

HIRA LAL

v.

DISTRICT JUDGE, GHAZIABAD & OTHERS

April 13, 1983

[R.S. PATHAK AND RANGANATH MISRA, JJ.]

U.P. State Subordinate Service—Reservation for Scheduled Castes—Appointments should be made in accordance with roster prescribed.

The petitioner, a member of the Scheduled Castes, secured the 7th position in the test and interview held for filling up six vacancies in the post of stenographer and was not selected for appointment. The State Government had, by an order, directed that 18 per cent of the posts in the subordinate services should be reserved for Scheduled Castes whenever recruitment was to be made through competition and also provided that in the roster register of every 25 vacancies, the 1st 7th, 13th, 19th and 25th vacancies should be reserved for Scheduled Castes. The stand taken by the respondents was that while making selection to the six vacancies in question, no reservation had been intended to be made in view of the position that the post of stenographer was covered under Class III service and the total strength of Class III employees as on the relevant date was 132 and there were as many as 28 among them belonging to the Scheduled Castes which was more than 21 per cent. The petitioner contended that the direction regarding reservation should have been applied and he should have been selected for appointment.

Allowing the petition,

HELD : That more than 21 per cent of the posts in Grade III service were being manned by people belonging to Scheduled Castes at the relevant time is no answer to the prescription of the roster. It is not known whether some of the recruits of earlier years already in service belonging to the Scheduled Castes had come on the basis of overall merit without reference to reservation. When six vacancies were being filled up at a time in one year, if the roster was to be followed, one of the posts would indisputably have gone to the candidate of the Scheduled Castes. As per the roster, the petitioner was entitled to be appointed against the first vacancy. [731 E-H; 742-A]

ORIGINAL JURISDICTION : Writ Petition No. 4007 of 1982

(Under Article 32 of the Constitution of India)

R.K. Jain for the Petitioner.

Prithvi Raj and *Mrs. S. Dikshit* for the Respondent.

The Judgment of the Court was delivered by

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RANGANATH MISRA, J. Petitioner, who offered himself as a candidate for one of the posts of Stenographer in Hindi, in the establishment of District Judge at Ghaziabad in the State of Uttar Pradesh, has come with this petition under Article 32 alleging the violation of his fundamental rights enshrined in Arts. 14 and 16 of the Constitution. He has pleaded that he is a member of the scheduled castes and the State Government by a general order in March, 1965 had directed that "in services subordinate to U.P. Government for recruitment through competition" 18% of the posts should be reserved for members of the scheduled castes. He further alleged that when six vacancies in the post of Stenographer in Hindi were advertised to be filled up and he offered himself as a candidate, he was examined in shorthand test on April 17, 1982, and was shown in the third place in the list of successful candidates published on April 24, 1982 and was called to an interview on May 1, 1982. According to him, in the final list of successful candidates his position was shown as no. 7 and, therefore, he was not selected. He complains that he was downgraded from the third place without justification, and if the Government order of reservation of 18% had been kept in view, he should have been selected even if he secured the seventh place in the merit list.

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In the return to the rule, the Additional District Judge of Ghaziabad has indicated that the petitioner had secured eighth place in shorthand test and his name figured as no. 3 in the list of successful candidates as it has been drawn up in alphabetical order. At the interview he improved his position and was ultimately shown as no. 7. In the selection no reservation had been intended to be made in view of the position that the post of Stenographer is covered under Class III service and the total strength of Class III employees in the judgeship of Ghaziabad as on May 1, 1982, was 132 and there were as many as 28 among them belonging to the scheduled castes which came to more than 21%—3% above the reservation. An assertion was made that the process of recruitment had been fair and *bona fide*.

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A rejoinder has been filed by the petitioner accepting the position that "the written test and the interview were done without any '*mala fide*' but reiterating the contention that direction regarding reservation should have been applied and the petitioner appointed on selection.

It is not the case of the answering respondent that reservation indicated in Government order of 1965 was not applicable to the relevant recruitment and the assertion of the petitioner that in the previous years provision of reservation was implemented has also not been disputed. The scheme in the Government order contemplates a roster register for every 25 vacancies and prescribes the following mode :

- (1) 1 reserved for scheduled castes.
- (2) 2-6 unreserved.
- (3) 7 reserved for scheduled castes.
- (4) 8-12 unreserved.
- (5) 13 reserved for scheduled castes.
- (6) 14-18 unreserved.
- (7) 19 reserved for scheduled castes.
- (8) 20-24 unreserved.
- (9) 25 reserved for scheduled castes.

Paragraph 2 of the Government order states : "if in any particular year there are only two vacancies, no more than one should be considered reserved and if there is only one, that should be considered unreserved; the reservation shall be valid up to three years". When six vacancies were being filled up at a time in one year, if the roster was to be followed, one of the posts would indisputably have gone to the candidate of the scheduled castes. The stand taken in the counter-affidavit that more than 21% of the posts in the Grade III cadre of the judgeship were being manned by the people belonging of the scheduled castes at the relevant time is no answer to the prescription of the roster. It is not known whether some of the recruits of earlier years already in service belonging to the scheduled castes had come on the basis of overall merit without reference to reservation.

On this premise, if the provision of reservation had to be kept in view, the petitioner was bound to have been recruited. We allow the petition. As per the roster, he was entitled to be appointed

A against the first vacancy. We, therefore, direct the appointing authority to appoint the petitioner in that vacancy and five out of the six who are respondents 3 to 8 before us according to their position in final merit list shall be retained.

We make no order as to costs.

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H.L.C.

Petition allowed.