

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.18602/1999

(From the judgement and order dated 25/05/1999 in SA 825/96
of The HIGH COURT OF JUDICATURE AT ALLAHABAD)

U.P.S.R.T.C. & ORS.

Petitioner (s)

VERSUS

VIJAY KUMAR GUPTA

Respondent (s)

(With prayer for interim relief)
(With Appln(s). for exemption from filing O.T.)

Date : 03/08/2001 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B.N. KIRPAL
HON'BLE MR. JUSTICE N. SANTOSH HEGDE

For Petitioner (s)

Mr. Pradeep Misra,Adv.

For Respondent (s)

Mr. Yatish Mohan, Adv.
Mr. Pankaj Kumar Singh, Adv.
Mr. K. Janjani, Adv.

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

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.SP2

Special leave granted.
The appeal is allowed and the judgment of the High
Court is set aside. No costs.

.SP1

Kalyani. (S.L. GOYAL)@@
AA
COURT MASTER @@
A AAA

(Signed Order is placed on the file.)

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2001@@
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(Arising out of S.L.P. (C) No. 18602/1999)

U.P.S.R.T.C. & Ors. Appellants

Versus

Vijay Kumar Gupta Respondent

O R D E R@@
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Special leave granted.

On 20th May, 1989, the appellants issued an advertisement inviting applications for appointment against 50 posts of Cleaners in the Workshop falling in the Kanpur Region. Applications were received, interviews held and a select list was prepared in the month of November, 1989. The name of the respondent figured as one of the selected candidates.

Before any letter of appointment could be issued, the State of U.P. imposed a ban on appointment of any person. Pursuant thereto, the respondent filed a writ petition for a direction that he should be appointed against the vacancy which had been advertised. The Single Judge following an earlier decision of the High Court of Judicature at Allahabad in the case of Pradeep@@
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Kumar Mishra and others Vs. U.P. State Road Transport@@
CC
Corporation, Lucknow and others reported in (1991) 2@@
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UPLBEC 796, came to the conclusion that the ban which had been imposed had been struck down in Pradeep Kumar Mishra's case and, therefore, the respondent had a right to be appointed to the post notwithstanding the withstanding the ban by the Government.

An appeal filed against the said decision was dismissed by the Division Bench. In our opinion, neither the decision under appeal nor the earlier decision in Pradeep Kumar Mishra's case have been rightly decided. A Constitution Bench of this Court in Shankarsan Dash Vs.@@
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Union of India, 1991 (3) SCC 47, came to the conclusion@@
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that a candidate who has been included in the merit list has no indefeasible right to appointment even if a

vacancy exists. Two decisions of the Allahabad High Court, namely, one under appeal and the earlier decision in P.K. Mishra's case clearly run counter to the decision of this Court in Shankarsan's case(supra). We@@
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fail to understand as to how a policy decision of the Government refraining from making any recruitment or imposing a ban in respect thereof can even be challenged,

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leave alone quashed by the High Court. It has not been shown that the action of the appellants in not appointing the respondent was for any malafide reason or appellants acted arbitrarily. It has also not been shown to us that any one junior to the respondent has been appointed.

Under the circumstances, the appeal is allowed and the judgment of the High Court is set aside. No costs.

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.....J
(B.N. KIRPAL)

.....J
(N. SANTOSH HEGDE)

New Delhi,
August 3, 2001.