

SUPREME COURT OF INDIA

The Secretary, Kerala Public Service Commission.

Vs.

Sheeja P.R.

C.A.No.129 of 2013

(K.S.Radhakrishnan and Dipak Misra JJ.)

08.01.2013

JUDGMENT

K. S. RADHAKRISHNAN, J.

1. Leave granted.

2. The Kerala Public Service Commission (in short “the Commission”) has approached this Court aggrieved by the directions given by the Division Bench of the Kerala High Court, to operate the supplementary list after the main list got exhausted.

3. The 1st Respondent herein, who figured as rank no. 3 in the Supplementary list, filed Writ Petition No. 34851 of 2010 seeking a Writ of Mandamus, directing the Commission to issue an advise memo for his appointment for the post of Higher Secondary School Teacher-English (Junior) in a vacancy occurred due to non-joining of 2nd respondent herein. Learned Single Judge of the High Court dismissed the writ petition on 9.12.2010 holding that once the main list got exhausted, the supplementary list could not be kept alive. Review Petition No. 89 of 2011 filed against the judgment was also dismissed.

4. Aggrieved by the said judgment, 1st respondent herein filed Writ Appeal No. 871 of 2011 before the Division Bench of the Kerala High Court. It was contended that 1st respondent had secured 3rd rank in the supplementary list and he was entitled to get appointment in the reservation quota of Ezhava community. Further, it was also pointed out that 2nd respondent belonging to the same community, though advised, did not join duty since she had got another employment. The claim

of 1st respondent was that, since he was the next candidate, was eligible to get advise memo from the Commission so that he could joint in that non-joining vacancy. The Division Bench of the High Court took the view that since 2nd respondent did not join, the 1st respondent should have been issued the advise memo by the Commission. Holding so, the writ appeal was allowed and the order passed in Review Petition No. 89 of 2011 and the judgment passed in Writ Petition No. 34581 of 2010, were set aside. Aggrieved by the said judgment, the Commission has come up with this appeal.

5. Shri V. Giri, learned senior counsel appearing for the Commission, submitted that the issue raised in this case is squarely covered by the judgment of this Court in *Nair Service Society v. District Officer, Kerala Public Service Commission* (2003) 12 SCC 10 (N.S.S. case). Referring to paragraphs 25 and 36 of that judgment, learned senior counsel submitted that once the main list is exhausted, the supplementary list has no life and that the Division Bench has not properly appreciated paragraph 23 of N.S.S. case. Learned senior counsel also submitted that the Division Bench has not properly appreciated the scope, meaning and significance of the supplementary list which has been prepared after complying with the Rules of Reservation. Learned senior counsel pointed out that if sufficient number of candidates belonging to the reserved groups, including scheduled castes and scheduled tribes, are not there in the rank list, it is possible that the communities would not be adequately represented in the services as envisaged in the rules. The Commission has, therefore, evolved a procedure of preparing supplementary lists for the reserved groups by lowering the marks at the elimination stage of selection, which has been incorporated in Part I of the Rules of Procedure of the Commission, published with the concurrence of the Government.

6. Shri Jogy Scaria, learned counsel appearing for the 1st respondent, on the other hand, contended that the Division Bench has correctly granted the relief and directed the Commission to appoint 1st respondent in a non- joining vacancy. Learned counsel pointed out that the vacancy arose while the main list was in force due to non-joining of the 2nd respondent and hence the 1st respondent has a claim over that vacancy. Learned counsel also pointed out that the Division Bench has correctly applied the principle laid down by this Court in N.S.S. case (supra).

7. We are of the view that the Division Bench has completely overlooked the ratio laid down by this Court in N.S.S. case (supra). Paragraph 19 of the judgment has clearly interpreted Rule 2(g) of the Kerala Public Commission Rules and Procedures, which is extracted below for easy reference:

19. The above definition shows that there is only one ranked list. Therefore, the supplementary list prepared by KPSC to satisfy the rules of reservation has, in fact, no statutory backing. For that reason when the main list is exhausted or expired, supplementary list cannot be allowed to operate. If the supplementary list alone is allowed to operate it would amount to giving greater sanctity to it and long life than the main list prepared in accordance with the Rules. Secondly, after the expiry or exhaustion of the main list if the supplementary list is operated it would violate the first proviso to Rule 15(c) of the General Rules. The reason is that the NJD vacancies in respect of OBC candidates cannot be filled up after the expiry or exhaustion of the main list and only reserved candidates can be advised from the supplementary list which would violate 50% rule as no OC category candidates could be advised. As rightly contended by Mr Venugopal, it would adversely affect the OC category candidates and violate the statutory rule. The reason given by the Division Bench that if any NJD vacancy arises in the OC category, the same could be filled up in the next batch of appointment thereby, the rights of OC candidates can very well be protected without any violation of the proviso to Rule 15 of KSSSR is not legally acceptable. The above reasoning, in our opinion, is equally applicable to NJD vacancies which arise in the reserved categories as well. By advising candidates from the supplementary list, without any opportunity of balancing the advice with an open competition candidate the consequence would have been a violation of 50:50 rule with a tilt in favour of the reserved candidates lasting their quota above 50%. The net result is that there will be excess reservation over 50% in the year.

8. The reason for preparation of supplementary list was also considered by this Court in the above mentioned judgment in paragraphs 23 and 24. The same are also extracted below for easy reference:

23. With a view to secure adequate representation of reserved communities in the selection and thereby to effectuate the policy of reservation, KPSC prepares what it calls supplementary list of candidates for the different reserved communities who will be entitled to appointment, comprising of a number equal to half the number of turns as per the quota to each reservation group. Thus if Muslims were entitled to ten turns in the list, the supplementary list of Muslims will comprise of at least five Muslims. The advantage of this procedure was that no reservation turn will be passed over to open competition and reservation groups will get the representation due to

them, at the same time maintaining the balance of 50:50 between open competition and reservation candidates.

24. The supplementary list was only in respect of reservation categories. There was no supplementary list prepared in relation to open competition merit candidates for the reason that where the last of the candidates has been advised from the rank list in the open competition, there was no further scope for drawing on the supplementary list or advising from that list, as all the advice hitherto was on the basis of one open competition followed by reservation, thereby keeping the balance of 50:50. If any more candidates are advised from the supplementary list, the number of reservation candidates will go up and the 50:50 rule will be violated.

9. This Court has specifically held that once the main list is exhausted, the supplementary list has no survival of its own. In the light of the principles laid down by this Court in N.S.S. case (supra), we have to examine the various issues raised before us. The Commission on 27.4.2009 finalized the rank list for the post of Higher Secondary School Teachers-English (Junior), Kerala Higher Secondary Education. The main list consisted of 145 candidates, including persons from open merit, OBCs, Muslims, Sports and other reservation categories. 1st respondent was placed in the supplementary list as rank no. 3 under the category of Ezhava falling under Other Backward Classes (OBC). 2nd respondent was placed above 1st respondent as rank no.2 in the supplementary list. The rank list prepared on 27.4.2009 had expired on 28.9.2010, on the advice of the last candidate from the main list. The intimation from the Appointing Authority/the Director, Kerala Higher Secondary Education regarding non- joining of the vacancy was received by the Commission only on 12.9.2011, i.e. one year after the main list got exhausted. Once the main list got exhausted, going by the judgment in N.S.S. case (supra), the supplementary list has no life of its own. The writ petition was preferred by the 1st respondent only on 16.11.2010 after the expiry of one year from the date on which the main rank list got exhausted.

10. We are of the view that the situation would have been different, had the NJD vacancies were reported before the main list got exhausted i.e. on 28.9.2010. The Commission could advise candidates only on receiving intimation with regard to the non-joining duty vacancies before the main list got exhausted. So far as this case is concerned, NJD vacancy was reported and received by the Commission only on 12.9.2011, by that time, the main list got exhausted. In the absence of the main list, there is no independent existence of the supplementary list.

11. Rule 13 of the K.P.S.C. Rules of procedure says that the ranked lists published by the Commission shall remain in force for a period of one year from the date on which it was brought into force. The list can also remain in force till the publication of a new list after the expiry of the minimum period of one year or till the expiry of three years whichever is earlier. Rule 13 has five other provisos. It is unnecessary to refer to those provisos as far as the present case is concerned. We are in this case mainly concerned with the question whether the main list got exhausted or not. Once the main list becomes empty or drains out on the advice of all the candidates, it loses its life; consequently supplementary list also automatically vanishes. It was pointed out that the Commission has got the power to extend the life of the main list upto three years but that power has not been exercised in the present case. Further, we may also clarify that there is no provision in the Rules of procedure to prepare a supplementary list for the general category candidates. Supplementary list is prepared only in relation to the reserved category candidates so as to see that the reservation principle is properly and effectively implemented. We, therefore, do not agree with the view expressed by Justice S.B. Sinha in the concurring judgment in N.S.S. case, that a supplementary list has to be prepared for the open category candidates also as per the proviso to Rules 4 and 12.

12. The point of distinction between the candidates of the reservation group included in the main list and their counter-parts of the supplementary list, is that former are eligible to be considered both on merit and against reservation turns depending upon the number of vacancies and their placement in the main list, while the latter are intended to fill in the groups in the reserved turns caused by the paucity of candidates entitled to reservation in the main list. The supplementary list is always subject to the main list. Therefore, once the main list is exhausted, the supplementary list automatically loses its significance. A supplementary list has no separate existence, dehors the main list.

13. We are, therefore, of the view that the contention of the learned senior counsel appearing for the appellant that the Division Bench of the High Court has committed an error in directing the Commission to operate the supplementary list is sustainable. Appeal is, therefore, allowed and the judgment of the Division Bench of the High Court is set aside.