

# **The State Of Tamil Nadu vs K. Shobana Etc. Etc. on 5 March, 2021**

**Equivalent citations: AIR 2021 SUPREME COURT 1267, AIRONLINE 2021 SC 105**

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**Bench: Hrishikesh Roy, Dinesh Maheshwari, Sanjay Kishan Kaul**

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 3745-3754 OF 2020

THE STATE OF TAMIL NADU & ORS.

.. APPELLANT

VERSUS

K. SHOBANA ETC. ETC.

..RESPONDENT

JUDGMENT

SANJAY KISHAN KAUL, J.

1. The perennial problem of working out the reservation system given the scarce employment sources has given rise to the present dispute.

2. Notification was issued on 12.06.2019 by the Teachers' Recruitment Board, appellant No. 3, inviting applications online from eligible candidates for direct recruitment to the post of Post Graduate Assistants and Physical Education Directors, Grade-I in school education and other departments for the year 2018-2019 in Tamil Nadu. The recruitment for various subjects was carried out smoothly, but the filling up of vacancies for the post of Post Graduate Assistants in Chemistry has caused some disputes in which the respondents were applicants. notification, a total of 356 posts were notified for Chemistry, out of which 117 vacancies were available for Most Backward Class (MBC) and Denotified Community (DNC) candidates. The break-up of 117 vacancies was of 74 backlog vacancies and 43 current vacancies.

3. The respondents, among other candidates, applied for the aforementioned post online and appeared in the written examination on 28.09.2019. Post verification of certificates, a provisional selection list was published by appellant No. 3 on 20.11.2019, but the names of the respondents were absent.
4. The respondents claimed that on scrutinizing the list, they found that the meritorious candidates under the MBC quota, who would have been selected irrespective of any reservation, had not been considered under the general vacancies but had been appointed in the MBC/DNC quota against the backlog vacancies. This had caused the respondents not to be appointed. It was their submission that the meritorious candidates were required to be adjusted against vacancies on merit in the General Turn, and it is only thereafter that the backlog vacancies had to be filled in and thereafter, lastly, the current vacancies under the quota had to be adjusted.
5. The aforesaid resulted in filing of writ petitions before the High Court of Madras seeking quashing of the provisional selection list and for appointment of these respondents.
6. The controversy really arose and arises from the interpretation of Section 27(f) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 (hereinafter referred to as “the Act”). The relevant Section reads as under:

“27. Reservation for Appointments-

(f) If qualified and suitable candidates belonging to any of the Backward Classes, Backward Class Muslims including the Most Backward Classes and Denotified Communities are not available for selection for appointment by recruitment by transfer or by promotion in the turns allotted to them, the turns so allotted shall lapse and the selection for appointment for the vacancies shall be made by the next turn in the order of rotation:

Provided also that in the case of selection for appointment by direct recruitment, with effect on and from the 1st April 1989, there shall be a ban on dereservation of vacancies reserved for the candidates belonging to any of the Scheduled Castes and Scheduled Tribes, Most Backward Classes and Denotified Communities to be appointed by direct recruitment. But, the above ban on dereservation of vacancies shall not be applicable to the vacancies reserved for the Backward Classes (other than Most Backward Classes and Denotified Communities), Backward Class Muslims and, therefore, if qualified and suitable candidates belonging to any of the Backward Classes (other than Most Backward Classes and Denotified Communities), Backward Class Muslims are not available for appointment, the turn so allotted to them shall lapse and the vacancy shall be filled by the next turn in the order of rotation. If sufficient number of qualified and suitable candidates belonging to any of the Scheduled Castes and Scheduled Tribes, Most Backward Classes and Denotified Communities are not available for selection for appointment for the vacancies reserved for them by direct recruitment in the first attempt of recruitment, then, a

second attempt shall be made for selection of the candidates belonging to the respective communities by direct recruitment in the same recruitment year or as early as possible before the next direct recruitment for selection of candidates against such vacancies. If the required number of candidates belonging to such communities are not available even then, the vacancies for which selection could not be made shall remain unfilled until the next recruitment year treating them as “backlog” vacancies. In the subsequent year, when direct recruitment is made for the vacancies of that year, namely, the current vacancies, the “backlog” vacancies shall also be announced for direct recruitment, keeping the vacancies of the particular recruitment year, namely, the current year vacancies and the “backlog” vacancies as two distinct groups as illustrated in Schedule-IX.

The selection for appointment for the next direct recruitment shall be made first for the “backlog” vacancies and then the normal rotation shall be followed:

7. The Section propagates the social philosophy of vacancies for reserved category not lapsing in case there are inadequate number of candidates. Thus, instead of offering it to the general category, a provision has been made to carry forward those vacancies for one year. In case even in the succeeding year, these vacancies are not filled in, then it goes to other categories. However, crucial issue arises from the last sentence of third proviso to Section 27(f) which provides for the selection of appointment for the next direct recruitment to be made “first for backlog vacancies and then the normal rotation shall be followed”. Meaning, thus, has to be assigned to what is implied by the expression “first” vis-à-vis the backlog vacancies.

8. It is the case of the appellants that the clear provisions of the Section must be given effect to, which in turn, would imply that on the basis of merit the backlog vacancies had to be first filled in. After those vacancies were filled, the appointment had to be made on merit in the General Turn. Thus, such of the candidates who made it on merit, would be adjusted against those seats, while the remaining would be adjusted against the reserved vacancies.

9. The respondents succeeded before the learned Single Judge in terms of judgment dated 09.01.2020 and the Writ Appeals preferred against the same was dismissed vide impugned order dated 19.03.2020.

10. Learned senior counsel for the appellants Shri C. Aryama Sundaram contented that vested right can only be for 69% reservation, while if the view propounded by the respondents was to be taken into account, it would lead to more than 69% reservation. There had been no reduction in reservation below the statutory limit, and that coming in the open category did not mean that they are not entitled to benefit of the reserved category.

11. An argument was initially sought to be propounded that the backlog vacancies relating to the earlier year would require seniority to be given, and if the respondents’ plea was accepted, persons less meritorious in that category would be entitled to seniority. However, in subsequent proceedings, it transpired that this was not the factual position, as the backlog vacancies would also

take the seniority from the year when they were so filled in.

12. Learned senior counsel sought to contend that the expression used in Section 27(f) of the Act must be given its natural meaning and the word “first” had been used by the legislature in its wisdom and with an intent which could not be made otiose.

13. The appellant relied on Hardeep Singh Vs. State of Punjab & Ors.<sup>1</sup> wherein, though the dispute related to the interpretation of the provisions of Section 319 of the Cr.P.C., what is relevant is the proposition sought to be laid down. It held that it was a settled principle of law that if an interpretation leads to a conclusion that the word used by the legislature is redundant, that should be avoided as the presumption is that the 1 (2014) 3 SCC 92, paras 42 to 45.

legislature has deliberately and consciously used the word of carrying out the purpose of the Act. The legal maxim *a verbis legis non est recedendum* which means, “from the words of law, there must be no departure” has to be kept in mind. There could be no assumption that a legislature committed a mistake when the language of the statute was plain and ambiguous. No word in a Statute has to be construed as a surplusage nor could any word be rendered ineffective or purposeless if the Court required to carry out the legislative intent fully and completely.

14. We may also note the submission of learned senior counsel for the intervenors Mr. S. Nagamuthu, supporting the plea of the appellants because his clients are the beneficiaries of the manner in which the Section is sought to be interpreted by the appellants, and thus certain other reserved categories benefited from the same. The additional submission he made was in the context of Article 16 (4B) of the Constitution of India which reads as under:

“16: Equality of opportunity in matters of public employment-

(4B)- Nothing in this article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or in accordance with any provision for reservation made under clause (4) or clause (4A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty per cent reservation on total number of vacancies of that year.”

15. The submission advanced was that what the appellants were doing was in consonance with the same, as the reservation carried forward was to be filled in as a separate class of vacancies, and not to be considered together with a vacancy of that year in which they are being filled in keeping in mind that the seats were limited.

16. On the other hand, learned senior counsel for the respondents Mr. N.L. Rajah contended that the correct methodology was that first, the list has to be drawn up on the basis of merit, and then only the issue of application of reservation would arise.

17. Thus, first the meritorious candidates would take their place in the general merit list where no reservation would apply. Reservation would apply thereafter, whereby the backlog vacancies would be filled in first, followed by the current year vacancies. In a nutshell, his contention was that Section 27 of the Act has nothing to do with the selection based on merit, and only applies to the mode of reservation post that stage. Two lists for “the distinct groups” are required to be made as provided for the reserved vacancies, which would be- first, a backlog list and then, secondly, the current list. The meritorious selected candidates have nothing to do with this part of the list. Our attention was also drawn to the provisional selection list dated 20.11.2019 to point out how the merit list had been drawn up. The submission, thus, was that this is the consistent and correct practice, and the fact that this problem arose only in case of Chemistry would make no difference even though practically now all the backlog vacancies would be filled in.

18. Learned counsel supported his contention by reference to certain judicial pronouncements. On the principle of how the persons in the merit list, irrespective of their community, would not affect the reservation as they would be adjusted against the general candidates were supported by the judicial pronouncement in *Rajesh Kumar Daria vs. Rajasthan Public Service Commission* and Ors.<sup>2</sup> In para 9 of the judgment, the difference between the nature of vertical reservation and horizontal reservation has been highlighted to opine that the candidates belonging to the backward class may compete for non reserved posts for which they are appointed on merit, their number will not be counted against quota reserved for respective backward classes. This is stated to be the consistent view starting from the judgment in *Indra Sawhney v. Union of India* <sup>3</sup>, *R.K. Sabharwal vs. State of Punjab*<sup>4</sup>, *Union of India vs. Virpal Singh Chauhan* <sup>5</sup> and *Ritesh R Sah Vs. Dr. Y.L. Yamul* <sup>6</sup>. This principle does not to apply for horizontal (special) reservations. For example, where a special reservation for women is provided within the social reservation for Scheduled Castes, the proper procedure is first to fill up the quota for Scheduled Castes in order of merit and then find out the number of candidates among them who belong to the special reservation group of “Scheduled Caste women”. If the number of women in such list is equal to or more than the number of special reservation quota, then there is no need for further selection towards the special reservation quota. Only if there is any shortfall, the requisite number of Scheduled Caste women

2. (2007) 8 SCC 785.

3. 1992 Supp (3) SCC 217.

4. (1995) 2 SCC 745.

5. (1995) 6 SCC 684.

6. (1996) 3 SCC 253.

shall have to be taken by deleting the corresponding number of candidates from the bottom of the list relating to Scheduled Castes.

19. A similar view has been taken in *Anil Kumar Gupta & Ors. vs. State of U.P. & Ors.*<sup>7</sup> by opining on the basis of the judgment in *Indra Sawhney's case* (supra) that the proper and correct course is to first fill up the open quota seats on the basis of merit, and then fill up each of the social reservation quotas. If the quota fixed for horizontal reservations is already satisfied, no further question would arise while dealing with such horizontal reservations (which is not the case in the present appeals).

20. Learned counsel also sought to contend that insofar as Tamil Nadu is concerned, the matter was settled long time back by the judgment of the High Court in *K.R. Shanthi vs. Secretary to Government, Education Department, Chennai & Anr.*<sup>8</sup> It was clearly observed that candidates selected on merit under open quota should not be adjusted against reserved vacancy and the inter se seniority of candidates selected and appointed in that selection should be only on merit and not on the basis of roster points. It would be relevant to extract the steps which were opined as required to be taken and set out in para 14:

“14. A perusal of the above judgments would keep at least two things beyond any pale of doubt. Firstly, the roster is not vacancy based, but the same is only post based. It

7. (1995) 5 SCC 173.

8. (2012) 7 MLJ 241 paras 14, 18 and 19, incidentally authored by S. Nagamuthu, J., as he then was, though of course the principle of promissory estoppel cannot apply while he raises his contentions! identifies the number of posts earmarked for various categories under the vertical reservations and posts left behind for open quota as well as special reservations.

Secondly, after so identifying the posts, it should be calculated as to how many vacancies are to be filled up under various categories in the current selection. If once the number of vacancies earmarked for each category in the current selection is identified by using the Roster, thereafter the Roster will have no further role to play in the matter of selection. After identifying the number of vacancies earmarked for various categories, the selection for each category has to be made purely based on merit following the method detailed below:

First Step:

(i) As against the number of vacancies identified for open quota, irrespective of caste, sex, physically challenged, etc., everyone should be allowed to compete based on merits.

(ii) The meritorious candidates should be first selected as against the above vacancies under open quota.

Second Step:

(iii) After completing the first step, moving on to the vertical reservation categories, selection has to be made for each category from amongst the remaining candidates belonging to the particular reserved category (vertical) based on merits.

**Third Step:**

(iv) After completing the second step, horizontal reservation which cuts across the vertical reservation has to be verified as to whether the required number of candidates who are otherwise entitled to be appointed under the horizontal reservation have been selected under the vertical reservation.

(v) On such verification, if it is found that sufficient number of candidates to satisfy the special reservation (horizontal reservation) have not been selected, then required corresponding number of special reservation candidates shall have to be taken and adjusted/accommodated as against social reservation categories by deleting the corresponding number of candidates therefrom.

(vi) Even while filling up the vacancies in the vertical reservation, if, sufficient number of candidates falling under the horizontal reservation have been appointed, then, there will be no more appointment exclusively under the horizontal reservation.

**Caution:**

(vii) At any rate, the candidates who were selected as against a post under open quota shall not be adjusted against the reserved quota under vertical reservations.”

21. Lastly, referring to the recent judgment of this Court in Saurav Yadav and Ors. vs. State of Uttar Pradesh & Ors. 9 This judgment again set forth the steps to be taken while implementing this list in para 14 as under:

“14. The observations in the Order dated 20.02.2019 passed by the Division Bench of the High Court of Judicature at Allahabad in Pramod Kumar Singh v. State of U.P.8 are also relied upon by the State Government. In that case the horizontal reservation for dependants of Freedom Fighters, Ex. Servicemen and women in the very same selection for Police Constables was in issue. The Division Bench of the High Court dealt with the Note submitted on behalf of the State which indicated the steps undertaken to determine and fill up seats for various categories as under:— “The procedure as set forth for completion of the recruitment exercise is then described in the following terms:

“Step 3.1 From List-1 select 19158 candidates in open category in order of their merit (Total Marks). This list may contain candidates from any state or any reserved categories (OBC/SC/ST) also. Let us call this list as List 1- A. Step 3.2 Now select 10345 candidates of OBC Category from the candidates left after Step 3.1 from the

List-1. This 9 . 2020 SCC OnLine SC 1034.

will include only OBC candidates with domicile of U.P. Let us call this list as List-1-B. Step 3.3 Now select 8046 candidates of SC Category from the candidates left after Step 3.1 from the List-1. This will include only SC candidates with domicile of U.P. let us call this list as List 1-C. Step 3.4 Now select 766 candidates of ST Category from the candidates left after Step 3.1 from the List-1. This will include only ST candidates with domicile of U.P. let us call this list as List 1-D. Step 3.5 If number of candidates in List-1-C is less than the required number 8046 for SC Candidates from shortage will be filled from ST candidates remaining after step 3.4 if available. If required quota of SC remains unfilled, then number of shortage posts should be shown separately. Similarly if number of for ST candidates then shortage will be filled from SC candidates remaining after Step 3.3, if available. If required of ST still remains unfilled then number of shortage posts should be shown separately.

Step 3.6 In this way four lists of candidates will be prepared as follows:

List-1-A (OC) List-1-B (OBC) List-1-C (SC) List-1-D (ST) 19158 (will include 10345 (Only OBC, 8046 (Only SC, 766 (Only ST, GEN, OBC, ST of any domicile of U.P.) domicile of U.P.) domicile of U.P.) state) Step 4 prepare a separate list of remaining candidates from List-1 who are not included in List-1-A, 1-B, 1-C and 1-D. Let us call this list as List-1.

Step 4.1 Now count the number of DFF candidates belonging to General Category (having domicile of U.P.) from the List-1-A. The candidates should not be OBC/SC/ST category. If number of candidates is 383 or more, then nothing needs to be done, otherwise select the shortfall of candidates of general category belonging to DFF on merit from the List-2 (Only candidates not belonging to OBC, SC & ST category) and adjust/insert them in after removing equal number of candidates from the bottom of List-1-A except General Category DFF, Ex-Servicemen, female and home guard candidates (any candidate who is eligible for horizontal reservation)”. ””

22. We have examined the contentions of the parties.

23. First, we would like to turn to the judgment of the learned Single Judge which, in our view, is absolutely lucid and clear to the controversy and the conclusion. Learned Single Judge set forth the controversy in the first paragraph itself, i.e., whether the candidates who secured high marks should have been fitted in the General Turn but have been fitted in MBC/DNC Quota for the last year, which in turn has deprived certain candidates of selection. It has been rightly noted that the entire confusion has arisen due to the wrong reading of provisions of Section 27 of the Act, which provides for reservation for appointment. Section 27(f) merely states that if the required number of candidates belonging to the community which fall under reservation are not available, then, the vacancies, for which selection could not be made in the current year, should be treated as backlog vacancies. In the subsequent recruitment, the backlog vacancies and the current vacancies for the particular community must be separately announced, and the direct recruitment must first accommodate the backlog vacancies and thereafter only, the current vacancies have to be



accommodated. The provision had been read by the appellants as if the backlog vacancies must be filled in by MBC/DNC category candidates, irrespective of the merit of the candidate or the rank secured by him/her. The highest mark that was secured was 109 and, up to 90 marks, the candidates were fitted in General Turn and thus those candidates will have to be selected under the General Turn, irrespective of their community. It is these candidates who had been fitted in the backlog vacancy which has caused the problem.

24. The Division Bench vide the impugned order also opined in the same terms and agreed with the interpretation of Section 27 of the Act by further observing that the proviso which contains the word “first” does not have any relation to the offer and placement of such reserved category candidates, including, Most Backward Classes who attain their position by way of merit in the open category/General Turn vacancies.

25. We are in complete agreement with the view taken by the courts below as there really could not have been any cavil to the aforesaid. The principle that such of the reservation category candidates who make it on their own merit have to be adjusted against the general category candidates has not been in doubt or argued in view of the catena of judgments cited aforesaid. In our view, Section 27(f) of the Act cannot be read in a manner, apart from any other reason, to negate this very principle.

26. It has been rightly pointed out by learned counsel for the respondents that the issue arising from seniority of filling the backlog vacancies first was not even urged in the courts below and was sought to be raised for the first time before this Court, and elaborately at that, which plea finally fizzled out, as it was conceded that there is no factual basis for the same.

27. There can be no doubt about the proposition that if a word is used in a Statute, it cannot be made otiose as held in Hardeep Singh (supra). However, that is not the factual scenario in this case. The question arises as to at which stage would Section 27 of the Act operate, and where in the list, the application of the “first” principle would apply. Section 27 deals with the reservation. It has nothing to do with the general candidates list/ General Turn vacancies. Such of the candidates who have made it on their own merit albeit, from reserved category, have not sought the benefit of the reservation. Thus, Section 27 of the Act would have nothing to do up to that point. Section 27 would apply only when the reservation principle begins, which is after filling up of the seats on merit. Thus, the word “first” would apply at that stage, i.e., the backlog vacancies have to be filled in first and the current vacancies to be filled in thereafter. At the stage when the general category seats are being filled, there is thus no question of any carry forward or current vacancies for reserved category arising at all.

28. We may also note that the manner of filling up the seats has been well enunciated in the judgment in K.R. Shanthi’s case (supra) by the Madras High Court itself and appears to have been consistently followed. May be the peculiarity of the situation arising in Chemistry subject (which is in question) gives rise to this problem in the current year and such a problem had not apparently arisen earlier. In fact, there is no manner of doubt after the latest judgment of this Court in Saurav Yadav & Ors. case (supra) which again refers to the steps which have to be taken to fill in those vacancies. The steps are clear in their terms : in the given facts of the case, application of those

principles or steps would imply:

- a) the general merit list to be first filled in;
- (b) the backlog vacancies of the particular reserved category to be thereafter filled in "first"; and
- (c) the remaining reserved vacancies for the current year to be filled thereafter.

29. It appears that such a situation may not arise in the future as all backlog vacancies are stated to have been filled in. The performance and merit of candidates, as apparent from the list in question, would itself show as to how many candidates have been successful to attain appointment on a merit position without even availing of reservation- an extremely encouraging aspect! The increase in MBC/DNC candidates really does not impinge on the reservation of seats for other categories, nor does it violate any provision of the Constitution of India. <sup>10</sup> Though, of course, it would imply that some of the other candidates from different reserved categories would not be entitled to fill in the reserved seats of MBC/DNC categories, if those seats would have remained vacant.

30. The result of the aforesaid is that the appeals are dismissed in the aforesaid terms, leaving the parties to bear their own costs.

31. We may note that apparently in pursuance to our directions, the candidates as per the impugned judgment may possibly have already joined.

.....J. [SANJAY KISHAN KAUL] .....J. [DINESH MAHESHWARI] .....J. [HRISHIKESH ROY] NEW DELHI, March 05, 2021.

<sup>10</sup> These observations are in the context of the controversy before us as the larger issue of reservation beyond 50%, qua Tamil Nadu, is still pending consideration before this Court.