

A A.P. PUBLIC SERVICE COMMISSION

v.

BALOJI BADHAVATH & ORS.
(Civil Appeal No. 2244 of 2009)

APRIL 8, 2009

B

[S.B. SINHA AND CYRIAC JOSEPH, JJ.]

CONSTITUTION OF INDIA, 1950:

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Articles 14, 16, 335 – Reservation in recruitment –
Andhra Pradesh Subordinate Service Rules, 1996, 22 and
22A – Validity and applicability of.

ANDHRA PRADESH SUBORDINATE SERVICE
RULES, 1996:

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Rules 4, 22 and 22A – Reservation in appointments –
Protection of – Constitutional validity of.

LOCUS STANDI:

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Public Service Commission – Selection Procedure –
Locus standi of the Commission – Held it could maintain the
writ petition.

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The Government of Andhra Pradesh used to issue
orders laying down norms to be adopted for filling up of
vacancies in Group-I services in the State. The selection
process contained preliminary examination and main
examination followed by interview. For the preliminary
and main examination, two criteria used to be adopted,
one for the general category and the other for the
reserved category. The said procedure came to be
challenged before the High Court. On the basis of the
judgment of the High Court, the State issued fresh G.O.
providing that the candidates who had applied for Group-

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I services would be shortlisted based on preliminary examination (Screening Test) in the ratio of 1:50 to the total no. of vacancies available at the material time irrespective of community. In accordance with the said G.O. a Notification was issued in 2003 calling applications for Group-I services. The Notification was challenged in a writ petition but without success.

A Notification was issued in 2007 notifying 196 vacancies. 1,68,000 candidates applied and 9800 candidates were shortlisted to take the main examination. Some of the unsuccessful candidates approached the State Tribunal. The application was dismissed by the Tribunal. Aggrieved, the unsuccessful candidates filed a writ petition in the High Court. The High Court directed the Commission to prepare a statement showing the ratio as also category-wise data of the candidates permitted to appear for the Main examination as per the Commission; that despite noticing the ratio laid down, in regard to certain category of candidates, as for example, OC, BC(C), BC(E), women and physically handicapped candidates, in its earlier decisions in S. Jafeer Saheb as also in G. Raju, it was held that in the said case as the ratio of the candidates in respect of those categories fell much short of 1:15 ratio, the said GOMs dated 31.12.1997 as also the notification dated 27.12.2007 were held to be ultra vires Articles 14 and 16 of the Constitution of India. Hence the appeal.

Allowing the appeal, the Court

HELD:1. The Constitution of India lays down provisions both for protective discrimination as also affirmative action. Reservation of posts for the disadvantaged class of people as also seats in educational institutions are provided for by reason of Articles 15 and 16 of the Constitution of India. Reservation

A made for the members of the Scheduled Castes,
Scheduled Tribes and other Backward Classes, however,
is subject to Article 335 of the Constitution of India.
Concededly, no citizen of India can claim reservation as
a matter of right. The provisions contained in Articles 15
B and 16 of the Constitution of India are merely enabling
provisions. No writ of or in the nature of mandamus, thus,
could be issued. [Para 17] [705-G, H; 706-A]

C *C.A. Rajendran v. Union of India & Others*, (1968) 1 SCR
721; *Indra Sawhney and Others v. Union of India and Others*
1992 Supp (3) SCC 217; *Ajit Singh and Others (II) v. State*
of Punjab and Others (1999) 7 SCC 209 and *State of Punjab*
and Others v. Manjit Singh and Others (2003) 11 SCC 559,
relied on.

D 2. Appellant - Commission which has been
constituted in terms of Article 315 of the Constitution of
India is bound to conduct examination for appointment
to the services of the State in terms of the Rules framed
by the State. It is, however, free to evolve procedure for
E conduct of examination. While conducting the
examination in a fair and transparent manner as also
following known principles of fair play, it cannot
completely shut its eyes to the constitutional
requirements of Article 335 of the Constitution of India.
F [Para 21] [707-H; 708-A]

State of Kerala and Another v. N.M. Thomas and Others
(1976) 2 SCC 310, relied on.

G 3. How the Commission would judge the merit of the
candidates is its function. Unless the procedure adopted
by it is held to be arbitrary or against the known
principles of fair play, the superior courts would not
ordinarily interfere therewith. The State framed Rules in
the light of the decision of the High Court in *S. Jafeer*

Saheb. Per se, it did not commit any illegality. The correctness of the said decision, is not in question having attained finality. The matter, however, would be different if the said rules per se are found to be violative of Article 16 of the Constitution of India. Nobody has any fundamental right to be appointed in terms of Article 16 of the Constitution of India. It merely provides for a right to be considered therefor. A procedure evolved for laying down the mode and manner for consideration of such a right can be interfered with only when it is arbitrary, discriminatory or wholly unfair. [Para 22] [709-E-G]

S. Jafeer Saheb v. State of Andhra Pradesh 1985 (2) APLJ 380 and *G. Raju v. Government of A.P. rep. by its Secretary*, (Writ Petition No. 24247 of 2004 decided on 31.12.2004), referred to.

4.1. Indisputably, the preliminary examination is not a part of the main examination. The merit of the candidate is not judged thereby. Only an eligibility criterion is fixed. The papers for holding the examination comprise of General Studies and Mental Ability. Such a test must be held to be necessary for the purpose of judging the basic eligibility of the candidates to hold the tests. How and in what manner the State as also the Commission would comply with the constitutional requirements of Article 335 of the Constitution of India should ordinarily not be allowed to be questioned. [Para 25] [712-E, F]

4.2. The proviso appended to Article 335 of the Constitution, cannot be said to have any application whatsoever in this case. Lowering of marks for the candidates belonging to the reserved candidates is not a constitutional mandate at the threshold. It is permissible only for the purpose of promotion. Those who possess the basic eligibility would be entitled to appear at the main examination. While doing so, in regard to General

A English whereas the minimum qualifying marks are 40%
for OCs, it would be 35% for BCs and 30% for SC/STs
and physically handicapped persons. However, those
marks were not to be counted for ranking. Candidates
B belonging to the reserved categories as specified in the
notification are not required to pay any fee. Their age is
relaxed upto five years. It is, therefore, not correct to
contend that what is given by one hand is sought to be
taken by another. They can, thus, appear in the
examination for a number of times. Indisputably, the right
C conferred upon the writ-petitioners - respondents in
terms of Rules 22 and 22-A of the Andhra Pradesh State
and Subordinate Service Rules, 1996 was to be protected.
The extent of relaxation has been recognized. By reason
of such a provision, the right to be considered has not
D been taken away. [Para 25] [712-G, H; 713-A-D]

Chattar Singh v. State of Rajasthan (1996) 11 SCC 742
and *Pitta Naveen Kumar and Others v. Raja Narasaiah*
Zangiti and Others (2006) 10 SCC 261, referred to.

E 5.1. Judging of merit may be at several tiers. It may
undergo several filtrations. Ultimately, the constitutional
scheme is to have the candidates who would be able to
serve the society and discharge the functions attached
to the office. Vacancies are not filled up by way of charity.
F Emphasis has all along been made, times without
number, to select candidates and/ or students based
upon their merit in each category. The disadvantaged
group or the socially backward people may not be able
to compete with the open category people but that would
not mean that they would not be able to pass the basic
G minimum criteria laid down therefor. [Para 26] [713-E, F]

5.2. Merit is not the monopoly of people living in
urban areas. The State must adopt some criteria. It having
regard to its limited resources cannot allow lakhs and
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lakhs of candidates to appear at the examination as also at the interview. It is bound to devise some procedure to shortlist the candidates. Rule 4 of the Andhra Pradesh Public Service Commission Rules of Procedure which refers to Rules 22 and 22-A of the Andhra Pradesh State and Subordinate Service Rules, 1996 would apply only where shortlisting is done. The first part of the said Rule empowers the Commission to restrict the number of candidates to be called for interview to such extent as it may deem fit. While shortlisting, however, it may hold a written test or provide for a preferential or higher qualification and experience and only for that purpose it is required to take into account the requirements with reference to Rules 22 and 22A of the Andhra Pradesh State and Subordinate Service Rules, 1996 and the rule of reservation in favour of local candidates. [Para 28] [714-C-E]

Sangram Singh v. Election Tribunal, Kotah, Bhurey Lal Baya (1955) 2 SCR 1 and Akhil Bharatiya Soshit Karamchari Sangh (Railway) v. Union of India and Others (1981) 1 SCC 246, held inapplicable.

Ashoka Kumar Thakur v. Union of India and Others (2008) 6 SCC 1, referred to.

"Words and Phrases", Permanent Edition, Volume 22A, page 506 and "Advanced Law Lexicon", 3rd edition, 2005, page 907, referred to.

6. If category-wise statement is prepared, as has been directed by the High Court, it may be detrimental to the interest of the meritorious candidates belonging to the reserved categories. The reserved category candidates have two options. If they are meritorious enough to compete with the open category candidates, they are recruited in that category. The candidates below them would be considered for appointment in the

A reserved categories. This is now a well-settled principle of law as has been laid down by this Court in several decisions. [Para 37]

Union of India and Anr. v. Satya Prakash and Ors. (2006) 4 SCC 550; Ritesh R. Shah v. Dr. Y.L. Yamul (1996) 2 SCR 695 and R.K. Daria v. Rajasthan Public Service Commission, (2007) 8 SCC 785, relied on.

C 7. Reservation for women, handicapped etc. is on a horizontal basis. Reservation to the category of candidates has to be given irrespective of the class or category of candidates. A final selection has to be made. If such a procedure, as directed by the High Court, is to be taken recourse to, the same would give rise to a complexity. [Para 39] [717-E-G]

D 8. So far as the question of locus standi of the appellant to file the Special Leave Petition is concerned, it has the locus standi. The High Court not only has set aside the GOMs dated 31.12.1997 but it has also set aside the notification dated 27.12.2007. If the High Court's judgment is to be implemented, a fresh selection procedure has to be undertaken by the appellant. Furthermore, in terms of Order 41, Rule 4 of the Code of Civil Procedure, the appellate court, in the event, finds merit in the appeal at the instance of one of the respondents may set aside the entire judgment although another respondent had not appealed thereagainst. The Commission had undertaken the task of holding preliminary examination. It had followed the procedure laid down in its notification issued in this behalf and the GOMs issued by the State. It, therefore, could maintain a writ petition. [Para 40 and 41] [718-D-F]

Thammanna v. K. Veera Reddy Ors. (1980) 4 SCC 62 : (1981) 1 SCR 73 and A.P. Public Service Commission v. P.

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Chandra Mouleesware Reddy (2006) 8 SCC 330, held A
inapplicable.

Case Law Reference:

(1968) 1 SCR 721	relied on	
1992 Supp (3) SCC 217	relied on	B
(1999) 7 SCC 209	relied on	
(2003) 11 SCC 559	relied on	
(1976) 2 SCC 310	relied on	C
1985 (2) APLJ 380	referred to	
(1996) 11 SCC 742	referred to	
(2006) 10 SCC 261	referred to	D
(1955) 2 SCR 1	held inapplicable	
(1981) 1 SCC 246	held inapplicable	
(2008) 6 SCC 1	referred to	
(2006) 4 SCC 550	relied on	E
(1996) 2 SCR 695	relied on	
(2007) 8 SCC 785	relied on	
(1980) 4 SCC 62	:	F
(1981) 1 SCR 73	held inapplicable	
(2006) 8 SCC 330	held inapplicable	

CIVIL APPELLATE JURISDICTION : Civil Appeal No. G
2244 of 2009.

From the Judgment & Order dated 23.7.2008 of the High
Court of Andhra Pradesh in Writ Petition No. 16029 of 2008.

A Guntur Prabhakar for the Appellants.

D. Mahesh Babu, D. Bharathi Reddy and C.S.N. Mohan Rao for the Respondents.

B The Judgment of the Court was delivered by

S.B. SINHA, J. 1. Leave granted.

C 2. Andhra Pradesh Public Service Commission is before us aggrieved by and dissatisfied with a judgment and order dated 23.07.2008 passed by a Division Bench of the Andhra Pradesh High Court in Writ Petition No. 16029 of 2008.

D 3. The Government of Andhra Pradesh used to issue orders laying down norms to be adopted for filling up of vacancies in Group – I services in the State comprising of Deputy Collectors, Commercial Tax Officers, Assistant Prohibition and Excise Superintendents, Assistant Commissioner of Labour, Deputy Superintendent of Police Category-2, Divisional Fire Officers, District Registrars, Assistant Audit Officer and Assistant Treasury Officer/ Assistant Accounts Officer. The selection process takes place in two phases; the first being holding of an examination for the purpose of shortlisting of the candidates and the second being holding of the main examination followed by interview.

F 4. Both for preliminary examination as also the main examination, two criteria used to be adopted; one for the general category candidates and other for the reserved category candidates.

G 5. Validity of the said procedure came up for consideration before a Division Bench of the Andhra Pradesh High Court as far back in the year 1984 in *S. Jafeer Saheb v. State of Andhra Pradesh* [1985 (2) APLJ 380]. Indisputably, a similar question came up for consideration again in *G. Raju v. Government of A.P. rep. by its Secretary* [Writ Petition No. 24247 of 2004 decided on 31.12.2004]

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In *S. Jafeer Saheb* (supra), the contention of the State was that the reservation of posts used to be made while admitting the candidates for examination itself and not in the final selection in the ratio of 1:15. The question which, thus, posed, was as to whether admission of candidates for the main examination by applying compensatory preference even at the stage of admission in the main examination is violative of Articles 14 and 16 of the Constitution of India. Taking note of the provisions contained in Articles 14, 16 and 335 of the Constitution of India, the High Court held:

“11. The purpose of holding a screening test is to ensure the basic standard of eligibility of the candidates and even at the stage of admission to the main examination the rule of reservation of posts cannot be applied. Reservation for applicants is not permissible under Art. 16(4).”

12. The learned Advocate-General submits that if reservation rule is not followed even at the stage of admitting candidates for the main examination, a reserved vacancy is likely to remain unfilled. It is nobody's case that as many candidates as there are reserved vacancies have not been qualified for the main examination. Is there any rule of relaxation based on reservation for a pass in the H.S.C. Examination or Intermediate Examination or B.A. Examination? There can be no relaxation or waiver of a basic standard of performance. There can be no compromise with the maintenance of administrative efficiency which is barred by Art. 335 of the Constitution.”

It was furthermore held:

“14. Time is now ripe for Courts to lay down the limits to the lowering of standards for the purpose of compensatory preference. The intensity of compensatory preference cannot be at the expense of even-handedness and merit and cannot proliferate to such an extent as to prove fatal to the basic proficiency and efficiency. The intensity must

A vary depending on the nature of the compensatory discrimination whether it is primarily for individual benefit or whether the quality of public service is directly affected. Krishna Iyer, J., observed in *State of Kerala v. N.M. Thomas* that “to relax basic qualification is to compromise with the minimum administrative efficiency and is presumably barred by Art. 335”. Lowering of standards for the purpose of compensatory discrimination is limited to competing commitments to efficient administration.

C Public interest demands concern for quality and prohibits waiver or abandonment of quality. In *Janki Prasad v. State of Jammu & Kashmir*, the Supreme Court observed that the setting of absurdly low minimal scores made it a “travesty of selection”.

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E 16...When a candidate is ineligible or does not come up to a basic standard, no relaxation can be granted. As already pointed out such concession of preference based on reservation is not granted for a pass in the H.S.C. Examination or Intermediate Examination or BA Degree Examination, because they are eligibility test and not proficiency test.”

F 6. Indisputably, pursuant to or in furtherance of the said judgment of the High Court dated 28.12.1984, the State of Andhra Pradesh issued fresh G.O.Ms. No. 570 dated 31.12.1997, providing that the candidates who had applied for Group – I services would be shortlisted based on a preliminary examination (Screening Test) in the ratio of 1:50 to the total number of vacancies available at the material time irrespective of community, the relevant portions whereof read as under:

H “...The number of candidates to be admitted to the Written examination (Convention Type) would be 50 (fifty) times to the total number of vacancies available at material time

irrespective of communities.

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3. The papers except paper 2, i.e., General English may be answered in English or Telugu or Urdu chosen by the candidates. However, a candidate is not permitted to write part of the paper in English and part of it in Telugu.

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4. The paper on General English is a qualifying one and the standard of this paper is that of S.S.C. The minimum qualifying marks in this paper are 40% for O.Cs. 35% for B.Cs. and 30% for SC/STs and P.H. These marks are not counted for ranking.

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5. In the event of the S.C. and S.T. candidates not coming up for selection with the existing minimum prescribed for the selection in the competitive examination conducted by the commission, their selection shall be considered on the basis of rank with reference to their performance in the written and Oral competitive examination."

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7. Indisputably, when in terms of the said GOMs, a notification in Advertisement No. 21 of 2003 calling applications for Group – I Services was issued in the year 2003, another writ application came to be filed by G. Raju and seven others questioning the legality thereof.

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The Andhra Pradesh High Court by a judgment an order dated 31.12.2004 passed in Writ petition No. 24247 of 2004, opined:

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"13. The contention of the learned counsel for the petitioners is that at least the ratio of 1:50 should be maintained in respect of each post reserved for community reservation, in such an event, it will enable the reserved candidates to effectively participate in the selection and candidates from out of them would be selected within the reservation category, but this contention though appears to be appealing, cannot be accepted. There cannot be any upper limit. If this has to be taken into consideration, then

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A 1:50 ratio should be considered to be appropriate and reasonable, and inasmuch as it is assured by the A.P.P.S.C. that there will not be any carry forward vacancies, we are not inclined to interfere with the order passed by the Tribunal."

B However, in that writ petition, the validity of GOMs dated 31.12.1997 was not in question.

C 8. A notification bearing No. 31 of 2007 was issued for Group – I Services Direct Recruitment (General) on 27.12.2007 notifying 196 vacancies; *inter alia* laying down:

D "3. Caste & Community: Community Certificate issued by the competent authority in terms of G.O.Ms No. 58, SW(J) Dept., dt: 12/5/97 should be submitted at appropriate time. As per General Rules for State and Subordinate Service Rules, Rule 2(28) Explanation: - No person who professes a religion different from Hinduism shall be deemed a member of scheduled caste. BCs, SCs & STs belonging to other States are not entitled for reservation, candidates belonging to other States shall pay the prescribed fee of Rs. 120/- (One hundred and Twenty only) through I.P.O. Otherwise such applications will not be considered and no correspondence on this will be entertained.

F 4. Reservation for local candidates is not applicable as per concerned Departmental Special Rules, except Post Code – 8, i.e., AAO in AP State Audit Service.

G 5. Reservation and eligibility in terms of General Rule 22 & 22-A of A.P. State and Subordinate Service Rules are applicable.

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H 10. The Reservation to Women will apply as per General Rules. For P.C. No. 066, women candidates are not eligible."

Relaxation of age was granted for the SC/ST and BCs candidates by five years. The reserved categories of candidates were exempted from payment of fees.

9. Pursuant to or in furtherance of the said notification, 1,68,000/- candidates applied. A preliminary examination was held for all the candidates. Having regard to the ratio of the number of candidates to be admitted for main examination being 1: 50, 9,800 candidates were shortlisted to take the main examination.

10. Respondents herein appeared at the said preliminary examination without any demur whatsoever. They, however, having not been shortlisted filed an original application before the Andhra Pradesh State Administrative Tribunal. The said original application was dismissed.

11. Aggrieved by and dissatisfied therewith, they filed a writ petition before the Andhra Pradesh High Court which by reason of the impugned judgment has been allowed. The Commission was impleaded as a party in the writ petition.

The High Court, however, directed the Commission to prepare a statement showing the ratio as also category-wise data of the candidates permitted to appear for the Main examination as per the Commission. Despite noticing the ratio laid down, in regard to certain category of candidates, as for example, OC, BC(C), BC(E), women and physically handicapped candidates, in its earlier decisions in *S. Jafeer Saheb* (supra) as also in *G. Raju* (supra), it was held that in the said case as the ratio of the candidates in respect of those categories fell much short of 1:15 ratio, the said GOMs dated 31.12.1997 as also the notification dated 27.12.2007 were held to be ultra vires Articles 14 and 16 of the Constitution of India.

It was stated that both in *S. Jafeer Saheb* (supra) as also in *G. Raju* (supra), the GOMs No. 570 dated 31.12.1997 was not challenged at all.

A The notification dated 27.12.2007 was said to be contrary to the principles of natural justice as also Articles 14 and 16 of the Constitution of India on the following premise:

- B (i) Non-implementation of community-wise reservation attracts the wrath of Article 16 of the Constitution of India.
- C (ii) The right of reservation must be recognized at all levels. Although S. Jafeer Saheb (supra) as also G. Raju (supra) lay down good law but as community – wise reservation did not fall for consideration therein, the said decisions were not binding upon it.
- D (iii) Non-fixation of a cut-off mark for each category of community would also be violative of Articles 14 and 16 of the Constitution of India.

E 12. Mr. L. Nageshwara Rao, learned senior counsel appearing on behalf of the appellant and Mr. R. Sundaravaradhan, learned senior counsel appearing on behalf of the respondent – State, would contend:

- F (i) As Article 16(4) of the Constitution of India provides for an enabling provision, no writ of mandamus could be issued.
- G (ii) Right of the candidates being only to be considered for selection in terms of the extant rules, the High Court committed an error in passing the impugned judgment.
- H (iii) The impugned judgment would be detrimental to the interests of the meritorious candidates belonging to the reserved category.
- (iv) The writ petitioners - respondents having failed to qualify in the preliminary examination, are estopped

and precluded from questioning the validity of GOMs No. 570 or the notification dated 27.12.2007 issued by the appellant – Commission. A

- (v) Reservation for women and physically handicapped persons being an incident of horizontal reservation and not a vertical reservation, the impugned judgment cannot be sustained. B

13. Mr. P.P. Rao, learned senior counsel appearing on behalf of the respondents, however, while conceding that the writ petitioners – respondents cannot claim any right of reservation and no writ of mandamus can be issued, contended: C

- (i) As the Constitution contemplates upliftment of weaker sections by providing a percentage of seats for employment in the State and having regard to the fact that both clauses (1) and (4) of Article 16 of the Constitution of India provide for valid classification, the impugned judgment should not be interfered with. D E

- (ii) Judging of the merit of the candidates having regard to the provisions of Article 335 of the Constitution of India per se should not allow the State and the Commission to stop all the candidates at the first gate and then prevent them from appearing at the main examination as thereby constitutional scheme to provide reservation would be frustrated to a great extent. F

- (iii) The means to achieve the constitutional object and the goals should not be defeated by inserting procedural provisions as a result whereof what is being given by one hand should not be permitted to be taken away by the other. G

- (iv) Reservation made in favour of women, physically H

A handicapped, etc., although pertains to horizontal reservation, the candidates of the said categories cannot be treated differently.

B (v) A candidate only by appearing in an examination cannot waive his fundamental or a statutory right.

C (vi) The State having provided for reservation in terms of Rules 22 and 22-A of the Andhra Pradesh State and Subordinate Service Rules, 1996 and furthermore, such a right having also been created in terms of Regulation 14-A of the Andhra Pradesh Public Service Commission Regulations, 1963, the writ petitioners – respondents obtained an indefeasible right for consideration of their candidature so as to enable them to compete with other candidates for appointment in the said post which cannot be permitted to be taken away by reason of the impugned GOMs No. 570 and the notification dated 27.12.2007.

E (vii) The expression “irrespective of communities” used in GOMs No. 570 even otherwise cannot be read in such a manner so as to violate the constitutional scheme, as reservation is not based on any religion or race, particularly in view of the fact that the makers of the Constitution of India thought of a casteless and classless society.

F (viii) The High Court having declared the GOMs No. 570 as unconstitutional and the State having not preferred any special leave petition thereagainst, the Andhra Pradesh Public Service Commission cannot be said to have any locus standi to maintain this appeal.

G 14. The vacancies which were to be filled up by the State pertained to Group – I services. The State indisputably subject

to the constitutional limitations having regard to its power contained in the proviso appended to Article 309 of the Constitution of India is entitled to frame rules laying down the mode and manner in which vacancies are to be filled up.

15. If the State has the legislative competence to frame rules, indisputably, it can issue governmental orders in exercise of its power under Article 162 of the Constitution of India. It adopted one procedure. It was held to be ultra vires by the Andhra Pradesh High Court in *S. Jafeer Saheb* (supra). It attained finality. The State amended the procedure in the light of the said decision by GOMs No. 570 dated 31.12.1997. No new policy was laid down which can be said to be contrary to or inconsistent with the decision of the Andhra Pradesh High Court in *S. Jafeer Saheb* (supra). A notification containing similar provisions issued by the Andhra Pradesh Public Service Commission in 2003 was questioned. It may be true that the validity of the GOMs itself was not questioned but if the terms of the notification were held to be unconstitutional, GOMs could have also been declared as such.

16. The Division Bench of the High Court indisputably was bound by the said decision. It, however, proceeded to examine the constitutionality of the GOMs dated 31.12.1997 and the notification dated 27.12.2007 *inter alia* on the premise that the validity of the said GOM and the notification was not tested on the touchstone of Articles 14 and 16 of the Constitution of India.

17. The Constitution of India lays down provisions both for protective discrimination as also affirmative action. Reservation of posts for the disadvantaged class of people as also seats in educational institutions are provided for by reason of Articles 15 and 16 of the Constitution of India. Reservation made for the members of the Scheduled Castes, Scheduled Tribes and other Backward Classes would, however, be subject to Article 335 of the Constitution of India. Concededly, no citizen of India can claim reservation as a matter of right. The provisions contained in Articles 15 and 16 of the Constitution of India are

- A merely enabling provisions. No writ of or in the nature of mandamus, thus, could be issued. [See *C.A. Rajendran v. Union of India & Others*, (1968) 1 SCR 721 at 731-733, *Indra Sawhney and Others v. Union of India and Others* [1992 Supp (3) SCC 217, para 165 to 169, 428 to 432, 741 and 742, *Ajit Singh and Others (II) v. State of Punjab and Others* (1999) 7 SCC 209, para 32 to 39, *State of Punjab and Others v. Manjit Singh and Others* (2003) 11 SCC 559, para 7 and 12]

C 18. The State, however, have made provisions for reservation. Indisputably, the appellant – Commission has made regulations known as Andhra Pradesh Public Service Commission Regulations, 1963, Regulation 14-A whereof reads as under:

D “It shall be necessary for the Commission in the matter of recruitment to the posts and services to strictly adhere to wherever applicable the provisions contained:

(i) in the General Rule 22 and 22-A;”

E 19. The rules of procedure for holding the said examination have also been prescribed known as the Andhra Pradesh Public Service Commission Rules of Procedure; Rule 4 whereof reads as under:

F “4. Where a direct recruitment is to be made by selection, i.e., after interview only, and where the number of qualified petitioners is unduly large having regard to the actual number of vacancies available, the Commission may restrict the number of candidates to be called for interview to such extent as it may deem fit. Such shortlisting may be done by the Commission either by holding a written test or on the basis of preferential or higher qualifications and experience and after taking into account the requirements with reference to the Rules 22, 22-A of the General Rules for State and Subordinate Services and the Rule of reservation in favour of local candidates where they are

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applicable.”

20. The State of Andhra Pradesh in exercise of its power conferred upon it by the proviso appended to Article 309 of the Constitution of India framed rules known as the Andhra Pradesh State and Subordinate Service Rules, 1996. Rules 22 and 22-A thereof indisputably provide for reservation for appointments to a service, class or category in favour of Scheduled Castes, Scheduled Tribes, Backward Classes, women, physically handicapped, meritorious sportsmen, ex-servicemen, etc. Special rules and *ad hoc* rules have also been made for reservation of women by way of Rule 22-A thereof, stating:

“22-A. Women reservation in appointment:
Notwithstanding anything contained in these rules or special rules or Adhoc Rules:

(1) In the matter of direct recruitment to posts for which women are better suited than men, preference shall be given to women:

Provided that such absolute preference to women shall not result in total exclusion of men in any category of posts.

(2) In the matter of direct recruitment to posts for which women and men are equally suited, there shall be reservation to women to an extent to 33 1/3% of the posts in each category of Open Competition, Backward Classes (Group – A), Backward Classes (Group – B), Backward Classes (Group – C), Backward Classes (Group – D), Scheduled Castes, Scheduled Tribes and Physically Handicapped and Ex-servicemen quota:...”

21. Appellant - Commission which has been constituted in terms of Article 315 of the Constitution of India is bound to conduct examination for appointment to the services of the State in terms of the Rules framed by the State. It is, however,

A free to evolve procedure for conduct of examination. While conducting the examination in a fair and transparent manner as also following known principles of fair play, it cannot completely shut its eyes to the constitutional requirements of Article 335 of the Constitution of India, which reads as under:

B "335 - Claims of Scheduled Castes and Scheduled Tribes to services and posts

C The claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State:

D Provided that nothing in this article shall prevent in making of any provision in favour of the members of the Scheduled Castes and the Scheduled Tribes for relaxation in qualifying marks in any examination or lowering the standards of evaluation, for reservation in matters of promotion to any class or classes of services or posts in connection with the affairs of the Union or of a State."

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In *State of Kerala and Another v. N.M. Thomas and Others* [(1976) 2 SCC 310], this Court opined:

F "41. Article 335 of the Constitution states that claims of members of the Scheduled Castes and scheduled tribes shall be taken into consideration in the making of appointments to the services and posts in connection with affairs of the State consistent with the maintenance of efficiency of administration. The impugned rule and the impugned orders are related to this constitutional mandate. Without providing for relaxation of special tests for a temporary period it would not have been possible to give adequate promotion to the lower division clerks belonging to Scheduled Castes and scheduled tribes to the posts of

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upper division clerks. Only those lower division clerks who were senior in service will get the benefit of the relaxation contemplated by Rule 13-AA and the impeached orders. Promotion to upper division from lower division is governed by the rule of seniority subject only to passing of the qualified test. The temporary relaxation of test qualification made in favour of Scheduled Castes and scheduled tribes is warranted by their inadequate representation in the services and their overall backwardness. The classification of the members of the Scheduled Castes and scheduled tribes already in service made under Rule 13-AA and the challenged orders for exempting them for a temporary period from passing special tests are within the purview of constitutional mandate under Article 335 in consideration of their claims to redress imbalance in public service and to bring about parity in all communities in public services."

22. How the Commission would judge the merit of the candidates is its function. Unless the procedure adopted by it is held to be arbitrary or against the known principles of fair play, the superior courts would not ordinarily interfere therewith. The State framed Rules in the light of the decision of the High Court in *S. Jafeer Saheb* (supra). Per se, it did not commit any illegality. The correctness of the said decision, as noticed hereinbefore, is not in question having attained finality. The matter, however, would be different if the said rules per se are found to be violative of Article 16 of the Constitution of India. Nobody has any fundamental right to be appointed in terms of Article 16 of the Constitution of India. It merely provides for a right to be considered therefor. A procedure evolved for laying down the mode and manner for consideration of such a right can be interfered with only when it is arbitrary, discriminatory or wholly unfair.

23. We may notice that in *Chattar Singh v. State of Rajasthan* [(1996) 11 SCC 742], Rule 13 of the Rajasthan

A State and Subordinate Services (Direct Recruitment by Combined Competitive Examinations) Rules, 1962 prescribing the mode of conducting preliminary as also main examination had been interpreted, opining :

B "...What requires to be done is that the Public Service Commission has to consider the number of vacancies notified or likely to be filled in the year of recruitment for which notification was published. Then candidates who had appeared for the Preliminary Examination and qualified for Main Examination are to be screened by the test. The object is to eliminate unduly long list of candidates so that opportunity to sit for Main Examination should be given to candidates numbering 15 times the notified posts/vacancies in various services; in other words for every one post/vacancy there should be 15 candidates. There would be wider scope to get best of the talent by way of competition in the examination. The ultimate object is to get at least three candidates or as is prescribed, who may be called for viva voce. Therefore, the lowest range of aggregate marks as cut-off for general candidates should be so worked out as to get the required number of candidates including OBCs, Scheduled Castes and Scheduled Tribes. The lowest range would, therefore, be worked out in such a way that candidates numbering 15 times the notified posts/vacancies would be secured so as to afford an opportunity to the candidates to compete in the Main Examination.

G 15. Under the proviso, if that range has not been reached by the candidates belonging to the SCs or the STs, there may be 5% further cut-off from the last range worked out for the general candidates so as to declare them as qualified for appearing in the Main Examination. In other words, where candidates belonging to the SCs and STs, numbering 15 times the total vacancies reserved for them are not available then the Service Commission has to go

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down further and cut off 5% of the marks from the lowest of the range prescribed for general candidates and then declare as eligible the SC and ST candidates who secured 5% less than the lowest range fixed by PSC for general candidates so as to enable them to appear for the Main Examination. The candidates who thus obtain qualifying marks are eligible to appear and write the Main Examination. The respective proportion of 1:3 or as may be prescribed and candidates who qualified in the Main Examination will be called by the Commission, in their discretion, for interview. The Commission shall award marks to each candidate interviewed by them, having regard to their character, personality, address, physique and knowledge of Rajasthani culture as is in vogue as per rules. However, for selection to the Rajasthan Police Service, candidates having 'C' Certificate of NCC will be given preference. The marks so awarded shall be added to the marks obtained in the Main Examination by each such candidate.

16. In working out this procedure, if the minimum of 15 times of the candidates are identified and results declared, it would not be necessary to pick up more General/ Reserved candidates. It would not be necessary to declare the result of more than 15 times the total notified vacancies/ posts so as to enable them to compete in the Main Examination. The object of screening test is to eliminate unduly long number of persons to appear for Main Examination. If more candidates are called by declaring their result in Preliminary Examination, the object of Rule 13 would be frustrated."

24. The Commission contends that in all the past examinations held, the vacancies pertaining to the reserved categories had been filled up. The vacancies were not required to be carried forward as sufficient numbers of candidates belonging to the reserved category were available. It is in the

A aforementioned context, a statement was made in *G. Raju* (supra) that the Commission shall not carry forward the vacancies.

B In *Pitta Naveen Kumar and Others v. Raja Narasaiah Zangiti and Others* [(2006) 10 SCC 261], this Court held:

C “52. The authority of the State to frame rules is not in question. The purport and object for which the said notifications were issued also cannot be said to be wholly arbitrary so as to attract the wrath of Article 14 of the Constitution of India. The appellants herein no doubt had a right to be considered but their right to be considered along with other candidates had not been taken away. Both the groups appeared in the preliminary examination. Those who had succeeded in the preliminary examination were, however, allowed to sit in the main examination and the candidature of those had been taken into consideration for the purpose of viva voce test who had passed the written examination.”

E 25. Indisputably, the preliminary examination is not a part of the main examination. The merit of the candidate is not judged thereby. Only an eligibility criterion is fixed. The papers for holding the examination comprise of General Studies and Mental Ability. Such a test must be held to be necessary for the purpose of judging the basic eligibility of the candidates to hold the tests. How and in what manner the State as also the Commission would comply with the constitutional requirements of Article 335 of the Constitution of India should ordinarily not be allowed to be questioned.

G The proviso appended to Article 335 of the Constitution, to which our attention has been drawn by Mr. Rao, cannot be said to have any application whatsoever in this case. Lowering of marks for the candidates belonging to the reserved candidates is not a constitutional mandate at the threshold. It

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is permissible only for the purpose of promotion. Those who possess the basic eligibility would be entitled to appear at the main examination. While doing so, in regard to General English whereas the minimum qualifying marks are 40% for OCs, it would be 35% for BCs and 30% for SC/STs and physically handicapped persons. However, those marks were not to be counted for ranking. We have noticed hereinbefore, that candidates belonging to the reserved categories as specified in the notification are not required to pay any fee. Their age is relaxed upto five years. It is, therefore, not correct to contend that what is given by one hand is sought to be taken by another. They can, thus, appear in the examination for a number of times. Indisputably, the right conferred upon the writ-petitioners – respondents in terms of Rules 22 and 22-A of the Andhra Pradesh State and Subordinate Service Rules, 1996 was to be protected. The extent of relaxation has been recognized. By reason of such a provision, the right to be considered has not been taken away.

26. Judging of merit may be at several tiers. It may undergo several filtrations. Ultimately, the constitutional scheme is to have the candidates who would be able to serve the society and discharge the functions attached to the office. Vacancies are not filled up by way of charity. Emphasis has all along been made, times without number, to select candidates and/ or students based upon their merit in each category. The disadvantaged group or the socially backward people may not be able to compete with the open category people but that would not mean that they would not be able to pass the basic minimum criteria laid down therefor.

27. We have been informed at the bar that 12 handicapped people have appeared at the main examination and, thus, it would be possible to fill up the posts even from that category of candidates.

28. Submission of Mr. Rao that by reason of such a

- A process, only the forward sections of backward classes who have the advantage of undergoing coaching classes, etc. would be given preference may not be correct. No statistical data had been placed before the High Court or before us. We have not been furnished any information as to on what basis, such a contention could be raised. All the candidates are highly educated. Merit is not the monopoly of people living in urban areas. The State must adopt some criteria. It having regard to its limited resources cannot allow lakhs and lakhs of candidates to appear at the examination as also at the interview. It is bound to devise some procedure to shortlist the candidates. Rule 4 of the Andhra Pradesh Public Service Commission Rules of Procedure which refers to Rules 22 and 22-A of the Andhra Pradesh State and Subordinate Service Rules, 1996 would apply only where shortlisting is done. The first part of the said Rule empowers the Commission to restrict the number of candidates to be called for interview to such extent as it may deem fit. While shortlisting, however, it may hold a written test or provide for a preferential or higher qualification and experience and only for that purpose it is required to take into account the requirements with reference to Rules 22 and 22A of the Andhra Pradesh State and Subordinate Service Rules, 1996 and the rule of reservation in favour of local candidates.

29. Strong reliance has been placed by *Mr. Rao on Sangram Singh v. Election Tribunal, Kotah, Bhurey Lal Baya* [(1955) 2 SCR 1] wherein Vivian Bose. J., stated as under:

- "Now a code of procedure must be regarded as such. It is procedure, something designed to facilitate justice and further its ends: not a penal enactment for punishment and penalties; not a thing designed to trip people up. Too technical a construction of sections that leaves no room for reasonable elasticity of interpretation should therefore be guarded against (provided always that justice is done to both sides) lest the very means designed for the furtherance of justice be used to frustrate it."

The said observation was made keeping in view the concept of justice. By reason of providing for a preliminary examination, the right of the reserved category candidates has not been taken away. The means cannot be allowed to defeat the ends which the constitutional scheme seeks to achieve. A

30. Reliance has also been placed by *Mr. Rao on Akhil Bharatiya Soshit Karamchhari Sangh (Railway) v. Union of India and Others* [(1981) 1 SCC 246] wherein this Court held: B

"76. Proceeding on this footing, the fundamental right of equality of opportunity has to be read as justifying the categorisation of SCs & STs separately for the purpose of "adequate representation" in the services under the State. The object is constitutionally sanctioned in terms, as Articles 16 (4) and 46 specificate. The classification is just and reasonable. We may, however, have to test whether the means used to reach the end are reasonable and do not outrun the purposes of the classification. Thus the scope of the case is narrowed down." C D

31. We have proceeded on the same assumption. What was in question in that case was as to whether in matter of promotions reservation of posts for SC/ST candidates is unconstitutional. It is now a settled law that it is not. The said observation *inter alia* was in tone with the opinion of Ray, CJ in *N.M. Thomas* (supra). E

The said observations, in our opinion, have no application to the fact of the present case. F

32. Submission of Mr. Rao is that the expression "irrespective of communities" has wrongly been used. In support of the said contention reliance has been placed on the expression "Irrespective of Race" in the Words and Phrases, Permanent Edition, Volume 22A, page 506, which is in the following terms: G

- A "By Act May 2, 1890, c. 182 § 31, 26 Stat. 94, Sections 566, 567, Mansf. Dig., was extended over Indian Territory with a proviso excepting Indians and their estates. By act June 7, 1897, C.3, § 1, 30 Stat. 83, such laws were made to apply to all persons in the territory "irrespective of race"
- B and by the Curtis Act June 28, 1898, C. 517, § 26, 30 Stat. 504, it was provided that the laws of the Indian tribes should not longer be enforced. Held that by virtue of such provisions, a noncitizen husband of a Creek allottee who died after the birth of a child of the marriage was entitled by the curtesy to a life estate in her allotted lands.
- C *Armstrong v. Wood*, 195 F. 137, 141"

33. The word "community", however, is understood in different senses, keeping in view the purport and object for which the said term is used. It may be given a natural meaning.

- D It may have to be read along with the words 'caste' and 'religion' in which event it will have to have a narrower meaning than the dictionary meaning of a body of people having same common interest. [See Advanced Law Lexicon, 3rd edition, 2005, page 907]

- E 34. Indisputably, when the said words were used, it took its clue from *S. Jafeer Saheb* (supra).

The expression might have been loosely used but its purport and object had been understood by candidates including the writ petitioners. The provisions for holding the preliminary examination were for the purpose of maintaining a basic standard. The High Court has directed deletion of the said words.

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- G 35. Mr. P.P. Rao has relied upon the following paragraph of the decision of this Court in *N.M. Thomas* (supra):

"43. Scheduled Castes and scheduled tribes are not a caste within the ordinary meaning of caste. In *Bhaiyalal v. Harikishan Singh*¹² this Court held that an enquiry whether

the appellant there belonged to the Dohar caste which was not recognised as a scheduled caste and his declaration that he belonged to the Chamar caste which was a scheduled caste could not be premitted because of the provisions contained in Article 341. No court can come to a finding that any caste or any tribe is a scheduled caste or scheduled tribe. Scheduled caste is a caste as notified under Article 366(25). A notification is issued by the President under Article 341 as a result of an elaborate enquiry. The object of Article 341 is to provide protection to the members of Scheduled Castes having regard to the economic and educational backwardness from which they suffer."

36. For the views, we have taken earlier, it is not necessary for us to go into the above mentioned larger question particularly having regard to the recent decision of this Court in *Ashoka Kumar Thakur v. Union of India and Others* [(2008) 6 SCC 1]

37. One other aspect of the matter must be kept in mind.

If category-wise statement is prepared, as has been directed by the High Court, it may be detrimental to the interest of the meritorious candidates belonging to the reserved categories. The reserved category candidates have two options. If they are meritorious enough to compete with the open category candidates, they are recruited in that category. The candidates below them would be considered for appointment in the reserved categories. This is now a well-settled principle of law as has been laid down by this Court in several decisions. [See for example, *Union of India and Anr. V. Satya Prakash and Ors.* (2006) 4 SCC 550, para 18 to 20, *Ritesh R. Shah v. Dr. Y.L. Yamul* (1996) 2 SCR 695 at 700-701, *R.K. Daria v. Rajasthan Public Service Commission*, (2007) 8 SCC 785, para 9]

A 38. As we have entered into the merit of the matter, in our opinion, it is not necessary to determine the question as to whether the writ petitioners – respondents having appeared in the examination were estopped and precluded from filing the writ petition.

B 39. Reservation of women, handicapped etc. is on a horizontal basis. Reservation to the category of candidates has to be given irrespective of the class or category of candidates. A final selection has to be made. If such a procedure, as directed by the High Court, is to be taken recourse to, the same would give rise to a complexity.

C 40. So far as the question of locus standi of the appellant to file this Special Leave Petition is concerned, we are of the opinion that it has the locus standi. The High Court not only has set aside the GOMs dated 31.12.1997 but it has also set aside the notification dated 27.12.2007. If the High Court's judgment is to be implemented, a fresh selection procedure has to be undertaken by the appellant. Furthermore, in terms of Order 41, Rule 4 of the Code of Civil Procedure, the appellate court, in the event, finds merit in the appeal at the instance of one of the respondents may set aside the entire judgment although another respondent had not appealed thereagainst.

D 41. The Commission had undertaken the task of holding preliminary examination. It had followed the procedure laid down in its notification issued in this behalf and the GOMs issued by the State. It, therefore, could maintain a writ petition.

E 42. Mr. Rao, however, submits that in order to maintain an appeal, the Commission should have been a 'person aggrieved'. Reliance in this behalf has been placed on *Thammanna v. K. Veera Reddy Ors.* [(1980) 4 SCC 62 : (1981) 1 SCR 73] wherein in the context of the provisions of Section 116C of the Representation of People Act, 1951, it was held:

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"14...As a general proposition, therefore, it may safely be stated that before a person is entitled to maintain an appeal under Section 116-C, all the conditions mentioned below, must be satisfied: A

(1) that the subject-matter of the appeal is a conclusive determination by the High Court of the rights with regard to all or any of the matters in controversy, between the parties in the election petition, B

(2) that the person seeking to appeal has been a party in the election petition, and C

(3) that he is a "person aggrieved", that is a party who has been adversely affected by the determination..."

No exception to the rule can be taken. We are not, however, dealing with the election petition. We are dealing with a rule laid down by a constitutional authority as also the State. D

43. Mr. Rao also relied upon the following paragraph of a decision of this Court in *A.P. Public Service Commission v. P. Chandra Mouleesware Reddy* [(2006) 8 SCC 330]: E

"13. The State of Andhra Pradesh, we may notice, did not question the order of the Tribunal. The Commission was required to carry out fresh exercise in compliance with the directions of the Tribunal. For the said purpose, no fresh selection process was to be undertaken. If the State did not have any objection to fill up the said posts realising the mistake committed by it; we fail to see any reason as to why the Commission should have felt aggrieved by the order of the Tribunal." F

In that case, the State had accepted the judgment of the High Court. A mistake on the part of the State to issue the impugned direction was in question therein. It was in that context the aforementioned observations had been made. G

A Therein 19 posts were to be filled up whereas a direction was issued only to fill up ten posts. The Tribunal directed the State to fill up all 19 posts. The State of Andhra Pradesh did not question the order of the Tribunal. Even the Commission was not required to carry out any fresh exercise to comply with the direction of the Tribunal. As the order of the Tribunal was not found to be unjustified, the High Court refused to interfere therewith. The observations were made only in the aforementioned context.

C 44. For the reasons aforementioned, the impugned judgment cannot be sustained, which is set aside accordingly. The appeal is allowed. However, in the facts and circumstances of the case, there shall be no order as to costs.

G.N.

Appeal allowed.