

[2014] 10 S.C.R. 617

DONESH RAJPUT & ORS.

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v.

PRADEEP KUMAR SHUKLA & ORS.

I.A. NOS.4-5 OF 2013, I.A. NOS.5-6 OF 2014

IN

CONTEMPT PETITION (C) NO.269 OF 2012

B

IN

SLP (C) NO.20558 OF 2009

SEPTEMBER 23, 2014

[FAKKIR MOHAMED IBRAHIM KALIFULLA AND
SHIVA KIRTI SINGH, JJ.]

C

Uttar Pradesh Pharmacists Service Rules, 1980: rr.15, 16 – Appointment – Post of Pharmacist – Direction passed in Santosh Kumar Mishra case that benefit for appointment for the post of Pharmacist should be extended to similarly placed persons – This implied that those who responded to the advertisement invited for filling up the post of Pharmacists, were to be considered only by following the procedure prescribed u/rr.14 and 15 of the Rules – Without following the relevant Rules and the requirements contained in the advertisement, no candidate can be considered for appointment – If they had not responded to the said advertisement by filing the appropriate applications, they cannot subsequently be heard to say that they were all similarly placed and that therefore, the State Government should consider them as similarly placed candidates.

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Disposing of the IAs and contempt petitions, the Court

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HELD: 1. In the letter issued by Principal Secretary, Law dated 29.4.2013, a tabular statement was shown wherein the total number of posts of Pharmacists in the State of Uttar Pradesh in the year 2000 after the division

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- A of the State, total sanctioned posts from 1998 to 2013, total posts on which the Pharmacist were working in the State of Uttar Pradesh in the year 2000 after the division of the State, the number of vacant posts resulting due to promotions and retirements from the year 1998 to 2013,
- B actual number of posts on which Pharmacists were working in the State, the number of newly appointed Pharmacists, total number of posts on which the pharmacists were working up to the year 2013 and the total number of vacant posts available were disclosed.
- C After furnishing the relevant data for the various categories, the letter dated 27.9.2013 stated that the total number of vacant posts was 950. The instant I.A. was filed by the State Government seeking direction to the Principal Secretary, Law to recall his order dated
- D 27.9.2013 and pass appropriate order to declare the correct number of vacancies available for the post of Pharmacist as the number of vacancies arrived at 950 in the report of the Principal Secretary dated 27.9.2013, did not reflect the correct figure as the said figure came to be arrived at by the Principal Secretary based on the
- E information furnished by the then Director who failed to gather the total number of vacancies in the Department from all the Districts with the matching information available at the Headquarters and, therefore, it required reconsideration. It was also stated that the said Director
- F was proceeded against by way of disciplinary action for furnishing wrong information to the Principal Secretary. Since the State of Uttar Pradesh came forward with valid reasons as to why the number of vacancies mentioned in the report of the Principal Secretary did not reflect the
- G correct position, the State should be allowed to verify the available vacancies. Granting such permission would also benefit the aspiring applicants for whom the benefit has been conferred in the judgment of this Court in Santosh Kumar Mishra. Therefore, the Principal Secretary
- H is directed to recall his order dated 27.9.2013, insofar as

it related to the ascertainment of the number of vacancies. A
[Paras 11, 16 to 19] [630-F-H; 631-A, B, E-H]

2. In another I.A., the prayer was for clarification/ B
modification of order dated 15.7.2014, passed in
Contempt Petition which stated that the existing
vacancies shall be filled by the State Government from
those candidates whose application forms were received
by the Department pursuant to the advertisement of the
year 2007 and who were found to be eligible. The said
report came to be submitted in compliance of order dated
29.4.2013, wherein while considering the grievances of
the various Contempt Petitioners which was referred to
in order dated 29.4.2013, those petitioners were directed
to appear before the Principal Secretary and state their
claims with a further direction to the Principal Secretary
to resolve their disputes. In compliance of the said
direction, it was reported by the State of Uttar Pradesh
that according to the Principal Secretary, the number of
candidates were 360, but when the grievances were
examined, it came to light that many of those persons
never applied and several others who claimed to have
applied on verification, it was found that there was no
such application on record. [Paras 20, 21] [632-C-D, F-H;
633-A] C
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3. When this Court held in Santosh Kumar Mishra
that the benefit should be extended to similarly placed
persons who were to be accommodated, what it really
meant to state was that those who responded to the
advertisement made on 12.11.2007, by which applications
were called for filling up the post of 765 vacancies of
Pharmacists, were to be considered only by following the
procedure prescribed under Rules 14 and 15 of the Rules
of 1980. Certainly, without following the relevant Rules,
namely, 14 and 15 and ignoring the requirements
contained in the advertisement dated 12.11.2007, no
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A candidate can be considered for being appointed to the post of Pharmacist. In other words, for a person to claim himself to be similarly placed, primarily they should have applied in response to the advertisement. If they had not responded to the said advertisement by filing the appropriate applications, they cannot subsequently be heard to say that they were all similarly placed and that therefore, the State of Uttar Pradesh should consider them as similarly placed candidates like that of the private respondents in the SLP, for being considered for the post of Pharmacists, merely because they belonged to some of the batches of 1998 to 2002. Such a claim made on behalf of any of the candidates, much less the 360 candidates who staked their claim before the Principal Secretary cannot, therefore, be countenanced. The Principal Secretary, having now reported in his report dated 27.9.2013 that none of the 360 candidates were the applicants, there is no scope for treating them as similarly placed persons as held in Santosh Kumar Mishra. Consequently, their claim now raised cannot also be acceded to. Neither the above 360 persons referred to in the report of Principal Secretary dated 27.09.2013 or any other candidate who did not apply in response to the advertisement claiming himself to be a member of the batch 1998 to 2002, can seek for consideration of his claim at par with the private respondents in Santosh Kumar Mishra in order to consider his claim for conferring the benefit granted in the said judgment. [paras 26, 27] [638-F-H; 639-A-F]

4. In the Contempt Petition filed by some of the candidates of the year 2002, it was alleged that in spite of the judgment of this Court in Santosh Kumar Mishra, as well as, subsequent orders passed in various Contempt Petitions including the order dated 29.04.2013, the respondent State has failed to fill up the vacancies and, therefore, they are liable to be proceeded against for

contempt of judgment in Santosh Kumar Mishra. In the light of order passed in I.A., the allegation of contempt made in Contempt Petition cannot survive. The State of Uttar Pradesh is directed to conclude the process of ascertainment of vacancies and fill up the remaining vacancies in accordance with the judgment in Santosh Kumar Mishra. [paras 28 to 30] [639-G-H; 640-A-D]

State of Uttar Pradesh and Anr. v. Santosh Kumar Mishra and Anr. 2010 (9) SCC 52: 2010 (9) SCR 942 – referred to.

Case Law Reference:

2010 (9) SCR 942 referred to Paras 3, 4, 7, 8, 14, , 18, , 22, , 23, 26, 27, 28, 30

CIVIL APPELLATE JURISDICTION : I.A. Nos.4-5 of 2013, I.A. Nos.5-6 of 2014.

IN

Contempt Petition (C) No.269 of 2012

IN

SLP (C) No.20558 of 2009

From the Judgment and Order dated 04.05.2009 in SA No. 388 of 2008 of the High Court of Judicature at Allahabad at Lucknow.

WITH

I.A. Nos. 1 & 2 in CONMT. PET. (C) No. 115 of 2014 in SLP (C) No. 20558 of 2009

V. Giri, Dr. Rajeev Dhavan, Irshad Ahmed, AAG., Mukesh K. Giri, Gunnam Venkateswara Rao, Venkata Raghuvamsy, Siddharth Krishna Dwivedi, Saurabh Upadhyay, Dr. S.K.

A Verma, Aldanish Rein, Shamshranish Rein, Maheravish Rein, Abhish Kumar, Vivek Vishnoi, Pawan Kumar Shukla, Yash Pal Dhingra, Pankaj Kumar Singh, K.L. Janjani, Ashutosh Lal, Dr. Kailash Chand, Yatish Mohan, K. N. Tripathy for the appearing parties.

B The Judgment of the Court was delivered by

FAKKIR MOHAMED IBRAHIM KALIFULLA, J. 1. Before advertng to the facts of this case, we make it clear that we propose to pass orders only in the above I.A. Nos.4-5 of 2013 and I.A. Nos.5 of 2014 in Contempt Petition(C) No.269/2012 and in I.A. Nos.1-2 in Contempt Petition(C) No.115/2014. All other connected applications and contempt petitions when listed on 14.2.2014, the following order came to be passed:

D "I.A.No.5 (for direction) in Contempt Petition (Civil) No.269 of 2014 in Special Leave Petition (Civil) No.20558 of 2009 and Contempt Petition (Civil) No.115/2014

Issue Notice.

E Personal appearance of the alleged contemnors is dispensed with for the present.

List the cases for final disposal on 25th March, 2014.

Rest of the matters

F List all the contempt petitions along with applications for orders after the decision in I.A. No.5 in Contempt Petition (Civil) No.269 of 2012 in Special Leave Petition (Civil) No.20558 of 2009 and Contempt Petition (Civil) No.115 of 2014."

G 2. Therefore, in the first instance, we wish to dispose of I.A. No.5 of 2014 in Contempt Petition(C) No.269/2012 along with Contempt Petition(C) No.115/2014 and I.A.Nos.1-2 in that Contempt Petition and thereafter, pass appropriate orders in H the other connected applications, as well as, Contempt

Petitions. I.A.No.5 of 2014 has been filed by the State of Uttar Pradesh with the following prayer: A

“Issue direction to the Principal Secretary, Law, Govt. of U.P. to recall his order dated 27.9.2013 and hear the applicants (State of U.P.) after giving fresh notice to all the parties, and pass an appropriate order/declare the Number of vacancies available on the post of Pharmacists;” B

3. In order to consider the prayer of the applicants, it is necessary to briefly trace the background of this litigation which ultimately culminated in a judgment of this Court in **State of Uttar Pradesh and another v. Santosh Kumar Mishra and another** reported in 2010 (9) SCC 52. The issue pertains to selection and appointment to the post of Pharmacist in the State of Uttar Pradesh, which was earlier governed by the Uttar Pradesh Pharmacists Service Rules, 1980 (hereinafter referred to as the “Rules of 1980”). The above Rules of 1980 came to be replaced by the U.P. Procedure for Direct Recruitment of Group ‘C’ Posts (Outside the Purview of Public Service Commission) Rules, 2000 as amended by U.P. Procedure for Direct Recruitment of Group ‘C’ Posts (Outside the Purview of Public Service Commission) (First Amendment) Rules, 2003. There was an advertisement dated 12.11.2007 whereby 766 vacancies were advertised for being filled up by Pharmacy diploma holders. There was a claim made by such diploma holders up to the year 2002 that their appointments were to be made under the Rules of 1980, even as regards the 766 vacancies advertised in the year 2007. The issue went before the learned Single Judge of the High Court of Allahabad and the diploma holders on being aggrieved by the decision of the learned Single Judge, took it up by way of an appeal before the Division Bench. The Division Bench summarized the issue in the following words: C
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A A peculiar and a piquant situation has arisen in the
 instant case, where it is not the case that an aspirant
 of the higher post in service on becoming eligible
 for promotion or a person seeking direct
 B appointment on the date when he is to be
 considered for such a promotion or appointment,
 seeks to interpret the rule of recruitment in a
 particular manner, looking to the past practice, to
 his advantage, but here is a case where the
 appellants were excluded from consideration of
 C their appointment at the relevant time earlier, by
 interpreting the rule to their disadvantage, and were
 made to believe that likewise their candidature shall
 be considered later on, for which various circulars
 and instructions were also issued by the State
 D Government, but when their turn came for getting
 employment, they were again being put out of
 consideration, by interpreting the rule in a different
 manner.”

E 4. This Court after noticing the above observations of the
 Division Bench in the judgment reported in **Santosh Kumar
 Mishra (supra)** held as under in paragraph 41:

F “41. It is on account of a deliberate decision taken by the
 State Government that the private respondents were left
 out of the zone of consideration for appointment as
 Pharmacists in order to accommodate those who had
 obtained their diplomas earlier. The decision taken by the
 State Government at that time to accommodate the
 G diploma-holders in batches against their respective years
 can no doubt be discontinued at a later stage, but not to
 the disadvantage of those who had been deprived of an
 opportunity of being appointed by virtue of the same Rules.
 In our view, the same decision which was taken to deprive
 the private respondents from being appointed, could not
 H now be discarded, once again to their disadvantage to

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prevent them from being appointed, introducing the concept of merit selection at a later stage. The same may be introduced after the private respondents and those similarly situated persons have been accommodated.

(Underlining is ours)

5. Therefore, after the judgment of this Court referred to above, two issues cropped up for consideration, which related to the number of vacancies for the post of Pharmacist to be filled up and who are all the candidates who were to be considered as similarly placed persons like the private respondents as has been noted in the above said paragraph 41 who were to be accommodated in the available vacancies. The said issue came to be examined by this Court in Contempt Petition(C) No.347/2010 in SLP(C) No.20558/2009 along with various other contempt petitions including Contempt Petition(C) No.269/2012 in SLP(C) No.20558/2009 and in the said order dated 27.11.2012, after making a brief reference to the complaint of the contempt petitioners, it was noted as under:

“The directions contained in our aforesaid judgment were quite clear that we were treating those candidates, who had obtained diplomas in pharmacy prior to 2002, as one single group, and that it was also our intention that the benefits which were to be given to the petitioners before us were also to be given to similarly situated candidates.”

(Underlying is ours)

6. Thereafter, taking note of the undertaking on behalf of the State of Uttar Pradesh, it was ultimately stated as under:

“.....Mr. Irshad Ahmad has also submitted that the said undertaking given to the Court shall be duly implemented within two months from date in keeping with the vacancies available. However, this should not be interpreted to mean that those who cannot be accommodated now will not be accommodated prior to those candidates who come within

A the zone of consideration by virtue of the Scheme of 2002. The second part of the list, which has been submitted on behalf of the State, shall not be given effect to, until these directions have been complied with.

B All the contempt petitions are disposed of accordingly”.

7. After the passing of the said order dated 27.11.2012, Contempt Petition(C) No.73/2013 in Contempt Petition(C) No.347/2010 came to be filed along with certain other contempt petitions. All those subsequent contempt petitions were disposed of by a common order dated 29.4.2013. In fact, it must be stated that under the said order, two directions came to be issued which, in our considered opinion, would clinch the whole issue and whatever further exercise which is to be carried out to comply with those directions can be issued in order to put an end to the controversy once and for all. This came to be dealt with and sorted out by this Court in **Santosh Kumar Mishra (supra)**.

8. In the order of this Court dated 29.4.2013, after referring to the nature of judgment rendered as reported in **Santosh Kumar Mishra (supra)** and after noting the grievances of the various contempt petitioners, it was stated as under in paragraphs 8 to 12:

“8. Since, it is not possible for us to decide the said dispute, we dispose of these petitions/applications for interim directions, by directing the Law Secretary in the State Government to consider the number of vacancies that may be available as against the number of candidates still to be accommodated upto the year 2002. While doing so, he should take into consideration the claims made by Mr. Donesh Rajput & Ors., (and in the matter of Uday Pratap Singh, applicant) the applicants in contempt petition No.269 of 2012, the claims of Shri Sachin Agarwal, the applicant/petitioner in Contempt Petition No.75 of 2013 in Contempt Petition No.65 of 2012, the claims of Harit

Kumar Dwivedi & Ors., the applicants in Contempt Petition No.347 of 2010 and Ravi Kant Dwivedi & Ors., the applicants in Contempt Petition No.165 of 2013 in Contempt Petition No.65 of 2012 in SLP (C) No.20774 of 2009. A

9. In order to facilitate the hearing, before the Law Secretary, the applicants in the above-mentioned matters, shall meet the Law Secretary to fix a time when the disputes can be taken up for resolution. B

10. Once a determination is made by the Law Secretary of the State, the State will, thereafter, act thereupon to fill up the vacancies, as may be declared. C

11. Pending the hearing and disposal of these matters, the vacancies which may have arisen, in the meantime, may be filled up in the manner indicated in the judgment of this Court dated 3rd August, 2010. D

12. The petitions/applicants are disposed of, accordingly."

9. Before issuing the above directions, it was also noted that when the above Contempt Petitions were taken up on 15.04.2013, though there was a dispute as regards the number of vacancies available, the State of Uttar Pradesh was allowed to fill up 553 vacancies out of 695 applicants with a stipulation that the remaining number would be accommodated in the succeeding years. It was indicated that the other objections with regard to additional affidavit regarding number of vacancies available would be taken up on a subsequent date and that is how the Contempt Petitions were listed on 29.4.2013. Before issuing the above directions, as contained in paragraphs 8 to 12, the claim made on behalf of the Contempt Petitioners that more than 2000 vacancies were available was referred to and thereafter, the directions came to be issued. By virtue of the above directions, contained in paragraphs 8 to 12, it was incumbent upon the Law Secretary of the State Government to E
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A ascertain the number of vacancies that may be available as
 against the number of candidates who were to be
 accommodated up to the year 2002. While ascertaining the
 number of candidates to be accommodated up to the year
 2002, it was directed that the claim made by those individuals
 B whose names were referred to in paragraph 8, the applicants
 in Contempt Petition(C) No.269/2012, Contempt Petition(C)
 No.75/2013 Contempt Petition(C) No.65/2012, Contempt
 Petition(C) No.347/2012, Contempt Petition(C) No.165/2013
 and Contempt Petition(C) No.65/2012 in SLP(C) No.20774/
 C 2009, were permitted to approach the Law Secretary on a date
 to be fixed, when the dispute relating to their claims could be
 taken up for resolution.

10. The above order dated 29.4.2013, therefore, intended
 to resolve the twin objective of ascertaining the available
 D number of vacancies in which the candidates up to the year
 2002 could be accommodated on the one hand and such of
 those claimants who were before this Court by filing Contempt
 Petitions whose claims required to be considered as to
 whether they were lawfully eligible to be accommodated in the
 E available vacancies in the category of 'similarly situated
 persons' which was required to be ascertained and resolved
 by the Law Secretary or the other.

11. Pursuant to the above direction in the order dated
 F 29.4.2013, a communication was forwarded by the Principal
 Secretary, Law, Government of Uttar Pradesh to the Principal
 Secretary, Department of Medical Health and Family Welfare
 on 27.9.2013. In the said letter, which is virtually a report as per
 the directions of this Court dated 29.4.2013, a tabular
 G statement was shown wherein the total number of posts of
 Pharmacists in the State of Uttar Pradesh in the year 2000 after
 the division of the State, total sanctioned posts from 1998 to
 2013, total posts on which the Pharmacist were working in the
 State of Uttar Pradesh in the year 2000 after the division of the
 State, the number of vacant posts resulting due to promotions
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and retirements from the year 1998 to 2013, actual number of posts on which Pharmacists were working in the State, the number of newly appointed Pharmacists, total number of posts on which the pharmacists were working up to the year 2013 and the total number of vacant posts available were disclosed. After furnishing the relevant data for the various categories, the letter dated 27.9.2013 stated that the total number of vacant posts was 950.

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12. The said letter though referred to the talks held with some of the claimants and the nature of grievances expressed by them, nothing was stated as to their entitlements. Thereafter, along with the said letter dated 27.9.2013, the Principal Secretary, Law enclosed a copy of the representations of the applicants as well as the list of applicants.

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13. In the reply affidavit filed by the third respondent who is the Director General, Medical Health Services in the State of Uttar Pradesh in Contempt Petition(C) No.115/2014, it has been stated that the list which was forwarded by the Principal Secretary, Law along with letter dated 27.9.2013, contained names of 360 candidates and on verification it was found out that none of the 360 persons were the candidates who had applied pursuant to the advertisement published in the year 2007. In paragraph 8 of the reply affidavit, it was stated that the list provided by the Law Secretary consisting of 360 candidates in compliance of the order passed by this Court dated 29.4.2013, were persons who never applied or who alleged to have applied but their application forms were not on record.

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14. In the above stated background, when these cases were listed for hearing on 15.07.2014, while granting time for the respondents to file their objections to I.A.No.5/2014 within four weeks, it was directed that when admittedly 448 vacancies were available as on the date of filing of the application, in I.A.No.5/2014 the claims of the applicants who were stated to

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A be more than 360 in number can be considered and whomsoever was eligible to be appointed may be issued with necessary orders of appointment in accordance with the judgment of this Court in **Santosh Kumar Mishra (supra)**. It is only thereafter at the instance of the petitioner in the main
 B Special Leave Petition that these applications were listed along with Contempt Petition(C) No.115/2014, in order to ascertain the correct position so as to direct the State of Uttar Pradesh to proceed with the issuance of the orders of appointment as directed by this Court in order dated 15.7.2014.

C 15. We heard Dr. Rajeev Dhawan, learned Senior Counsel who appeared for such of those Contempt Petitioners who were granted permission to appear before the Law Secretary and make their say and the Law Secretary was directed to resolve the dispute. We also heard Mr. V. Giri, learned Senior Counsel
 D for the applicants in I.A.Nos.1-2 of 2014. Mr. Irshad Ahmed, learned Additional Advocate General for the State of Uttar Pradesh and Mr. Mukesh K. Giri, learned Counsel who also appeared for some of the Contempt Petitioners who claimed to be identically placed like the persons who were represented
 E by Dr. Rajeev Dhawan.

16. Before adverting to their respective contentions, it will be necessary to note the prayer contained in I.A. No.5/2014 in Contempt Petition(C) No.269/2012. This I.A. has been filed by
 F the State of Uttar Pradesh and the prayer in the application is to issue direction to the Principal Secretary, Law, Government of Uttar Pradesh, to recall his order dated 27.9.2013 and hear the applicants, namely, the State of Uttar Pradesh and after giving fresh notice to all the parties, pass appropriate order to declare the correct number of vacancies available for the post
 G of Pharmacist. To support the above prayer, it has been stated in the application that the number of vacancies arrived at 950 in the report of the Principal Secretary, Law dated 27.9.2013, does not reflect the correct figure, that the said figure came to be arrived at by the Principal Secretary, Law based on the
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information furnished by the then Director (Para-Medical) Dr. V.S. Srivastava, who failed to gather the total number of vacancies in the Department from all the Districts with the matching information available at the Headquarters, as well as, the Government orders regarding sanction of posts and, therefore, it requires reconsideration. It was also stated that the said Director Dr. V.S. Srivastava has been proceeded against by way of disciplinary action for furnishing wrong information to the Principal Secretary, Law.

17. It was stated that when the discrepancy in the number of vacancies noted in the report dated 27.9.2013 was pointed out to the Law Secretary in response to the applicants' request, the Principal Secretary, Law rightly informed the applicants in his reply by stating that since he had submitted his report dated 27.9.2013, pursuant to the directions of this Court in the order dated 29.4.2013, he was not in a position to comply with the request of the applicant-State.

18. In such circumstances, at the very outset, since the State of Uttar Pradesh has come forward with valid reasons as to why the number of vacancies mentioned in the report of the Principal Secretary, Law dated 27.9.2013, does not reflect the correct position, we are convinced that the applicant State should be allowed to verify the available vacancies by calling for particulars from the Department from all the Districts, matching with the information available in the Headquarters and also after considering the Government orders regarding the number of posts sanctioned. Granting such permission will also benefit the aspiring applicants for whom the benefit has been conferred in the judgment of this Court in **Santosh Kumar Mishra (supra)**.

19. Therefore, while directing the Principal Secretary, Law, Government of Uttar Pradesh to recall his order dated 27.9.2013, insofar as it related to the ascertainment of the number of vacancies for the reasons mentioned by the applicant in this application, we permit the applicant himself to gather the

- A required particulars from all the Districts of the concerned Department, apart from verifying with the matching information available at the Headquarters and after taking into account the posts sanctioned under various Government orders and thereafter, finalize the available vacant posts of Pharmacists.
- B The said exercise shall be carried out by the applicant expeditiously, preferably within a month from the date of production of a copy of this order.

C 20. When we come to the prayer in I.A. Nos.1-2 of 2014 in Contempt Petition(C) No.115/2014, the prayer is for clarification/modification of our order dated 15.7.2014, passed in Contempt Petition (C) No.115/2014 which stated that the existing vacancies shall be filled by the State Government from those candidates whose application forms were received by the Department pursuant to the advertisement of the year 2007 and who were found to be eligible. We find some justification to consider the said prayer made in the said interlocutory applications. For that purpose, the relevant Rules, namely, Rules 14 and 15 of the Rules of 1980, are required to be noted along with the submissions made by Dr. Rajeev Dhavan, D learned Senior Counsel representing those persons whose E numbers have been ascertained as 360 in the report of the Principal Secretary, Law dated 27.9.2013.

F 21. The said report came to be submitted in compliance of our order dated 29.4.2013, wherein while considering the grievances of the various Contempt Petitioners which was referred to in paragraphs 8 to 12 of our order dated 29.4.2013, we directed those petitioners to appear before the Principal Secretary, Law and state their claims with a further direction to the Principal Secretary, Law to resolve their disputes. In G compliance of the said direction, it has now been reported by the State of Uttar Pradesh in the reply affidavit dated 08.7.2014, that according to the Principal Secretary, Law, the number of candidates were 360, but when the grievances were examined, H it came to light that many of those persons never applied and

several others who claimed to have applied on verification, it was found that there was no such application on record. The above report of the Principal Secretary, Law has to be kept in mind while considering the submissions of Dr. Rajeev Dhawan, learned Senior Counsel, as well as, Mr. Mukesh K. Giri, learned Counsel who represented some other similarly placed persons.

22. Dr. Rajeev Dhawan, learned Senior Counsel in his submissions contended that once the judgment of **Santosh Kumar Mishra (supra)** directed that the benefit would accrue to all those who were similarly placed and who were to be accommodated, which was reinforced in the subsequent order dated 27.11.2012 in Contempt Petition(C) No.269/2012 by making the intention of this Court clear to the effect that benefit should be given to similarly placed candidates in the batch of the years 1998 to 2002. According to the learned Senior Counsel, there cannot be a different treatment now meted out to those persons. The contention of Dr. Rajeev Dhawan, learned Senior Counsel is, therefore, that when the above 360 candidates who belonged to the batches of the year 1998 to 2002, no discriminatory treatment can be meted out to them in the matter of considering their claim for appointment to the available posts of Pharmacists.

23. Though in the first blush, such a submission of the learned Senior Counsel appears to be forceful and appealing, it will have to be stated that even such a claim of any person as similarly placed candidate cannot be considered *de hors* the relevant Rules relating to appointment to the posts of Pharmacists. In this context, the reference to Rules 14 and 15 and the advertisement dated 12.11.2007, assume significance. We have taken pains to analyse this issue and clarify the position in order to give effect to the orders of this Court rendered in **Santosh Kumar Mishra (supra)**, so that there is no doubt in the minds of either the claimants or the Appointing Authority, namely, the State while implementing our orders.

24. Rules 14 and 15 read as under:

A "14. Determination of vacancies- The Director shall determine the number of vacancies to be filled during the course of the year as also the number of vacancies to be reserved for the candidates belonging to the Schedule Castes, Schedule Tribes and such other categories under rule 6. He shall notify the vacancies to the Employment Exchange and shall also advertise them in leading newspapers and in such other manner as may be considered proper by him.

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C 15. Procedure for Direct Recruitment:- (1) For the purpose of recruitment, there shall be constituted a Selection Committee comprising-

D 1. Additional Director, to be nominated by the Director
2. Joint Director, dealing with establishment of Pharmacists,

E 3. Secretary State Pharmacy Council
(2) The Selection Committee shall prepare a list of candidates in order of merit as disclosed by marks obtained by them in diploma examination. If two or more candidates obtain equal marks, the Selection Committee shall arrange their names in order of merit on the basis of their general suitability for the post. The number of the names in the list shall be larger (but not larger by more than 25 percent) than the number of vacancies. The list so prepared shall hold good for one year only.

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G (3) The Director shall forward the requisite number of names in order of merit, from the list to be concerned appointing authority/appointing authorities."

H 25. Alongwith the above Rules, it is relevant to note the advertisement made in the year 2007, namely, 12.11.2007 which is as under:

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[FAKKIR MOHAMED IBRAHIM KALIFULLA, J.]

"Dainik Jagran Daily News Paper Dated -18.11.2007

Office of Director General Medical and Health Services, U.P.

Advertisement No :-2/appointment/2007 dated :-
12.11.2007

Date of issuing the advertisement :- 12.11.2007

Last date of accepting the application :- 04.12.2007
by 5 PM

Place of sending the application :- Medical section – II,
Swasthya Bhawan, Lucknow.

In view of the directions given vide Government Order No.1490/4/07-M-72-2006 dated 11.10.2007, applications are invited for the direct recruitment on the temporary following posts in the Government Hospital of Rural and Urban areas of the state by the Director General Medical and Health Services, U.P. Swasthya Bhawan, Lucknow the following posts under the provisions and service conditions given for the direct recruitment procedure Rule 2002 and amended Rule 2003 and concerned service Regulation of the concerned cadre of direct recruitment of Group –C posts outside the jurisdiction of U.P.Public Service Commission in the prescribed format.

S. No.	Post	Name of appointing authority	Age as on 01 July, 2007	Pay Scale	Total Number of post	Gen.	SC.	ST.	OBC	Education Qualification
2.	Pharmacist (Allo.)	Do years	18-35 7000	4500-	765	386	181	15	207	Diploma in pharmacy from any recognized institutes and

A		registration in State Pharmacy Council U.P.
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Note :- Number of vacancy may be decreased or increased.

Preferential qualification :-

1. Minimum two years experience in the State service.
2. Candidate has obtained the B certificate of National Cadet Corps.

General instructions :-

- (i) It is necessary to get the candidates registered in U.P. State Medical faculty for the post of Lab Technician, X-ray technician and Physiotherapist.
- (ii) The selection of the candidates shall be made on the basis of prescribed procedure by the Department Selection Committee, the decision of the selection committee in this regard shall be final. No correspondence shall be accepted on the said subject. The recommendation/approval of any kind in the selection shall be considered to be ineligible.
- (iii) Selection of the able candidate shall be done on the basis of the interview held by the departmental selection committee and no travelling allowances shall be payable to the candidate for the interview.
- (iv) Certificate of the educational qualification and technical ability duly attested by the Gazetted officer. Registration certificate of U.P. Council/ faculty for concerned post. Caste certificate issued by the competent authority should be enclosed with the application and should take the certificate of the

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- principal from the Educational institution last studied. Candidate will have to give the address for correspondence and ticket of the prescribed amount. A
- (v) The name of the post applied for and name of the SC, ST, OBC should be written in legible letter on the envelope of the application. B
- (vi) The freedom fighter of U.P. Handicapped person, Ex. Army Man will have to be enclosed the certificate related to it and the claim made by the candidate will not be acceptable. C
- (vii) Certificate of married or un-married, the certificate of Husband and wife either of the two in case of married person will have to be enclosed. D
- (viii) At the time of interview, candidate will have to produce the education and technical ability certificate and certificate related to caste in original.
- (ix) The candidate of the reserved category will be given the relaxation of the age limit as per rules and the age of the Ex.Army man shall be determined as per the Government order. E
- (x) Selected candidates shall be posted in the Primary/ Community Health Centre or State Hospital or Government Distt. Hospital and he can be transferred at any other place in future. F
- (xi) Undesired application shall not be entertained and no correspondence will be made in this regard. G
- (xii) Information shall be given separately for the interview on the prescribed date.
- (xiii) Application received after prescribed date shall not H

A be considered and if the application is not in
prescribed form then legible signature of the
candidate on the prescribed format at the foot of
the application or the attested copy of required
certificate are not enclosed then the application
B shall be rejected and no correspondence shall be
accepted in this regard.

(xiv) Application shall be accepted through registered
post/Speed Post/Courier by 05.12.2007 by 5 PM.

C (xv) Delay caused in sending the application by
telegram of department/courier shall not be
entertained and in this regard no correspondence
should be made.

D (xvi) The candidate who is working in center and State
Government will have to produce the certificate from
service employer if no objection certificate send
then it will have to be produced certainly by the
candidate.

E Sd/- Director General
Medical and Health Services
U.P., Lucknow."

26. When this Court held that the benefit should be
extended to similarly placed persons who were to be
F accommodated, what it really meant to state was that those who
responded to the advertisement made on 12.11.2007, by which
applications were called for filling up the post of 765 vacancies
of Pharmacists, were to be considered only by following the
procedure prescribed under Rules 14 and 15 of the Rules of
G 1980. Certainly, without following the relevant Rules, namely, 14
and 15 and ignoring the requirements contained in the
advertisement dated 12.11.2007, no candidate can be
considered for being appointed to the post of Pharmacist. In
other words, for a person to claim himself to be similarly placed,
H i.e., at par with the writ petitioners, namely, the appellants

before the Division Bench of the High Court and the private respondents in the Special Leave Petition in **Santosh Kumar Mishra (supra)**, primarily they should have applied in response to the advertisement dated 12.11.2007. If they had not responded to the said advertisement by filing the appropriate applications, they cannot subsequently be heard to say that they were all similarly placed and that therefore, the State of Uttar Pradesh should consider them as similarly placed candidates like that of the private respondents in the Special Leave Petition, for being considered for the post of Pharmacists, merely because they belonged to some of the batches of 1998 to 2002.

27. Such a claim made on behalf of any of the candidates, much less the 360 candidates who staked their claim before the Principal Secretary, Law cannot, therefore, be countenanced. The Principal Secretary, Law, having now reported in his report dated 27.9.2013 that none of the 360 candidates were the applicants, there is no scope for treating them as similarly placed persons as held in **Santosh Kumar Mishra (supra)**. Consequently, their claim now raised before us cannot also be acceded to. We, therefore, make it clear that neither the above 360 persons referred to in the report of Principal Secretary, Law dated 27.09.2013 or any other candidate who did not apply in response to the advertisement dated 12.11.2007 claiming himself to be a member of the batch 1998 to 2002, can seek for consideration of his claim at par with the private respondents in **Santosh Kumar Mishra (supra)** in order to consider his claim for conferring the benefit granted in the said judgment.

28. Once we steer clear of the said position in I.A. Nos.1-2 of 2014 in Contempt Petition(C) No.115/2014, the only other aspect to be considered is as to whether there is any case made out for contempt as alleged in Contempt Petition(C) No.115/2014. The said Contempt Petition has been filed by some of the candidates of the year 2002. It is alleged that in

- A spite of the judgment of this Court in **Santosh Kumar Mishra (supra)**, as well as, subsequent orders passed in various Contempt Petitions including the order dated 29.04.2013, the respondent State has failed to fill up the vacancies and, therefore, they are liable to be proceeded against for contempt of judgment of this Court dated 03.8.2010 passed in Special Leave Petition(C) No.20558/2009.

C 29. In the light of our order passed in I.A.No.5/2014 in Contempt Petition(C) No.269/2012 and I.A. Nos.1-2 of 2014 in Contempt Petition(C) No.115/2014, we are convinced that for the present, the allegation of contempt made in Contempt Petition(C) No.115/2014 cannot survive. Therefore, the said Contempt Petition is closed in the light of order passed in I.A.Nos.1-2 of 2014 and our directions in I.A. No.5/2014.

- D 30. The State of Uttar Pradesh is directed to conclude the process of ascertainment of vacancies and fill up the remaining vacancies in accordance with the judgment of this Court dated 03.08.2010 in **Santosh Kumar Mishra (supra)** and in accordance with the clarification now made in this judgment.
- E In the light of the present orders now passed, we do not find any scope for passing any orders in the rest of the matters, mentioned in this Court's order dated 14.02.2014 which are disposed of. Accordingly I.As. are also disposed of. No costs.

F Devika Gujral I.A.'s and Contempt Petitions disposed of.