

Gangal Ram

Vs

State of Haryana and Others

Civil Appeal No. 11856 of 1995

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

07.12.1995

ORDER

1. Leave granted.

2. The appellant specifically raised a plea that on 1-1-1993 result of the examination conducted in December 1992 was declared and two candidates were duly declared to have been selected and appointed. The appellant is one of the candidates who claimed their right for consideration for selection as Road Inspector in the said examination. It is now an admitted fact that on 16-7-1993, 14 more candidates came to be appointed by promotion as Road Inspectors. When the appellant claimed relief by filing Writ Petition No. 10306 of 1993, the High Court dismissed the writ petition on 10-2-1994. After the notice was served, the respondents filed a counter-affidavit contending that subsequently 14 vacancies had arisen in the promotion quota and, therefore, they were duly declared to have been selected and appointed. With a view to satisfy ourselves about the correctness and legality of the action taken by the respondents, on 11-9-1995 we passed the following order :

"Though in the counter-affidavit it is stated that the results of the rest of the candidates were announced on 16-7-1993 for the reason that subsequent to the appointment of the two candidates on 1-1-1993, some vacancies reserved for promotion quota for Mistries had arisen, no documentary evidence in support of the averment has been placed by the respondents. Learned counsel seeks for and is granted four weeks' time for producing the record to justify whether the vacancies had arisen and if so, how many and on what basis the appointments by promotion came to be made."

3. No record has been produced. Ms. Nisha, learned counsel appearing for the State sought further opportunity to produce the file but we decline to grant further time since no explanation has been given as to under what circumstances the record has not been produced even till date. Under these circumstances, we are left with no option but to proceed with the matter on the basis of the material on record.

4. Shri D.K. Garg, learned counsel appearing for the appellant, contended that the appellant apprehends that the action was taken by the respondents only after committing illegal acts of taking bribe and 14 candidates were appointed without any selection. We find force in the contention. In view of the fact that the record has not been produced, we have to draw adverse inference against the respondents for non-production of the record and proceed on the footing that had the record been produced, the same would have proved unfavourable to them and their actions are bristled with illegalities and to cover up the same no record has been produced. Obviously, examination having

been conducted in December 1992 and the result declared and two selected candidates having been appointed on 1-1-1993, the result of the examination stands concluded. It is not the case, however, that any fresh examination was conducted giving opportunity to all the candidates to offer their candidature for consideration and that 14 candidates were selected, who were respondents in another writ petition disposed of by the High Court, though not impleaded in this case. We do not propose to set aside their selection as their appointment have become final since they are not impleaded as party-respondents to this appeal. However, things are not appearing to be innocuous as stated in the counter-affidavit filed by the Chief Engineer. It would be obvious that those promotions to 14 persons came to be made after demand and acceptance of illegal gratifications in that behalf by the concerned persons involved in the appointments. Otherwise, nothing prevented the respondents from producing the record before the Court to justify the correctness and the legality of the action taken by them. In these circumstances, we are constrained to make these observations. However, no relief can be given to the appellant as he was neither selected nor was kept in the waiting-list.

5. The appeal is disposed of accordingly. No costs.