

Hira Lal

Vs

District Judge, Ghaziabad and Others

Writ Petition No. 4007 of 1982

(R. S. Pathak, Ranganath Misra JJ)

13.04.1983

JUDGMENT

RANGANATH MISRA, J.-

1. Petitioner, who offered himself as a candidate for one of the posts of Stenographer in Hindi in the establishment of District Judge at Ghaziabad in the State of Uttar Pradesh, has come with this petition under Article 32 alleging the violation of his fundamental rights enshrined in Articles 14 and 16 of the Constitution. He has pleaded that he is a member of the Scheduled Castes and the State Government by a general order in March 1965 had directed that "in services subordinate to U. P. Government for recruitment through competition" 18 per cent of the posts should be reserved for members of the Scheduled Castes. He further alleged that when six vacancies in the post Stenographer in Hindi were advertised to be filled up and he offered himself as a candidate, he was examined in shorthand test on April 17, 1982, and was shown in the third place in the list of successful candidates published on April 24, 1982, and was called to an interview on May 1, 1982. According to him, in the final list of successful candidates his position was shown as No. 7 and, therefore, he was not selected. He complains that he was down graded from the third place without justification, and if the government order of reservation of 18 per cent had been kept in view, he should have been selected even if he secured the seventh place in the merit list.

2. In the return to the rule, the Additional District Judge of Ghaziabad has indicated that the petitioner had secured eighth place in shorthand test and his name figured as No. 3 in the list of successful candidates as it had been drawn up in alphabetical order. At the interview he improved his position and was ultimately shown as No. 7. In the selection no reservation had been intended to be made in view of the position that the post of Stenographer is covered under Class III service and the total strength of Class III employees in the judgeship of Ghaziabad as on May 1, 1982, was 132 and there were as many as 28 among them belonging to the scheduled castes which came to more than 21 per cent - 3 per cent above the reservation. An assertion was made that the process of recruitment had been fair and bona fide.

3. A rejoinder has been filed by the petitioner accepting the position that "the written test and the interview were done without any mala fide" but reiterating the contention that the direction regarding reservation should have been applied and the petitioner appointed on selection.

4. It is not the case of the answering respondent that reservation indicated in government order of 1965 was not applicable to the relevant recruitment and the assertion of the petitioner that in the previous years provision of reservation was implemented has also not been disputed. The scheme in the government order contemplates a roster register for every 25 vacancies and prescribes the

following mode :

- (1) 1 reserved for scheduled castes.
- (2) 2-6 unreserved
- (3) 7 reserved for scheduled castes.
- (4) 8-12 unreserved.
- (5) 13 reserved for scheduled castes.
- (6) 14-18 unreserved.
- (7) 19 reserved for scheduled castes.
- (8) 20-24 unreserved.
- (9) 25 reserved for scheduled castes.

5. Paragraph 2 of the government order states : " if an any particular year there are only two vacancies, no more than one should be considered reserved and if there is only one, that should be considered unreserved; the reservation shall be valid up to three years". When six vacancies were being filled up at a time in one year, If the roster was to be followed, on of the posts would indisputably have gone to the candidate of the Scheduled Castes. The stand taken in the counter-affidavit that more than 21 per cent of the posts in the Grade III cadre of the judgeship were being manned by the people belonging to the scheduled Castes at the relevant time is no answer to the prescription of the roster. It is not known whether some of the recruits of earlier years already in service belonging to the Scheduled Castes had come on the basis of overall merit without reference to reservation.

6. On this premise, if the provision of reservation had to be kept in view, the petitioner was bound to have been recruited. We allow the petition. As per the roster, he was entitled to be appointed against the first vacancy. We, therefore, direct the appointed authority to appoint the petitioner in that vacancy and five out of the six who are respondent 3 to 8 before us according to their position in the final merit list shall be retained.

7. We make no order as to costs.

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