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JAI NARAIN RAM
v.
STATE OF U.P. AND ORS.

NOVEMBER 16, 1995

B

[K. RAMASWAMY AND B.L. HANSARIA, JJ.]

Service law :

C *Appointment—Posts reserved for S.C. candidates—Public Service Commission recommending 4 names—No waiting list maintained since there was no request from Government—All the four selected candidates not joining service—Candidate within the next four in the merit list approaching the Court—Since his turn could be covered in the four vacancies advertised, he should be recommended by the Public Service Commission and appointed by the Government—Directions issued—Right to appointment—Constitution of India—Articles 14 and 16.*

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E **An advertisement was issued in 1988 for filling up certain vacancies including 15 posts in the Treasury Officers- Accounts Officers in U.P. Finance and Accounts Service. Out of the said 15 posts, 4 were reserved for Scheduled Caste candidates. The State Public Service Commission recommended the names of four candidates. The appellant and three others could not be recommended, as there was no request from the Government for keeping a waiting list. The appellant approached the High Court for a writ of mandamus or direction to the Public Service Commission to recommend his name for appointment in the Accounts Service. The High Court dismissed the writ petition on the ground that the petitioner was not intimated that he was selected. Aggrieved against the High Court's order the appellant preferred the present appeal.**

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Allowing the appeal, this Court

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HELD : 1.1. It is not in dispute that the appellant is a reserved candidate belonging to Scheduled Castes. In view of the admitted position that four posts were reserved in the Finance Department and the 4 selected candidates appeared to have not joined the service, it is clear that the appellant also is the 4th candidate in the order of merit would have been selected, had there been a requisition by the State Government for appoint-

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ment of the reserved candidates. [447-B-C]

1.2. Right to seek appointment to a post under Article 14 read with Articles 16(1) and (4) is a constitutional right to equality. The State failed to perform its constitutional duty to requisition the P.S.C. to recommend the next qualified persons to the posts reserved for Scheduled Castes. Under these circumstances, the denial of appointment to the appellant and three others above him is unconstitutional. Therefore, the respondents are not justified in denying the claim of the appellant for appointment to the above post. The P.S.C. is, therefore, directed to recommend the name of the appellant for appointment in the first category, i.e. Treasury Officers and Accounts Officers, within a period of six weeks from the date of the receipt of the order and the State is directed to issue order of appointment to the appellant within a period of six weeks thereafter. [447-C-F]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 11314 of 1995.

From the Judgment and Order dated 4.12.92 of the Allahabad High Court in Civil Misc. W.P. No. Nil of 1992.

R.K. Jain, M.A. Rahman and M.R. Bidsar, for the Appellant.

A.B. Rohtagi, R.B. Misra and M.K. Roy for the Respondents.

The following Order of the Court was delivered :

Leave granted.

We have heard the learned counsel for the appellant and the State. For the recruitment in the 15 posts of Treasury Officers- Accounts Officers in U.P. Finance and Accounts Services, Sales Tax Officers (6 posts) and Regional Audit Officers (4 posts) advertisement was made in 1988. Out of 15 posts in the Treasury Officers-Accounts Officers in U.P. Finance and Accounts Service, 4 posts were reserved for members of the Scheduled Castes. It would appear that as a result of Competitive examination conducted by the P.S.C., the last candidate selected for these 4 posts was one Anil Kumar Rai who secured 361 marks in written examination and 39 marks in personality test out of 400 marks. The P.S.C. had recommended the names of four candidates. As a result, the appellant and three others - one Balkesh Singh, Bali Ram Prasad, Amar Singh, who secured 347 + 53

A (total 400 marks), 344+56 (total 400 marks), 360+39 (total 399 marks) and the appellant 351+48 (total 399 marks), could not be recommended, as there was no request by the Government for putting them in the waiting list. Since they could not be appointed, the appellant had approached the High Court for a writ of mandamus or direction to the P.S.C. to recommend his name for appointment in the Accounts Service. The High Court dismissed the writ petition No. nil of 1992 by order dated December 4, 1992 on the ground that the petitioner was not intimated that he was selected. Since there was no information that he was put in the select list, direction could not be given to appoint him as Accounts Officer in Accounts Service.

C In the counter-affidavit filed by the P.S.C., it was stated that since four posts were reserved for the Scheduled Castes and the last candidate Anil Kumar Rai was already selected and recommended for appointment, and as there was no request by the State Government for preparation of waiting list for the vacant posts reserved for the Scheduled Castes, the names of the appellant and the aforesaid three persons could not be recommended for appointment. It is stated in the counter-affidavit filed by Behari Lal, Special Secretary, Karmik Anubhag Secretariat, U.P. that since the appellant was not recommended nor found qualified for appointment, he could not claim any appointment.

E In para 11 of the Special Leave Petition, a specific stand has been taken in paragraph 11 that the four candidates selected by the P.S.C., namely, Ram Bodh, Roll No. 22142, Serial No. 13, Lolark Ram Roll No. 442, Sl. No. 23, Ram Daras Chandrahas, Roll No. 2301, Sl. No. 24, and Raja Ram, Roll No. 1787, Sl. No. 30, though selected and recommended for appointment in the first category, did not join in the service. As a consequence, 4 posts were left vacant and required to be filled up by the reserved candidates. Since the appellant is the 4th candidate among the candidates who were standing in the order of merit, rejection of appellant's claim for appointment is illegal and unconstitutional.

G In the counter affidavit of Bihari Lal, it is stated in para 6 thus :

H "That the contents of paras 11 & 12 of the S.L.P. relates to the Finance Deptt., therefore need no comments of answering respondent. However, it is submitted that reserved posts can be filled by the candidates of reserved categories only."

In other words, there is no denial of the aforesaid four candidates not joining in the Finance Department. It is submitted that it would be filled up by reserved candidates. A

It is not in dispute that the appellant is a reserved candidate belonging to Scheduled Castes. In view of the admitted position that four posts were reserved in the Finance Department in category 1 mentioned earlier and 4 selected candidates appeared to have not joined in the service, as asserted in para 11 of the S.L.P. and not specifically denied by the respondents in the counter-affidavit in para 6 as referred to earlier, it is clear that the appellant also is the 4th candidate in the order of merit would have been selected, had there been a requisition by the State Government for appointment of the reserved candidates. B C

Right to seek appointment to a post under Article 14 read with Articles 16(1) and (4) is a constitutional right to equality. The State failed to perform its constitutional duty to requisition the P.S.C. to recommend the next qualified persons to the posts reserved for scheduled castes. Under these circumstances, the denial of appointment to the appellant and three others above him is unconstitutional. Therefore, the respondents are not justified in denying the claim of the appellant for the appointment to the above post. D

The P.S.C. is, therefore, directed to recommend the name of the appellant for appointment in the first category, i.e. Treasury Officers and Accounts Officers, within a period of six weeks from the date of the receipt of the order and the State is directed to issue order of appointment to the appellant within a period of six weeks thereafter. E

The appeal is accordingly allowed. No costs. F

G.N.

Appeal allowed.