

**SUPREME COURT OF INDIA**

Vijay Kumar Sharma

Vs.

Chairman, School Service Commission

C.A.No.2890 of 2001

(M.B. Shah and S.N. Variava JJ.)

19.04.2001

**JUDGMENT**

**S. N. Variava, J.**

1. Leave granted.
2. Heard parties.
3. This Appeal is against a Judgment dated 4th July, 2000. Briefly stated the facts are as follows:

“The Respondents had issued an advertisement in the newspaper for filling up vacancies in various categories of services in Schools run by them. The Appellants had applied for the posts pursuant to the said advertisement. They had appeared in written test as well as personality test. A panel was then prepared. Appellants No. 1, 3 and 4 were empanelled. Appellant No. 2 was not empanelled at all.”

4. As appointment letters were not issued to the Appellants they filed a Writ Petition in the Calcutta High Court which was allowed by a single Judge by Order dated 22nd December, 1999. However, in Appeal the Division Bench has, by the impugned order dated 4th July, 2000, set aside the Order of the single Judge and dismissed the Writ Petition on the ground that the vacancies which had been advertised were tentative. The Division Bench has held that there were no vacancies and, therefore, no direction could be issued for filling up the vacancies.

5. Appellant No. 2 was not empanelled and, as such, has no right to make any claim to be appointed. Therefore, the Appeal so far as Appellant No. 2 is concerned stands dismissed.

6. The Appellants No. 1, 3 and 4 were empanelled. Mr. Ghosh appearing for the Respondents states that the life of panel, so far as General Category is concerned, has been extended to 2nd February, 2002. He states that there are vacancies and Appellants No. 3 and 4 will be

appointed against those vacancies. In view of this statement the Order of the High Court, so far as Appellants No. 3 and 4 are concerned, is set aside.

7. Appellant No. 1 belongs to the OBC Category. For reasons best known to the Respondents, even though the life of the panel for General Category has been extended to 2nd February, 2002, the same has not been done for the panel of the OBC Category. It has been pointed out to us that in the OBC Category there were vacancies, yet Appellant No. 1 was not appointed and the panel allowed to lapse. We see no justification for not appointing Appellant No. 1 when vacancies were available. We also see no justification for not extending the panel life of the OBC Category. We, therefore, direct that Appellant No. 1 will be appointed against the vacancies which are available in the OBC Category.

8. With the above directions, the Appeal of Appellants No. 1, 3 and 4 is allowed. To that extent the Order of the Division Bench stands set aside. There will be no Order as to costs.