

ITEM NO.3 COURT NO.2 SECTION XI

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

CONTEMPT PETITION (C) NO.347 OF 2010 IN S.L.P.(C) NO.20558/2009

HARIT KUMAR DWIVEDI & ORS. Petitioner(s)

VERSUS

PRADEEP KUMAR SHUKLA & ORS. Respondent(s)

(With appln(s) for intervention and exemption from filing O.T. and permission to file additional documents and impleadment)

WITH CONMT.PET.(C) NO.3 OF 2011 IN SLP (C) NO.20558/2009
CONMT.PET.(C) NO.8 of 2011 IN SLP (C) NO.20774/2009
CONMT.PET.(C) NO.29 of 2011 IN SLP (C) NO.20774/2009
CONMT.PET.(C) NO.32 of 2011 IN SLP (C) NO.22114/2009
CONMT.PET.(C) NO.36 of 2011 IN SLP (C) NO.20558/2009
CONMT.PET.(C) NO.37 of 2011 IN SLP (C) NO.32977/2009
CONMT.PET.(C) NO.73 of 2011 IN SLP (C) NO.20558/2009
CONMT.PET.(C) NO.92 of 2011 IN SLP (C) NO.20558/2009

(With appln.(s) for impleadment)

CONMT.PET.(C) NO.104 of 2011 IN SLP (C) NO.20558/2009
CONMT.PET.(C) NO.107 of 2011 IN SLP (C) NO.22732/2009
CONMT.PET.(C) NO.283 of 2011 IN SLP (C) NO.20774/2009
CONMT.PET.(C) NO.349 of 2011 IN SLP (C) NO.20774/2009
CONMT.PET.(C) NO.350 of 2011 IN SLP (C) NO.20774/2009
CONMT.PET.(C) NO.385 of 2011 IN SLP (C) NO.22732/2009
CONMT.PET.(C) NO.65 of 2012 IN SLP (C) NO.20774/2009
CONMT.PET.(C) NO.66 of 2012 IN SLP (C) NO.20774/2009

Date: 27/03/2012 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ALTAMAS KABIR
HON'BLE MR. JUSTICE J. CHELAMESWAR

For Petitioner(s) Mr. Mukesh K. Giri, AOR
Mr. Rachit Mittal, Adv.
Mr. Baldeo Puri Goswami, Adv.

C.P. (C) 347/2010

IN CP 92/11 Dr. Sumant Bharadwaj, Adv.
Mr. Ajit Kumar Gupta, Adv.
Ms. Archana Pathak Dave, Adv.
Ms. Mridula Ray Bharadwaj, AOR
Mr. K.K. Shukla, Adv.

IN CP 73/11 Mr. Shree Pal Singh, AOR
Mr. K. Sita Rama Rao, Adv.
Mr. Rahul Singh, Adv.

IN CP 8/11, 29/11, Mr. P.N. Mishra, Sr. Adv.

283/11, 349,11,
350/11, 65/11 &
66/11

Mr. Mukesh Verma, Adv.
Mr. Pawan Shukla, Adv.
Mr. Pravesh Thakur, Adv.
Mr. Yash Pal Dhingra, AOR

IN CP 107/11 &
CP 385/11

Mr. Pankaj Kumar Singh, Adv.
Mr. J.P.N. Gupta, Adv.
Mr. K.L. Janjani, AOR

Ms. Anu Gupta, AOR

For Respondent(s)

Mrs. Shobha Dikshit, Sr. Adv.
Ms. Niranjana Singh, AOR
Mrs. Prema Singh, Adv.
Mr. Saket Singh, Adv.

Mr. Santosh Kumar Tripathi, AOR

IN CP

Mr. C.L. Sahu, AOR
Ms. Hema Sahu, Adv.
Mr. Rajendra Sahu, Adv.
Mr. Rishabh Sahu, Adv.

/Applicant

Mr. Shyamal Kumar, Adv.
Mr. Rajiv Ranjan Dwivedi, AOR

/Applicant -
Vinay Kr. Divedi

Mr. Dinesh Kr. Tiwary, Adv.
Mr. Chandan Kumar, Adv.
Mr. N.N. Jha, Adv.
Mr. V.S. Mishra, Adv.
Ms. Shama Sharma, Adv.
Ms. Rita Upadhyay, Adv.

C.P. (C) 347/2010

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

CONMT. PET. (C) NO.65/2012

Let a copy of this contempt petition be served on Ms. Niranjana Singh, learned counsel appearing for the respondents, and let it be taken up for consideration along with Contempt Petition No.347 of 2010. Ms. Shobha Dikshit, learned senior counsel, who is appearing for the alleged contemnors in the other contempt petitions, is requested to take instructions in connection with this matter as well.

There appears to be some confusion as to whether the order passed by this Court on 3rd August, 2010, in S.L.P. (C) No.20558 of 2009, and several other matters, had been confined only to 766 vacancies, which had been advertised for being filled up by diploma-holders who had passed the diploma course in Pharmacy from different institutions which had been recognized by the Pharmacy Council of India and were also registered with the State Pharmacy Council of U.P. In our judgment, we had referred to the fact that the controversy regarding filling up of the vacancies had been triggered by the 766 vacancies, which had been advertised for being filled up by the diploma-holders. In the entire judgment we do not find that we had confined our directions on the basis of the principles indicated only to the said vacancies. In fact, in paragraph 41 of the said judgment, we had indicated that the decision taken by the State

discontinued at a later stage, but not to the disadvantage of those who had been deprived of an opportunity of being appointed by virtue of the same Rules. We had also taken a view, that the same decision which had been taken to deprive the private respondents from being appointed, could not be discarded once again to their disadvantage, to prevent them from being appointed, introducing the concept of merit selection at a later stage. We had, therefore, indicated that the same could be introduced after the private respondents and those similarly situated persons had been accommodated.

As has been pointed out by Ms. Shobha Dikshit, learned senior counsel appearing on behalf of the respondents, in a subsequent matter, which was filed by one Kishor Kumar and others, the question of filling up of the vacancies had also arisen and we had dismissed the said special leave petition on the basis of the earlier judgment in the case of State of U.P. v. Santosh Kumar Mishra (2010) 9 SCC 52. Ms. Dikshit pointed out that the said decision also indicated the number of vacancies being 766 and it was submitted that in that context the order was understood to have been confined only to the said 766 vacancies and not beyond that. Accordingly, she submitted that the said 766 vacancies having been filled up, the order passed by us had worked itself out.

There seems to be some misunderstanding as to the intent of the order which we had passed in Santosh Kumar Mishra's case. In fact, the later judgment in Kumar's case indicates that we were unable to accept the submissions made in that case because of the decision which

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we had earlier delivered in Santosh Kumar Mishra's case.

We make it clear that our directions in Santosh Kumar Mishra's case were in respect of the persons, who had been deprived of appointment on the basis of the earlier policy and the figure 766 only happened to be the figure of the advertisement, which triggered of the whole controversy.

Accordingly, we are adjourning this matter for six weeks, to enable steps to be taken in terms of the observations made in this order.

(Chetan Kumar)
Court Master

(Juginder Kaur)
Assistant Registrar