

A UNIVERSITY OF COCHIN, REP., BY ITS REGISTRAR
UNIVERSITY OF COCHIN ETC.

v.

N.S. KANJOONJAMMA AND ORS. ETC.

B MARCH 20, 1997

[K. RAMASWAMY AND S. SAGHIR AHMAD, JJ.]

Service Law :

C *Kerala State Subordinate Service Rule :*

Rules 4, 14 to 17-A—Promotion—Reservation for Scheduled Castes and Scheduled Tribes—Special recruitment to Class I and Class II non-teaching posts—Advertisement issued for selection to the posts—Contesting respondent applied for the posts but was unsuccessful—She challenged the recruitment—High Court allowed her writ petition—Held, Rules having not been challenged, the University has properly made applicable the rules—Rule 4 is inapplicable to the special recruitment—Contesting respondent having participated in the selection, she is estopped from challenging the correctness of the procedure—High Court erred in allowing the writ petition of the contesting respondent—Appeal allowed—Estoppel.

E CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2223 of 1985 Etc.

F From the Judgment and Order dated 13.2.85 of the Kerala High Court in O.P. No. 5366 of 1982.

K. John Mathew, (E.M.S. Anam) (NP), N. Sudhakaran and K.R.R. Pillai for the appearing parties.

The following Order of the Court was delivered :

G These appeals by special leave arise from the judgment of the Division Bench of the Kerala High Court, made on February 13, 1985 in OP No. 5366/1982. The contesting first respondent, a Section Officer in the University, appointed by direct recruitment, challenged the promotion of V. Vasudevan as Deputy Registrar and P.K. Sudhakaran as Assistant
H Registrar of the *Cochin University*. The facts are that the Syndicate in its

Resolution dated December 3, 1980 adopted Rules 14 to 17-A of the Kerala State and Subordinate Services Rules (for short, the 'Rules') so as to be applicable to the University in the matter of recruitment., The Syndicate in its meeting dated January 20, 1981 resolved that non-teaching posts in the University in Class I, Class III and Class IV would be made available for application of rule of reservation in the matter of promotion to the Schedule Castes and Scheduled Tribes. In Resolution dated March 7, 1981, the Syndicate further resolved that special recruitment to six vacant posts be advertised for recruitment of the Scheduled Castes and Scheduled Tribes declaring them to reserved posts. By further Resolution dated October 1, 1981, it resolved to recommend constitution of Staff Selection Committee for recruitment of those candidates. By a further Resolution dated June 4, 1982, the Syndicate authorised the Vice-Chancellor to constitute the Selection Committee to make selection. Accordingly, the Vice-Chancellor constituted a Selection Committee. The advertisement was made for recruitment to fill up the said six posts. The respondents 3 and 4, candidates above-named and the first respondent along with others applied for the said posts and were interviewed by the Selection Committee on July 17, 1982. It selected and the appointment of respondents 3 and 4 came to be made on July 20, 1982. Accordingly, the Syndicate approved of the selection by its proceedings of the even date and appointed respondents 3 and 4 as Deputy Registrar and Assistant Registrar respectively.

The first respondent, as stated earlier, filed writ petition in the High Court questioning the correctness of the appointment of Respondents 3 and 4 on the ground that when selection was made, there was no rule for special recruitment of the reserved candidates. The Rules have not been specifically applied for special recruitment and, therefore, the selection and appointment of the respondents is not in accordance with law. The Rule is when inservice candidates were available, direct recruitment could not be resorted to. That contention found favour with the High Court. Thus, these appeals by special leave.

The only question that arises for consideration is : whether the view taken by the High Court is correct in law? Rules 14 to 17A of the Rules relate to the reservation of the Scheduled Castes and Scheduled Tribes and the method of recruitment has been provided therein and Rule 17-A reads as under :

A "Special recruitment from among the Scheduled Castes and Scheduled Tribes -

B Notwithstanding anything contained in these rules or in the special rules, the State Government may reserve a specified number of posts in any service, class, category to be filled by direct recruitment exclusively from among the members of the Scheduled Castes and Scheduled Tribes.

C This rule shall be deemed to have come into force with effect from November 25, 1959."

D It is not in dispute that Rules 14 to 17-A having specifically been adopted by the aforesaid Resolutions of the Syndicate and approved by the University, the power of the University to adopt the Rules has not been challenged. The aforesaid Resolutions do indicate that the University has properly made of Rules 14 to 17- A applicable in relation to the recruitment of non-teaching staff to the University in certain posts, viz., Class I, Class III and Class IV. In furtherance thereof, the Vice-Chancellor was authorised by the Syndicate to advertise the posts and constitute a Selection Committee for recruitment of the candidates. In furtherance thereof, a Committee was constituted. Advertisement came to be made. It is seen that when the general rules have been made applicable there is no necessity by the University to make a special reservation rule for special recruitment. Therefore, the non-mention of the special recruitment in the Resolution is of little consequence. As seen the Syndicate adopted the Rules in relation to the non-teaching staff of the University. As a consequence, the advertisement came to be made for special recruitment of the Scheduled Castes and Scheduled Tribes to the posts reserved for them. In fact, the first respondent also had applied for and sought selection but remained unsuccessful. Having participated in the selection, she is estopped to challenge the correctness of the procedure. That apart, we have already held that procedure was correctly followed and, therefore, the omission to mention in the advertisement that it was a special recruitment is of no consequence. The further finding of the High Court relates to proviso 1 to Rule 4 which provides that when duly qualified candidates are available, the appointment shall be made to them. In other words, if duly qualified candidates are not available, then advertisement could be made for selection. That rule is applicable to the general recruitment. But with reference

to the special recruitment of the candidates belonging to the Scheduled Castes and Scheduled Tribes, Rules 14 to 17-A stand attracted. In addition, as seen earlier, the advertisement came to be made as early as on April 22, 1982 by which time the Resolution of the Syndicate was not adopted, the same having been adopted on March 7, 1982. So, Rule 4 is inapplicable to the special recruitment advertised on October 1, 1981. Therefore, the later Resolution applying Rule 4 has no retrospective effect. It is contended by the learned counsel for the respondent No. 1 that respondents 3 and 4 have left the jobs and so there is no need to disturb the appointment of the first respondent. As they are said to be on foreign service, they are entitled to join back on their posts. Thus considered, the High Court was clearly in error in allowing the writ petition.

The appeals are, accordingly, allowed. The writ petition stands dismissed. No costs.

R.P.

Appeal allowed.