

Nek Shyam Shamsheri and Another

Vs

State of Uttar Pradesh and Others

Writ Petition (Civil) No. 387 of 1988

(M. M. Dutt, S. Natarajan JJ)

04.11.1988

JUDGMENT

DUTT, J. –

1. In this writ petition, the petitioners have prayed for several reliefs. This Court, however, while issuing notice limited the scope of the writ petition only to the question of grant of Selection Grades and Super-Time Scales to the petitioners.
2. Of the two petitioners, petitioner 1 is the Special Judge, Meerut, and petitioner 2 is the Additional Sessions Judge, Muzaffarnagar, State of Uttar Pradesh.
3. Initially, the petitioners and 8 others were appointed Judicial Magistrates in the Cadre of Judicial Officers some time in June 1957 on the basis of the Combined Civil Services Competitive Examination held for the recruitment of 10 Judicial Officers and 35 Munsifs who were appointed in July 1957.
4. The Judicial Officers including the petitioners recruited along with 35 Munsifs on the basis of the said Combined Civil Services Competitive Examination, did not belong to the Judicial Service. While the Munsifs had a definite channel of promotion up to the position of the District and Sessions Judges, the petitioners who were in the cadre of Judicial Officer had no such promotional opportunity.
5. By a government notification dated September 30, 1967, the Judicial Officers were for the first time brought within the administrative control of the High Court with effect from October 2, 1967. In other words, the Judicial Officers were brought within the ambit of Judicial Service of the State under the control of the High Court.
6. By another notification dated March 12, 1975 issued in supersession of the said notification dated September 30, 1967, the Government of U.P. constituted a Judicial Service with the members of the U.P. judicial Officers' Service to fill in the posts of Additional Sessions Judges. It was directed in the notification that the U.P. Judicial Officers' Service would be a service distinct and separate from the U.P. Civil Services (Judicial Branch).
7. The petitioners were appointed in the Higher Judicial Service by way of promotion to the posts of Additional Sessions Judges on December 12, 1979 and were confirmed in those posts with effect from January 1, 1980.

8. In view of the unamended Rule 27 of the U.P. Higher Judicial Service Rules, 1975, hereinafter referred to as "the Rules" only the District Judges were eligible for appointment to the Selection Grade posts. The Additional Sessions Judges and the Additional District Judges were not eligible for the Selection Grade posts. It was only by virtue of the Government order dated January 1, 1962 that 15 per cent of the posts were available for the Higher Judicial Service for Selection Grades in the scale of Rs. 2300-2700 with effect from July 1, 1979. Thus, out of the sanctioned strength of 339 posts, 51 posts were available for Selection Grade. But these 51 Selection Grade posts were available only to the District Judges.

9. Now, we may refer to an important step taken by the U. P. Government by issuing an order dated January 17, 1984 which, inter alia, provided for the appointment of the Additional Sessions Judges to Selection Grade posts. The relevant part of the said Government order dated January 17, 1984 is extracted below :

The Governor has been pleased to pass orders that since November 1, 1983, the Selection Grade in U.P. Higher Judicial Service Cadre be sanctioned by increasing it from 15 per cent to 20 per cent. In consequence thereof, there will be available 17 additional posts in the Selection Grade of Rs. 2300-100-2700, meaning thereby that since after November 1, 1983, the number of posts of Selection Grade will increase up to 68, but there will be no increase in the total number of the posts of the cadre. At present according to the rules the Selection Grade is permissible only to the District and Sessions Judges. Consequent on the aforesaid increase in the percentage of Selection Grade, since after November 1, 1983 the Selection Grade will be permissible to other members of Higher Judicial Service including the Additional Sessions Judges, subject to the condition that at no time the posts more than 15 per cent of the total posts of Selection Grade will be permissible to Additional Sessions Judges. Necessary amendments in this relation are being carried out separately in the Higher Judicial Rules, 1975.

10. It appears from the government order extracted above that from November 1, 1983, the Selection Grade posts were increased from 15 per cent to 20 per cent. As a result, the number of Selection Grade posts became 68, and that after November 1, 1983, the Selection Grade would be available to other members of Higher Judicial Service including the Additional Sessions Judges subject, however, to the condition that at no time more than 15 per cent of the total number of posts would be available to the Additional Sessions Judges.

11. As directed in the said government order dated January 17, 1984, by a notification dated April 5, 1984 Rule 27 of the Rules was amended and substituted as follows :

27. Appointment. - Appointment to the Selection Grade posts in the Service shall be made by the court from amongst the members of the Service on the basis of merit :

Provided that at no time the proportion of the number of Additional Sessions Judges in the Selection Grade shall exceed 15 per cent of the total number of Selection Grade posts.

27-A. Appointment to Super-Time Scale. - Appointment to Super-Time Scale posts in the Service shall be made by the court from amongst the members of the Service holding Selection Grade posts on the basis of merit.

12. Thus, under the amended Rule 27, the Additional Sessions Judges have become eligible for Selection Grade posts, but not exceeding 15 per cent of the total number of posts. Under Rule 27-A, appointment to Super-Time Scale posts will be made from amongst members of the Service, that is, the Higher Judicial Service, holding Selection Grade posts. The number of Selection Grade posts was, however, increased to 79 since after April 1, 1984 by the government order dated May 20, 1985.

13. At a Full Court Meeting held on January 25, 1986, the High Court by a resolution approved the recommendations of the Selection Committee that 57 District Judges/Additional District Judges were fit for appointment in the Selection Grade. By the same resolution, the High Court also approved the recommendation of the Selection Committee that 24 Additional Sessions Judges including the two petitioners, were fit for appointment in the Selection Grade. The High Court, however, did not specify the date from which the Selection Grades will be granted to the petitioners and others.

14. The grievance of the petitioners is that in spite of the said resolution of the High Court, the petitioners are not being given the Selection Grade. The petitioners claim that they are entitled to be appointed in the Selection Grade posts with effect from November 1, 1983 in terms of the said government order dated January 17, 1984.

15. It is, however, stated by Mr. Gopal Subramaniam, learned counsel appearing on behalf of the Allahabad High Court, that the petitioners have already been appointed to the Selection Grade posts with effect from August 10, 1984. Counsel submits that it is true that by the said government order dated January 17, 1984 it was decided to grant Selection Grade posts to the Additional Sessions Judges and Additional District Judges since November 1, 1983, but that could not be given effect to so long as Rule 27 was not amended as directed in the said government order. Rule 27 was amended and the amendment was published in the official Gazette on August 10, 1984 and, accordingly, the petitioners have been appointed to the Selection Grades with effect from August 10, 1984. According to the learned counsel, the petitioners cannot claim to be appointed to the Selection Grades with effect from a date earlier than the date of amendment of Rule 27.

16. In view of the statement of Mr. Subramaniam that the petitioners have already been appointed to the Selection Grades with effect from August 10, 1984, the dispute between the parties is narrowed down to the question as to whether the petitioners are entitled to be appointed to the Selection Grades with effect from November 1, 1983 or the respondents are justified in appointing the petitioners to the Selection Grades with effect from August 10, 1984, that is, the date on which the amendment of Rule 27 was published in the official Gazette.

17. We have already extracted above the relevant portion of the government order dated January 17, 1984. It is apparent from the government order that the government had decided to grant Selection Grades to the Additional Sessions Judges and the other members of the Higher Judicial Service with effect from November 1, 1983. On the date the said order was made by the government, that is, on January 17, 1984, the government was fully aware that under the unamended Rule 27 of the Rules, Additional Sessions Judges or the Additional District Judges were not entitled to the Selection Grades. In spite of that, the government decided that the other members of the Higher Judicial Service including the Additional Sessions Judges will be appointed to the Selection Grades to the limited number of posts as mentioned therein with effect from November 1, 1983. The said government order has not been superseded or modified by a subsequent government order and, accordingly, it stands. We fail to understand how in the face of the said government order dated

January 17, 1984, the respondents can deny to the petitioners appointment to the Selection Grades with effect from November 1, 1983. It follows from the said government order dated January 17, 1984 that with a view to granting Selection Grades to the Additional Sessions Judges and Additional District Judges, the government took steps for the amendment of the Rules, particularly Rule 27. In our opinion, the date of amendment of Rule 27 has no bearing on the question from which date Additional Sessions Judges or the Additional District Judges will be granted the Selection Grades. That question is to be decided by the government and the government having already decided that these members of Higher Judicial Service should be granted Selection Grades with effect from November 1, 1983, that decision will stand. In the circumstances, we are firmly of the opinion that the petitioners are entitled to the Selection Grades with effect from November 1, 1983.

18. Before parting with this case, we may dispose of one submission made on behalf of the petitioners. Mr. Jain, learned counsel appearing on behalf of the petitioners, has drawn our attention to the notification dated March 22, 1988 whereby the High Court appointed certain District Judges/Additional District and Sessions Judges in the Selection Grades with effect from the date noted against the name of each. In the list of District Judges and Additional District and Sessions Judges who have been granted the Selection Grade, it appears that the officers named against serial Nos. 1 to 9 have been granted the Selection Grade with effect from November 1, 1983. It is stated by Mr. Jain that these officers against serial Nos. 1 to 9 of the list are Additional District Judges. It is submitted that as Additional District Judges have been appointed to the Selection Grade posts with effect from November 1, 1983, the petitioners are entitled to claim appointment to the Selection Grade with effect from the said date. On the other hand, it is submitted by Mr. Subramaniam that the said officers against serial Nos. 1 to 9 are not Additional District Judges but they are all District Judges. There is, however, nothing to show that the said officers are District Judges. Be that as it may, we do not think that it is necessary to decide whether these officers are District Judges or Additional District Judges, for we have already held that the petitioners are entitled to the Selection Grades with effect from November 1, 1983 in view of the said government order dated January 17, 1984.

19. As the petitioners have been granted the Selection Grades, it is now for the High Court to consider the question of granting of Super-Time Scales to the petitioners. The decision of that question falls entirely within the administrative jurisdiction of the High Court and this Court cannot embark on adjudicating the same.

20. We are, however, not inclined to accept the contention made on behalf of the petitioners that the Additional Sessions Judges are entitled to all the 15 per cent of the total number of posts for Selection Grades. Indeed, that is not the intention and spirit of the said government order dated January 17, 1984. All that the said order provides is that at no time the posts more than 15 per cent of the total number of posts of Selection Grade would be permissible to the Additional Sessions Judges. This does not mean that all the 15 per cent of the total number of posts will be reserved for the Additional Sessions Judges as Selection Grade posts. The order only fixes the maximum number of Selection Grade posts to which the Additional Sessions Judges can be appointed. The contentions in this regard of the respondents and some Additional Sessions Judges and District Judges, who are the intervenors, are accepted.

21. No other point has been urged on behalf of the parties.

22. For the reasons aforesaid, the writ petition is allowed to the extent indicated above. The respondents are directed to grant Selection Grades to the petitioners with effect from November 1,

1983 in terms of the said government order dated January 17, 1984. The High Court is directed to consider the question of grant of Super-Time Scale to the petitioners preferably within three months from date.

23. There will be no order as to costs.

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