

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No.504 OF 2011

SUDHANSHU TIWARI

... APPELLANT

VERSUS

PUBLIC SERVICE COMM. U.P. ALLAHABAD & ORS.

... RESPONDENTS

WITH

CIVIL APPEAL No.505 OF 2011

O R D E R

Application for intervention filed by one Naresh Kumar Verma is allowed.

We have heard learned counsel for the parties in respect of the impugned order dated 27th January, 2004 passed by the High Court of Judicature at Allahabad in Civil Misc. Writ Petition No.54668 of 2000.

At this stage, it may be mentioned that the writ petition (No. 54668 of 2000) was tagged with another writ petition being Civil Misc. Writ Petition No.19794 of 1999.

The controversy relates to the filling up of the posts in the Office of the Transport Commissioner.

By an advertisement issued on 1st January, 1999, as many as 35 posts were advertised for being filled up of Assistant Regional Transport Officers (ARTOs).

While the recruitment process was going on, the State of Uttar Pradesh amended the U.P. Transport Service Rules, 1990 (for short "the Rules") by inserting therein a proviso to Rule 5(1). This proviso reads as follows:

"Provided that if sufficient number of eligible or suitable candidates are not available for promotion, the post may be filled by direct recruitment through the Commission on the basis of the result of the Combined State Services Examination."

Feeling aggrieved by the insertion of the aforesaid proviso, a writ petition bearing No. 19794 of 1999 was filed by R.K. Saraswat and others in which the aforesaid amendment was challenged. During the pendency of the writ petition, the High Court passed an interim order on 1st September, 1999 restraining the respondents from transferring the quota of 50% of posts of ARTOs for direct recruitment. As a result of this interim order, the number of available posts got reduced from 35 to 15.

As a result of the reduction in the number of posts, the appellants before us were aggrieved and they filed writ petition bearing No.54668 of 2000 before the High Court for a prayer for the issuance of an appropriate writ to fill up 35 Posts of ARTOs as per the advertisement dated 1st January, 1999 and also for declaring the reduction of seats from 35 to 15 as illegal and arbitrary.

Both the writ petitions were heard together and it appears that during the pendency of the writ petitions, R.K. Saraswat and others (writ petitioners in the writ petition bearing No.19794 of 1999) were promoted against the vacancies for the year 2001-2002.

As far as the appellants are concerned (the petitioners in Writ Petition No.54668 of 2000), their case was taken up for consideration and it was held by the High Court that the number of seats reduced by the Public Service Commission cannot be increased by the Court by an order in exercise of its writ jurisdiction. In other words, the High Court was of the view that the reduction in the number of seats in terms of the order dated 1st September, 1999 was the act of the Public Service Commission and the State Government as well. The High Court failed to realize that the Commission and the State Government were compelled to act and reduce the number of vacancies from 35 to 15 as a result of the interim order passed by the High Court on 1st September, 1999. If the interim order had not been passed, the advertisement would have been given effect to as it is and the direct recruits would have filled up all the 35 posts in accordance with the Rules.

Be that as it may, the High Court dismissed the writ petition filed by the appellants on the basis of the

above. It is under these circumstances that the appellants are now before us.

Having heard learned counsel for the parties, we are of the view that the High Court was completely in error in coming to the conclusion that the number of seats were reduced from 35 to 15 at the instance of the Public Service Commission and the State Government. The number of seats was reduced as a result of the interim order passed by the High Court on 1st September, 1999 in Writ Petition No.19794 of 1999. That writ petition having been dismissed by the High Court for whatever reason, the interim order automatically stands vacated. With the vacation of the interim order, the advertisement revives in the sense that the number of seats reverts to 35 which had been reduced to 15 in terms of the interim order passed by the High Court. That being the position, there is no option but to set aside the order of the High Court and allow the appeals filed by the appellants and direct the respondents to fill up the advertised vacancies.

Needless to say, in case the appellants are found to have qualified in terms of the advertisement and the Combined State Services Examination, they will be given all the consequential benefits.

The appeals are allowed in view of the above.

.....J.
(MADAN B. LOKUR)

.....J.
(S.A. BOBDE)

NEW DELHI
SEPTEMBER 17, 2015

ITEM NO.105

COURT NO.9

SECTION XI

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s).504/2011

SUDHANSHU TIWARI

Appellant(s)

VERSUS

PUBLIC SERVICE COMM. U.P.ALLAHABAD & ORS

Respondent(s)

(With appln. (s) for permission to file additional documents and permission to file additional affidavit and intervention)

WITH

C.A. No. 505/2011

(With Office Report)

Date : 17/09/2015 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE MADAN B. LOKUR

HON'BLE MR. JUSTICE S.A. BOBDE

For Appellant(s) Mr. Amarendra Sharan, Sr. Adv.
 Mr. Anurag Dubey, Adv.
 Mr. Meenesh Dubey, Adv.
 Ms. Ila Haldia, Adv.
 Ms. Anu Sawhney, Adv.
 Ms. Meenakshi Parihar, Adv.
 Mr. S. R. Setia, AOR

For Respondent(s) Mr. Goodwill Indeevar, AOR

 Mr. Rakesh K. Khanna, Sr. Adv.
 Mr. Rakesh Mishra, AOR
 Ms. Shaifali Jain, Adv.

 Mr. Irshad Ahmad, AAG
 Mr. Samir Ali Khan, AOR
 Mr. Aditya Narayan Singh, Adv.

 Mr. Shrish Kumar Misra, Adv.
 Mr. Piyush Dwivedi, Adv.

 Mr. Shail Kumar Dwivedi, AOR

 Mr. Vijay Prakash, AOR

Mr. Vinodh Kanna B., AOR

Mr. Pradeep Misra, AOR

UPON hearing the counsel the Court made the following
O R D E R

Application for intervention filed by one Naresh
Kumar Verma is allowed.

The appeals are allowed in terms of the signed order.

(SANJAY KUMAR-I)
COURT MASTER

(JASWINDER KAUR)
COURT MASTER

(Signed order is placed on the file)