

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6251 OF 2000@@
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Union of India ...Appellant (s)

Versus

Babu Ram Jain ...Respondent(s)

WITH

(C.A. Nos.6252, 6253, 6254,6255,6256-6257 of 2000)@@
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These appeals by the Union of India are directed against the judgment/direction of the Delhi High Court in relation to the appointment to the post of Member, Income-Tax Appellate Tribunal. From the records it transpires that an advertisement had been issued in the year 1996 indicating the approximate number of vacancies to be 18 which was liable to be altered depending upon the circumstances. A selection committee headed by a sitting Judge of this Court, selected 25 persons in all, 14 in the main list and 11 in the waiting-list. From out of those 25 persons, 24 persons were appointed sometimes in November, 1997. The Union of India however in its wisdom thought fit to annul the appointment of 9 persons, and accordingly terminated their services on 30th of September, 1998. Be it stated, while terminating their services they had not been given any notice. The termination order however indicated that the order of termination is being

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passed because they had been appointed in excess of the number of posts advertised for. Out of 9 terminated employees, all of them approached the Tribunal. Three such applications are still pending and 6 applications stood decided. The Tribunal dismissed 5 of the applications and allowed the one. Those five persons whose applications stood dismissed, the person whose application was allowed, as well as the Union of India approached the High Court against the order of the Tribunal. The High Court by the impugned judgment having directed that the order of termination is illegal and having quashed the said order of termination, the Union is in appeal before us.

In course of hearing of these appeals learned Additional Solicitor General contended before us that the Union was obliged to examine the legality of the orders of termination in view of certain directions made by the Delhi High Court in a Public Interest Litigation which was registered as Civil Writ Petition No. 3303/98. But, having

examined the assertions made in that writ petition as well as the interim order passed thereon, we are unable to accept this contention of the learned Additional Solicitor General. The learned Additional Solicitor General urged that the number of posts advertised being 18, in accordance with the law laid down by this Court appointment beyond the same must be held to be null and void and, therefore, the Union Government was

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justified in re-examining the matter and terminating the services of those who were found to have been appointed beyond the number of posts advertised. It is not necessary for us to examine this contention in depth inasmuch as on going through the approval that had been put up before the Minister of Law at the relevant point of time and in view of the terms of advertisement itself and, in the facts and circumstances of the present case, we have no hesitation to come to the conclusion that the appointments made beyond the number of posts advertised cannot be held to be illegal in any manner. Moreso, the advertisement clearly indicated that the number of vacancies is only approximate and is liable to alteration. On the facts and circumstances of the present case, the conclusion is irresistible that there was no infirmity in issuing letters of appointment in favour of those who had been selected by the selection committee and at any rate, the order of cancellation of appointment without affording them an opportunity of being heard must be held to be illegal. In the facts and circumstances of the present case, we see no infirmity with the impugned order/judgment of the Delhi High Court requiring our interference in the matter.

So far as the pecuniary benefits of these respondents are concerned, we direct that they should be paid 50 per cent of the wages from the date they relinquished their office till

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the date of their reinstatement. Needless to mention the impugned direction of the Delhi High Court should be implemented forthwith.

The appeals accordingly stand dismissed.

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(G.B. PATTANAIAK)@@
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(U.C. BANERJEE)@@
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New Delhi,
April 11, 2001.

.....J@@
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(S.N. VARIAVA)@@
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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. 6251 OF 2000@@
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Union of India ...Appellant (s)

Versus

Babu Ram Jain ...Respondent(s)

[With appln.(s) for permission for making appointment in the existing vacancies in the posts of judicial/accountant members in ITAT and exemption from filing c/c of the impugned judgment and impleadment/intervention and office report]

WITH

(C.A. Nos.6252, 6253, 6254,6255,6256-6257 of 2000)@@
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Date : 11/04/2001 These petition(s)/appeal(s) was/were 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 Appellant (s) Mr. Mukul Rohtagi, ASG.
Mr. Rajiv Nanda, Adv.
Mr. Manish Shinghvi, Adv.
Mr. P. Parmeswaran, Adv.
Mr. B.K. Prasad, Adv.

For Respondent (s) Mr. Sudhir Chandra, Sr. Adv.
(CA 6251 & 6256-57) Mr. Rajiv K. Garg, Adv.
Mr. Achintya Dwivedi, Adv.
Mr. K.K. Gupta, Adv.
Mr. Atul Sharma, Adv.

CA 6252/00 Mr.Gobind Das, Sr. Adv.
M/s. Suman Doval, S.M. Garg, S. Prasad,
Sunil Agarwal, Rajan Sharma, V.B. Singh Rawat
and Suhail Siddiqi, Advs.

CA 6254/00 Mr. R. Venkataramani, Sr. Adv.
M/s. Suman Doval, S.M. Garg, S. Prasad,
Sunil Agarwal, Rajan Sharma, V.B. Singh Rawat
and Suhail Siddiqi, Advs.

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CA 6253/00

Mr.M.K. Banerjee, Sr. Adv.
Mr.G.K. Banerjee, Adv.
Mr. S. Bhatnagar, Adv.
Ms. Malvika Trivedi, Adv.
Mr. Joseph Pookkat, Adv.
Mr. Prashant Kumar, Adv.

UPON hearing counsel, the Court made the following
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Intervention / impleadment allowed.
Appeals stand dismissed in terms of the signed order.

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(J.S. Rawat)
Court Master

(Suneet Bala Sharma)
Court Master

(Signed order is placed on the file)