

N. F. Sali

Vs

State of Karnataka and Others

Civil Appeals Nos. 4046-47 of 1992

(Kuldip Singh, N. M. Kasliwal, B. P. Jeevan Reddy JJ)

08.10.1992

JUDGEMENT

B. P. JEEVAN REDDY, J.:-

1. Leave granted.

2. Heard counsel for the parties.

3. With a view to bring the representation of Scheduled Castes and Scheduled Tribes in certain Civil Services in the State of Karnataka to the prescribed level, the Governor framed the Karnataka Civil Services (Special Recruitment of Scheduled Castes and Scheduled Tribes candidates to certain Group 'A' and Group 'B' posts) Rules, 1985 (hereinafter referred to as the "Rules"). They were brought into force on 11-4-1985, the date of publication in the Official Gazette. The cadres in Group 'A' and Group 'B', to which the said rules are made applicable are mentioned in the Schedule (against Sl. Nos. I to 5) and in the lists given below the Schedule (hereinafter referred to compendiously as the Schedule) appended to Rules. Rule 2 defines the expressions 'Board' and 'Schedule'. 'Board' means a Board constituted under Rule 4(l).

4. Rules 3 and 4 which constitute the core of the Rules read as follows:

"3 Appointment of Scheduled Castes or Scheduled Tribes candidates to certain Group 'A' and Group 'B' posts.

Notwithstanding anything contained in.-

(i) the Karnataka Recruitment of Gazetted Probationers (Appointment by Competitive Examinations) Rules, 1966;

(ii) the Karnataka State Civil Services (Direct Recruitment by Selection) Rules, 1973;

(iii) the Karnataka Civil Services (General Recruitment) Rules, 1977;

(iv) the rules of recruitment specially made in respect of posts referred to in the Schedule; or

(v) any other rules providing for recruitment of Scheduled Castes and Scheduled Tribes,

Such number of eligible candidates belonging to Scheduled Castes or Scheduled Tribes as indicated in Column 3 of the Schedule who have passed the courses specified in the corresponding entries in column 2 thereof shall, subject to the availability of vacancies, be appointed every year to the posts specified in column 4 thereof in the manner provided for in these rules.

4. Selection of candidates.- (1) The Government shall, for the purpose of selection of candidates for appointment under these rules, constitute a Board consisting of the following members, namely:-

(a) The Additional Chief Secretary

... Chairman

(b) A Vice-Chancellor of an University established by law in the State of Karnataka, nominated by the State Government..

.. Member

(c) An eminent educationist, nominated by the State Government.

... Member

(2) The Board shall, immediately after the end of every academic year, commencing from and including 198-2-83, obtain from the Universities established by law in the State of Karnataka, the names of the Scheduled Castes and Scheduled Tribes candidates, who have studied in an educational institution in the State of Karnataka for not less than five years before passing the Pre-University Course Examination and who have passed in such academic year from such Universities any of the courses specified in column 2 of the Schedule, in first attempt securing the 1st or 2nd or 3rd positions among the Scheduled Castes and Scheduled Tribes candidates.

(3) Separate lists of such candidates, in respect of each course specified in column 2 of the Schedule, shall be prepared arranging their names in the order of merit determined on the basis of marks secured in the examination passed by them in such academic year to pass such course.

(4) From each of the lists prepared under sub-rule (3) in respect of courses specified in Sl. Nos. 1 to 3 in the Schedule such number of candidates as is equal to the number indicated in the corresponding entries in column 3 shall be selected, in the order in which their names are arranged in the list, for appointment to the posts specified in the corresponding entries in column 4 thereof.

(5)(a). The candidates specified in the lists prepared in respect of courses specified at Sl. Nos. 4 to 8 in the Schedule shall be called for an oral test to assess the suitability of the candidates in all respects for the posts concerned. Maximum marks for the test shall be 100. The oral test shall be conducted by the Board.

(b) After the test conducted under clause (a), separate lists of candidates in respect of each course specified at S1. Nos. 4 to 8 shall be prepared arranging their names in the order of merit, merit being determined on the basis of marks secured in the test. From each of such lists such number of candidates as is equal to the number indicated in the corresponding entries in column 3 shall be selected in the order in which their names appear in the lists for appointment to the posts specified in Column 4.

Provided that where a candidate becomes eligible for appointment to two or more alternative posts the selection shall be made on the basis of the marks secured in the test and the preference indicated by candidate in writing.

(6) The names of candidates selected under sub-rules (4) and (5) shall be sent to the concerned appointing authority who shall appoint them to the concerned post."

5. The Schedule appended to the Rules contains four columns. A look at the Schedule is necessary for a proper understanding of the procedure prescribed by Rules 3 and 4:

#### SCHEDULE

Sr. No.	Courses	No. of Candidates to be appointed.	Post to which Candidates are to be appointed.
1.	2.	3.	4.
1.	B.Sc. (Ag.) Degree	3	Agricultural Officer or Asstt. Agricultural Officer
2.	B.V.Sc. Degree	3	Asstt. Surgeons of Veterinary Services
3.	M.B.B.S. Degree	15	Asstt. Surgeons or Equivalent posts in the Health
4.	B.E. Degree (Civil) (Mechanical or Electrical)	15	Assistant Executive Engineer in Public Works/ Irrigation-Deptt. or Inspectors of Factories/ Boilers
5.	Post-Graduate Degree in Agricultural Science	3	Asstt. Director of Agriculture.
6.	Post-Graduate Degree in Arts.	5	In any of the Group-A posts shown below.
		10	In any of the Group-B posts shown below.
7.	Post-Graduate Degree in Science	5	In any of the Group-A posts shown below.
		10	In any of the Group-B posts shown below.
8.	Post-Graduate Degree in Commerce	5	In any of the Group-A posts shown below.
		10	In any of the Group-B posts shown below.

## GROUP 'A' POSTS

- 1 . Assistant Commissioner
2. Assistant Controller of State Accounts Department.
3. Commercial Tax Officer.
4. Treasury Officer.
5. Assistant Labour Commissioners.
6. District Development Assistants.
7. Deputy Superintendent of Police.
8. Deputy Director of Youth Services.
9. Assistant Commandants.
10. Readers in Collegiate Education Department.
11. Education Officers in the Department of Public Instruction.
12. District Officers of Scheduled Castes/ Scheduled Tribes Welfare.

## GROUP 'B' POSTS

1. Tahsildars
2. Assistant Commercial Tax Officers.
3. Labour Officers.
4. Assistant Controllers of Weights and Measures.
5. Assistant Director of Information and Publicity.
6. Assistant Superintendent of Prisons.
7. Assistant Registrars of Co-operative Societies.
8. Deputy Superintendent of Excise.
9. Employment Officers.
10. Assistant Director of Youth Services/ District Youth Service Officer.
11. Assistant Superintendent of Land Records.
12. Chief Officer Grade-1.

13. Assistant Treasury Officers.
14. District Marketing Officers.
15. Lecturers in Collegiate Education Department.
16. Head Masters of High Schools.
17. Assistant Director of Bureau of Economics and Statistics.
18. Assistant Director of Industries and Commerce.

GOVERNOR OF KARNATAKA

By Order and in the name of the Governor of Karnataka,

M. M. Naik,

Joint Secretary to Government

Department of Personnel &

Administrative Reforms.

(Services Rules)"

6. Rule 5 says that these rules shall remain in force in respect of each of the cadres specified in column 4 of the Schedule until the representation of Scheduled Castes and Scheduled Tribe candidates in each of these cadres reaches fifteen and three per cent respectively. Rule 6 empowers the Government to amend the Schedule and to remove difficulties by issuing appropriate directions. Rule 7 says that all other rules for the time being in force regulating recruitment and conditions of services made under the proviso to Article 309 shall be applicable to candidates selected under these rules, in so far as they are not inconsistent with the provisions of the said rules. Rule 8 repeals an identical set of rules issued in 1984, while saving any action taken thereunder.

7. A reading of Rules 3 and 4 discloses the following scheme. Notwithstanding the several Rules governing recruitment to the cadres mentioned in the Schedule, a special procedure shall be followed for filling up the number of vacancies shown in column 3 of the Schedule by selecting and appointing members of Scheduled Castes and Scheduled Tribes. For this purpose a Board has to be constituted in the prescribed manner. Two different procedures are prescribed for filling up the posts mentioned in the Schedule. So far as the posts mentioned under SI. Nos. 1 to 3 are concerned, they should be filled by SC/ST candidates who have passed the requisite examination (specified in column 2 of the Schedule) in the first attempt, securing first, second or third positions among the SC/ ST candidates. The candidates who have passed the said courses commencing from 1982-83 must be considered for this purpose provided they have studied in an educational institution in the State of Karnataka for a period of not less than five years before passing the Pre-University Course Examination. These candidates have to be listed in the order of merit determined on the basis of marks obtained by them in the relevant examination. So far as the posts mentioned under SI. Nos. 4 to 8 of the Schedule are concerned, a different procedure is prescribed. The candidates eligible for these posts shall have to be called for an oral test to assess their suitability for the post concerned. At

the end of the oral test, separate lists of candidates in respect of each post specified under SI. Nos. 4 to 8 has to be prepared in the order of merit based on the marks secured at the oral test. From such merit list, candidates equal to the number of vacancies indicated in the corresponding entries in column 3 have to be selected.

8. Now, let us examine the facts of the case in the light of the above legal position. After obtaining the particulars of eligible candidates from the various Universities in the State, a Board was constituted by the Government of Karnataka as contemplated by Rule 4(1). The Board conducted the oral test on 12th, 13th and 14th November, 1990. (Evidently we are concerned in this case with selection to the posts specified under S. Nos. 4 to 8 of the Schedule and not with posts specified under SI. Nos. 1 to 3). On the basis of the oral test, certain candidates were selected. The unsuccessful candidates thereupon approached the Karnataka Administrative Tribunal by way of Applications Nos. 1270, 1410 and 1895 of 1991 questioning the validity of the selections made by the Board in November, 1990. The grounds urged by them before the Tribunal were:

(i) By virtue of Rule 7 of the Rules, sub-rule (2) of Rule 6 of the Karnataka State Civil Services (Direct Recruitment by Selection) Rules, 1973 (hereinafter referred to as "1973 Rules") are applicable to the said selection process. According to Rule 6(2) of the 1973 Rules, "the Selecting Authority shall publish on the notice board of its office on the day on which interview or viva-voce is held or on the day following but before the Commencement of the interview or viva-voce on that day, a list of marks obtained by each candidate in the said interview or viva-voce". At the impugned selection, the said requirement was not observed, which vitiates the entire process of selection.

(ii) The interview was not conducted properly.

(iii) The allocation of posts for different subjects has been made improperly vitiating the entire selection as such.

9. On behalf of the State it was contended that Rule 6(2) of the 1973 Rules does not apply to selections made under the said Rules and that, therefore, it was not obligatory upon the Board to publish the list of marks obtained by each of the candidate at the said oral test. It was also submitted that even if the said Rule 6(2) is held applicable, it is not mandatory and its non-observance does not vitiate the selection. Another contention urged by the State, was that unless the selected candidates are impleaded as respondents, their selection cannot be set aside.

10. The Tribunal rejected the, second and third contentions urged by the appellants before it. It also rejected the State's contention that no relief can be granted in those applications without impleading the selected candidates. It agreed with the petitioners (respondents 5 to 17 in these appeals) that rule 6(2) of 1973 Rules does apply to selections made under the Rules and further that the non-observance of the said sub-rule has vitiated the entire process of selection. Accordingly, it allowed the applications filed before it and directed the respondents before it to interview the candidates afresh and make the selection in accordance with law.

11. These Special Leave petitions are preferred by candidates whose selection and appointment was set aside by the Tribunal.

12. The learned Counsel for the appellants submitted that Rule 6(2) has no application to the

selections made under the said Rules and that even if it does, the Rule being merely directory does not vitiate or invalidate the process of selection. Rule 7 of the Rules and Rule 6(2) of 1973 Rules read thus:

7. Application of other rules:- All other rules for the time being in force and such other rules and amendments as may be made from time to time regulating recruitment and conditions of service made under the proviso to Article 309 of the Constitution of India insofar as they are not inconsistent with the provisions of these rules shall be applicable to candidates selected for appointment under these rules."

"Rule 6(2). The selecting authority shall publish on the notice board of its office on the day on which interview or viva voce is held or on that day following but before the commencement of the interview or viva voce on that day, a list of marks obtained by each candidate in the said interview or viva voce;

Provided that where the interview or viva voce is held in any Place other than the place Of its Office,, the said list shall be published in such other place."

13. According to clause (b) of sub-rule(5) of Rule 4, after the test conducted under clause - (a) of sub-rule (5), separate lists of candidates in respect of each course specified by Sl. Nos. 4 to 8 of the Schedule shall be Prepared in the order of merit and from such lists, candidates equal to the number of vacancies indicated in the relevant entries in column 3 shall be selected. Whereas Rule 6(2) of 1973 Rules says that Selecting authority shall publish on the notice board of its office on the day on which interview/ viva voce held or on the day following, a list of marks obtained by each candidate. It further provides that where the interview/ viva voce is held on more than one day, the list of marks shall be published at any rate, before the commencement of interview or viva voce on the succeeding day. The question is whether Rule 6(2) can be read into sub-rule (5)(b) of Rule 4 by virtue of Rule 7 of the said Rules. We think not. Take a case, where the oral test contemplated by sub-rule (5) of Rule 4 is held on more than one day; if Rule 6(2) of the 1973 Rules is held applicable, the Selecting authority would be obliged to publish the list of marks at the end of each day or at any rate before the oral test begins on the succeeding day; whereas Rule 4(5)(b) of the Rules provides that such list shall be published only after the oral test contemplated by Rule 4(5)(a) is over. It must Also be remembered that the oral test and selection process under the Rules is a special process; it is not confined to one post or one cadre or one group; whereas a normal selection is confined to a particular post or a group of posts. (As many as 30 to 35 cadres are specified in the Schedule appended to the Rules). The non obstante clause in Rule 3 of the Rules gives overriding effect to the provisions of the Rules and as such the provisions of the 1973 Rules - to the extent of inconsistency - cannot be made applicable to the selection made under the Rules. We are, therefore, of the opinion that Rule 6(2) of the 1973 Rules being inconsistent with Rule 4(5)(b) of the Rules, is not applicable to the selections made under the Rules. On this ground alone these appeals are liable to be allowed.

14. In view of the opinion expressed in the preceding paras, it is not necessary for us to go into the question whether non-observance of Rule 6(2) of 1973 Rules vitiates the selection. Nor is it necessary for us to consider whether Rule 6(2) is mandatory or directory.

15. The appeals are accordingly allowed and the order of the Tribunal impugned in these appeals is set aside. No order as to costs. Appeals allowed.

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