

SUPREME COURT OF INDIA

Nair Service Society

Vs.

Dr. T. Beermasthan

C.A.No. 1991 of 2009

(R.V. Raveendran and Markandey Katju JJ)

30.03.2009

JUDGEMENT

MARKANDEY KATJU, J.

Civil Appeal Nos.....of 2009 [@ SLP(C) Nos. 20419, 29345, 30967 & 2674 of 2008]

1. Leave granted.

2. These appeals have been filed against the judgment dated 23.5.2008 passed by the Division Bench of the Kerala High Court in WP No. 1697 of 2007. The appellant society in the first of the appeals is an incorporated body rendering social service. It purports to espouse the cause of merit in appointments in government service and public sector undertakings. The appellant in the second of the appeals (not a party before the High Court) is a general category candidate whose chance of selection and appointment as a medical officer was adversely affected by the decision of the High Court.

The appellant in the third of the appeals is the Kerala Public Service Commission, which is entrusted the task of executing the recruitment and selection process. The appellants in the fourth of the appeals (not parties before the High Court) are candidates included in the rank list prepared and published by PSC for different posts in various departments. According to them they would have been advised and appointed but for the interpretation placed by the High Court in its decision in WA No. 1697 of 2008.

3. Heard learned counsel for the parties and perused the record. The writ appeal was filed before a division bench of the High Court against the judgment of a learned Single Judge of the High Court in W.P. (C). No.

25171 of 2006-V dated 10.4.2007.

4. The point that arises for decision in this appeal is whether a correct construction has been placed on Rules 14 to 17 of the Kerala State &

Subordinate Services Rules, 1958 (in short 'the Rules') by the Kerala Public Service Commission (in short the P.S.C.), while selecting candidates for the post of Medical Officer (ISM).

5. The brief facts of the case are that the Kerala Public Commission invited applications for

appointment to the post of Medical Officer (Indian System of Medicine) under the Kerala Government, by the notification published in the Kerala Gazette dated 14.10.2003. The rank list was published on 31.12.2005. The writ petitioners were candidates and included in the supplementary list of Muslims at rank Nos.17 and 18.

According to the writ petitioners, 250 candidates were advised, out of which 198 were from the main list and 52 from the supplementary lists. In that process, only 28 Muslim candidates were advised. It is alleged that going by Rules 14 to 17 in Part II of the Rules, 30 candidates should have been advised from the Muslim community. If two more Muslim candidates had been advised, the writ petitioners would have got appointment. Feeling aggrieved by the omission of the P.S.C to advise them, the Writ Petition was filed by the two writ petitioners, seeking the following reliefs:

"(i) to issue a writ of mandamus directing the 3rd respondent to issue advice memos to the petitioners.

(ii) to issue a writ of mandamus directing the 3rd respondent to set right the errors and irregularities in following the principles of communal rotation and reservation in advising candidates from Ext.P1 ranked list."

6. According to the writ petitioners, rank Nos.28, 50, 82 and 111 in the main list were Muslims and their turn had arisen under the open competition turn. However, they were advised for appointment in the reserved vacancies and to that extent Muslim candidates in the supplementary list lost their chances.

7. According to the Public Service Commission, the candidates were advised strictly in accordance with the Rules. The rank list was published by the P.S.C. on 31.12.2005 by including 252 candidates from the main list and 107 from the supplementary lists of various reservation candidates.

Upto 24.11.2006, 268 candidates were advised from the ranked list against the fresh vacancies and the non-joining duty vacancies reported by the appointing authority. It was also stated that the last open competition candidate advised was rank No. 213 and the last Ezhava candidate advised was rank No.226 in the main list. It was further stated that the last Muslim candidate advised was rank No.12 in the supplementary list for Muslims.

According to the P.S.C., the turn of the writ petitioners did not arise for advice, Rank No.8, who belongs to the Muslim community was advised under the open competition turn, and other Muslim candidates included in the main list were advised under the Muslim reservation turn.

8. The P.S.C filed an additional counter affidavit dated 1.3.2007 before the High Court. In the said counter affidavit, the details of the rotation were given. It was stated therein that the recruitment to the post of Medical Officer (ISM) ended at Main Rotation VIII 39 OC. For the present selection, the rotation started at MR VIII 40 OBC and ended at MR XI 7 OC while working in the rotation for the 267 fresh vacancies reported. As on 13.2.2007, 287 candidates were advised including 20 NJD vacancies.

The details of Muslim candidates advised are also given. Rank No.8, who was a Muslim candidate, was advised under the open competition turn. The last Muslim candidate advised from the main list was rank No.252. From the supplementary list, 14 Muslim candidates were advised. The P.S.C emphatically refuted the contention of the writ petitioners that rank Nos. 28, 50, 82 and 111 should have been advised under the open competition turn.

It is asserted that the advices were made strictly in accordance with Rules 14 to 17 of the Rules.

9. The learned Single Judge, who heard the Writ Petition, allowed it, holding that the method adopted by the P.S.C. was not in accordance with the Rules. He held that in view of Rule 14(b) of the Rules, the members of Scheduled Castes, Scheduled Tribes and Other Backward Classes are entitled to be considered for appointment under the open merit quota and if any candidate belonging to those communities is appointed in the open merit quota, the number of seats reserved for the said communities shall not be affected by the same. The learned Judge held that other provisions of Rules 15 to 17 should be read subject to Rule 14(b). Based on that finding, the learned Judge directed the P.S.C to invoke its power under Rule 3(c) of the Rules and modify the advices appropriately, so that the Muslim candidates who got appointment under the reservation quota, but who would have got appointment under the open competition quota, are adjusted against the open competition quota and in their place, other Muslim candidates are advised under the reservation quota. Aggrieved by the judgment of the learned Single Judge, the P.S.C filed the Writ Appeal No.

1697 of 2007.

10. According to the P.S.C., the unit of appointment for working out rotation is 20, as provided under Rule 14(a). It was alleged that the learned Single Judge failed to comprehend the impact of the said provision. The P.S.C is bound by Rule 14(a) in working out the communal rotation. It was also contended that none of the affected candidates was impleaded in the Writ Petition and for that reason alone, the Writ Petition should have been dismissed.

11. During the pendency of the Writ Appeal, notice was taken out to all affected persons by publishing notice dated 9.10.2007 in all editions of Kerala Kaumudi daily dated 22.10.2007, published from Kerala. In the Writ Appeal, the Nair Service Society got itself impleaded as additional 7th respondent. It supported the contentions of the P.S.C in the appeal.

However, the Division Bench of the High Court disposed off the writ appeal broadly upholding the judgment of the learned Single Judge. The High Court held that where the number of vacancies reported is more than 20, the unit of appointment shall be the number of vacancies reported and not 20. It held that if reservation is applied to a 20 point roster, as done by P.S.C., it will result in denial of reservation to eligible candidates as per the percentage of reservation set apart for them and result in candidates under merit quota cornering more vacancies than what was due to them at the expense of communities eligible for reservation. The division bench held that Rule 14(a) would apply only where vacancies reported are less than 20.

The division bench issued the following directions :

"The three advices made on 1.2.2006, 17.4.2006 and 17.7.2006 of 161, 30 and 40 vacancies respectively shall be reopened notionally. The turns of the candidates shall be re-arranged, taking the vacancies as three blocks of 161, 30 and 40 respectively and the three advice lists shall be notionally re- arranged, as provided in the third proviso to Rule 14(c). Every alternative vacancy in the three blocks of vacancies shall be firstly allotted to open competition candidates and the remaining vacancies to the communities eligible for reservation, subject to the rule that reservation in a particular year shall not exceed 50%. As a result, if it is found that any of the candidates, eligible for reservation, were though entitled to be advised but not actually advised, they shall be advised for appointment by the P.S.C to the appointing authority. For the purpose of seniority, the advice of the candidates so made will take effect only from 10.4.2007, the date on which the learned

Single Judge rendered the decision. It is clarified that the advices and the appointments of candidates already made by the P.S.C as per the above mentioned three advices shall not be affected by this judgment. In other words, relief is granted in this Writ Appeal without disturbing the candidates already advised before 10.4.2007. The candidates additionally advised as per this judgment shall be accommodated by the appointing authority in the vacancies to which candidates were advised after 10.4.2007 or were reported after 10.4.2007, but before the main list exhausted. The advice of candidates, if any, made pursuant to the interim order of the Division Bench staying the judgment of the learned Single Judge, being definitely subject to the final orders in the Writ Appeal, can be re-opened by the P.S.C., to implement this judgment. The P.S.C shall undertake and complete the exercise and advise the candidates as directed above within one month from the date of production of a copy of this judgment. The appointing authority shall make consequential appointments without further delay. The Writ Appeal is disposed of as above".

12. Before dealing with the contentions of the learned counsel for the parties we may refer to the relevant rules which are rules 14 to 17 of the rules. The relevant part of these rules are quoted below:- "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, appointments by direct recruitment 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 2 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 out of every five posts reserved for Scheduled Castes and Scheduled Tribes, one shall go to Scheduled Tribe candidate and the remaining four shall go to Scheduled Caste candidates and in the absence of a candidate to fill up the post reserved for Scheduled Tribe candidates, it shall go to a Scheduled Caste Candidate and vice versa.

(a) The claims of members of Scheduled Castes and the 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 cycle 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 Castes 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 the fourth and twelfth turns in the first, second and fourth rotations, the twelfth turn in the third rotation and the fourth turn in the fifth rotation shall go to Scheduled Caste candidates and in the absence of a candidate for appointment against the turn allotted for Scheduled Tribe candidates, it shall go to a Scheduled Caste candidate and vice versa:

.....

Provided also that in preparing the list of 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, 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 finalizing 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 interchanged with the candidates of the same community in the reservation turn for the purpose of ranking.

(d) 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 a common test or interview or both, shall be grouped together for the purposes of observance of the rules relating to reservation of appointments.

(e) A supplementary list of sufficient number of suitable candidates, not less than five times the reservation quota, if available, from each community or group of communities for the purpose of satisfying the reservation quota, shall be prepared and published.

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15. (a) The integrated cycle combining the rotation in clause (c) of rule 14 and the sub-rotation in sub-rule (2) of rule 17 shall be as specified in the Annexure to this Part. Notwithstanding anything contained in any other provisions of these rules or in the special rules if a suitable candidate is not available for selection from any particular community or group of communities specified in the Annexure, such vacancy shall be kept unfilled, notified separately for that community or group of communities for that selection year and shall be filled by direct recruitment exclusively from among that community or group of communities. If after re- notification, repeatedly for not less than two times, no suitable candidate is available for selection from the respective community or group of communities, the selection shall be made from available other Backward Classes candidates. In the absence of Other Backward Classes candidates, the selection shall be made from available Scheduled Castes candidates and in their absence, the selection shall be made from available Scheduled Tribes candidates.

Explanation:- One selection year for the purpose of this rule shall be the period from the date on which the rank list of candidates comes into force to the date on which it expires.

(b) If a suitable candidate is not available for selection from the group of communities classified as "Scheduled Castes" in the turn allotted from such group in the Annexure, the said group shall be passed over and the post shall be filled up by a suitable candidate from the group of communities classified as "Scheduled Tribes"

and vice versa.

I The benefit of the turn forfeited to Scheduled Castes or Scheduled Tribes communities by reason of it being passed over under sub-rule (b) shall be restored to it, at the earliest possible opportunity, if a suitable candidate from that particular community or group is available for selection by making adjustment against the claims of the Scheduled Caste or Scheduled Tribe community that derived the extra benefit by reason of such passing over.

17. Reservation to a category of posts shall not exceed 50% of the total number of vacancies for which selection is resorted to in a selection year:

Provided that the 50% ceiling to reservation specified above shall not apply to the filling up of any number of reserved vacancies kept unfilled and notified separately as per sub-rule (a) of rule 15 to be filled exclusively by direct recruitment from among a community or group of communities:

Provided further that such class of vacancies to be filled up in that year or in any succeeding year or years shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of 50% of the total number of vacancies of that year.

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, Thiyyas and Billavas
2. Muslims
3. Latin Catholics and Anglo Indians
4. Nadars (Hindu Nadars and Nadars included in S.I.U.C)
5. Scheduled Caste Converts to Christianity
6. Viswakarmas
7. Dheevaras 8. Other Backward Classes put together i.e.

communities other than those mentioned in items 1 to 7 above included in the list of "Other Backward Classes".

(2) (a) The 40% reservation allowed to Other Backward Classes shall be distributed among the different groups of Backward Classes in the following proportion:- (i) For direct recruitment to posts included in the Kerala Last Grade Service.

Out of every 40 appointments, 11 shall be given to Ezhavas, Thiyyas and Billavas, 10 to Muslims, 4 to Latin Catholics and Anglo Indians, 3 to Nadars (Hindu Nadars and Nadars included in S.I.U.C), 2 to Scheduled Caste Converts to Christianity, 2 to Viswakarmas, 2 to Dheevaras and 6 to Other Backward Classes put together".

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13. The question in this case is about the interpretation of rules 14 to 17 of the Rules.

14. A bare perusal of Rule 14 (a) of the Rules shows that a unit for appointment for the purpose of Rule 14 shall be 20, of which 2 are reserved for SC/ST candidates and 8 for OBC candidates, while the remaining 10 shall be on the basis of open merit. The proviso to Rule 14 (a) states that out of 5 posts reserved for SC/ST candidates one post shall go to ST candidates and the remaining to SC candidates, and in the absence of ST candidates it shall go to a SC candidate and vice versa.

15. Rule 14 (b) however, states that if a SC/ST/OBC candidate is so meritorious that even if he is not treated as SC/ST/OBC he would still qualify in the open merit then he would not be treated as a SC/ST/OBC candidate and he will be adjusted against the 10 seats meant for open merit candidates. In other words, he will not take away the seats reserved for SC/ST/OBC candidates.

16. Some of the learned counsel appearing for the respondents have submitted that Rule 14 (b) will prevail over rule 14 (a). We do not agree. In our opinion a harmonious interpretation has to be given to Rules 14 (a) and Rule 14 (b), and neither prevails over the other.

17. It may be noted that rule 14 (a) states that the unit of appointment for the purpose of the Rule shall be 20. A specific number 20 has been stated in Rule 14 (a). Rule 14 (a) does not state that 50% seats are for open merit candidates, 40% for OBC candidates and 10% for SC/ST candidates. In other words, Rule 14 (a) does not mention the percentage of seats at all, but instead it mentions a specific number, viz., 20.

18. In our opinion reading Rules 14 (a) and (b) along with Rule 14 (d) of the Rules, the correct interpretation of the Rules is that a common rank list as per merit for all the successful candidates in respect of selection to the vacancies notified by the Public Service Commission should be prepared, and reservation should be applied with reference to units of 20. That is, the first 20 most meritorious candidates, that is, from Serial No. 1 to 20 in that common rank list should first be considered for the purpose of reservation.

At that stage, candidates from Serial No. 21 and below are not to be considered.

19. Out of these 20 most meritorious candidates, the appointments have then to be made in accordance with Rule 14 (c), which has been quoted above.

20. It is only after the selections have been made against these first 20 most meritorious selected candidates, that the P.S.C. should move to the next batch of 20 in the rank list i.e., from Serial No. 21 to 40, and the same process is to be repeated again. Thereafter the third batch of 20 candidates i.e., from Serial No. 41 to 60 should be considered and selections and appointments made as per Rule 14 (a).

21. Rule 14 (b) of the Rules only means that in these batches of 20 selected candidates the SC/ST or OBC candidate who is so meritorious that he qualified even in the open merit then he will be given an open merit seat and he will not take away any of the reserved seats.

22. Some of the learned counsel for the respondents submitted that this will cause hardship to some SC/ST/OBC candidates. In our opinion hardship is not a relevant consideration when the meaning of the Rule is plain and clear. The literal rule of interpretation applies in this case.

23. In our opinion the effect of the High Court's decision is to read a proviso into rule 14(a) of the Rules as follows: "provided that where the number of vacancies reported to the Commission for advice exceeds 20, the unit of appointment shall be the number of vacancies reported to the Commission". This is not a legitimate method of interpretation. The High Court could not have rewritten Rule 14(a) in this manner based on its conjectures and surmises as to what the legislature intended. It is now well settled by this Court in *Dr. Ganga Prasad Verma vs. State of Bihar* (1995) Supp 1 SCC 192 (para 5) and *Trading Engineers vs. Sales Tax Officer* (1978) 1 SCC 636 (para 7) that where the language of the Act or the Rules is clear and explicit, the words of the statute alone represents the intention of the legislature. In fact, the effect of the High Court's reading these words into Rule 14(a) is to increase the total reservation in favour of the reserved categories beyond 50% and to dilute the merit of those chosen to ever lower levels in violation of Rule 15 of the Rules which only embodies the well settled constitutional principle laid down by this Court in *Indra Sawhney vs. Union of India* (1992) Supp 3 SCC 215 (para 809).

24. Rule 16 provides that there shall be sub-rotation among major groups of OBCs. Rule 17(1) lists 8 major groups of OBCs for purposes of Rule 16, i.e. for sub-rotation among major groups of OBCs. Rule 17(2) provides the proportion in which the 40% reservation in favour of OBC is to be distributed among the major OBC groups, which goes up to serial No. 40.

Rule 15(a) provides an integrated cycle combining the rotation in Rule 14(c) (i.e. the rotation of candidates from the Open Competition, OBC and SC/ST in a unit of appointment of 20) and the sub-rotation in Rule 17(2) among the OBCs.

25. It is relevant to note that the Commission has been advising appointments based on a unit of 20

as provided in Rule 14(a) for the last more than 30 years. In fact, this Court in *Nair Service Society vs. District Officer, Kerala Public Service Commission* (2003) 12 SCC 10 (para 22) had referred to the procedure followed by the Commission in advising appointments based on the rank list for the open merit category and the supplementary list for the reserved category. In our opinion an accepted practice which has been followed by the P.S.C. for so long a period should not be lightly disturbed, unless there are compelling reasons. If two interpretations of the Rules are possible, the interpretation which favours the practice which was being followed for a long period should ordinarily be preferred unless it is clearly in violation of the Rules.

26. In our opinion, the High Court also erred in placing undue reliance on the fact that the annexure to Rule 15 containing the integrated cycle is based on a roster of 100 points. The terms "integrated cycle" and "unit of appointment" are entirely different concepts. The rationale for the integrated cycle based on a 100-point roster is merely to give effect to the principle of rotation and sub-rotation among the reserved category candidates in respect of vacancies that arise at different points of time over a period of one year to a maximum of three years that the list is in force.

Further, the sub-rotation among OBCs in Rule 17(2) with reference to 40% reservation in favour of OBC and the requirement in the proviso to Rule 14 (a) that one out of every five posts reserved for SC/ST shall go to ST and the remaining to SC, require an integrated cycle of Open Competition candidates (constituting 50%), OBC candidates (constituting 40%) and 20 SC/ST candidates (constituting the remaining 10% reservation) which can only be reflected in a 100-point roster.

27. In our opinion, the concept of an "integrated cycle" could never be the basis for rendering the "unit of appointment" of in Rule 14(a) otiose in cases where the number of vacancies reported to the Kerala Public Service Commission exceeds 20. By drawing a distinction between cases where reported vacancies are 20 or less and cases where reported vacancies exceed 20, the High Court has attempted to fill a perceived "casus omissus"

on the part of the legislature in Rule 14(a) and, in effect, has written a proviso into the rule that the unit of appointment would change where the total number of vacancies reported exceed 20. It is a settled principle of interpretation that Courts should not add or delete words in a statute or rule.

28. Normally vacancies are reported to the Commission on various dates and in different numbers. Even in the present case, the Commission had received requisitions on various dates between February 2003 and January 2007 ranging from 3 vacancies to 44 vacancies. This Court in *The University of Cochin vs. Dr. N. Raman Nair* (1975) 3 SCC 628 (para 6), has observed that Rule 14(c) lays down a scheme of rotation for every block of 20 vacancies and this rule must be applied in the order in which the vacancies occur. Therefore, the Commission cannot wait until the total number of vacancies is reported to the Commission so as to determine whether the vacancies have exceeded 20 or not.

29. In fact, the High Court has, by a process of interpretation, rendered Rule 14(a) redundant and otiose, even though the validity of the rule was not the subject matter of challenge in any of the writ petitions.

30. In our opinion, Rule 14(b) merely says that the members of OBC and SC/ST shall be considered for appointment in the Open Competition category, if found meritorious, and such appointment shall not affect the number of seats reserved for the OBCs and SC/ST. In our opinion, Rule 14 (b) ought

to be read consistently with Rule 14(a) to the extent that where an OBC or SC/ST candidate is so placed in the merit list that he would be advised against the Open Competition category, i.e. between 1,3,5, 7,9,11,13,15,17,19 the seats in the reserved category, i.e. between 2,4,6, 8,10,12,14,16,18,20 shall not reduce to that extent. The members of OBC and SC/ST would still be entitled to 40% and 10% reservations respectively.

On the other hand, if Rule 14(b) is interpreted to increase the unit of appointment from 20 to the number of vacancies where the vacancies exceed 20, Rule 14(a) would be rendered redundant and otiose.

31. In our opinion, the High Court erred in placing undue reliance on the fact that the annexure to Rule 15 containing the integrated cycle is based on a roster of 100 points. As already stated above, the terms integrated cycle and unit of appointment are entirely different concepts. The rationale for the integrated cycle of 100-point roster is merely to give effect to the principle of rotation and sub-rotation among the reserved category candidates to vacancies that arise at different points of time during the period of 1 year to 3 years that the list is in force.

32. In our opinion the High Court erred in proceeding on the basis that a large number of vacancies totaling to 267 were reported to the Commission together. As per the affidavits filed by the Commission before the High Court, the requisitions were received during the relevant period at various stages. The details of the vacancies reported during the present selection and the turn in which rotation started and ended at each stage of working out the rotation were as under:

Letter No. & Date No. of Rotation started/ended Date of vacancies advice D3-7204 02 dt. 27/2/03 3dt. 44 10/10/03 D3-18859 03 dt.25/3/04 45dt.15/9/04 15 MR VIII 40 OBCdt.30/12/04 15 Dodt. 14/2/05 3 MR X 1 OC 01/02/06dt.21/6/05 16dt.05/9/05 20 D3 2885 06 dt. 08/3/05 30 MR X 2E to MR X 31 17/4/06 OC D3 2885 06 dt. 18/6/06 40 MR X 72 32 SC to MR 17/7/06 & 71 OC D3 18859 03 dt. 28/6/06 17 (10 MR X 72 SC to MR X 17/7/06 NJD & 7 77 OC fresh) D3 2884 06 03 dt. 1 NJD 14/8/06 07/7/06 D3 12473 06 dt. 08/9/06 7 MR X 78E to MR X 85 28/9/06 OC D3 12473 06 dt. 7 MR Y 78E to MR X 85 28/9/06 12/10/06 OC D3 2884 06 dt. 07/11/06 5 NJD 24/11/06 D3 12473 05 dt. 1 NJD 19/12/06 16/11/06 D3 12473 06 dt. 15 MR X 92 ST to MR XI 7 11/01/07 04/12/06 & 21/12/06 OC D3 2884 06 & 12473 06 3 NJD 13/02/07 dt. 23/01/07 The details of candidates belong to Muslim community advised from the ranked list are as follows:

Rank Name Turn in which advised Date of No. advice 1 Suni Babu P.P. MR VIII 36 M 01/02/06 8 Muhseena H MR VIII 53 OC 01/02/06 28 Shahid M MR VIII 46 M 01/02/06 50 Assainar M MR VIII 56 M 01/02/06 82 Simi Devan MR VIII 66 M 01/02/06 111 Shamsad P MR VIII 76 M 01/02/06 132 Abdul Rafeeq O.P. MR VIII 80M 01/02/06 149 Jaseena Beegom T MR VIII 86 M 01/02/06 161 Sumayya V.K. MR VIII 96 M 01/02/06 170 Vaheeda Rehman A MR IX 6 M 01/02/06 183 Benazir K.I. MR IX 16 M 01/02/06 185 Nazeema P.K. MR IX 26 M 01/02/06 192 Shabna Beegum MR IX 30 M 01/02/06 220 Fakrudeen A MR IX 36 M 01/02/06 221 Nadarsha P.K. MR IX 46M 01/02/06 235 Shaik Anwar KS MR IX 56M 01/02/06 246 Abdul RV Pottammal MR IX 66 M 01/02/06 247 Shamsudeen K MR IX 76M 01/02/06 252 Bensha P Bashir MR IX 80 M 01/02/06 Supplementary List - Muslim 1 Abdul Razak P MR IX 80M 01/02/06 2 Bindu N Lal MR IX 96 M 17/04/06 3 Shahina P.K. MR X 6 M 17/04/06 4 Rehana P MR X 16 M 17/04/06 5 Muhas K Kareem MR X 26 M 17/07/06 6 Anitha A Khader MR X 30 M 17/07/06 7 Murunnisa N K MR X 36 M 17/07/06 8 Arifa V P MR X 46 M 17/07/06 9 Sareena N MR X 56 M 17/07/06 10 Sahida T MR X 66 M 17/07/06 11 Raseena Beevi M MR X 76 M 28/09/06 12 Rahina V K MR X 80 M 06/11/06 13

33. This Court in *University of Cochin vs. Dr. N. Raman Nair* (1975) 3 SCC 628 has observed that Rule 14(c) lays down a scheme of rotation for every block of 20 vacancies and this rule must be applied in the order in which the vacancies occur.

34. This Court in *Nair Service Society vs. District Officer, Kerala Public Service Commission* (2003) 12 SCC 10 (para 22) had the occasion to examine the Rules, the ranked merit list and the supplementary reserved list prepared by the Commission, and the principles followed by the Commission in making the appointments. This Court observed as follows:

"....Based on the procedure so prescribed, KPSC prescribes the ranked merit list in the order of merit. The candidates are arranged strictly according to the community or caste or group or according to the cycle of rotation, in reservation. The number of candidates to be included in this rank list is filed with reference to some principles followed by them, which are explained in para 4 of KPSC's writ appeal before the High Court (pp. 102- 103). The candidates are advised for appointment as and when vacancies are reported, but following the rules of reservation and rotation prescribed in Rules 14 to 17".

The Commission has advised appointments based on a unit of 20 for the last more than 30 years. The principle of reservation, rotation and sub-rotation are all applied based on this unit of 20.

35. Several decisions have been cited before us by the respondents, but it is well established that judgments in service jurisprudence should be understood with reference to the particular service rules in the State governing that field. Reservation provisions are enabling provisions, and different State Governments can have different methods of reservation.

There is no challenge to the Rules, and what is challenged is in the matter of application alone. In our opinion the communal rotation has to be applied taking 20 vacancies as a block.

36. The High Court ought to have considered that the vacancies were reported to the Commission in various spells and filling up the turn of a community is a continuous process, and the Commission cannot wait to advise a reservation candidate till his turn arises for advice and keep the community turn unfilled or advise a candidate lower in rank retaining a candidate who is above him in the list by anticipating reporting of vacancies.

37. In our opinion the Commission has correctly advised candidates in the order in which the requisitions were received, and that too by correctly applying the principle contained in the rules.

38. Rule 14 prescribes the procedure for implementation of reservation of appointments. Clause (a) of this Rule prescribes that unit of appointment for the purposes of this Rule shall be 20 whereas clause (c) specifies the order of rotation in every cycle of 20 vacancies. Though the proviso to the sub-rule provides that candidates selected on open competition turns can be interchanged with the candidates selected on the basis of reservation, the same is permissible within the unit of 20 only.

39. The High Court in paragraph 15 of the impugned judgment has observed :

"15. The point to be decided is whether such application of rotation will run counter to any of the provisions of Rules 14 to 17 or whether that will give effect to the intention of the said Rules. We are of the view that none of the above said Rules stand in the way of applying the rotation as above

by allotting every alternative vacancy to merit quota and reserved quota. Rule 14(a) contemplates a situation of reporting of vacancies numbering less than 20. There are hundreds of posts where the number of vacancies reported will normally be below 20 at a particular point of time. Vacancies are reported in large numbers only in the case of L.D.Clerks, Police Constables, Medical Officers etc. When vacancies numbering more than 20 are reported and if reservation is applied as stated above by allotting every alternative vacancy firstly to open competition candidates and the remaining vacancies to candidates eligible for reservation, the same will effectuate the purpose of the rules of reservation. The members of Other Backward Classes will get 40% of the vacancies meant for them.

We are of the view that for canvassing for the above position, the writ petitioners need not challenge any of the Rules. A proper construction of the Rules which will advance the object of them will mandate the P.S.C to make the advices as stated above. Any other application of the Rules will amount to ultra vires and unauthorized action."

40. With respect we are unable to agree with interpretation of Rules 14 to 17 given by the High Court in the impugned judgment.

41. It may be mentioned that there is no challenge to the validity of these Rules. Hence we have to read the Rules as they are. In our opinion, the so-called purposive interpretation sought to be placed on the Rules by the High Court was misconceived and is, therefore, not acceptable.

42. The High Court in its observation quoted above has sought to find out the intention of Rules 14 to 17. In our opinion the question of finding the intention arises only when a statute is not clear. If the statute is clear as it is in this case, it has to be read as it is, and the literal rule of interpretation is to be applied. In our opinion intention seeking is ordinarily to be done only when the statute is not clear.

43. It may be mentioned that reservation provisions are enabling provisions. In other words, the State is not bound to make a reservation, but it is empowered to do so in its own discretion vide *M. Nagaraj and Others vs. Union of India and others* (2006) 8 SCC 212. In paragraph 102 of the said judgment, the Constitution Bench of this Court observed:

"The impugned constitution amendments are enabling in nature. They leave it to the States to provide for reservation."

44. The same view has been taken in paragraphs 107 and 123 of the aforesaid decision.

45. Different State Governments in the country may have different methods for providing reservations, and these will be valid as long as the method adopted by a particular State Government does not violate any constitutional provision or statute. It is not for this Court to decide on the wisdom or otherwise of the said method of reservation. This Court should exercise judicial restraint and not interfere with the same unless there is some clear illegality. In our opinion the method prescribed by the Rules made by the State Government suffers from no infirmity or illegality, and hence the High Court acted wrongly in allowing the Writ Petition. We are clearly of the opinion that the High Court has placed a wrong interpretation on the relevant Rules.

46. In our opinion the High Court was in error in directing the Commission to ignore the express mandate of Rule 14 (a). The High Court was wrong in holding that the said Rule only applies when the vacancies are less than 20. In fact the direction of the High Court in the impugned judgment

really amounts to treating the entire number of vacancies which in the present case is 250 as one unit, which is against the express mandate of Rule 14(a). Thus the High Court has really amended Rule 14(a) and (c) of the Rules, which was not in its jurisdiction. It is only the legislature which can amend the law, and not the Court.

47. In our opinion the correct interpretation of Rule 14 to 17 is that the Public Service Commission should adopt each batch of 20 candidates as a separate unit for the purpose of reservation and not take the entire select list as one unit.

48. It is true that reserved category candidates can compete for the non- reserved post as provided for in Rule 14 (b), which only provides what has already been laid down by the Constitution Bench of this Court in R.K.

Sabharwal and others vs. State of Punjab and others (1995) 2 SCC 745.

Rule 14(b), however, will apply only to units of 20 candidates, and not for the total vacancies.

49. For the reasons given above the appeal is allowed, the impugned judgment of the Division Bench of the Kerala High Court as well as of the learned Single Judge, are set aside and the Writ Petitions are dismissed.

There shall be no order as to costs.

CA No.....of 2009 [@ SLP(Civil) No. 21139 of 2008]

50. Leave granted. The appellant was one of the candidates in the Rank list published by the P.S.C. for appointment to the post of High School Assistant (Natural Science - Malayalam Medium). She is a convert from a Scheduled Caste to Christianity and claimed benefit of reservation available to Other Christians. She approached the High Court in WP No. 12816/2007 alleging that P.S.C. had advised an open competition category candidate for the post reserved for 'OX' category for which she was an eligible candidate.

Her grievance is that while disposing of her petition along with WA No.

1697/2007, the High Court by enunciating the legal principle incorrectly, had wrongly denied her relief on the erroneous impression that her turn did not arise before the expiry of rank list. As we are holding that the interpretation of Rules 14 to 17 by the High Court was erroneous, the dismissal of her writ petition has to be upheld, though on a different ground.

CA No.....of 2009 [@ SLP(Civil) Nos. 439-443 of 2008]

51. Leave granted. These appeals are filed by P.S.C., being aggrieved by the common order dated 11.11.2008 of a learned Single Judge disposing of WP(C) No. 25077, 26089, 24158, 28435 and 16599/2008 (filed by some candidates after the rank lists were published and advices were made) with a direction to the P.S.C. to apply the principles laid down in the judgment dated 23.5.2008 of the Division Bench in WA No. 1697/2007 to all advices made by P.S.C. on or after 23.5.2008 in respect of bulk vacancies exceeding 20 in number reported to it in a given requisition (or where the requisition received from the appointing authority on a given day exceeds 20 vacancies). Following our decision in the Civil Appeals arising from WA No. 1697/2007, these appeals are allowed and the writ petitions are dismissed. No costs.