

Rajan Baboo

Vs

U.P. Public Service Commission and Others

Civil Appeal Nos. ... of 1996 (arising out of Slps (C) Nos. 8607 of 1990 and 2841-42 of 1991)

(S.C. Agarwal, G.T. Nanavati JJ)

18.01.1996

ORDER

1. Special leave granted.

2. These appeals relate to appointment on the basis of selection through the Combined Upper Subordinate Services Examination, 1983, Lower Division Assistant Examination, 1984 and Provincial Civil Services Examination, 1985 conducted by the U.P. Public Service Commission (hereinafter referred to as "the Commission"). For the purpose of the said selection, there was reservation for the dependents of freedom fighters. The appellant, Rajan Baboo, was selected by the Commission against a post reserved for dependents of freedom fighters, on the basis that he is the son of Shri Sita Ram Jaiswal, a freedom fighter. It appears that a complaint was received by the Commission that the appellant is not the legitimate son of Shri Sita Ram Jaiswal and he had wrongly availed the benefit of the reservation. On the basis of the said complaint, the Commission referred the matter for enquiry to the District Magistrate, Allahabad. The District Magistrate submitted his report dated 2-3-1988 that the appellant is not the legitimate son of Shri Sita Ram Jaiswal and he could not be regarded as the dependent of a freedom fighter. On the basis of the said report of the District Magistrate, the Commission passed an order dated 18-4-1988 and took the view that the appellant cannot be held as a legitimate issue of freedom fighter Shri Sita Ram Jaiswal and, therefore, he cannot be given the benefit of a dependent of a freedom fighter. By order dated 9-5-1988, the Commission cancelled the candidature of the appellant for the Combined Upper Subordinate Services Examination, 1983. The appellant filed two writ petitions (Civil Miscellaneous Writ Petitions Nos. 7670 and 9886 of 1988) before the Allahabad High Court to challenge the said two orders dated 12-4-1988 and 9-5-1988. Both these writ petitions were dismissed by the High Court by judgment dated 13-2-1989. The case of the appellant is that on the representation made by him, an inquiry was made by Additional District Magistrate, City, Allahabad and he submitted a second report dated 31-1-1989 wherein he expressed the view that the appellant is the legitimate son of Shri Sita Ram Jaiswal. In view of the said report of the Additional District Magistrate, the appellant filed a review petition before the High Court which was dismissed by order dated 2-5-1990. Feeling aggrieved by the said orders of the High Court dated 13-2-1989 and 2-5-1990, the appellant has filed these appeals.

3. During the pendency of these matters this Court, on 6-2-1991, passed an order wherein the Court has referred to the claim of the appellant that prior to her marriage to Shri Sita Ram Jaiswal on 18-12-1952 at the Arya Saniaj Mandir at Allahabad, Smt Janaki Devi had been converted to Hinduism in the same Mandir on 13-12-1952, and has observed that having regard to the far-reaching consequences of any declaration that the appellant is not the legitimate son of Shri Sita Ram Jaiswal, it would be appropriate that a proper inquiry should be conducted into the matter by the

District Judge, Allahabad. By the said order, the Court directed the District Judge, Allahabad to carry out an inquiry regarding the claims of conversion and marriage which was alleged to have taken place. In pursuance of the said order of this Court, the District Judge, Allahabad, conducted an inquiry wherein he afforded opportunity to the appellant as well as to the respondents to adduce evidence. Two questions have been considered by the District Judge, in the said inquiry, viz., (i) whether Smt Janaki Devi, who earlier belonged to the Muslim religion, was converted to Hinduism on 13-12-1952, as claimed by the appellant, and (ii) whether after such conversion, Smt Janaki Devi was married to Shri Sita Ram Jaiswal on 18-12-1952.

4. In support of his case on both the issues, the appellant examined Shri Sita Ram Jaiswal PW 1, Mahadev Prasad PW 2, the brother of Shri Sita Ram Jaiswal, Nar Singh PW 3, son of Shri Sita Ram Jaiswal from his first wife, Ram Prasad Arya PW 4, Manager of Arya Samaj Mandir, Raj Kishore Jaiswal PW 5, a friend of Shri Sita Ram Jaiswal, Vaidya Nath Prasad PW 6, Punna Lal PW 7, Smt Janaki Devi PW 8, Ghanshyam Das PW 9, Sumer Chand Kushwaha PW 10 and Mool Chand Awasthi PW 11. On behalf of the respondents, Shri Tara Chand Pal, Section Officer in the U.P. Public Service Commission was examined. With regard to the marriage of Shri Sita Ram Jaiswal with Smt Janaki Devi on 18-12-1952 at Arya Samaj Mandir, Allahabad apart from the evidence of Shri Sita Ram Jaiswal PW 1 and Smt Janaki Devi PW 8, there is the evidence of Mahadev Prasad PW 2 and Raj Kishore Jaiswal PW 5, Vaidya Nath Prasad PW 6, Punna Lal PW 7, Ghanshyam Das PW 9 and Sumer Chand Kushwaha PW 10 who have stated that they were present at the time of the said marriage. Nar Singh PW 3, the son of Shri Sita Ram Jaiswal from his first wife, has stated that Smt Janaki Devi is his stepmother and that two sons and four daughters were born to Smt Janaki Devi from her marriage with Shri Sita Ram Jaiswal and that the appellant is one of the sons born from the said wedlock.

5. The District Judge, in his report dated 19-7-1991, has found, that Smt Janaki Devi was earlier known as Smt Suggan and she was married to Abdul Majid and she was converted to Hinduism in the year 1952 and at that time she was renamed as Janaki Devi. The District Judge has, however, found that it has not been proved as a fact that Shri Sita Ram Jaiswal was married to Smt Janaki Devi on 18-12-1952 as alleged but Shri Sita Ram Jaiswal and Smt Janaki Devi were living together since long and as a result of their living together, two sons and four daughters were born and the appellant is one of them.

6. The consideration which has weighed with the District Judge in holding that Smt Janaki Devi was not married to Shri Sita Ram Jaiswal on 18-12-1952 is that no documentary evidence had been produced about the said marriage. The District Judge has said that it is claimed that there was a record about the said marriage in the marriage register maintained in the Arya Samaj Mandir where the marriage is alleged to have been taken place but that register has not been produced.

7. As regards non-production of the register, we find that Ram Prasad Arya PW 4, who is the Manager of Arya Samaj Mandir at Allahabad, has stated that Shri Vasudeo Prasad Shukla, who died in 1970, actually deposited that register in some court in the year 1968 but he was unable to say as to in which court that register was deposited. He has also stated that at the time when the register was deposited he had prepared a file which he had given to Shri Krishna Nand, Advocate with the request that the register be taken back but that file was lost by Shri Krishna Nand, Advocate. In these circumstances, we are of the view that the oral testimony of the witnesses examined by the appellant who have stated that they were present at the time of the marriage of Shri Sita Ram Jaiswal to Smt Janaki Devi at the Arya Samaj Mandir could not be discarded only on the ground that there is no documentary evidence to corroborate their evidence. The evidence of the witnesses

finds support from the finding recorded by the District Judge that on 13-12-1952 Smt Suggan was converted to Hinduism and was renamed as Smt Janaki Devi because the purpose underlying the said conversion was that Shri Sita Ram Jaiswal wanted to marry her. We are, therefore, of the opinion that there is no reason to discard the evidence of these witnesses and on the basis of their evidence, it must be held that Shri Sita Ram Jaiswal was married to Janaki Devi and the appellant is the legitimate son of Shri Sita Ram Jaiswal. On that view of the matter, the appellant is entitled to avail the benefit of the reservation, for dependents of freedom fighters.

8. The appeals are, therefore, allowed, the impugned judgments of the High Court dated 13-2-1989 and 2-5-1990 and the orders of the Commission dated 18-4-1988 and 9-5-1988 are set aside and the position regarding appointment of the appellant on the basis of his selection by the Commission in Combined Upper Subordinate Service Examination, 1983 is restored. No orders as to costs.