

State of U.P. and Others

Vs

Rajesh Kumar Misra

Civil Appeal No. 4901 of 1992

(L.M. Sharma, Yogeshwar Dayal, N. Venkatachala JJ)

17.11.1992

JUDGEMENT

VENKATACHALA, J.:-

1. Leave granted.

2. Bareilly Polytechnic, Bareilly is the attachee of the U.P. Government Polytechnic, Sahajahanpur. Certain Jai Prakash Gupta was appointed on December 11, 1987 in an unadvertised post of Assistant Lecturer (Electrical) in that Polytechnic on ad hoc basis. He continued in that post by an Order dated 16-3-1989 issued by the Joint Director of Technical Education (Appellant 3). The nature of his continued appointment, as seen from that order, was 'temporary ad hoc' till a Directorate level regular appointment was made or up to 31-5-1989, whichever occurred earlier. When his said appointment as Assistant Lecturer (Electrical) was due to expire on 31-5-1989, he obtained on 29-5-1989 an interim order from the High Court of Judicature at Allahabad, Lucknow Bench in a Writ Petition, W. P. No. 6042 of 1989, by which the State Government was restrained from terminating his appointment. By then, there was another Writ Petition No. 4308 of 1989 filed by Rajesh Kumar Misra (respondent here) which was pending hearing by the same Lucknow Bench. The facts which had led to the filing of that writ petition and the relief sought for therein require mention as the present appeal is directed against the order made therein. Director of Technical Education (Appellant 2) had issued an advertisement in the year 1988 inviting applications from eligible candidates for appointment in the posts of Assistant Lecturers (Electrical) in the said Polytechnic. The respondent here and the said Jai Prakash Gupta, who had applied for appointment to the said post, were interviewed along with other applicants on 6-1-1989 by a Selection Committee constituted for the purpose. In the Select List of candidates prepared by that Selection Committee the respondent here had been placed at Sl. No. 5 while the said Jai Prakash Gupta had been placed at Sl. No. 8. Selectees at Sl. Nos. 1, 2 and 4 were appointed as Assistant Lecturers (Electrical) in the Polytechnic in February, 1989 purporting to implement that Select List. The respondent here in his Writ Petition claimed that the said Jai Prakash Gupta, who was at Sl. No. 8 in the Select List when was appointed in one of the posts of Assistant Lecturer (Electrical), he who was at Sl. No. 5 in the Select List should have been appointed earlier than the said Jai Prakash Gupta and hence the appellants here who were respondents in his writ petition should be directed to appoint him as Assistant Lecturer (Electrical) by writ of mandamus issued to them. A learned Judge of the High Court, who heard that Writ Petition (W.P. No. 4308 of 1989) allowed it and directed the respondents therein (appellants here) by a writ of mandamus to appoint the petitioner therein (respondent here) as Assistant Lecturer (Electrical) in the Polytechnic by his Order dated September 16, 1991. It is the respondents in that writ petition, who have filed the present appeal by special leave, questioning the validity of that order of the learned Judge.

3. The submission made on behalf of the appellants was not that the appellants were not in favour of appointing the respondent (writ petitioner) in the post of Assistant Lecturer (Electrical) in that Polytechnic, but they were unable to so appoint him as the High Court by its interim order made in Writ Petition No. 6042 of 1989 of the said Jai Prakash Gupta, had allowed him to continue in that post although on May 31, 1989 he had to vacate it in terms of the order by which his appointment had been continued from the year 1987 on temporary ad hoc basis. It was explained on behalf of the appellants, that the learned Judge, although had been told that the appointment of Jai Prakash Gupta, who had found a place at Sl. No. 8 of the Select List, as against the respondent who found a place at Sl. No. 5, had not been made in implementation of that Select List, but had been continued by the joint Director because of his ad hoc appointment in the year 1987 itself, he had ignored that all important aspect of the matter in directing the appellants to appoint the respondent also as Assistant Lecturer (Electrical) in the Polytechnic. Grievance made out on behalf of the appellants, appears to us, to be well founded. Order dated 16-3-1989 by which the Joint Director had appointed Jai Prakash Gupta as Assistant Lecturer (Electrical), does not show that it was made on the basis of the aforesaid Select List. When the appellants were ready and willing to appoint the respondent at Sl. No. 5 in the Select List as Assistant Lecturer (Electrical) in preference to Jai Prakash Gupta at Sl. No. 8 in the Select List, but for the interim Order of the High Court made in Writ Petition No. 6042 of 1989, the learned Judge should have heard that writ petition along with the writ petition out of which the present appeal by special leave has arisen and disposed of both of them by a common order, as the adoption of such course would have brought about a just result.

4. In the result, we allow this appeal, set aside the Order under appeal and request the High Court to club Writ Petition No. 4308 of 1989 along with Writ Petition 6042 of 1989 of Jai Prakash Gupta and decide both of them by a common order. No costs. Appeal allowed.

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