

KARNATAKA STATE ROAD TRANSPORT CORPORATION

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v.

B.K. DORESWAMY AND ORS.

JULY 21, 1994

[KULDIP SINGH, M.M. PUNCHHI AND K. RAMASWAMY, JJ.]

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SERVICE LAW—Selection—Karnataka Government Instructions dated September 6, 1969—Para 6—Selection for posts of Assistant Stores/Purchase Officers in State Road Transport Corporation—Reservation for Scheduled Castes/Scheduled Tribes & other backward classes—Absence of a candidate belonging to a reserved class—Such vacancy to be filled by selection on basis of general merit.

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The reservation for Scheduled Castes/Scheduled Tribes and other backward classes was regulated in the State of Karnataka by the Government Instructions dated September 6, 1969. Para 6 of the said Instructions provides classification and rotation of vacancies for open competition/backward classes/Scheduled Castes and Scheduled Tribes. The Karnataka State Road Transport Corporation held selections for the posts of Assistant Stores/Purchase Officers in the year 1972. Four selected candidates were appointed. Since no Scheduled Tribe candidate was selected the first vacancy which was meant for the Scheduled Tribes was given to a general category candidate, who was even otherwise on the top of the merit list. The next candidate was the Scheduled Caste candidate.

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The selected Scheduled Caste candidate filed a writ petition seeking a mandamus directing the Transport Corporation to treat him senior to the general category candidate in the cadre of Assistant Stores/Purchase Officers on the ground that since the Scheduled Tribe candidate was not available he being a member of the Scheduled Caste was entitled to the first vacancy. The writ petition was allowed by the High Court. Writ appeal filed by the Corporation was dismissed. This appeal was filed against the judgment of the High Court.

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Allowing the appeal, this court

HELD : 1. In the State of Karnataka, according to the Government Instructions dated September 6, 1969, out of the merit list the first vacancy

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- A was to be filled by appointing a Scheduled Tribe candidate. Since the Scheduled Tribe candidate was not available the vacancy was to be filled in accordance with the provisions of para 6 of the Instructions. Under the said paragraph, when a person belonging to Scheduled Tribe is not available for being selected against the vacancy reserved for the said class, such vacancy has to be filled by selection on the basis of general merit. Since in the present case the Scheduled Tribe candidate was not available, the first vacancy was rightly filled by appointing a general candidate who was at number one in the merit list. It is nowhere provided in the instructions of the Government of Karnataka that when a person belonging to a reserved class is not available then the vacancy is to be filled by a candidate of another reserve class. [22-A to C]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 118 of 1987.

- D From the Judgment and Order dated 17.6.86 of the Karnataka High Court in W.A. No. 1922/83.

K.R. Nagaraja for the Appellant.

The Judgment of the Court was delivered by

- E **KULDIP SINGH, J.** The Karnataka State Road Transport Corporation (the Corporation) held selections for the posts of Assistant Stores/Purchase Officers in the year 1972. The first four candidates selected in order of merit were as under :-

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1. Shri A.M. Khan
 2. Shri S.S. Shirol
 3. Shri K.G. Doddamani
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4. Shri B.K. Doreswamy

- H The reservation for Scheduled Castes/Scheduled Tribes and other backward classes was regulated in the State of Karnataka by the Government Instructions dated September 6, 1969. Annexure-I to the said Instructions provides classification and rotation of vacancies for open competition/backward classes/Scheduled Castes and Scheduled Tribes in

the following manner :

1. Scheduled Tribes
2. Scheduled Castes
3. Backward Classes
4. Open competition

Para 6 of the Instructions is as under :

"When a person belonging to Scheduled Tribes, the Scheduled Castes or other backward classes is not available for being selected for a vacancy reserved for such class, such vacancy shall be filled by selection on the basis of general merit."

The above mentioned four selected candidates were appointed as Assistant Stores/Purchase Officers by the order dated November 19, 1972. The appointments were in the following order :

A.M. Khan (General Category)

B.M. Doreswamy (Scheduled Caste)

S.S. Shirol

K.G. Doddamani

Since no Scheduled Tribe candidate was selected the first vacancy which was meant for the Scheduled Tribes was given to A.M. Khan, general category candidate, who was even otherwise on the top of the merit list.

B.K. Doreswamy filed a writ petition before the Karnataka High Court seeking a mandamus directing the corporation to treat him senior to A.M. Khan in the cadre of Assistant Stores/Purchase Officers on the ground that since the Scheduled Tribe candidate was not available he being a member of the Scheduled Caste was entitled to the first vacancy. The writ petition was allowed by a learned single Judge of the High Court. Writ appeal filed by the Corporation was dismissed by the Division Bench of the High Court. This appeal by the Corporation is against the judgments of the High Court.

A We are of the view that the High Court fell into patent error in interpreting the Government instructions dated September 6, 1969. It is no doubt correct that out of the merit list the first vacancy was to be filled by appointing a Scheduled Tribe candidate. Since the Scheduled Tribe candidate was not available the vacancy was to be filled in accordance with the provisions of para 6 of the Government Instructions. Under the said paragraph, quoted above, when a person belonging to Scheduled Tribe is not available for being selected against the vacancy reserved for the said class, such vacancy has to be filled by selection on the basis of general merit. Since in the present case the Scheduled Tribe candidate was not available, the first vacancy was rightly filled by appointing A.M. Khan who was at number one of the merit list. It is nowhere provided in the instructions of the Government of Karnataka that when a person belonging to a reserve class is not available then the vacancy is to be filled by a candidate of another reserve class. On the other hand the instructions specifically provide that in the absence of the candidate belonging to a reserved class the vacancy has to be filled by selection on the basis of general merit. The order of appointment dated November 19, 1972 issued by the State Government was in conformity with the Government Instructions and no fault could be found with the same. A.M. Khan having been rightly appointed at number one in accordance with the Government Instructions he would rank senior to B.K. Doreswamy in the cadre of Assistant Stores/Purchase Officers.

F For the reasons recorded above, we allow the appeal, set aside the order of the learned single Judge dated November 26, 1982 and of the Division Bench dated June 17, 1986 and dismiss the writ petition filed by B.K. Doreswamy before the High Court. No. costs.

A.G.

Appeal allowed.