

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.5679 OF 2006
(Arising out of SLP(C) No.23806/2005)

RACHNA RANI

.....APPELLANT(S)

VERSUS

STATE OF U.P. & ORS.

....RESPONDENT(S)

O R D E R

Leave granted.

Heard learned counsel appearing on behalf of respective parties and perused the order passed by the High Court which is impugned in this appeal. The Government of U.P. in paragraph 7 of its counter affidavit has reproduced Rule 10 of the U.P.Secondary Education Services Selection Board Rules, 1998 which were framed under Section 35 of the said Act. It is also stated that the Rules came into force from the date of its publication in the official gazette, i.e., 13th July, 1998. For the sake of convenience, we also reproduce Rule 10 as under :-

"10. Sources of recruitment -- Recruitment to various

categories of teachers shall be made from the following

sources:

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- (a) Principal of an Intermediate College or Headmaster of a High School By direct recruitment
- (b) Teachers of lecturer's grade (i) 50 per cent by direct recruitment;
(ii) 50 per cent by promotional from amongst substantively appointed teachers of the trained graduates grade.
- (c) Teachers of trained graduates grade (i) 50 per cent by direct recruitment;
(ii) 50 per cent by promotion from amongst the substantively appointed teachers of Certificate of Teaching grade:

Provided that if in any year of recruitment suitable eligible candidates are not available for recruitment by promotion, the posts, may be filled in by direct recruitment.

Provided further that if in calculating respective percentage of posts under this rule, there comes a fraction then the fraction of the post to be filled by direct recruitment shall

be ignored and the fraction of the posts to be filled by promotion shall be increased to make it one post."

A perusal of the above Rule will show that in case eligible candidates are not available to fill up the post in promotional quota then the same post can be filled up by direct recruitment. Since no Scheduled Caste candidate was available in L.T. Grade to be promoted to the post of

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lecturer hence direct recruitment was made to fill up the said post. The Rules have an overriding effect on the Government Order dated 12.07.1978. However, in this case, the High Court has relied upon the Government Order dt.12.07.1978 and allowed the Writ Petition filed filed by respondent No.6 (Rachna Rani), the appellant herein. The High Court has failed to notice the Rules framed under Section 35 of the said Act on 13.07.1998. The whole approach made by the High Court is not correct.

We, therefore, have no other option but to set aside the order passed by the Division Bench of the High Court and ratify the order of appointment of the learned Single Judge made in favour of the appellant herein. The appeal stands allowed accordingly. No costs.

.....J.
(Dr.AR.LAKSHMANAN)

.....J.

(ALTAMAS KABIR)

NEW DELHI;

DECEMBER 8, 2006.

ITEM NO.35

COURT NO.9

SECTION XI

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

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RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).23806/2005

(From the judgement and order dated 22/09/2005 in SA No. 1094/2005 of The
HIGH COURT OF JUDICATURE AT ALLAHABAD)

RACHNA RANI

Petitioner(s)

VERSUS

STATE OF U.P. & ORS.

Respondent(s)

(With appln(s) for exemption from filing O.T. and with prayer for interim relief and
office report)

Date: 08/12/2006 This Petition was called on for hearing today.

CORAM :

HON'BLE Dr. JUSTICE AR. LAKSHMANAN

HON'BLE MR. JUSTICE ALTAMAS KABIR

For Petitioner(s)

Mr.O.P.Sharma, Sr.Adv.

Mr. R.C. Gubrele,Adv.

Mr.K.R.Gupta, Adv.

For Respondent(s)

Mr. E.C. Vidya Sagar, Adv.

Mr. Dinesh Kumar Garg, Adv.

Mr. Mansoor Ali Khan, Adv.

Mr. B.S. Billowria, Adv.

Ms. Ritu Puri, Adv.

Mr. Vivek Gupta, Adv.

Mr. D.K. Gupta, Adv.

Mr. Bhim Pratap Singh, Adv.

Ms. Priya Kashyap, Adv.

Mr. T.N. Singh, Adv.

For State of U.P.

Mrs. Shobha Dixit, Sr. Adv.

Ms. Niranjana Singh, Adv.

Mr. Abhishek Chaudhary, Adv.

UPON hearing counsel the Court made the following

O R D E R

Leave granted.

The appeal is allowed in terms of the signed order.

No costs.

(Satish K. Yadav)

Court Master

(Phoolan Wati Arora)

Court Master

(Signed order is placed on the file)