

SUPREME COURT OF INDIA  
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 126-127 OF 2002

HINDUSTAN PETROLEUM CORPORATION LTD.&ANR

Appellant (s)

VERSUS

KAMLESH KUMAR & ORS  
(With office report )

Respondent(s)

WITH Civil Appeal NO. 128-129 of 2002(With office report)  
Civil Appeal NO. 130-131 of 2002(With office report)  
Civil Appeal NO. 132-133 of 2002(With office report)  
Civil Appeal NO. 134-135 of 2002(With office report)

Date: 12/12/2007 These Appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.K. MATHUR  
HON'BLE MR. JUSTICE MARKANDEY KATJU

For Appellant(s) Mr. Amarendra Sharan, ASG  
Mr. L. Nageshwara Rao, Sr. Adv. (NP)  
Mr. Rajiv Kapur, Adv.  
Ms. Arti Singh, Adv.  
Ms. Uttara Babbar, Adv.  
Mr. Sanjay Kapur, Adv.

For Respondent(s) Mr. Nalin Tripathi, Adv.  
Mrs Sarla Chandra, Adv.  
Mr. Shrish Kumar Misra, Adv.  
Mr. Ajay K. Agrawal, Adv. (NP)  
Mr. Praveen Swarup, Adv. (NP)

UPON hearing counsel the Court made the following  
ORDER

The appeals are allowed and impugned judgment and orders are set  
aside in terms of the signed order. No order as to costs.

(Ajay Kr. Jain)  
Court Master

(Vijay Dhawan)  
Court Master

(Signed order is placed on the file)  
IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 126-127 OF 2002

Hindustan Petroleum Corporation ..... Appellants  
Ltd. & Anr.

Versus

Kamlesh Kumar & Ors. .... Respondents

WITH

ORDER

Heard learned counsel for the parties.

This batch of appeals involve similar facts and identical questions of law and hence they are being disposed of by a common order.

These appeals by special leave are directed against the judgment and orders passed by a learned Single Judge of the High Court of Judicature at Allahabad (Lucknow Bench) whereby the learned Single Judge following the judgment of a cognate Bench dated 12.3.1993 in W.P.(C) No. 11133/1990 has directed the opposite parties No. 2 and 3 (the appellants herein) to appoint the petitioners on any Class IV posts within a period of two months from the date of production of a copy of the order issued. The High Court further directed that in case no vacancy exists, the opposite parties would create posts and appoint the petitioners anywhere in the State of U.P. It was clarified that age would not be considered to be a bar for appointment of the petitioners.

Aggrieved against the order passed by the learned Single Judge, the present appeals have been filed. The learned Addl. Solicitor General appearing for the appellants submitted that as per the present position there is no vacancy available against which any employment can be given to the respondents who have been displaced in view of their land having been acquired. Learned counsel for the appellants further submitted that all the respondents in these appeals, whose lands have been acquired for industrial purpose, have been given compensation in accordance with law and therefore there is no obligation on part of the appellant corporation to create posts for the respondents and accommodate them against the said posts. According to him the order passed by the learned Single Judge is beyond jurisdiction and the respondents cannot be given any appointment. He has also invited our attention to Annexure-P/2, a chart which has been filed by the appellant corporation. It is pointed out by him that in so far as Kamlesh Kumar is concerned, his name was sponsored by the Employment Exchange but he failed in the test and Pratap Narain whose name was not sponsored by the Employment Exchange did not appear in the test. Learned Addl. Solicitor General further submitted that another bottling plant of the appellant-corporation at Shakurbasti, New Delhi has been closed down and those persons who have become surplus from the said bottling plant have been absorbed in the plant at Unnao, Uttar Pradesh. According to the learned Addl. Solicitor General

in view of these aspects, there is no vacancy available for accommodating the respondents in the appellant corporation.

As against this, learned counsel for the respondents has submitted that at the time the land of the respondents was acquired, an agreement was entered into with the corporation whereby the corporation agreed to give preference in the matter of employment to one member of the family whose land was acquired. According to the learned counsel for the respondents in terms of the said agreement the appellant-corporation was under an obligation to give preference when the persons from other places were accommodated.

We have heard learned counsel for the parties. At the outset we may observe that giving preference in the matter of employment does not entitle a person for appointment. Therefore the direction given by the learned Single Judge in order dated 12.3.1993 in Writ Petition No. 11133/1990 to create posts and give employment to the writ petitioners, which has been followed in the impugned orders, is without jurisdiction. It is well settled that the Court cannot create a post, as that is a purely executive or legislative function. Giving preference in the matter of employment mean that all other things being equal the writ petitioners should have been given appointment over and above other persons but it can never mean creation of posts and appointing them against the said posts. Therefore, the High Court was totally wrong in directing to create posts for the writ petitioners and accommodating them in the said posts. Each public sector corporation has its limitations and it cannot go beyond their means. They have to maintain their fiscal discipline also. As a matter of fact, the respondents have already been benefited by giving them compensation for the land acquired. Therefore, over and above this they have no right to claim appointment. However, as a social measure the appellant corporation thought that one person from each family may be given preference in the matter of employment provided other things are equal. It is clear that the learned Single Judge has gone beyond his jurisdiction and as such the direction given by the impugned order cannot be sustained.

Moreover, in the changed situation also when there is no vacancy available in the bottling plant at Unnao, no direction can be given to the appellant corporation to give preference to the respondents in the matter of appointment. It is unnecessary to give any such direction when the factual aspect is before us and it is clear that no vacancy is available and nor is there any likely to be in

future as the persons from the bottling plant at Shakurbasti, New Delhi which was closed down have been absorbed in the Unnao Plant. The learned Addl. Solicitor General appearing for the appellant corporation also submitted that because of automation of the bottling plant even the people presently employed have become surplus. In the above facts and circumstances, we cannot give any direction to the appellant corporation to give preference to the respondents in the matter of appointment or create any posts for them. Consequently, the appeals are allowed and impugned judgment and orders are set aside. No order as to costs.

(A.K.MATHUR)

.....J.

(MARKANDEY KATJU)

.....J.

New Delhi  
December 12, 2007