

PETITIONER:
PRAKASH K. & ANR.

Vs.

RESPONDENT:
THE STATE OF KARNATAKA & ORS.

DATE OF JUDGMENT: 30/09/1996

BENCH:
K. RAMASWAMY, G.B. PATTANAIK

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

Leave granted.

We have heard learned counsel for the parties.

These appeals arise from the order of the Karnataka Administrative Tribunal made on February 27, 1996 in OA No.3034-35/95. The recruitment for the post of teacher was completed prior to November 17, 1993 and teachers came to be appointed. When the same was challenged, the Tribunal found that they were in excess of 50% of the quota reserved for the backward classes and weaker sections of the society. But the Tribunal declined to interfere with the order on the ground that the appellants belatedly approached the Tribunal on June 15, 1995 by which time all the appointments had come to be made and the teachers were working. The Tribunal has pointed out thus:

"The present Applications were filed on 15.6.1995. The Applicants question the appointments to the public offices made by the State Government. Any challenge to the appointments by the State Government should be made at the earliest. Any laches on the part of the challenger to the appointments is a ground to refuse the relief. Upsetting of the appointments at this belated stage would also upset the administrative machinery and it is not in the public interest that the appointments made at least a year and six months prior to the filing of the Applications should be set aside.

It is true that the reservation in excess of 50% is unconstitutional. The recruitment process no doubt was substantially over by the time the Supreme Court announced its judgment in Indira Sawhney's case. Though the select list was prepared

subsequently, in all fairness the State Government should have re-done the select list in the light of the decision of the Supreme Court. But the question is whether we can, at this stage, set at naught those appointments on the ground of unconstitutionality. The private Respondents have already joined the service. Public interest requires that the experience gained by the private Respondents should not be lost to the public. The relief to be granted by this Tribunal is entirely discretionary. Though Mr. Bhagwath contends that the Applicants have approached this Tribunal within one year of the date of the cause of action, that may not be technically correct. The cause of action arose when the select list was prepared which they knew as unconstitutional even as early as on 17.11.1993. This apart, we are of the firm view that the limitation provided under Section 19 of the Administrative Tribunals Act, 1985, does not come in the way of exercising our discretion and reject an Application, if the Application suffers from laches. This is the view we have already taken in NAGARAJA AND OTHERS v. DIRECTOR GENERAL AND INSPECTOR GENERAL OF POLICE IN KARNATAKA, BANGALORE AND OTHERS (1995 K.S.L.J.541). This Tribunal cannot act mechanically and grant the relief only on the ground that an Applicant has approached this Tribunal within one year of the cause of action and he has made out a good case on merits, ignoring the realities and the effect of the relief on the administration and private parties. This Tribunal cannot shut its eyes to the inconvenience and injury that would result to the private Respondents who have joined the service already."

In that view, it cannot be said that the view taken by the Tribunal is not warranted on the facts in this case. Shri Rama Jois, learned senior counsel for the appellants, contended that there are still some vacancies and further vacancies have arisen and direction may be given to appoint the appellants to those posts. The Tribunal has pointed out that unless their merits are considered by the Service Commission vis-a-vis other eligible candidates and the selected candidates, Tribunal cannot give any such direction for appointment. We find that view taken by the Tribunal also cannot be said to be unjustified warranting interference. On the other hand, the view is consistent with philosophy of Articles 14 and 16(1) of the Constitution.

The appeals are accordingly dismissed. No costs.

JUDIS