, we think that it is desirable that the University should be left to make its own reasonable classification in accordance with the principles laid down above by us so as to determine which of the two Readers was entitled to be appointed earlier. In other words, the Syndicate of the University will have to pass a fresh resolution which is in accordance with the law as explained by us and then to apply the rules in conformity with such a resolution in exercise of the powers possessed by the University.

16. The result is that we dismiss this appeal subject to the elucidation given by us of the manner in which the directions issued by the High Court to the University to act in accordance with Section 6(2) of the Act are to be carried out by the University. We make no order as to costs.

</html