

Jai Narain Ram

Vs

State of U. P. and Others

Civil Appeal No. 11314 of 1995

(K. Ramaswamy, B. L. Hansaria JJ)

16.11.1995

ORDER

1. Leave granted.

2. We have heard the learned counsel for the appellant and the State. For the recruitment in the 15 posts of Treasury Officers-Accounts Officers in U. P. Finance and Accounts Services, Sales Tax officers (6 posts) and Regional Audit Officers (4 posts) advertisement was made in 1988. Out of 15 posts in the Treasury Officers-Accounts Officers in U. P. Finance and Accounts Service, 4 posts were reserved for members of the Scheduled Castes. It would appear that as a result of competitive examination conducted by the PSC, the last candidate selected for these 4 posts was one Anil Kumar Rai who secured 361 marks in written examination and 39 marks in personality test out of 400 marks. The PSC had recommended the names of four candidates. As a result, the appellant and three others - one Balkesh Singh, Bali Ram Prasad, Amar Singh, who secured 347 + 53 (total 400 marks), 344 + 56 (total 400 marks), 360 + 39 (total 399 marks) and the appellant 351 + 48 (total 399 marks), could not be recommended, as there was no request by the Government for putting them in the waiting list. Since they could not be appointed, the appellant had approached the High Court for a writ of mandamus or direction to the PSC to recommend his name for appointment in the Accounts Service. The High Court dismissed the Writ Petition No. nil of 1992 by order dated 4-12-1992 on the ground that the petitioner was not intimated that he was selected. Since there was no information that he was put in the select list, direction could not be given to appoint him as Accounts Officer in Accounts Service.

3. In the counter-affidavit filed by the PSC, it was stated that since four posts were reserved for the Scheduled Castes and the last candidate Anil Kumar Rai was already selected and recommended for appointment, and as there was no request by the State Government for preparation of waiting list for the vacant posts reserved for the Scheduled Castes, the names of the appellant and the aforesaid three persons could not be recommended for appointment. It is stated in the counter-affidavit filed by Behari Lal, Special Secretary, Karmik Anubhag Secretariat, U. P. that since the appellant was not recommended nor found qualified for appointment, he could not claim any appointment.

4. In paragraph 11 of the special leave petition, a specific stand has been taken to paragraph 11 that the four candidates selected by the PSC, namely, Ram Bodh, Roll No. 22142, Serial No. 13, Lolark Ram, Roll No. 442, Serial No. 23, Ram Daras Chandrahas, Roll No. 2301, Serial No. 24, and Raja Ram, Roll No. 1787, Serial No. 30, though selected and recommended for appointment in the first category, did not join in the service. As a consequence, 4 posts were left vacant and required to be filled up by the reserved candidates. Since the appellant is the fourth candidate among the candidates who were standing in the order of merit, rejection of the appellant's claim for

appointment is illegal and unconstitutional.

5. In the counter-affidavit of Behari Lal, it is stated in paragraph 6 thus :

"That the contents of paras 11 and 12 of the SLP relates to the Finance Department, therefore need no comments of answering respondent. However, it is submitted that reserved posts can be filled by the candidates of reserved categories only."

In other words, there is no denial of the aforesaid four candidates not joining in the Finance Department. It is submitted that it would be filled up by reserved candidates.

6. It is not in dispute that the appellant is a reserved candidate belonging to Scheduled Castes. In view of the admitted position that four posts were reserved in the Finance Department in Category 1 mentioned earlier and 4 selected candidates appeared to have not joined in the service, as asserted in paragraph 11 of the SLP and not specifically denied by the respondents in the counter-affidavit in paragraph 6 as referred to earlier, it is clear that the appellant also is the fourth candidate in the order of merit and would have been selected, had there been a requisition by the State Government for appointment of the reserved candidates.

7. Right to seek appointment to a post under Article 14 read with Articles 16(1) and (4) is a constitutional right to equality. The State failed to perform its constitutional duty to requisition the PSC to recommend the next qualified persons to the posts reserved for Scheduled Castes. Under these circumstances, the denial of appointment to the appellant and three others above him is unconstitutional. Therefore, the respondents are not justified in denying the claim of the appellant for the appointment to the above post.

8. The PSC is, therefore, directed to recommend the name of the appellant for appointment in the first category, i.e., Treasury Officers and Accounts Officers, within a period of six weeks from the date of the receipt of the order and the State is directed to issue order of appointment to the appellant within a period of six weeks thereafter.

9. The appeal is accordingly allowed. No costs.