

SUPREME COURT OF INDIA

Manjula Sircar

Vs.

Harendra Bahadur Singh

(B Agarwal, P Naolekar and D Jain JJ.)

13.09.2007

JUDGMENT

P.P. NAOLEKAR, J.

1. Heard the learned Counsel for the parties.

2. In the interview held for appointment to the posts of Civil Judge (Jr. Division) by the Uttar Pradesh Public Service Commission in pursuance of the advertisement issued by the Public Service Commission under U.P. Nayayik Sewa Civil Judge (Junior Division) Examination, 1999 dated 1.8.1999, the candidates inclusive of the appellants and the contesting respondent were selected. By Government Order dated 26.2.1999, it was decided to provide reservation for women to the extent of 20 per cent in the appointments, and in pursuance thereof giving effect to 20 per cent reservation the appellant-women candidates were appointed. There was a challenge by filing a writ petition in the High Court of Judicature at Allahabad by a candidate selected but could not be appointed because of the 20 per cent reservation given to the women candidates. The Division Bench of the High Court by its order dated 27.7.2001 has held that there could not be any reservation for women in the instant selection as there has been no consultation at all with the High Court for providing such reservation, and as a consequence thereof gave direction for rearranging the list of finally selected candidates in order of merit without giving benefit of 20 per cent reservation for women to the women candidates. The net result of that direction would be that the appellant-women candidates who were selected and appointed would not be selected.

3. During the pendency of proceedings before the High Court when the fact was brought to the notice of the High Court that the women candidates have been issued appointment letters, the Division Bench of the High Court directed that all the appointments made during the pendency of the writ petition shall be subject to further orders of the Court.

4. Aggrieved by the order passed by the Division Bench of the Allahabad High Court, the women candidates have preferred special leave petition and by order dated 12.9.2001 the operation of the impugned order of the High Court was stayed and as a result thereof the appellant-women candidates continued in service right from the date they were appointed on the post.

5. While granting leave on 27.9.2002, this Court found that there were a number of vacancies for the post of Civil Judge (Jr. Division) and, therefore, it was directed that pending hearing and

disposal of these appeals the respondent No. 1 and other similarly selected candidates who are 12 in all and who are eligible as per the direction given by the High Court, be appointed to the post of Civil Judge (Jr. Division) if they are otherwise qualified; and that their appointment would be subject to further directions and the result of these appeals. As a consequence of this order, the writ petitioner (the respondent herein) along with others, total 12 in number, were also given appointment on the post. Thus, the appellants and the respondent all have been given appointment on the post in pursuance of the selection made.

6. If at this stage, the direction given by the High Court for revision and rearrangement of the names of the women candidates without giving benefit of 20 per cent reservation is given effect to, the services of the women candidates, who are in service for more than six years, will be required to be terminated.

7. In the facts and circumstances of the case, we feel that this is an appropriate case where this Court should exercise its jurisdiction under Article 142 of the Constitution of India for doing complete justice between the parties and thus upholding the order of the High Court holding that the benefit of 20 per cent reservation for women is not available to the women candidates for appointment to the post in pursuance of the advertisement dated 1.8.1999, we set aside the direction given by the High Court for revising and re-arranging the select list so far as women candidates are concerned and to exclude them if they do not fall within the merit, and instead thereof we direct that the appointments given to the appellant-women candidates shall not be disturbed and their services shall not be terminated, but for the purposes of the seniority they shall be placed just below the 12 selected men candidates, referred in the interim order dated 27.9.2002 passed by this Court, according to the inter se merit between the appellant-women candidates.

8. Consequently, the order of the High Court is upheld with the aforesaid modification of continuity of service of the women candidates and placing them just below the 12 selected men candidates. The appeals are, accordingly, disposed of.

9. There shall be no order as to costs.