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SLP(C)No. 16419 OF 2000

ITEM No.47

Court No. 4

SECTION XI  
A/N MATTER

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No.16419/2000

(From the judgement and order dated 02/03/2000 in CMWP 33281/99  
of The HIGH COURT OF JUDICATURE AT ALLAHABAD)

STATE OF U.P. AND ANR.

Petitioner (s)

VERSUS

NIRANJAN LAL JAISWAL

Respondent (s)

(With prayer for interim relief)

Date : 05/02/2001 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.B. PATTANAIAK  
HON'BLE MR. JUSTICE U.C. BANERJEE  
HON'BLE MR. JUSTICE S.N. VARIAVA

For Petitioner (s) Mr. Dinesh Diwedi, Sr. Adv.  
Mr. R.B. Misra, Adv.  
Mr. K. Misra, Adv.  
Ms. Sangeeta Sharma, Adv.

For Respondent (s) M/s. Syed Ali Ahmad, Syed Tanweer Ahmad,  
G.G. Upadhyay, Vikas Bansal and Mr. R.D.  
Upadhyay, Advs.

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

.....L.....I.....T.....T.....T.....T.....J.  
.SP2

Leave granted.  
The appeal is disposed of.

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(Y.P.Dhamija) (Suneet Bala Sharma)@@  
AA  
COURT MASTER COURT MASTER

Signed order is placed on the file.

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1035/2001@@  
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(arising out of SLP(C) No.16419/2000)

State of U.P. & Anr. ...Appellants

Vs.

Niranjan Lal Jaiswal ...Respondent

O R D E R@@  
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.....L.....I.....T.....T.....T.....T.....T.....J.  
.SP2

Leave granted.

This case is a glaring example indicating the disposal of the Writ Petition by the High Court without application of mind to the facts alleged by the parties. Be it be stated that when the respondent approached the High Court claiming relief of being promoted to the post of Under-Secretary in accordance with the direction given by this Court in the case of Ram Sewak Prasad Vs. State of U.P.@@  
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& Ors. AIR 1991 SC 1818, the State Government in its counter@@  
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affidavit had categorically indicated "according to the order of the Hon'ble Supreme Court dated 11.7.1991 adjusting such Excise Inspectors in the yearwise vacancies available under the rule 10 percent seniority was determined and accordingly seniority list dated 1.7.1992 was issued. Adjusted the petitioner against the vacancy available for the year 1976-77 for the post of Excise Inspector his seniority was accordingly determined. So, the statement of the petitioner

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that Shri Ram Dhani Yadav was junior to him is denied." Therefore, this is not a case of non-consideration of the respondent in accordance with the judgment of this Court in Ram Sewak Prasad. The High Court by the impugned judgment directs that the respondent should be promoted with effect from the date of his ad-hoc appointment without applying its mind to the aforesaid stand of the State Government indicated in the counter affidavit. We are inclined to set aside the order of the High Court and allow this matter. Mr. Upadhyay, the learned counsel appearing for the respondent contended that there would be other grounds the High Court has not considered and therefore the matter should be remitted to the High Court for re-consideration. In view of this submission we are persuaded to set aside the impugned order of the High Court and remit the matter to the High Court for re-disposal in accordance with law. This may be done within 3 months from today. The writ petition may be allotted to some other learned Judges and not the Judges who disposed it of.

The appeal is disposed of.

.SP1

.....J.  
(G.B. PATTANAIAK)

.....J.  
(U.C. BANERJEE)

New Delhi,  
February 05, 2001

.....J.  
(S.N. VARIAVA)