

DR. KASHINATH NAGAYYA IBATTE

A

v.

STATE OF MAHARASHTRA AND ORS.

MARCH 31, 1995

[K. RAMASWAMY AND N. VENKATACHALA, JJ.]

B

*Service Law:*

*Scheduled Tribe candidate—Temporary appointment as lecturer against reserved vacancy—Regular selection and recommendation of candidates by Public Service Commission—Held temporarily appointed candidate should give place to regularly selected candidates.*

C

The appellant, a scheduled tribe candidate was appointed as Lecturer in 1981 against a reserved vacancy and had been continuously working till 1993. In appeal to this Court, the question was raised as to whether he could be allowed to continue in service, when candidates selected and appointed by the Public Service Commission were available for appointment.

D

**Disposing the appeal, this Court**

E

**HELD:** Temporary candidates working on *ad hoc* basis have to give place to the candidates selected by the Public Service Commission and appointed by the Government, in accordance with Rules. The appellant appeared for selection against three vacancies reserved for Scheduled Tribes and was among three candidates selected. The respondents who are appointed in the vacancies are the candidates selected by the Public Service Commission. The Government has appointed them on a regular basis. Under these circumstances, the appellant has to give place to the candidates regularly selected and appointed. However, it would be open to the Government to consider the appellant's case in one of the existing unfilled posts subject to the selection by the Public Service Commission.

F

[116-E-F]

G

**CIVIL APPELLATE JURISDICTION :** Civil Appeal No. 4724 of 1995.

H

From the Judgment and Order dated 14.7.93 of the Maharashtra Administrative Tribunal, Bombay in Original Application No. 696 of 1993.

A Manoj Swarup for the Appellant.

K. Madhava Reddy, S.M. Jadhav and A.S. Bhasme for the Respondents.

The following Order of the Court was delivered:

B Leave granted. We have heard counsel on both sides.

The appellant being a Scheduled Tribe candidate was appointed initially in 1981 to a vacancy reserved for the Scheduled Tribes and thereafter he had been continuously working as a Lecturer till 1993. It is

C also on record that he is a specialist in Anatomy and Surgery. As regards his qualifications and eligibility and experience to hold the post, the Government has not, in fairness, disputed. The only dispute is whether he could be allowed to continue in service, when candidates selected and appointed by the Public Service Commission (PSC) are available for appointment?

D It is settled law that temporary candidates working on *ad hoc* basis have to give place to the candidates selected by the PSC and appointed by the Government, in accordance with rules. It is not in dispute that the appellant appeared for selection in three vacancies reserved for Scheduled Tribes but he was not among three candidates selected. The respondents who are appointed in the vacancies are the candidates selected by the PSC and recommended for appointment. The Government has appointed them on a regular basis. Under those circumstances, the appellant has to give place to the candidates regularly selected and appointed.

F It is, however, not in dispute that at present, there are 22 vacancies existing which are yet to be filled in. Under these circumstances, it would be open to the Government to consider the case of the appellant and take the service of the appellant who had put in more than 12 years of service in one of the unfilled posts, of course, subject to the selection by the PSC.

G By the date of selection, if he becomes barred by age, the Government is directed to suitably relax his age and consider him for appointment according to rules.

The appeal is accordingly disposed of. No costs.

T.N.A.

Appeal disposed of.