

Kerala Agricultural University

Vs

K. R. Anil and Others

Civil Appeal No. 8676 of 1997

(G. N. Ray, G. B. Pattanaik JJ)

03.12.1997

JUDGMENT

1. Leave granted.

2. Heard Mr. John Mathew, the learned Senior Counsel appearing for the appellant and also the learned counsel for the State of Kerala and Mr. Raju Ramachandran, the learned Senior Counsel appearing for Respondent 1. Respondent 1 was a candidate for the appointment to the post of Junior Assistant Professor in the Kerala Agricultural University when an advertisement for filling up such post had been given. It may be stated that Respondent 1 belongs to Ezhava community and it is an admitted position that there was a post reserved in the cadre of Junior Assistant Professor for a candidate belonging to Ezhava community. Respondent 1 was not selected against such reserved vacancy and a writ petition was presented by him before the Kerala High Court. One of the grounds urged in the writ petition was :

"On the basis of qualification, experience and performance in the interview put together, the petitioner can only be placed above Respondents 4, 5 and 7. The elimination of the petitioner from the select list therefore smacks of mala fides."

3. By the impugned judgment, the High Court has held that under the provisions of Rules 14 of 17 of the Kerala State and Subordinate Service Rules, no selection method was applicable for filling up the reserved vacancy and as the writ petitioner was eligible to be appointed against the said reserved vacancy the elimination of the writ petitioner on the score of not being found suitable in the selection process, was improper. The High Court therefore directed for appointment of Respondent 1 to the post of Assistant Professor in the said University because in the meantime the post of Junior Assistant Professor was abolished and the Junior Assistant Professor were upgraded as Assistant Professors. Mr. Mathew has contended that Rule 14 of the said Kerala State and Subordinate Service Rules should be considered along with Rule 15. It will be quite apparent that even for the purpose of filling up the post reserved for the members of Scheduled Castes and Scheduled Tribes and Backwards Classes inter se merit assessment of candidates of such categories is required to be made. Our attention has been drawn to the proviso under clause (c) of Rule 14 which is to the following effect :

"Provided also that in preparing the list the eligible candidates to be appointed under this Rule applying the rotations specified above in every cycle of 20 vacancies, the candidates eligible to be selected on open competition basis, that is, turns 1, 3, 5, 7, 9, 11, 13, 15, 17, and 19 shall be selected first and then the candidates for the reservation turns, out of those available in the ranked list in the particular groups

having regard to their ranks. In finalising the select list any candidate of the same community selected on open competition turns, if found to be below in the order of the candidates selected from the same community on the basis of reservation, for the fixation of ranks as per Rule 27 of these Rules, candidates of the same community obtaining higher marks shall be integrated with the candidates of the same community in the reservation turn of the purpose of ranking."

4. The learned counsel has also drawn attention of the Court to clause (d) of Rule 14 which indicates that notwithstanding anything contained in this Rule, posts to which appointments are made by direct recruitment from a common ranked list prepared on the basis of common test or interview or both, shall be grouped together for the purposes of observance of the rule relating to reservation of appointments. Referring to such provisions the learned counsel has submitted that selection process is implied and such selection by way of assessment of inter se merit position does not affect the rule for appointment on the basis of communal rotation scheme. It has been contended by Mr. Mathew that it is the specific case of the University that Respondent 1 was called before a Selection Committee but she was not found suitable for appointment on assessment of merit by such Selection Committee. Unfortunately the University records relating to such assessment by Selection Committee could not be traced because of certain events happening in the University in the meantime. Therefore such records could not be produced before the High Court but Respondent 1 in his writ petition not having contended that the selection process was otherwise illegal or there was defect in constituting the Selection Committee there was no occasion to look to the records relating to the selection process made by the Selection Committee. The learned counsel has submitted that the High Court failed to appreciate Rules 14 and 15 particularly the proviso mentioned hereinbefore and proceeded on an erroneous footing that the University was not competent to make any exercise by way of selection for shortlisting the candidate. Therefore, the impugned judgment cannot be sustained and the same should be set aside. Mr. Mathew has further submitted that for the purpose of appointment to the post of Assistant Professor, a selection on all-India basis is required to be made. In the greater interest of the students it is also necessary to make proper exercise for selecting suitable candidates. Therefore, the direction given by the High Court should be set aside. Mr. Mathew has therefore submitted that the University should be permitted to select the proper person even against a reserved vacancy.

5. Mr. Raju Ramachandran, the learned Senior Counsel appearing for Respondent 1, has submitted that it is not the stand of Respondent 1 that no scrutiny of the candidates for the reserved category can be made because a candidate may be found unsuitable for some obvious reasons, on scrutiny. But such scrutiny is not to be equated with regular merit assessment by comparing the merit of a candidate eligible to be appointed against a reserved vacancy with general candidates through a general selection process. Respondent 1 as a matter of fact appeared before the Selection Committee because the respondent did not object that no prima facie scrutiny can be made. But it is the specific case of the respondent that even though he fared well before the Selection Committee and answered all the questions he had not been selected because of some mala fide. In such circumstances even assuming that Respondent 1 had to face similar selection process the records of the University were required to be produced. Mr. Raju Ramachandran has submitted that withholding of such records was not proper and justified. There is no dispute that Respondent 1 has requisite qualification for the post of Junior Assistant Professor or Assistant Professor. Subsequently he got a temporary appointment to the post of Junior Assistant Professor in the University. There is no dispute that for any other obvious reasons he can be prima facie found unsuitable. Therefore, the direction of the High Court that Respondent 1 should be appointed to the post of Assistant Professor because the post of Junior Assistant Professor does not exist now, should not be interfered with. Respondent 1 is

not interested to oppose the contention of the appellant that under the said Rules for appointment to a reserved vacancy some exercise by way of for assessing the suitability of the candidates is to be made.

6. After considering the facts and circumstances of this case and submissions made by the learned counsel appearing for the parties it appears to us that the proviso to Rule 14(c) and clause (d) of Rule 14 and also Rule 15 indicate that a merit assessment is required to be made even for the candidate who is eligible to be appointed against the reserved vacancy. The High Court, in our view, was not justified to hold that if a candidate belongs to a community for which there is a vacancy and such candidate is otherwise eligible on the basis of his academic qualification such candidate cannot be eliminated by assessing his merit. Therefore the impugned judgment of the High court indicating that no selection is required to be made in the matter of appointment against reserved vacancy under Rules 14 to 17 of the said Rules must be held to be incorrect and the same is set aside. It is the specific grievance of Respondent 1 that even though he had fared well in the interview, his elimination was improper and amounted to mala fide. Considering such case and also taking into consideration the fact that the University failed to produce records of the Selection Committee to show that fair assessment had been made so far as Respondent 1 is concerned, we do not think that the direction of the High Court to give appointment to Respondent 1 should be interfered with in the special facts of the case. Therefore, although the principle on which the decision has been rendered by the High Court is not accepted and the same is set aside for the reasons indicated by us we are inclined to interfere with the ultimate direction of the High Court to give appointment to Respondent 1 to the post of Assistant Professor. It is made clear that the approval of the direction for appointment of Respondent 1 has been given in the special facts of the case and also by taking into consideration that Respondent 1 has requisite qualification for such appointment and he had also been given temporary appointment to the post of Junior Assistant Professor in the said University on the basis of academic qualification and there is nothing adverse on records to suggest that Respondent 1 is unsuitable to hold the post of Assistant Professor. This appeal is accordingly disposed of without any order as to costs. It is made clear that such appointment of Respondent 1 to the post of Assistant Professor will be effective from the date of this judgment.