

A ANURAG PATEL
v.
U.P. PUBLIC SERVICE COMMISSION AND ORS.

SEPTEMBER 29, 2004

B [K.G. BALAKRISHNAN AND DR. AR. LAKSHMANAN, JJ.]

Service Law:

C *State of U.P.—State Services/Upper Subordinate Services Examination—Direct recruitment through UPPSC—Reservation—Allocation of inter se seniority amongst reserved candidates securing higher rank and selected on general merit vis-à-vis the candidates standing lower in merit list but selected against reserved vacancies—Government of U.P., Instruction dated 19.10.1992—Held, in a combined competitive examination held for more than one service, each service should be treated separately—Authorities concerned should prepare list of reserved category candidates to be appointed on general merit as also of those to be appointed as against the reserved vacancies and while making appointments the inter se merit of all candidates belonging to reserved category should be considered and accordingly the candidates be given option treating each service separately—The State Government would carry out the exercise of reallocation accordingly.*

E *Ritesh R. Sah v. Dr. Y.L. Yamul & Ors. (1996) 3 SCC 253 and State of Bihar & Ors. v. M. Neethi Chandra & Ors. (1996) 6 SCC 36, relied on.*

CIVIL APPLATE JURISDICTION : Civil Appeal No. 4794 of 1998.

F From the Judgment and Order dated 15.4.98 of the Allahabad High Court in C.M.W.P. No. 46029 of 1993.

WITH

C.A. Nos. 4795/98, 6763 and 6764 of 2004.

G Rajiv Dutta, R.N. Trivedi, P.N. Misra, T.N. Singh, V.K. Singh, S.N. Singh, Ravi Prakash Mehrotra, Mrs. Deepti, R. Mehrotra, Garvesh Kabra, Shail Kumar Dwivedi, G. Venkateshwara Rao, Ms. Shweta Garg, Mohmmad Shoeb Alam, M/s. K.L. Mehta & Co., Pradeep Misra, Himanshu Munshi, R.P. Gupta, A.S. Pundir, Vibhakar Mishra, Pankaj Kumar and K.L. Janjani for the
H appearing parties.

The following Order of the Court was delivered :

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Leave granted in Special Leave Petition Nos. 24015 of 2003 and 2197 of 2004.

In the year 1990, the Uttar Pradesh Public Service Commission (for short 'the U.P.P.S.C.,) conducted a combined State Services/Upper Subordinate Services (Preliminary) Examination for selection to various posts such as Deputy Collectors in U.P. Civil (Executive) Services/Dy. Superintendent of Police in U.P. Police Services, Treasury Officers/Account Officers in U.P. Finance and Accounts Services, Sales Tax Officers, Asstt. Transport Officers, District Supply Officers and various other posts. Pursuant to the advertisement made by the U.P.S.C., a large number of candidates appeared for selection and the U.P.P.S.C. Published the list of selected candidates in August, 1992. Altogether 358 posts in various categories were filled up. The candidates belonging to the Backward Classes were entitled to get reservation in selection in respect of 57 posts in various categories, out of a total number of 358 posts. The posts in each category of service are filled up by choice of the candidate and the person who secured higher position in the merit list would opt for U.P. Civil (Executive) Service and those who cannot get the higher and important category of service have to be satisfied with posts in services of lesser importance. In each category of service posts were reserved for Scheduled Caste/Scheduled Tribe, Backward Classes and handicapped persons etc. The candidates belonging to SC/ST and Backward Classes get selected to the seats (posts) earmarked for general candidates. The U.P.S.C. treats such candidates in the general category and allot them to various services depending upon the rank secured by them in the select list and SC/ST and B.C. Candidates, who got lower rank in merit lists of general candidates would get only posting in lesser important service. However, the SC/ST and B.C. Candidates who got selection to the posts reserved in each category even though they secured lesser rank in the whole select list would get appointed to reserved posts in each category. This mode of appointments caused serious injustice to candidates who applied for post in the reserved category, yet they got selection to the general seats (posts) as they were meritorious and were entitled to get selection along with the general candidates. However, their merit and ability did not pay any dividends as they got appointment only to lesser important posts.

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The said anomaly is easily discernible from the following facts :

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A The 3rd respondent i.e. Rajesh Kumar Chaurasia in C.A. No. 4784/98, who secured 76th place in the select list, filed a Civil Miscellaneous Writ Petition No. 46029 of 1993 before the High Court of Allahabad contending that he was appointed as a Sales Tax Officer, although the appellant in C.A. No. 4794/95 i.e. Nanku Ram (Anurag Patel) who was also a Backward Class candidate, was appointed as a Deputy Collector, who according to the 3rd respondent, had secured 97th rank in the select list, a rank lower than him. Similarly, 8 persons all belonging to Backward Classes, who find their name in the select list filed writ petition No. 22753 of 1993 alleging that they were entitled to get postings in higher cadre of service as the persons who secured lower rank in the select list were given appointment to higher posts. The first petitioner in the writ petition i.e. Shri Rama Snaker Maurya and the 2nd petitioner i.e. Shri Abdul Samad were at serial Nos .13 and 14 in the select list. According to these petitioners, persons lower in rank who got appointment in the reserve category were given postings on the ground that those posts were earmarked for being appointed in Class II services.

D The petitioners in these writ petitions contended that the authorities, while making appointments, had not strictly followed the instructions issued by the government. When the selection was made some of the candidates, who belonged to the backward classes, got selection in the general category and while making appointments, these candidates for selection to the open merit quota were treated as general candidates and they were appointed on the basis of the rank list prepared in the merit. As against the reserved quota, only those candidates who had obtained the reservation and got entry to the selection were appointed. For example, in the case of U.P. Civil (Executive) Services there were altogether 20 posts, out of which 10 posts were to be filled up by the general category candidates, 4 posts by the Scheduled Caste candidates, 2 posts for Army displaced persons/handicapped/Emergency commissioned/short service commissioned officers/Ex-Army men, one post of the dependents of freedom fighters of U.P. and 3 posts for the candidates belonging to backward classes. This being that top most post coming under the selection, the authorities should have filled up the post according to the instruction issued by the government on 19th October, 1992. The instruction was to the following effect :

H “Allocation/section of the candidates successful in the combined examinations held for more than one service ought to be made treating each service separately. If any candidate belonging to

reserved category, succeeds on merits, without availing himself/herself of the facility of relaxation in norms and exemption in age limit prescribed for the general candidates, on the basis of his preference, he will not be adjusted against the vacancy/post of the reserved quota. On the contrary, if any candidate belonging to the reserved category, finds place in the selection list, after having availed himself/herself of the facility of relaxation in norms and exemption in age limit prescribed for the general candidates, on the basis of his preference, he ought to be adjusted against the vacancy/post of the reserved quota.”

It seems, the U.P.P.S.C. recommended the candidates, as regards the first category i.e. U.P. Civil (Executive) Services as follows, namely :

First 10 candidates were appointed on the open merit and thereafter three seats which were reserved for backward classes were filled up by O.B.C. Candidates, who secured rank Nos. 38, 62 and 97. The rank list prepared by the U.P.P.S.C. shows that as many as 9 candidates had secured higher rank than the candidate No. 38, namely, Shri Ashok Chandra who got appointment as Deputy Collector and as against candidate Shri Ramesh Chandra Yadav, who got appointment as Deputy Collector, secured only 62nd place in the select list and there were 15 candidates belonging to backward classes were above him in the rank list. So also the 97th rank holder who was the petitioner in the writ petition before the High Court and the present appellants in C.A. No. 4794 of 1998 also get appointment as Dy. Collector and there were several other backward class candidates in the merit list, who secured higher marks in the selection. This anomaly happened as the candidates above who secured higher marks than the 3rd respondent were adjusted against the vacancies that arose in the general category for various other posts such as Treasury Officers/Account Officers in U.P. Finance and Accounts Services, Sales Tax Officers, Asstt. Transport Officers, District Supply Officers etc. The authorities should have prepared the candidates who are to be appointed on general merit as also candidates who are to be appointed as against the reserved vacancies and while making appointments the *inter se* merit of the reserved candidates should have been considered and they must have been given the option treating each service separately. As this exercise was not followed, less meritorious candidates got appointment to higher posts whereas more meritorious candidates had to be satisfied with posts of lower category.

A In the matter of admission to the medical college, the same difficulty was experienced and this Court held in *Ritesh R. Sha v. Dr. Y.L. Yamul & Ors.*, [1996] 3 SCC 253, in paragraph 17 of the judgment at page 261 as follows:

B “.....In view of the legal position enunciated by this Court in the
 C aforesaid cases the conclusion is irresistible that a student who is
 D entitled to be admitted on the basis of merit though belonging to a
 E reserve category cannot be considered to be admitted against seats
 reserved for reserved category. But at the same time the provisions
 should be so made that it will not work out to the disadvantage of
 such candidate and he may not be placed at a more disadvantageous
 position than the other less meritorious reserved category candidates.
 The aforesaid objective can be achieved if after finding out the
 candidates from amongst the reserved category who would otherwise
 come in the open merit list and then asking their option for
 admission into the different colleges which have been kept reserved
 category candidates should be considered and they be allotted seats
 in whichever colleges the seats should be available. In other words,
 while a reserved category candidate entitled to admission on the
 basis of his merit will have the option of taking admission in the
 colleges where a specified number of seats have been kept reserved
 for reserved category but while computing the percentage of
 reservation he will be deemed to have been admitted as an open
 category candidate and not as a reserved category candidate.”

F The same question was considered by this Court in *State of Bihar & Ors.*
 v. *M. Neethi Chandra & Ors.*, [1996] 6 SCC 36, wherein it was held in
 paragraph 13 as follows :

G “.....However, to the extent the meritorious among them are
 denied the choice of college and subject which they could secure
 under the rule of reservation, the circular cannot be sustained. The
 circular, therefore, can be given effect only if the reserved category
 candidate qualifying on merit with general candidates consents to
 being considered as a general candidate on merit-cum-choice basis
 for allotment of college/institution and subject.”

H In the instant case, as noticed earlier, out of 8 petitioners in writ petition No. 22753/93, two of them who had secured ranks 13 and 14 in the merit list,

were appointed as Sales Tax Officer-II whereas the persons who secured rank Nos. 38, 72 and 97, ranks lower to them, got appointment as Deputy Collectors and the Division Bench of the High Court held that it is a clear injustice to the persons who are more meritorious and directed that a list of all selected backward class candidates shall be prepared separately including those candidates selected in the general category and their appointments to the posts shall be made strictly in accordance with merit as per the select list and preference of a person higher in the select list will be seen first and appointment given accordingly, while preference of a person lower in the list will be seen only later. We do not think any error or illegality in the direction issued by the Division Bench of the High Court.

Mr. R.N. Trivedi, learned senior counsel appearing for the Commission submitted that in case any rearrangement is made, the same persons who had already been appointed are likely to lose their posts. Going by the counter statement filed by the State in the writ petition No. 22753/93 it appears that altogether 358 candidates were appointed and 47 candidates belonging to backward classes were filled up by posts earmarked for backward classes. Amongst the 358 candidates those who secured higher marks than the cut-off mark for the general category also must have got selection in the general category even though they belong to the backward classes. If these candidates who got selection in the general category are allowed to exercise preference and then appointed accordingly the candidates who were appointed in the reserved categories had to be pushed down in their posts and the vacancies thus left by the general category candidates belonging to backward classes could be filled up by the persons who are really appointed against the quota reserved for backward classes. There will not be any change in the total number of posts filled up either by the general category candidates or by the reserved category candidates.

Learned senior counsel for the Commissioner further pointed out that all these officers have been working against the posts since the last 11 years and that many of these affected parties were not made parties to the writ petition and if any reallocation of posts is made at this distance of time it will cause injustice to the affected parties. It is also pointed out by the respondent's counsel that in the writ petition filed by one Amrendra Pratap Singh i.e. writ petition No. 32346 before the Allahabad High Court, an interim order was passed in favour of the petitioner therein and the Division Bench directed that the appointment would be subject to the result of the writ

- A petition and this order continued for some period and all the candidates were informed that their appointments would be subject to the result of the writ petition. Although that writ petition under review was dismissed, the candidates who were appointed were aware of the proceedings pending before the High Court. By the impugned order the High Court only directed
- B reallocation of the posts according to the merit prepared in the select list. The decision rendered in writ petition No. 46029 of 1993 dated 15th April, 1998 was followed in the decision in writ petition No. 22753 of 1993.

C In the circumstances, we do not find any merit in these appeals. The appeals are dismissed accordingly. However, the State is directed to carry out the exercise of reallocation within a period of three months. The affected officers shall be given reasonable opportunity of being heard and to the extent possible the State shall give accommodation to such officers.

R.P.

Appeals dismissed.