

ã[1
IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.5270 OF 2012
HET SINGH YADAV & ORS.

APPELLANT(S)

VERSUS

STATE OF U.P.& ORS.
WITH

RESPONDENT(S)

T.P. (CIVIL) NO.889 OF 2013

O R D E R

This appeal arises from a judgment and order dated 16.12.2010 passed by the High Court of Judicature at Allahabad whereby Writ Petition No.1283 of 2007 filed by the two judicial officers serving in the Uttar Pradesh Higher Judicial Service has been allowed with the following directions:

(i) Subject to observations made hereinabove, seniority of all the promotees with regard to vacancies existing prior to 15.3.1996 shall be determined on the basis of old unamended Rules (supra) and for the vacancies arisen thereafter, the seniority shall be determined on the basis of amended Rules notified on 15.3.1996 (supra) subject to S.K. Tripathi & Ashok Pal Singh (supra).

(ii) The roster of 1:1 may be prepared while

2

finalising seniority list only in case the promotees and direct recruits are appointed and resume duty in the same recruitment year.

(iii) In view of judgment of Hon'ble Supreme Court in the case of B.S. Mathur (supra) the seniority of promotees and direct recruits should be tested on the basis of continuous officiation of service without applying roster in case there is breakage of quota and rota system. Promotees shall be placed in the seniority against the year of vacancy for which they have been selected whereas, direct recruits shall be given seniority from the date of assumption of duty. Petitioners shall be entitled for seniority with effect from 27.5.1996.

(iv) The impugned seniority list has been prepared against the settled principles of law (supra) hence suffers from inherent weakness and substantial illegality, therefore, shall not survive. In view of the above, the writ petition deserves to be allowed. Accordingly, the writ petition is allowed. A writ in the nature of certiorari is issued quashing the impugned seniority list dated 24.8.2007 contained in Annexure No.1 to the writ petition with consequential benefits. A writ in the nature of mandamus is issued directing the respondents to prepare a fresh seniority list keeping in view the observations made by their lordships of Hon'ble Supreme Court in the case of Ashok Pal Singh (supra) read with findings recorded in the body of the present judgment expeditiously.

3

No costs.â- \235

When this appeal came up before this Court for hearing on 04.04.2011, we requested the High Court to proceed further in the matter keeping in view the directions contained in the decision of this Court in Ashok Pal Singh Vs. U.P. Judicial Service Association & Ors. [(2010) 12 SCC 635]. Mr.Rakesh Dwivedi, learned senior counsel appearing for the High Court of Allahabad

today submits that pursuant to the above direction of this Court, the High Court of Allahabad has undertaken an exercise and determined the inter-se seniority of Judicial Officers in the U.P. Higher Judicial Service and circulated a final seniority list of the said officers on 14.04.2016. This list according to the learned counsel keeps in view the directions of this Court in Ashok Pal Singh (supra) and assigns appropriate positions to the members of the Higher Judicial Service in the seniority list. He further submits that aggrieved by the list circulated by the High Court Writ Petition (C) No.322/2016 in Kalpana Misra & Ors. vs. The High Court of Judicature at Allahabad through Registrar General & Ors. was filed in this Court which was disposed off by this Court by an order dated 01.07.2016 reserving liberty to the petitioners in the said petition to move the High Court under Article 226 of the Constitution. The aggrieved private officers have accordingly filed Writ

4

Petition No.16569 of 2016 before the Allahabad High Court at Lucknow Bench. Mr.Dwivedi submits that in light of the said subsequent development and the fact that the original writ petitioners, namely, Prabhuji and Ashok Kumar Agarwal have since retired from service and are no longer interested in pursuing the matter any further in this Court, this appeal could be allowed, judgment of the High Court set aside, and the writ petition dismissed reserving liberty for all concerned to seek such redress as may be legally permissible to them before the High Court in the pending writ petition or any other petitions that they may choose to file.

On behalf of the appellants and the State of Uttar Pradesh it is submitted that the High Court has while preparing a fresh list failed to keep the directions issued by this Court in Ashok Pal Singh's case (supra) in view and that the list so prepared is also unsustainable. It is further submitted that this Court could in order to give a quietus to the controversy examine on merits the contentions urged on both sides once and for all instead of leaving it to the High Court to do so. Alternatively it was submitted that if this Court were to set aside the impugned order passed by the High Court, it should be made clear that this Court has expressed no opinion on the merits of the case or contentions raised by the parties so that the High Court

5

is not prevented from taking an appropriate view in accordance with law. Most of the appellants have either retired as High Court Judges or as District Judges. Some of them who were subsequently added as appellants to this appeal are perhaps still in service as District Judges in the Higher Judicial Service of the State and are shown in the fresh seniority list prepared by the High Court. It is also not in dispute that the fresh writ petition pending before the High Court questions the seniority list on several grounds. In the circumstances and having regard to the fact that this Court has declined to entertain the petition filed under Article 32 of the Constitution by the aggrieved officers, we see no reason why the High Court cannot examine the challenge to the fresh list issued by it making it unnecessary for us to embark upon examination of the merits of the case or the contentions raised by the parties. Interest of justice would, in our opinion, be sufficiently served if we leave all issues open determination by the High Court. We accordingly allow this appeal, set aside the

order passed by the High Court and dismiss Writ Petition No.1283/2007 with the observation that we have not expressed any opinion on any of the contentions that were urged before the High Court in the writ petition or

6

those raised before us in these proceedings. We make it clear that all questions touching upon the validity of the seniority list circulated by the High Court pursuant to our order dated 04.04.2011 are left open to be determined by the High Court in accordance with law after hearing the parties concerned.

Parties are left to bear their own cost.

I.A. No.16/2016 shall also stand disposed off in terms of the order passed in this appeal with liberty to the applicant to seek appropriate relief in separate proceedings. All other pending applications also stand disposed off in the above terms.

T.P. (C) No.889 of 2013

Learned counsel for the petitioner seeks leave to withdraw this transfer petition.

The transfer petition is accordingly dismissed as withdrawn.

.....CJI.

[T.S.THAKUR]

.....J.

[A.M. KHANWILKAR]

NEW DELHI

SEPTEMBER 15, 2016.

REVISED

ITEM NO.106

COURT NO.1

SECTION XI

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

RECORD OF PROCEEDINGS

Civil Appeal No.5270/2012

HET SINGH YADAV & ORS.

Appellant(s)

VERSUS

STATE OF U.P.& ORS.

Respondent(s)

(with appln. (s) for stay and interim stay and interim relief and deletion of the name of respondent and impleadment and directions and impleadment and directions and stay and stay and permission to submit additional document(s) and impleadment and directions and impleadment and impleadment and permission and bring on record subsequent event and permission to bring additional facts and documents on record and bringing subsequent events on record and filing addl. documents and exemption from filing O.T. of annexures and permission to bring on record subsequent event and additional documents and office report)

WITH

T.P.(C) No.889/2013

(With Office Report)

Date : 15/09/2016 This appeal/petition was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE A.M. KHANWILKAR

For Appellant(s)

Mr. Jitendra Mohan Sharma, Adv.

Mr. S.K. Sabharwal, Adv. (deceased)

Mr. Venkita Subramoniam T.R., Adv.

Mr. Raghavendra S. Srivatsav, Adv.

Mr. Jasbir Singh Malik, Adv.

Ms. Usha Mandiratta, Adv.

For Respondent(s)

Mr. S.R. Singh, Sr. Adv.

(For Impleadment Mr. Farrukh Rasheed, Adv.

In I.A. No.16) Mr. Aditya Samaddar, Adv.

(High Court of Mr. Rakesh Dwivedi, Sr. Adv.
Allahabad) Ms. Preetika Dwivedi, Adv.

Ms. Apoorva Garg, Adv.

(State of U.P.) Mr. P.N. Misra, Sr. Adv.

Mr. Abhishtj Kumar, Adv.

Ms. Mayuri Raghuvanshi, Adv.

Mr. Vyom Raghuvanshi, Adv.

Mr. Ajit Sharma, Adv.

Mr. Brij Bhusan, Adv.

Mr. Pahlad Singh Sharma, Adv.

Mr. Rana Ranjit Singh, Adv.

Mr. Vinay Garg, Adv.

Mr. Ravi Prakash Mehrotra, Adv.

UPON hearing the counsel the Court made the following

O R D E R

C.A.No.5270 of 2012

This appeal is allowed and I.A.No.16 of 2016 disposed off in terms of the signed order.

T.P.(C) No.889 of 2013

The transfer petition is dismissed as withdrawn in terms of the signed order.

(Ashok Raj Singh)

(Veena Khera)

Court Master

Court Master

(Signed Order is placed in the file)