

THE KERALA AGRICULTURAL UNIVERSITY

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v.

K.R. ANIL AND ORS.

DECEMBER 3, 1997

[G.N. RAY AND G.B. PATTANAIK, JJ.]

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Service law :

Kerala State and Subordinate Services Rules—Proviso to Rule 14(c), Rule 14(d) and Rule 15 :

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Selection procedure—Reserved post—Kerala Agricultural University advertised for post of Junior Assistant Professor—Reserved for Ezhava community—Respondent No. 1 belonging to Ezhava community—Educationally qualified—But not selected—Held—Proviso to Rule 14(c), Rule 14(d) and Rule 15 indicate selection on assessment by merit even for reserved vacancy—Hence, principle on which High Court rendered decision is set aside—However, direction of High Court to appoint Respondent No. 1 not interfered with in the special facts of case viz (i) that records relating to selection not produced by university inspite of allegation of malafide; (ii) that Respondent No. 1 educationally qualified; and (iii) that he was subsequently appointed against temporary post as Junior Assistant Professor.

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Kerala Agriculture University advertised for the post of Junior Assistant Professor. A post was reserved for candidate belonging to Ezhava community. Respondent No. 1, belonging to the Ezhava community, was a candidate for the post. In spite of having the requisite qualifications, Respondent No.1 was not selected under the reserved category, and hence, he moved a Writ Petition before the High Court.

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The High Court held that under Rules 14 to 17 of the Kerala State and Subordinate Services Rules no selection method was available for filling up the reserved vacancy. Since Respondent No. 1 was eligible, his elimination by the selection committee on ground of not being found suitable was improper. Furthermore, since in the meanwhile the post of Junior Assistant Professor had been abolished and Junior Asstt. Professors upgraded to post of Assistant Professor, the High Court directed Respondent No. 1 to be appointed as an Assistant Professor.

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A Being aggrieved, the University filed the present Appeal contending, *inter alia*, that Rule 14 r/w Rule 15 indicates that even for filling up reserved post, inter-se-merit assessment of candidates of the reserved category is to be made. The Respondent No. 1 was interviewed but the selection committee did not find him suitable on assessment of merit.

B The Respondent No. 1 did not dispute that *prima facie* scrutiny of candidates for reserved post can be done and hence, he appeared before a selection committee. He however, contended that such scrutiny cannot mean a comparison of reserved category candidate with general candidates, through general selection procedure. Furthermore, even assuming
 C that Respondent No. 1 had to face similar selection procedure, since he had specifically stated that he had done well in the interview and had not been selected because of *malafide*, the University records ought to have been produced. It was also stated that admittedly Respondent No. 1 was qualified for the Post of Junior Assistant Professor or Assistant Professor
 D and was subsequently appointed to the aforesaid post, against a temporary vacancy.

Disposing of the Appeal, this Court

E HELD : 1.1. The High Court was not justified in holding that if a candidate belonging to a reserved category is otherwise eligible on the basis of his academic qualification, he cannot be eliminated by assessing his merit. Proviso to Rule 14(c), Rule 14(d) and Rule 15 indicate that a merit assessment is to be made even for candidates eligible to be appointed against a reserved vacancy. The Judgment of the High Court that Rules 14
 F to 17 do not indicate that selection is required for appointment against a reserved vacancy is incorrect and set aside. [166-C-E]

G 1.2. However, the ultimate direction of the High Court to appoint the Respondent No. 1 to the post of Assistant Professor is not interfered with in the special facts of the case, namely, that the University failed to produce the records of the selection committee to show there had been a fair assessment, inspite of allegation of *malafide*; that the respondent No. 1 had the requisite qualifications for the post; and that he had subsequently been given temporary appointment to the post of Junior Assistant Professor. [166-E-H]

H 1.3. The appointment of Respondent No. 1 to the post of Assistant Professor will be effective from the date of this Judgment. [167-B]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8676 of A
1997.

From the Judgment and Order dated 4.7.96 of the Kerala High Court
in O.P. No. 7640 of 1988.

John Mathew, E.M.S. Anam and Fazlin Anam for the appellant. B

Raju Ramachandran, Roy Abraham, Mrs. Baby Krishnan, (Ms.
Malini Poduval) for state/for the Respondents.

The Judgment of the Court was delivered by

Leave granted. Heard Mr. John Mathew, the learned senior counsel C
appearing for the appellant and also the learned counsel for the State of
Kerala and Mr. Raju Ramachandran the learned senior counsel appearing
for the respondent No. 1. The respondent No. 1 was a candidate for the D
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 the respondent No. 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 candidates belonging to
Ezhava community. The respondent No. 1 was not selected against such
reserved vacancy and a writ petition was presented by him before the E
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 *malafides*. F

By the impugned judgment, the High Court has held that under the
provisions of Rule 14 to 17 of 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 G
found suitable in the selection process, was improper. The High Court
therefore directed for appointment of the respondent No. 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
Professors were upgraded as Assistant Professors. Mr. Mathew has con- H

A tended that Rule 14 of the said Kerala State and Subordinate Service Rules should be considered alongwith Rule 15. It will be quite apparent that even for the purpose of filling up post reserved for the members of scheduled castes and scheduled tribes and backward 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 the Rule 14 which is to the following effect :

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‘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, 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.’

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H 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 effect 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 the respondent No. 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 the respondent A
No. 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 B
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 short listing 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 C
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 D
proper person even against a reserved vacancy.

Mr. Raju Ramachandran the learned senior counsel appearing for
the respondent No. 1 has submitted that it is not the stand of the respon-
dent No. 1 no scrutiny of the candidates for the reserved category can be E
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. The respondent No. 1 as a matter of fact, F
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 malafide. In such circumstances even assuming that G
respondent No. 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 the respondent No. 1 has requisite qualification
for the post of Junior Assistant Professor or Assistant Professor. Sub- H
sequently he got a temporary appointment to the post of Junior Assistant

A 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 the respondent No. 1 should be appointed to the post of Assistant Professor because the post of Jr. Assistant Professor does not exist now, should not be interfered with. The respondent No. 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.

C 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 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 Rule 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 the respondent No. 1 that even though he had fared well in the interview, his elimination was improper and amounted to *malafide*. 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 No. 1 is concerned, we do not think that the direction of the High Court to give appointment to respondent No.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 not inclined to interfere with the ultimate direction of the High Court to give appointment to the respondent No. 1 to the post of Assistant Professor. It is made clear that the approval of the direction for appointment of respondent No. 1 has been given in the special facts of the case and also by taking into consideration that the respondent No. 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 the respondent No. 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 the respondent No. 1 to the post of Assistant Professor will be effective from the date of this judgment.

S.K.

Appeal disposed of.