

SUPREME COURT OF INDIA

State of U.P.

Vs.

Ram Swarup Saroj

(Dr. A. S. Anand, CJI., R.C. Lahoti and Doraiswamy Raju, JJ.)

Civil Appeal No. 1977 of 2000 (Arising out of SLP(C)

No. 13155 of 1999).

07.03.2000

JUDGMENT

R.C. Lahoti, J. - Leave granted.

2. U.P. Public Service commission, on a requisition made by High Court of Allahabad, held an examination in the year 1990 for selecting suitable candidates for appointment of Munsifs. The respondent, who belongs to a scheduled caste, also appeared in the written examination and was declared having passed the same. He was also called for an oral interview on 17.10.1994. Result of the selection was declared on 25.11.1994. 22 seats were reserved for scheduled caste candidates. The name of the respondent did not figure in the list of successful candidates. The respondent had secured 432 out of 950 marks. The last two candidates appearing in the list of successful candidates belonging to the scheduled caste category were Shambhu Nath and Rahul Kumar Katyal who had secured 433\950 marks each.

3. It appears that in the list of candidates belonging to the general category there were several candidates who had secured an aggregate of 522 marks each. The practice then followed by the Public Service Commission was that if two or more than two candidates had obtained the same marks then while determining their position *inter se* in the list of selected candidates they will be so arranged as to place the candidate who had obtained higher marks in the written examination above the candidate obtaining lesser marks in the written examination and if the number of marks obtained in the written examination and interview were equal then the older in age will be kept above the person younger in age. One Avinash Narain Pandey, a candidate belonging to the general category filed a writ petition challenging the validity of the procedure so adopted for determining the order of merit in the select list. The petition was registered as W.P. No. 5127 of

1995. The High Court allowed the writ petition and directed that the order of merit shall be arranged by giving weightage to the marks secured by the candidates at the interview. This resulted in altering the order of merit and to some extent the list of successful candidates belonging to the general category. The directions issued by the High Court were applied by the authorities for finalising after revising the list of successful candidates of scheduled caste category as also for determining their order of merit inter se. Such revised list of successful candidates was finalised by U.P. P.S.C. in the month of November, 1996.

4. From out of the list of successful candidates belonging to the scheduled caste category all excepting one Narendra Pratap Singh joined the service. In the month of October, 1997 the respondent filed a writ petition before the High Court seeking a direction to the State of Uttar Pradesh to offer the vacancy created by non-joining of Narendra Pratap Singh to the respondent.

5. Before the High Court the claim of the respondent was contested by the State of Uttar Pradesh on two grounds only. It was submitted, firstly, that if one vacancy was to be filled then one Chandan Lal whose name figured above the respondent should have to be offered the post and not the respondent as Chandan Lal was placed at serial No. 1 in the waiting list and above the respondent, Ram Swarup Saroj. Next it was submitted that the concurrence of the High Court was sought for by the U.P. Government vide its letter dated 13th May, 1997 for filling the vacancy caused by non-joining of Narendra Pratap Singh but the High Court did not agree with the proposal made by the State Government and therefore the vacancy could not be filled.

6. The Division Bench of the High Court having heard the learned counsel for the parties and keeping in view the facts placed before it formed an opinion that it was not necessary to enter in the controversy whether Chandan Lal or the respondent, Ram Swarup Saroj would be entitled to be appointed in one vacancy available in the scheduled caste category; it would serve the interest of justice if the respondents were directed to fill in the vacancy available in the category of scheduled caste candidates in the order of merit from out of the waiting list by appointing one who was willing to join the post. It was ordered accordingly and a period of four weeks from the date of the order, i.e., 10.5.1999 was allowed for compliance.

Aggrieved by the abovesaid order the State of Uttar Pradesh has filed the present appeal.

7. At the hearing the learned counsel for the State of Uttar Pradesh raised mainly two contentions. Firstly, it was submitted that the select list having been prepared in November, 1996 has ceased to

be valid on expiry of one year from the date of preparation thereof and an appointment from such list could not now be directed. Reliance has been placed on several circulars issued by the State of Uttar Pradesh from time to time laying down the validity of a select list for appointment to State services at one year. Second plea raised on behalf of the appellant is that the respondent had filed the writ petition by impleading only the State of Uttar Pradesh and U.P. Public Service Commission as respondents before the High Court but had omitted to implead the High Court of Uttar Pradesh as a party in the writ petition; as such no binding direction could be issued as in the matter of judicial appointments the State Government is not free to act of its own unless and until the High Court recommends an appointment or concurs in any proposal made by the State Government.

8. We find none of the pleas raised before this Court was raised by the appellant before the High Court. A plea as to non-joinder of a party cannot be permitted to be raised for the first time before this Court if the same was not taken before the High Court and has not occasioned a failure of justice. It is pertinent to note that the High Court of Uttar Pradesh though aware of the impugned judgment delivered by the Division Bench has not chosen to file an appeal thereagainst. Before us also the appellant-State of U.P. has not placed any material on record to show how an inference as to failure of justice can be drawn because of non-joinder of High Court as party in the writ petition. The first plea of the appellant therefore fails.

9. Similarly, the plea that a list of selected candidates for appointment to the State services remains valid for a period of one year only is primarily a question depending on facts and yet the plea was not raised before the High Court. Secondly, we find that the select list was finalised in the month of November, 1996 and the writ petition was filed by the respondent in the month of October, 1997, i.e. before the expiry of one year from the date of the list. Merely because a period of one year has elapsed during the pendency of litigation, we cannot decline to grant the relief to which the respondent has been found entitled to by the High Court. We may place on record that during the course of hearing of SLP before this Court, on 29.9.1999 we had directed the learned Additional Advocate General for the State of U.P. to bring on record on affidavit the status of present recruitment of the judicial officers and the present vacancy position in the subordinate judiciary. In the affidavit of Joint Secretary, Department of Appointment, State Government, Uttar Pradesh sworn in on 4.11.1999 and filed before this Court it is stated that as on 14.10.1999 there were 231 vacancies existing in the cadre of Munsif Magistrates (now Civil Judge, Junior Division/Judicial Magistrates). That being the factual position we see no reason why the direction made by the High Court should be upset in an appeal preferred by the State of Uttar Pradesh.

The appeal is therefore dismissed. The implementation of the order of the High Court under appeal was not stayed by this Court. The appellant shall comply with the direction issued by the High Court within a period of six weeks from today if not already complied with. No order as to the costs.

Appeal dismissed.