

STATE OF KARNATAKA

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v.

KUMARI GOWRI NARAYANA AMBIGA ETC.

MARCH 27, 1995

[KULDIP SINGH AND B.L. HANSARIA, JJ.]

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*Karnataka State Civil Services (Direct Recruitment of Scheduled Castes, Scheduled Tribes Backward Tribes to Class III Posts) (Special) Rules, 1977:*

*Rules 2(b), 3 and 4—Class III Posts—Appointment to—Special Rules confining appointment to only Scheduled Castes/Scheduled Tribes and backward classes candidates without undergoing selection process—Special rules held violative of Article 16(1) and 335—However, appointments made so far protected.*

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*Constitution of India, 1950 : Articles 16(1) and 335 : Scheduled Castes—Scheduled Tribes—Backward classes—Special Rules for appointment without undergoing selection process held unconstitutional—For protecting the rights of candidates appointed judgment made prospective in operation.*

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**The appellant-State appoint local candidate - temporary Government servants not appointed regularly as per rules of Recruitment to that service - and from time to time they were regularised under executive orders and Rules. Subsequently, the State ordered that no further appointments to class III posts be made by appointing local candidates except candidates belonging to SC/ST and backward classes. However, not only a large number of candidates belonging to SC/ST and backward classes but also from other categories were appointed. Thereafter the State enacted Karnataka State Civil Services (Direct Recruitment of Scheduled Castes, Scheduled Tribes and Backward Tribes to Class III Posts) (Special) Rules, 1977 providing for appointment of local candidates belonging to SC/ST and backward classes only. Under the Special Rules, read with the Government Instructions dated March 8, 1977 the Administrative Heads of various departments were left with no option but to terminate the services of local candidates who did not belong to Scheduled Castes, Scheduled Tribes and Backward Tribes. The local candidates whose services were terminated or were likely to be terminated challenged the vires of the Special Rules before the High Court contending that a separate procedure**

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A under the Special Rules for recruitment of candidates belonging to Scheduled Castes, Scheduled Tribes and Backward Tribes and that too without regard to merit and suitability was discriminatory and not at all consistent with the maintenance of efficiency of administration. The High Court struck down these Rules as violative of Articles 16(1) and 335 of the Constitution holding that the procedure provided under the Special Rules is not consistent with the maintenance of standards of efficiency in the State Services. Against the Judgment of the High Court State preferred appeals before this Court.

Dismissing the appeals, this Court

C HELD: 1. There is not infirmity in the reasoning and the conclusions reached by the High Court. [1142-D]

D 2. The direct recruitment to various cadres in Class-III service in the Karnataka State is on the basis of merit prepared on the basis of competitive examination or selection made on the basis of objective criteria provided in the various Rules. The Special Rules on the other hand provide entry into various cadres of Class III service to Scheduled Caste, Scheduled Tribe and Backward Tribe candidates without undergoing the process of selection. They are appointed as local candidates in the first instance and thereafter under the Special Rules they are inducted into various cadres of Class III service without going through the process of selection. The procedure provided under the Special Rules is not consistent with the maintenance of standards of efficiency in the State Service. [1140-G-H, 1141-A]

F 3. Even otherwise the Special Rules cannot be protected under Article 16(4) of the Constitution of India and they infract Article 16(1) of the Constitution of India. It is no doubt correct that reservation of posts in Civil Service is permissible under Article 16(4) of the Constitution of India for Scheduled Castes, Scheduled Tribes and Backward Tribes. But the Special Rules in this case neither provide for any reservation nor any other affirmative action permissible under Article 16(4) of the Constitution of India. [1142-E]

*Indra Sawhney v. Union of India*, [1992] Supp. 3 S.C.C. 210, referred to.

H 4. To protect the rights of Scheduled Caste, Scheduled Tribe and

**Backward Tribe candidates who have been appointed/regularised during the pendency of these appeals it is directed that the High Court judgment, as upheld by this Court, shall be operative prospectively from the date of this judgment.** A

**CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 615 to 620 of 1979 Etc. Etc.** B

From the Judgment and Order dated 15.9.78 of the Karnataka High Court in W.P. Nos. 5333 and 8018 to 8022 of 1977.

S. Sivasubramaniam, Kh. Nobin Singh and M. Veerappa with him for the Appellant. C

P.R. Ramasesh and P. Mahale for the Respondents.

The following Judgment of the Court was delivered by

**KULDIP SINGH, J.** These appeals are directed against the judgment of the Division Bench of the Karnataka High Court declaring the Karnataka State Civil Services (Direct Recruitment of Scheduled Castes, Scheduled Tribes, and Backward Tribes to Class III Posts) (Special) Rules, 1977 (the Special Rules) as violative of Articles 16(1) read with Article 335 of the Constitution of India. This Court while granting special leave on March 9, 1979 stayed the operation of the impugned judgment of the High Court. D E

We may briefly state the necessary facts. The Karnataka Civil Services Rules define 'local candidate' to mean 'a temporary government servant not appointed regularly as per Rules of Recruitment to that service'. The local candidates appointed from time to time, subject to their possessing the prescribed qualifications were regularised by the State Government either by way of executive orders, or by framing Rules under Article 309 of the Constitution of India. By the Office Memorandum dated May 23, 1973 the State Government ordered that no further appointments of local candidates be made. Later on by Office Memorandum dated June 13, 1974 the embargo was relaxed in respect of the Scheduled Castes and the Scheduled Tribes for appointments to Class III posts. The Office Memorandum dated December 19, 1975 further provided that 3% of the vacancies be filled up by appointing local candidates belonging to Backward Tribes. Following these orders, a large number of local candidates F G H

**A** belonging to Scheduled Castes, Scheduled Tribes and Backward Tribes were appointed. It is not disputed that despite prohibition, candidates from other categories were also appointed as local candidates. The local candidates were given opportunity to apply to the Public Service Commission/Departmental Recruitment Committees for recruitment to Class III Cadres in the State services. Those rejected by the Commission/Committees and those who did not apply were liable to be terminated from the post held by them as local candidates. On February 1, 1977, the Government, however, directed the continuance of such local candidates belonging to Scheduled Castes, Scheduled Tribes and Backward Tribes and Backward Tribes in service, till further orders.

**C** On February 25, 1977 the Special Rules were framed under Article 309 of Constitution of India. Rule 2(b) of the Special Rules which defines 'local candidate' is as under :

**D** "Local candidate' means any person belonging to any of the Scheduled Castes or Scheduled Tribes as defined in the Constitution of India or Backward tribes specified in Annexure I to the government Order No. BGAD 2 SBC 75 dated 9th July, 1975 and appointed to any of the categories of Class-III posts by an appointing authority by direct recruitment otherwise than in accordance with rule 4 of the Karnataka State Civil Services (General Recruitment) Rules, 1957 or the Special Rules of Recruitment applicable to such posts, but does not include any person, -

**F** (i) selected by the Karnataka Public Service Commission or a Recruitment Committee of any other Selection Authority and appointed to and assumed charge of any such post in pursuance of such selection; or

(ii) appointed temporarily for a fixed period or for any item of work; or

**G** (iii) whose services have been terminated due to resignation or under the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957".

**H** Rule 3 of the Special Rules states that notwithstanding anything to the contrary contained in any other Rules relating to recruitment to any of the

categories of Class III, direct recruitment to Class III posts in State Civil Services shall be made by the appointing authority concerned in accordance with the special Rules by the appointment of such local candidates who were not disqualified by the provisions of the Karnataka State Civil Services (General Recruitment) Rules, 1957, on the date of entry into service. Rule 4 provides that Class III posts which were left over after the appointment of regular candidates selected by the Public Service Commission/Recruitment Committees shall be filled up by appointing local candidates whose were in service on the commencement of the Special Rules. Sub-rule (2) of Rule 4 provides for the appointment of those local candidates whose services had been terminated before the coming into force of the Special Rules.

It is thus obvious that the Special Rules provide for appointment of local candidates belonging to Scheduled Castes, Scheduled Tribes and Backward Tribes. These Rules did not cover local candidates belonging to any other category. The Government issued instructions dated March 8, 1977 whereunder the procedure to be followed in making the appointments to class III posts was prescribed. Under the Special Rules, read with the Instructions, the Administrative Heads of various departments were left with no option but to terminate the service of local candidates who did not belong to Scheduled Castes, Scheduled Tribes and Backward Tribes. Those local candidates, whose services were terminated, or likely to be terminated, approached the Karnataka High Court challenging the vires of the special Rules. As stated above, a Division Bench of the High Court struck down the Special Rules holding the same to be violative of the constitutional provisions.

Based on the rival contentions of the parties, the High Court posed the following two questions for its consideration :

(1) Whether the Special Rules providing for appointment of only local candidates belonging to Scheduled Castes, Scheduled Tribes and Backward Tribes are violative of Article 16(1) read with Article 335 of the Constitution?

(2) Whether the services of local candidates belonging to Scheduled Castes, Scheduled Tribes and Backward Tribes have been regularised by the Special Rules, and if so, whether such regularisation is valid and permissible under law?

- A The High Court answered the first question in the affirmative, and in favour of the writ petitioners. The High Court primarily accepted the contention raised by the petitioners that a separate procedure under the Special Rules for recruitment of candidates belonging to Scheduled Castes, Scheduled Tribes and Backward Tribes and that too without regard to merit and suitability would be discriminatory and not at all consistent with the maintenance of efficiency of administration.
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- It would be useful to refer briefly to various sets of statutory rules which are operating in the State of Karnataka. The Karnataka State Civil Service (General Recruitment) Rules, 1957 provide that recruitment by competitive examination is to be made in the order of merit, from the list of candidates prepared by the Public Service Commission or other examining authority. It is further laid down in the said rules that recruitment by selection after giving such adequate publicity as the appointing authority may determine, is to be made in the order of merit of candidates as determined by the Public Service Commission/Selection Committee/Appointing Authority. Similarly, the Karnataka State Civil Services (Recruitment to Ministerial Posts), Rules 1966 regulate the method of direct recruitment to the cadres of Assistants, First Division Clerks, Junior Assistants, and Second Division Clerks in the Karnataka State Civil Services. Rule 4 of the said rules provides that the recruitment shall be made on the basis of merit determined by competitive examination conducted by the Public Service Commission. There is yet another set of Rules called the Karnataka State Civil Services (Direct Recruitment by Selection) Rules, 1973. These Rules provide that recruitment to various posts under the Rules is to be made on the basis of the merit-list prepared as a result of the qualifying examination. The *viva-voce* test is also provided and the candidates are to be called on the basis of the merit secured by them in the qualifying examination.
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- It is thus obvious that the direct recruitment to various cadres in Class III service in the Karnataka State is on the basis of merit prepared on the basis of competitive examination or selection made on the basis of objective criteria provided in the various Rules. The Special Rules on the other hand provide entry into various cadres of Class III service to Scheduled Caste, Scheduled Tribe and Backward Tribe candidates without undergoing the process of selection. They are appointed as local candidates in the first instance and thereafter under the Special Rules they are
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inducted into various cadres of Class III service without going through the process of selection.

We have no hesitation in agreeing to the conclusion reached by the Division Bench of the Karnataka High Court that the procedure provided under the Special Rules is not consistent with the maintenance of standards of efficiency in the State services. Even otherwise, we are of the view that the Special Rules cannot be protected under Article 16(4) of the Constitution of India and they infract Article 16(1) of the Constitution of India. The High Court struck down the Rules on the following reasoning:

"It is admitted by counsel on both sides that the Public Service Commission alone is the Selecting Authority for recruitment to Class III ministerial and non-ministerial posts. The Public Service Commission is therefore required to select candidates on the basis of merit by applying the same standard to all candidates called for interview including the candidates belonging to Scheduled Castes, Scheduled Tribes and Backward Tribes.

But no such procedure is provided under the Special Rules for recruitment of local candidates. Their initial appointment as local candidates was admittedly not in accordance with the procedure prescribed by the aforesaid rules of recruitment. The assurance of efficiency implicit in competitive selection thus became the first casualty. These irregular candidates are now sought to be regularly recruited without a chance to put the efficiency-standard to any test whatsoever. The argument that this would seriously impair the standard of efficiency of administration and would weaken the ramparts against inefficiency in public services cannot be rejected. The candidates may have the minimum educational qualification prescribed for the post, but that only satisfies the eligibility test and not the suitability test. The basic eligibility is quite distinct and different from suitability. Suitability could be considered only by competitive test with an application of the same yardstick to all candidates with a prescription of a minimum standard.

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The purpose of every competitive examination must be to select the worthiest person. The interview or the examination must be

A held for the assessment of candidates competence, proficiency and attainment and in other words to measure merit. Only those persons who possess the required standard of excellence assessed on no other basis than their performance in the examination or interview prescribed in that behalf can be considered to be suitable.

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If different standards are prescribed under the Rules for different classes, then it would plainly run counter to the doctrine of equality before law and would be inconsistent with equality of opportunity in matters relating to employment or appointment as guaranteed under Article 16(1)."

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We see no infirmity in the reasoning and the conclusions reached by the High Court. It is no doubt correct that reservation of posts in Civil Services is permissible under Article 16(4) of the Constitution of India for Scheduled Castes, Scheduled Tribes and Backward Tribes to the extent and in the manner laid down in the Nine-Judge Bench judgment of this Court in *Indra Sawhney v. Union of India*, [1992] Supp. 3 SCC 210. But the Special Rules in this case neither provide for any reservation nor any other affirmative action permissible under Article 16(4) of the Constitution of India.

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Having agreed with the reasoning and conclusions reached by the High Court on the first ground, it is not necessary for us to go into the second ground of attack dealt with by the High Court.

As mentioned above, this Court while granting special leave stayed the operation of the impugned judgment of the High Court. Since we are upholding the High Court judgment it would be necessary for us to protect the rights of Scheduled Caste, Scheduled Tribe and Backward Tribe candidates who have been appointed/regularised during the pendency of these appeals. Keeping in view the facts and circumstances of this case, we direct that the High Court judgment, as upheld by this Court, shall be operative prospectively from the date of this judgment.

We, therefore, dismiss the appeals on the above terms. No costs.

T.N.A.

Appeals dismissed.



R.P. SINGH (DECEASED) THROUGH L.R.S. AND ORS.

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v.

STATE OF PUNJAB AND ORS.

MARCH 27, 1995

[K. RAMASWAMY AND B.L. HANSARIA, JJ.]

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*Contempt—Court's directions—Delay in compliance with—Delay not deliberate and wilful—Unconditional apology—Acceptance of—Discharge from contempt.*

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The respondent, Chairman of the Improvement Trust, Ludhiana tendered unconditional apology before this Court for the delay in implementation of the directions issued by this Court. The delay was not deliberate and intentional.

Accepting the apology and discharging the contempt proceedings, this Court

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**HELD :** The respondent-Chairman shall comply with Court's order within three months from the date of this order and pay a sum of Rs. 500 as costs for the delay, from his pocket. [1144-D]

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CIVIL APPELLATE JURISDICTION : I.A. No. 4.

IN

Civil Appeal No. 2823 of 1979.

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From the Judgment and Order dated 30.1.78 of the Punjab & Haryana High Court in C.W.P. No. 3168 of 1977.

Ms. P.S. Shroff, Ms. Monica Sharma, S.S. Shroff for Ms. S.A. Shroff & Co. for the Appellant.

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Ranbir Yadav and G.K. Bansal for the respondent.

S.L. Aneja for the Respondent No. 2.

The following Order of the Court was delivered by :

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- A Pursuant to the order passed by this Court on March 6, 1995, today the counsel for the respondent no. 2 has placed in the Court the counter affidavit filed by Mr. Surinder Aggarwal, Chairman, Improvement Trust, Ludhiana. He admits the delay in compliance of the directions issued by this Court and tenders unconditional apology for the delay on their part.
- B No explanation has been given as to why the delay has been occasioned in implementation of the undertaking given in the counter affidavit filed in this Court as reiterated in our order dated January 27, 1994. On the facts and circumstances, we accept the unconditional and contrite apology for the delay in implementation of the directions issued by this Court since, it cannot be said that it was deliberate and wilful. Under those circumstances,
- C we accept the apology and drop the proceedings and discharge the contempt order. However Mr. Surinder shall comply with the order of the finalisation of the allotment to the petitioners within three months from today. Mr. Surinder Aggarwal is directed to pay a sum of Rs. 500 as costs for the delay from his pocket and it should not be drawn from the Trust.
- D The costs shall be paid to the Supreme Court Legal Aid Committee within a period of six weeks from today.

I.A. is disposed of accordingly.

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Petition disposed of.