2025 INSC 1462

Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS._____ OF 2025
(@Special Leave Petition (C) Nos.10079-10080/2025)

RADHIKA T. **...APPELLANT(S)**

VERSUS

COCHIN UNIVERSITY OF SCIENCE AND TECHNOLOGY & ORS.

...RESPONDENT(S)

J U D G M E N T

N.V. ANJARIA, J.

Leave granted.

2. These two Appeals preferred by the appellant-original petitioner, arise out of the judgment and order dated 12.07.2023 in Writ Appeal No.534 of 2023 and order dated 13.09.2025 in Review Petition No.1202 of 2023 respectively, passed by the Division Bench of High Court of Kerala, whereby the High Court dismissed both the writ appeal and

review petition, confirming the dismissal of the Writ Petition.

2.1. In the Writ Petition, the appellant-petitioner prayed to direct respondent No.1-Cochin University of Science and Technology, Kalamassery and its Registrar-respondent No. 2, to appoint the appellant as Associate Professor, Inorganic Chemistry (Scheduled Caste) in the Department of Applied Chemistry. It was next prayed to declare as illegal communication dated 16.09.2022 of the University rejecting the case of the petitioner for being appointed against the vacancy, which had arisen upon resignation of appointee candidate- one Dr. Anitha C. Kumar.

2.2. The appellant-petitioner staked her claim to be appointed on the basis that the appellant was ranked second in the Rank List/Wait List prepared pursuant to the recruitment process, and that the appointee Dr. Anitha at rank No.1 had resigned. While the wait list was in operation in view of Section 31(10) of the Cochin University of Science and Technology Act, 1986 (hereinafter referred to as '**the University Act**'). The request of the appellant came to be rejected on the ground that the university would be applying the rule of rotation under Section 31(11) of the University Act and in that view the

vacancy was to be given to the candidate from Latin Catholic/Anglo Indian category.

3. The petitioner, who belongs to Scheduled Caste, applied for the post of Associate Professor pursuant to recruitment notification dated 22.10.2019. The post of Associate Professor, Inorganic Chemistry was a single vacancy notified to be filled in, which carried the scale of pay of ₹37,400-₹67,000/- plus Academic Grade Pay of ₹9000/- (Pre-revised). The appellant fared successfully in the selection process and placed at merit No. 2 in the Rank List published by the University authorities. The rank list came into force with effect from 15.02.2021 to remain valid for a period of two years from the date of notification, as contemplated under Section 31(10) of the University Act.

3.1 The post in question was previously notified in the year 2005 and again in the year 2015, reserved for Scheduled Caste candidate. On both the occasions it remained unfilled for want of SC candidate. The University notified the same once again on 22.10.2019, reserving it for the Scheduled Caste category. As stated above, while the appellant was listed at rank No. 2 in the wait list, Dr. Anitha C. Kumar placed at No. 1 came to be appointed. Dr. Anitha however resigned and left the post on 30.03.2022 as she obtained appointment as Professor

in the School of Chemical Sciences, Mahatma Gandhi University, Kottayam.

3.2 On 20.04.2022, respondent No.1 rejected the request of the petitioner. The ground stated was that Dr. Anitha C. Kumar had a lien on the said post and therefore the post could not be offered to the petitioner. This decision of the respondents came to be challenged by the appellant by filing Writ Petition (C) No. 15183 of 2022 before the High Court, which petition came to be allowed, and the High Court directed the University to consider the claim of the petitioner for appointment, subject to her rank and eligibility as per the rules of communal rotation.

3.3 The appellant again submitted a request for her consideration for appointment. Respondents once again rejected the request by communication dated 16.09.2022, this time stating a different reason that pursuant to the resignation of the Dr. Anitha C. Kumar, a fresh vacancy has arisen which was needed to be filled in only by way of communal rotation by offering the same to a Latin Catholic candidate.

3.4 The appellant filed the Writ Petition (C) No. 38986 of 2022 challenging the aforementioned decision dated 16.09.2022 of the University. Learned Single Judge dismissed the

petition by order dated 03.02.2023 accepting the contention of the University that as per Section 31(11) of the University Act communal rotation was to be applied for filling up the vacancy, by undertaking fresh recruitment process and issuing the necessary notification. Against the dismissal of the writ petition, the appellant filed W.A. No. 534 of 2023 which came to be dismissed on 12.07.2023. The review petition was also dismissed, giving rise to the present Appeal before this Court, as stated above.

3.5 Respondent-University is governed by the provisions of the Cochin University of Science and Technology Act, 1986. While the relevant provisions are delineated and discussed in the subsequent paragraphs, it may be mentioned briefly at this stage that sub-section (9) of Section 31 of the University Act provides for preparation of Rank List and as per sub-section (10), the validity period of the Rank List is two years from the date of its publication. It is further provided that all vacancies arising during the period of validity of the Rank List shall be filled up from the list. Sub-section (11) of Section 31 says that communal rotation shall be followed category wise treating all departments as one unit.

3.6. As per Section 7(2) of the University Act, in making appointments to all the posts as determined by the Syndicate in any service, class or

category under the University, the University shall *mutatis mutandis* adhere to the provisions of clauses (a), (b) and (c) of Rule 14 and the provisions of Rules 15, 16, 17 and 17A of the Kerala State and Subordinate Service Rules, 1958, as amended from time to time.

4. Assailing the impugned judgment and orders, Learned Senior counsel for the appellant Mr. Mohan Gopal submitted that since the appellant was ranked at Serial No.2, she was entitled to be offered appointment upon departure of the candidate at rank No. 1 and appointed initially in that capacity. He submitted that the appellant could exercise her right to claim the appointment when in the operative Rank List, she was the next meritorious candidate. It was further submitted on behalf of the appellant that the vacancy was meant for Scheduled Caste category, therefore, in any view, in order to maintain the reservation, as contemplated in the recruitment notification, it ought to have been offered to the appellant who was Scheduled Caste candidate in line in the Rank List.

4.1. Referring to Section 31 of the University Act, learned Counsel for the appellant submitted that when the Rank List was treated as valid, the provision in sub-section (11) regarding communal rotation cannot be invoked to interject the currency of Rank List and that the appellant's

entitlement to be appointed could not have been disregarded. It was submitted that both sub section (10) and sub section (11) of Section 31 of the University Act should be allowed to simultaneously operate and till two year's validity period presented for the Rank List the application of rule of communal rotation has to wait to remain in abeyance till the validity period of Rank List. It was submitted that the rule of rotation may come into play upon expiry of Rank List to make for the two provisions cohesive operation and application. He in other words submitted interpreting both harmoniously.

4.1.1 For the proposition that candidate in the valid Wait List can claim his or her right to be appointed, learned counsel for the appellant relied on the decision of this Court in ***Gujarat State Dy. Engineers' Assn.*** *v.* ***State of Gujarat & Ors.***[1]. A decision of the Kerala High Court in ***Narayanan*** v. ***State of Kerala***[2], was also pressed into service to emphasize that the due representation to the Scheduled Caste could not be discounted when vacancy belonged to that category and the Rank List was operative.

[1] 1994 Supp (2) SCC 591
[2] 1981 SCC Online Ker 14: (1981) 2 SLR 340

4.2 On the other hand, learned counsel for the respondents Mr. Pranjal Kishore would submit that no candidate in the Wait List has any indefeasible right to seek appointment. It was submitted that the appellant did not have vested right for being appointed from the Rank List even though the vacancy had arisen upon departure of Dr. Anitha. According to his submission, the University was justified in taking a stance that it was a fresh vacancy to be filled in by applying the communal rotation under Section 31(11) of the University Act.

4.2.1 In order to substantiate the proposition canvassed that placement in the wait list would not give a right to the candidate to be appointed, learned counsel for the respondents relied on the decisions of this Court in ***Surender Singh & Ors.*** v. ***State of Punjab & Anr.***[3], in ***Rakhi Ray & Ors.*** v. ***High Court of Delhi & Ors.***[4]. and in ***Vivek Kaisth & Anr.*** v. ***State of Himachal Pradesh & Ors.***[5] Yet another decision of this Court in ***Raj Rishi Mehra & Ors.*** v. ***State of Punjab & Anr.***[6] was pressed into service, more particularly for its paragraphs 16 and 17 in which the observations from ***Surender Singh*** (supra) and ***Rakhi Ray*** (supra) were reiterated.

[3] (1997) 8 SCC 488
[4] (2010) 2 SCC 637
[5] (2024) 2 SCC 269
[6] (2013) 12 SCC 243

5. The moot question falling for consideration is whether in view of provisions of Section 31(10) versus Section 31(11) of the University Act, when the Rank List is provided to be valid for two years, whether during such validity period when a vacancy arises, next candidate in the Rank List/Wait List can legitimately put forward his or her right to be appointed, or the University would justified in adverting to resort to rule of communal rotation during the currency of operative Rank List.

5.1 Before proceeding further, an incidental aspect may be dealt with. As noted, when the appellant initially put forward her claim to the appointment, her request was rejected on the ground that Dr. Anitha C. Kumar had her lien on the post. Although the said ground was disapproved and rejected by this Court while allowing Writ Petition (C) No.15183 of 2022 directing the University to reconsider the claim of the petitioner, in the counter affidavit filed by the respondents in the present proceedings, in paragraph 6 in particular, the same ground is raised to deny the appointment to the appellant.

5.1.1 The concept of lien in service jurisprudence implies a right of an employee or civil servant to hold the post substantively to which he or

she is appointed. In ***Ramlal Khurana (Dead) by Lrs.*** v. ***State of Punjab & Ors.***[7] this Court stated,

> "Lien is not a word of art. It just connotes the right of a civil servant to hold the post substantively to which he is appointed. Generally when a person with a lien against a post is appointed substantively to another post, he acquires a lien against the latter post. Then the lien against his previous post automatically disappears." (Para 8)

5.1.2 The lien of an employee stands automatically terminated without requiring any formal order, once the employee gets appointed on other post. This was reiterated by this Court in ***State of Rajasthan & Anr. v. S.N. Tiwari & Ors.***[8] In the present case, Dr. Anitha Kumar resigned from the post and secured substantive appointment in another University. It terminated her lien on the post of Assistant Professor in the respondent University. It was entirely erroneous in law to reason that Dr. Anita had a lien on the post and to deny the appellant the appointment on that ground.

5.2 The respondent Cochin University is governed, including for the recruitment processes for the various post, under the Cochin University of

[7] (1989) 4 SCC 99
[8] (2009) 4 SCC 700

Science and Technology Act, 1986, The relevant provisions of Section 31 of the University Act which deals with selections are sub-section (9) and (10) of Section 31 and it reads as under,

> '(9) The rank of lists prepared by the Selection Committees shall be published in the notice board of the University and also in the Gazette.
>
> (10) A rank list published under sub section (9) shall remain in force for a period of two years from the date of such publication and all vacancies arising during the period shall be filled up from the list so published'

5.2.1 Sub-section (11) and (12) of Section 31 contemplates communal rotation to be applied and reservation of seats which are produced herein,

> "(11) Communal rotation shall be followed category-wise treating all the departments as one unit.
>
> (12) The Registrar shall maintain a register containing the list of appointments made indicating the vacancies filled up by open competition and by reservation to Scheduled Castes, Scheduled Tribes and other Backward Classes, vacancies remaining to be filled up for want of qualified hands from Scheduled Castes, Scheduled Tribes and Other Backward Classes, and vacancies carried forward for want of

qualified hands under reservation quota for being filled up in future vacancies and such other details as may be specified in the Statutes."

5.2.2 Section 31(10) contemplates that the Rank List published under Section 9 "shall remain in force for a period of two years from the date of such publication". It further mandates that all the vacancies arising during the said validity period of two years shall be filled up from the list so published. This statutory provision in the University Act enjoins that the Rank List shall remain alive and operative for two years from the date of publication. Sub section (11) of Section 31 at the same time provides that the communal rotation shall be valid category-wise and that all the departments are to be treated as one unit. Under sub section (12), the Registrar is required to maintain a register containing the list of appointments made indicating the vacancies filled up by open competition and by reservation.

5.3 It would also be relevant to briefly notice the provisions of the Kerala State and Subordinate Service Rules, 1958 which are mentioned in Section 7 of the University Act and are to be taken into account for rotational reservation. Rule 14 is in respect of reservation of appointments. Sub-rule (a) mandates about the need of appointment for the purpose of the reserved categories. Sub-rule

(b) is about the claim of the members of the Scheduled Castes and Scheduled Tribes for the appointments to be filled up on the basis of merits. Sub-rule (c) states about the appointments under the rule to be made in the order of rotation as specified for every cycle of 20 vacancies.

5.3.1 Rule 15 is about combining rotation in clause (c) of rule 14 in the integrated cycle. It further provides that notwithstanding anything contained in any other provisions of these rules, if a suitable candidate is not available for selection from any particular community or group of communities specified, the said vacancy shall be kept unfilled to be notified separately for that community or group of communities for that selection year and shall be filled by direct recruitment. In the explanation below Rule 15(a), the 'selection year' is explained. The 'selection year' for the purpose of this rule shall be the period from the date on which the Rank List of candidates comes into force upto the date on which it expires.

5.4 It is a salutary principle of statutory interpretation, and the courts are obliged to follow the same, namely that two provisions of a statute seemingly in conflict or the two separate limbs in a particular provision have to be interpreted so as to avoid conflict in their operation, what is known as the doctrine of harmonious construction. It is trite that a

construction which reduces any provision in the statute to a futility has to be eschewed. The maxim is that *ut res magis valeat quam pereat* which means that it is better for a thing to have effect than for it to be made void.

5.4.1 In ***CIT vs. Hindustan Bulk Carriers***[9]**,** this Court,

> "The provisions of one section of the statute cannot be used to defeat those of another unless it is impossible to effect reconciliation between them. Thus, a construction that reduces one of the provisions to a "useless lumber" or "dead letter" is not a harmonised construction. To harmonise is not to destroy." (Para 21)

5.4.2 This Court proceeded to highlight certain basic principles known to the concept of harmonious construction, which can be summarized a under:

> '(a) A construction which reduces the statute to a futility has to be avoided. A statute of any enacting provision therein has to be so construed as to make it effective and operative.
>
> (b) A statute is designed to be workable and the interpretation thereof by a court should be to

[9] (2003) 3 SCC 57

secure the object unless crucial omission or clear direction makes that end unattainable.

(c) The courts will have to reject that construction which will defeat the plain intention of the legislature even though there may be some inexactitude in the language used.

(d) If the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation, has to be avoided which would reduce the legislation to futility, and rather bolder construction should be accepted based on the view that Parliament would legislate only for the purpose of bringing about an effective result. The statute must be read as a whole, and one provision of the act should be construed with reference to other provision in the same act so as to make a consistent enactment of the whole statute.

(e) The court must ascertain the intention of the legislature by directing its attention not merely to the clauses to be construed but to the entire statute.

(f) It should not be lightly assumed that the Parliament had given with one hand what it took away with other.

(g) The provisions of one Section of the statute cannot be used to defeat those of the another unless it is impossible to effect reconciliation

between them. Thus, a direction that reduces one of the provisions to a "useless lumber" or "dead letter" is not a harmonised construction.'

(Paras 14,15,16,17,18,19,20 and 21)

5.4.3 Again, in ***State of Gujarat vs. R.A. Mehta***[10]**,** this Court applying the maxim *ut res magis valeat quam pereat* observed that in the process of statutory construction, the court must interpret the Act keeping in view the aforesaid legal maxim and that a statute must be construed in such a manner so as to make it workable.

5.4.4 Therefore, whether it is a question of construing and applying a particular provision in a statute *vis-à-vis* the other provision or it is a question of interpreting two sub-provisions in a parent provision, which may become conflicting or contradicting in their applicability, the creases are required to be ironed out by adverting to the rule of harmonious interpretation. When two sub-sections in a particular section, as the situation is obtained in the case on hand, are to be applied and their purport is apparently irreconcilable, the attempt should be made while applying them that neither is rendered otiose and none becomes ineffective. In application of one sub-provision, it should not happen that the teeth and the applicability of the other sub-provision

[10] (2013) 3 SCC 1

is taken away or that the other sub-provision is obliterated for its effect.

5.4.5. The court has to avoid a head-on clash of seemingly irreconcilable provisions. They have to be harmonised in their effect and implementation. One provision may not be operated in a manner to defeat the other. When two provisions are not possible to be completely harmonised, they should be operated and given effect to, up to the point of reconciliation.

5.4.6 In applying and implementing provision of Section 31(10) versus Section 31(11) of the University Act based on above principle of interpretation, the any of the provisions of Kerala State and Subordinate Services Rules, 1958 will have to be taken note of by virtue of sub-section (2) of section 7 of the University Act, which mandates application of these rules *mutatis mutandis* while making appointments for all posts under the University Act.

5.5. In light of above discussion, a conjoint reading of the Section 31(10) and 31(11) of the University Act indicates that both sub-sections operate in distinct spheres, yet they are not mutually exclusive. The provision declaring that the Rank List shall remain in force for a period of two years, merely prescribes the life span of the select list, whereas the

mandate to follow communal rotation governs the method and manner of appointment to vacancies arising during this period.

5.5.1 An interpretation that communal rotation could be applied only after expiry of currency of rank list would result in rendering the reservation/rotation requirement prescribed under sub-section (11) entirely otiose during the operational period of the said list, which would defeat the legislative intent behind framing the rotation rule. Such an interpretation is impermissible in view of the doctrine of harmonious construction, which requires courts to give effect to all provisions and avoid rendering any part superfluous. Asking sub section (11) to wait during two years period mentioned in sub section (10) would mean obliterating entirely the operation of said subsection of Section 31 for that period.

5.5.2 At the cost of repetition, this Court deems it appropriate to mention again when two provisions are capable of simultaneous operation without conflict, the Court must adopt an interpretation that allows each to have full play rather than subordinating one to the other. Applying this principle, the correct construction is that the Rank List continues to be valid for a period of two years as per section 31(10), and within this period, every

appointment made therefrom must adhere to the communal rotation mandated by section 31(11) of the University Act provided that the said vacancy stood satisfied in form and substance by the candidate for whom the said vacancy was reserved.

5.5.3 In the instant case, a scheduled caste candidate who being initially appointed and after declaration of her probation period resigned from service. The interpretation that communal rotation clause will come to operation only after expiration of Rank list after two years period as per section 31(10) upon which the vacancy arose would make the mandate of section 31(11) redundant and dead letter.

5.5.4 It is apt and appropriate to mention that courts in exercise of its powers cannot prolong the operation of provision to have effect after certain period unless the said provision itself mandate certain conditions for its operation. Hence, this interpretation preserves the intended effect of both provisions, ensures continuity of reservation norms during the validity of the list, and avoids an outcome where the roster requirement becomes illusory or effective only after the list itself has expired. Hence, both sub-sections must be read as simultaneously operative.

6. At this stage, in above context a reference to the decision of the Division Bench of the Kerala High Court in ***Narayanan***[2] relied on by the appellant is being noticed. The controversy before the High Court was about the appointment to the post of Section Officer in the Legislature Secretariat to be done in accordance with the Special Recruitment scheme under Rule 17A of the Kerala State and Subordinate Services Rules, 1958. Two vacancies to be filled in from Scheduled Caste and Scheduled Tribe were reported to the Public Service Commission. The petitioner who belonged to Scheduled Tribe, applied for the post. A rank list was prepared at the end of the examination process, in which one K.M. Mary was placed at Serial No.1 whereas the petitioner was ranked at Serial No.2. The Rule provided that if no qualified candidate from the Scheduled Tribes are available for recruitment, the vacancies reserved for them will be filled up by Scheduled Caste.

6.1 The first rank-holder K.M. Mary did not accept the appointment as she obtained the job elsewhere. The petitioner before the Kerala High Court put forth his case stating that the post should have gone to him, he being the next in the rank in the Scheduled Tribe list. However, instead of offering that post to the petitioner upon declining to accept the same, the Public Service Commission

took the view that it must then be treated as a vacancy available to be filled up afresh to which all Scheduled Castes may be able to compete.

6.1.1 The Kerala High Court addressed the question whether the rules of reservation would be adequately met by merely advising a candidate of a particular class to a post reserved for their class and whether where such candidate fails to join that post, the right of that class to that post will be lost.

6.1.2 The High Court posed a question 'Could it be said that when, in the list of eligible candidates, there are candidates available for advice for vacancies to be filled up by Scheduled Tribes the right to a particular turn in the matter of appointment to a post earmarked for Scheduled Tribe will be lost if the candidate advised is unable to take up that post even though the next in rank is available and is willing to take up the post'.

6.1.3 It was observed by the High Court in paragraph 5,

> 'At what stage does a class or community lose its right on the assumption that the reservation for that community is satisfied? Is it on appointment to that post or is it merely on advice for appointment? De hors any rules it appears to us that the rule of reservation would

be effective only if to a post reserved for a community a person is actually appointed. It is more so when, as the facts of this case show, there may be quite often cases where a candidate advised for appointment may not be available for appointment. In the scramble to get an appointment to one post or other candidates may have applied for appointments to several posts at the same time.'

6.1.4 The High Court proceeded further to state in the very paragraph,

'The mere fact that the candidate advised is not available for appointment should not result in the class to which the person advised belongs losing such right when eligible candidates are available for appointment to such posts. Otherwise, it would be a reservation in form only and not in substance. **When once a person advised is appointed whether subsequently he continues or not in that post is another matter.** But in the matter of appointment to the posts the principle of reservation would have to be adhered to in such a case. To treat the reservation as applicable at the stage of advice and not at the stage of appointment may not, in

circumstances where many of the people advised may not be able to join because they are already appointed, satisfy the rule of reservation in its true form and spirit as envisaged"

[emphasis supplied]

6.2. The proposition laid down in ***Narayana's*** case would not come to the rescue of the appellant in the instant case, for reasons more than one, *firstly*, that was a case where the selected candidate KM Mary did not accept the appointment; *secondly*, the post to which the application was called for was not filled up; *thirdly*, no vacancy arose to the said post; and, *fourthly*, as observed therein itself if the person is appointed, subsequently he continues or not in that post would be another matter.

6.3 In the instant case, the list was announced on 15.02.2021 and Dr. C Anitha who stood in the list at Serial No.1 was offered appointment; pursuant to which she reported and subsequently her probation was also declared. Thereafter on 30.03.2022, she resigned, due to which the vacancy arose. At this stage, section 31(11) gets attracted, and it had to be operated harmoniously in conjunction with section 31(10). Had the petitioner belonged to Latin Catholic/Anglo Indian Category her claim for being appointed to the post would have been

justified. As the vacancy had arisen and the list being in operation, necessarily communal rotation prescribed under sub-section (11) of section 31 would start operating immediately on vacancy arising.

6.4 Thus, the principles laid in ***Narayana's*** case would not assist the petitioner and the caveat made in the judgement to the effect '*when once a person advised is appointed whether subsequently he continues or not in that post is another matter*' is a complete answer to the proposition that post to which Dr. Anitha was appointed and later her probation being declared, the tendering of her resignation thereafter, is a corollary to the fact that post which was reserved for the Scheduled Caste candidate stood satisfied in form and substance and on her resignation vacancy arose. As the vacancy arise upon Dr. Anitha's resignation, same had to be necessarily filled up on communal rotation basis. It would be the tenet of harmonious construction.

7. Proceeding now to consider the decisions relied on and referred by both the sides, to on the aspect of operation of Wait List or Rank List, in ***Surender Singh***[3], the facts were that the State Government had advertised 2461 vacancies of teachers on 19.08.1992. The process of interview was completed only on 22.06.1994. By the time, new 7737

posts of the various categories of the teachers became available. The State Government proceeded to fill up these posts out of the applicants who had applied against 2461 posts advertised on 19.08.1992. This Court held that making appointments over and above the number of posts advertised was an improper exercise and that no exceptional circumstance existed or emergent situation which may justify the State Government to deviate from the principle of limiting the number of appointments to what was advertised initially. The filling up of vacancy from the existing Wait List, beyond and above the post advertised was disapproved.

7.1 In ***Rakhi Ray & Ors.***[4] the question was about the filling up of the judicial vacancies. It was similarly held by this Court that the High Court was not justified in filling up the post from the existing select list since the vacancies which are filled up, had arisen subsequent of issuance of the advertisement. It was stated by this Court that the wait list could not have been used as a reservoir to fill up the vacancies which came into existence after the notification of advertisement, the same being beyond the vacancies initially notified at the time of advertisement.

7.2 ***Vivek Kaisth & Anr.***[5] laid down the proposition that the appointments in excess of vacancies as advertised, would be arbitrary and it

would amount to depriving the candidates of appointment who were not eligible at the time when advertisement process was started, but acquired eligibility at subsequent point of time. In the decision in ***Raj Rishi Mehra***[10], while the Court stated the general proposition that the Select List or Reserve List or Wait List or Rank List does not entitle a person as of right to be appointed against unfilled post. The Rules in that case did not provide any time frame about the validity of the Wait List.

7.2.1 It was held that in absence of any stipulation in the recruitment rules imposing duty on the appointing authority to make appointments from the Wait List, the decision taken by the High Court on administrative side rejecting the petitioner- the wait listed candidates' claim for appointment against the reserved post cannot be faulted. The State Government had initially already approved the fresh recruitment, and the State Public Service Commission had issued fresh advertisement for 71 posts including the reserved category posts. Since the rules regulating the recruitment did not impose any duty on the appointing authority to make appointment from the Wait List, the refusal was held justified.

7.3 The decision in the ***Gujarat State Dy. Executive Engineers' Assn.*** was pressed into service by both the sides to bring home their respective case

about right to the wait-listed candidate to be appointed. The said decision may, therefore, be considered in its breath.

7.3.1 The examination for selection of Class I and Class II Engineers under the relevant Rules comprising out written and *viva voce* test were held in the year 1980 and 1982, for which the results were declared in the year 1981 and 1983 respectively. The High Court directed the merit list and the wait list to be redrawn by ignoring the minimum qualifying marks for the viva voce test prescribed for selection. Subsequently, those candidates who were included in the wait list filed Writ Petitions before the High Court for a direction to the Government to work out the vacancies in accordance therewith and appoint candidates from wating list of the two examinations.

7.3.2 What High Court did was that it directed the Government to make six more appointments by direct selection from the revised waiting list of the year 1980 examination out of the vacancies filled in the year 1981-1982. It was further directed that those not getting appointments should be considered for vacancies arising in the year 1982-1983 and between 01.04.1983 and 21.09.1983.

7.3.3 As regards how and in what manner a Waiting List should operate and what is its nature the

aspects which would be governed by the rules. It was explained thus,

> 'Usually it is linked with the selection or examination for which it is prepared. For instance, if an examination is held say for selecting 10 candidates for 1990 and the competent authority prepares a waiting list then it is in respect of those 10 seats only for which selection or competition was held. Reason for it is that whenever selection is held, except where it is for single post, it is normally held by taking into account not only the number of vacancies existing on the date when advertisement is issued or applications are invited but even those which are likely to arise in future within one year or so due to retirement etc.' (Para 8)

7.3.4 Observed this Court further that such list prepared either under the rules or even otherwise is mainly to ensure that the working in the office does not suffer if the selected candidates do not join for one or the other reason,

> "A candidate in the waiting list in the order of merit has a right to claim that he may be appointed if one or the other selected candidate does not join. But once the selected candidates join and no vacancy arises due to resignation etc. or for any other reason within the period the list is to operate under the rules or within

reasonable period where no specific period is provided then candidate from the waiting list has no right to claim appointment to any future vacancy which may arise unless the selection was held for it. He has no vested right except to the limited extent, indicated above, or when the appointing authority acts arbitrarily and makes appointment from the waiting list by picking and choosing for extraneous reasons." (Para 8)

7.3.5 Holding that it was not a correct approach on part of the High Court to permit to fill up vacancies from current wait list on the ground that subsequent vacancies were not property worked out, it was next observed in ***Gujarat State Dy. Executive Engineers' Association***[1],

"It is operative only for the contingency that if any of the selected candidates does not join then the person from the waiting list may be pushed up and be appointed in the vacancy so caused or if there is some extreme exigency the Government may as a matter of policy decision pick up persons merit from the waiting list. But the view taken by the High Court that since the vacancies have not been worked out properly, therefore, the candidates from the waiting list were liable to be appointed does not appear to be sound." (Para 9)

(Emphasis supplied)

7.4 It is correct that a waiting list is not a ready reservoir for the recruitment, but it is equally true that when it is made operative for a particular period under any provision, rule or circular, it has to be acted upon for the contingency when any of the selected candidate does not join or the appointee resigns. The waiting list is intended to pave way for the next ranked candidate to be appointed in such situation provided the vacancy occurs. In the present case, however the above dictum and the principles would have to be applied harmoniously with the rule 9 of rotation envisaged in Section 31(11) of the Act.

7.5 The rules of recruitment may provide the time stipulation about the validity and operation of the wait list. When the wait list or rank list kept alive for the purpose of making appointment therefrom by virtue of provision or stipulation, such mandate will have to be adhered to and a candidate placed next on merit in the Wait List or Rank List would be entitled to lodge his or her claim for appointment successfully to the vacancy created by virtue of none being appointed. From the survey of the decisions on the subject of operation of Wait List Or Rank List and the corresponding rights of the candidates enlisted therein, the law could be summarised to state that the wait list by itself is not a source of recruitment, and that generally a candidate placed in the wait list has

no vested right to invariably claim appointment therefrom, however when the wait list is made valid for a stipulated period, it would operate for such period.

8. Again, in the present set of facts, the above proposition would hold true subject to operation of rule and policy of rotation as per Section 31(11).

9. In the teeth of the aforesaid principles of law enunciated by this court when facts on hand are examined, it would not detain us for long to brush aside the contention raised by the learned senior counsel appearing for the appellant, though at first blush it looked attractive. At the cost of repetition, it is apt to note that the post called for was filled up but Dr. Anitha a Scheduled Caste candidate who worked for a period of more than one year viz., till she resigned on 30.03.2022, and on her resignation the vacancy of the said post having arisen, the mandate of sub-section (10) of section 31 prescribing that the waiting list would be in operation for a period of two years and simultaneously sub-section (11) of section 31 would be attracted and both these provisions have to be read harmoniously.

10. For the above precise reason, the respondent university has applied the communal

rotation and assigned the vacancy to the turn of 8-LC/AI that is, Latin Catholic/Anglo Indian Category and as the petitioner did not belong to the said category she has not been selected or for that matter none from the wait list belonged to the said category.

11. As a result, the appeals are dismissed and the impugned judgment and order dated 12.07.2023 passed by the High Court in Writ Appeal No.534 of 2023 as well as the order dated 13.09.2025 passed in Review Petition No.1202 of 2023 are hereby affirmed. Costs made easy.

In view of disposal of the appeals as above, all pending interlocutory applications would not survive and stand accordingly disposed of.

.....,J.
(ARAVIND KUMAR)

....., J.
(N.V. ANJARIA)

NEW DELHI
DECEMBER 18, 2025.
(VK)