

C. CHANNABASAVIAH

v.

STATE OF MYSORE & OTHERS

September 28, 1964

(P. B. GAJENDRAGADKAR, C.J., K. N. WANCHOO,
M. HIDAYATULLAH, RAGHUBAR DAYAL AND
J. R. MUDHOLKAR JJ.)

Constitution of India, 1950—Article 16—Equality of opportunity in matters relating to employment—Selection of candidates receiving lower marks than rejected candidates—Whether their appointments valid when made on compromise in Court proceedings or when made on Government recommendation under Mysore Public Service Commission (Function) Rules, 1957, r. 4. foot-note to sub-r. (3).

After holding *viva voce* examination for direct recruitment to Class I and Class II posts relating to certain Administrative Services, the Mysore Public Service Commission published a list of 98 candidates who were selected and appointed.

Subsequent to this announcement, the State Government sent, for the consideration of the Commission, a list of twenty-four candidates and as the Commission approved of them, they were also appointed. In giving their concurrence the Commission purported to take power from the foot-note to sub-r. (3) of r. 4 of the Mysore Public Service Commission (Functions) Rules, 1957.

Sixteen candidates, out of those who were not selected, filed petitions in the High Court alleging violations of Arts. 14, 15 and 16 of Constitution. In the course of these proceedings, a compromise was effected and as a result of an undertaking given by the Government before the High Court, the sixteen petitioners were also appointed.

Thereafter, other candidates, who were not selected, instituted similar proceedings in the High Court, but their petitions were summarily dismissed. They, thereupon, filed the present petitions under Art. 32 of the Constitution.

Upon a direction of the Court to the Mysore State Government, mark-lists prepared by the Public Service Commission after the *viva voce* tests were produced and these showed that all the candidates—except two who belonged to the scheduled castes in the first list of 98 candidates—had secured marks higher than 56%. Some of the candidates who were appointed on the recommendation of the Government and those appointed by compromise in the High Court (excluding three who were not interviewed at all), received lower marks and it was admitted that many of the petitioners, who were rejected, had obtained higher marks than some of the selected candidates.

HELD (i) Discrimination and unequal treatment was established in the case of the 16 candidates selected as a result of compromise before the High Court. Their appointments could not be sustained since most of these candidates had obtained fewer marks than some of the rejected candidates. Three candidates had not attended the *viva voce* test at all and there was nothing before the High Court for comparing the remaining thirteen candidates with those who had failed in the selection. In such a case the court should be slow to accept compromises unless it was made clear that what was being done did not prejudice anybody else. [364 E-H].

(ii) The foot-note to sub-r. (3) of r. 4 of the Mysore Public Service (Functions) Rules, 1957, on which reliance was placed to justify the appointments of the 24 candidates selected at the suggestion of the Government, was not intended to bypass the selection based on merit but to cover a case of exceptional merit. These candidates had also obtained lower marks than some rejected candidates and their appointments could not therefore be upheld since this amounted to discrimination and unequal treatment. [365 D-G].

ORIGINAL JURISDICTION : Writ Petitions Nos. 81, 95 to 111, 113—118, 140—142, 150, 151, 153—158, 159—165, 167, 168, 169—172, 178, 179, 183, 199 and 205—207 of 1963.

Petitions under Art. 32 of the Constitution of India for the enforcement of Fundamental Rights.

Petitioner in W. P. No. 81 of 1963 *in Person (not Present)*.

R. Gopalakrishnan, for the petitioners (in W. P. Nos. 95—111, 113 to 118, 169—172, 183 and for the intervener.

B. Parthasarathi, J. B. Dadachanji, O. C. Mathur and Ravinder Narain, for the petitioners (in W. P. Nos. 140—142 of 1963).

Naunit Lal, for the petitioners (in W. P. Nos. 150, 151 to 158, 167 and 168 of 1963).

C. K. Daphtary, Attorney-General, B. R. L. Iyengar and B. R. G. K. Achar, for respondents Nos. 1 and 2 (in all the petitions).

S. M. Hegde and V. D. Mahajan, for respondent No. 11 (in W. P. Nos. 95 to 111).

A. G. Ratnaparkhi, for respondents Nos. 38, 50, 51, 73, 84, 85, 87, 98, 126, 130, 139, 140 (in W. P. Nos. 95—111 and 113—118 of 1963).

The Judgment of the Court was delivered by

Hidayatullah J. These are fifty-five writ petitions under Art. 32 of the Constitution invoking Articles 14, 15 and 16 of the Constitution against the State of Mysore and the Mysore Public Service Commission in respect of appointments made to certain services in the Mysore State. The petitioners who were applicants for some of the posts were unsuccessful while others were appointed. In some of the petitions the successful candidates are joined as respondents. The facts are as follows :

By a notification dated September 26, 1959, the Mysore Public Service Commission announced that a competitive examination would be held for direct recruitment for Class I and Class II posts relating to certain Administrative Services and numerous

applicants including the petitioners offered themselves as candidates. On September 5, 1960, the Public Service Commission modified the earlier notification and instead of holding an examination announced that the selection would be made solely on the results of a *viva voce* test. The petitioners characterised this change as opposed to the Mysore Administrative Service Recruitment Rules, 1957 but during the hearing of these petitions this ground of attack was abandoned perhaps in view of what happened later.

The Public Service Commission duly held the *viva voce* interviews and on July 29, 1961 they published a list of ninety-eight candidates who they announced were selected. After the announcement of the results the State Government sent for the consideration of the Commission a list of twenty-four candidates and as the Commission approved of them they were also appointed on March 7, 1962. In giving their concurrence the Commission purported to take power from a foot-note added to sub-rule (3) of r. 4 of the Mysore Public Service Commission (Functions) Rules, 1957. Sixteen candidates, who were not selected, filed petitions under Articles 14, 15 and 16 of the Constitution in the High Court of Mysore. On November 26, 1962 there was a compromise and the Government undertook to appoint the petitioners before the High Court. Of these thirteen had attended the *viva voce* test but three had not been called for it. In this way there were three sets of appointments : the first of ninety-eight candidates, the second of twenty-four candidates and the third of sixteen candidates. There were in all 1,777 applicants who were called for the *viva voce* test. A very large number of the applicants was not called for the test and the High Court of Mysore in the petition of the three petitioners who had not been called for the *viva voce* test directed the Commission to call them and the Commission then called 203 candidates who were in the same category as the three petitioners in the High Court. It may be pointed out that at the first *viva voce* test eighty-eight candidates and at the second test ten candidates were selected, thus making the total number ninety-eight.

Encouraged by what had happened to those who had petitioned to the High Court, the other candidates who had not succeeded applied for writs under Articles 14, 15 and 16 of the Constitution. Their petitions were summarily dismissed by the High Court. They, thereupon, filed the present petitions under Art. 32 of the Constitution and that is how these fifty-five petitions are before us.

At an earlier hearing of the petitions this Court directed the State of Mysore (represented by the Attorney-General of India) to produce the mark-lists prepared by the Public Service Commission after the *viva voce* tests. Though numerous allegations of nepotism were made the arguments before us were confined to the consideration of the respective merits of the candidates selected and unselected in the light of the mark-lists produced in this Court. From the mark-lists it appears that the eighty-eight candidates who were first selected secured marks between 56% and 87%, except 2 (No. 87 L. Sharadamma and No. 88 R. Shamanaik) who belonged to the scheduled castes and who had obtained 51% and 50% marks respectively. The ten candidates who were selected at the second test had obtained marks ranging between 60% and 85%. The candidates who were appointed on the recommendation of the Government had not done so well at the examination. Only two had obtained 51 and 53% marks and the others marks ranging between 49% and 22%. The detailed results are :

49% (2); 47% (1); 45% (4); 44% (3); 43% (1); 42% (3); 40% (1); 37% (1); 32% (1); 31% (1); 28% (1); 23% (2); 22% (1); (Total—22).

Among the sixteen candidates who were selected by compromise in the High Court three had not been interviewed at all and the remaining 13 had received marks ranging between 48% and 22%. The detailed break up is :

Not interviewed (3); 48% (1); 47% (1); 45% (2); 44% (1); 43% (1); 42% (1); 38% (1); 37% (1); 30% (1); 24% (1); 23% (1); 22% (1); (Total—16).

It was admitted before us that many of the rejected candidates who are petitioners before us had obtained more marks than some of the selected candidates. In an affidavit filed on August 4, 1964, the Public Service Commission explained the procedure followed and also stated that 7 of the petitioners had obtained marks below 22% and thus were not entitled to succeed at all because their marks were lower than the last candidate selected and they could have no complaint. This is true, but unfortunately, their petitions cannot be dismissed out of hand because three candidates were selected who had not taken the *viva voce* test and in view of this these petitioners have a grievance, however slender it may be.

The State and the Commission filed five main affidavits in some petitions between July 18, 1963 and October 17, 1963 dealing with the special facts alleged by each petitioner and denied the allegations about nepotism. In these affidavits they also

challenged the validity of the petitions. In the other petitions skeleton affidavits were filed which incorporated by reference these five main affidavits. It is not necessary to refer to these affidavits at all because a very clear affidavit is now before this Court.

The mark-lists were made available to the learned counsel for the petitioners and the marks as shown in Schedules 'A' to 'E' to the last affidavit were accepted as correct by him. It was frankly admitted by the learned Attorney-General that some of the candidates who were not selected had obtained more marks than some of those who were selected. However, he pointed out that none of the candidates who had failed and who was a petitioner before us had obtained 56% marks or more. He contended that ninety-eight candidates in the first and second selections were better than any of the petitioners and their selection could not be questioned. The case of the two scheduled caste candidates, to whom we have referred by name earlier, stood on a different footing and Mr. Ayyangar who appeared for the petitioners did not question their selection. The dispute, therefore, centres round twenty-four candidates selected at the suggestion of the Government of Mysore and sixteen candidates selected on a compromise before the High Court, three of whom were not even called for the *viva voce* test.

Taking the case of the sixteen candidates first, it appears to us, that since most of these candidates had obtained fewer marks than some of the rejected candidates it is impossible to sustain their selection. To begin with it was wrong of the High Court to allow a compromise of this kind to be effected when it was patently obvious that three candidates had not attended the *viva voce* test at all and there was nothing before the High Court for comparing the remaining thirteen candidates with those who had failed in the selection. There were allegations of nepotism which had not been abandoned and we find now that most of these candidates do not rank as high as some of the rejected candidates. In such a case the court should be slow to accept compromises unless it is made clear that what is being done does not prejudice anybody else. To act otherwise opens the court itself to the charge that it did something just as bad as what was complained against. In our opinion, the appointment of these sixteen candidates cannot be accepted and the petitioners are entitled to claim that their marks should be compared with those obtained by the petitioners and the selection made on merit and merit alone. For this purpose, of course, the three candidates who were not called for the test would have to

be called and marks given to them. Otherwise they cannot be considered at all.

With regard to the 24 candidates who were selected at the suggestion of the Government reliance is placed upon a foot-note added to sub-rule (3) of r. 4 of the Mysore Public Service Commission (Functions) Rules, 1957. That rule occurs in a Chapter headed "Recruitment by Selection". Under sub-rule (3) it is provided that the Public Service Commission shall consider all applications received and when necessary interview such candidates as fulfil the prescribed conditions and shall advise Government about those it considers most suitable for appointment. The foot-note then reads :

N.B. Nothing contained herein shall preclude the Commission from considering the case of any candidate possessing the prescribed qualifications brought to its notice by Government, even if such a candidate has not applied in response to the advertisement of the Commission."

In our opinion, the foot-note is not intended to bypass the selection based on merit. It is intended to cover a case of exceptional merit. These candidates had appeared at the *viva voce* test and some of them had obtained very poor marks indeed. The learned Attorney-General attempted to show that twelve candidates were from the backward classes and four from the scheduled castes. That, in our judgment, is no justification for the selection in the manner it was actually done. It seems surprising that Government should have recommended as many as twenty-four names and the Commission should have approved of all those names without a single exception even though in its own judgment some of them did not rank as high as others they had rejected. Such a dealing with public appointments is likely to create a feeling of distrust in the working of the Public Service Commission, which is intended to be fair and impartial and to do its work free from any influence from any quarter. We did not allow learned counsel for the petitioners to bring before us allegations of nepotism etc., because, in our opinion, even without those allegations which it is not the practice of this Court to investigate unless a clear and strong case is made out, the manner of the selection and the respective ranking of these candidates justifies interference at the hands of this Court. The learned Attorney-General submitted that except for the two candidates from the scheduled castes, who have been described by name above, candidates who had obtained 56% and above marks need not be disturbed. We agree as to that for none of the peti-

tioners reaches that figure. He could not justify all the cases below that marking, and we agree again with him that this is the only possible conclusion to draw from the mark-lists placed before us. We will accordingly allow these petitions and quash the appointments of the twenty-four candidates whose names are mentioned in Annexure 'C' and the sixteen candidates whose names are mentioned in Annexure 'D' to the affidavit of the Public Service Commission filed on August 4, 1964. Their selection was not proper and must be set aside.

It is very unfortunate that these persons should be uprooted after they had been appointed but if equality and equal protection before the law have any meaning and if our public institutions are to inspire that confidence which is expected of them we would be failing in our duty if we did not, even at the cost of considerable inconvenience to Government and the selected candidates do the right thing. If any blame for the inconvenience is to be placed it certainly cannot be placed upon the petitioning candidates, the candidates whom this order displaces or this Court. With these observations we allow the petitions to the extent indicated above with one set of hearing fee.

Petitions partly allowed.