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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration T.A. No.1161/86

Union of India ..... Defendant Appellant

Versus

Shyam Manohar Misra .... Plaintiff Respondent

Hon.Ajay Johri, A.M.
Hon.G.S.Sharma, J.M.

(By Hon.Ajay Johri, A.M.)

Appeal No. 302 of 1983 Union of India Versus S.M. Misra has been received on transfer from the Court of District Judge, Gorakhpur under Section 29 of the Administrative Tribunals Act XIII of 1985. The appeal is against the decree and judgement of Munsif III Gorakhpur in Suit No. 1090 of 1981 Ram Saran and Others Versus Union of India and Others dated 10.5.1983. The grounds of appeal are that the plaintiffs had no lien on the post and therefore they were liable to be reverted. The panel was rightly prepared and the selection having been already made cannot be amended. The suit was also bad for misjoinder and non-joinder as the decision in the suit will affect the persons already selected. Plaintiff No.3 who is the defendant in this appeal did not appear in the selection hence he is not

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entitled to challenge it and he has failed to prove his case in the lower court. It has also been alleged that the relief in the suit cannot be truncated for the benefit of one of the plaintiffs and the judgement was vague and the relief granted to plaintiff No.3 (Defendant) is without meaning. The suit arose as a result of the alleged wrong calculation of vacancies reserved for 75% promotee quota and 25% limited departmental competitive examination quota in the year 1980-81. According to the appellants in the selections made during 1977-78 19 vacancies had to be filled for 75% quota and 3 for 25% . Selections could be held only for 19 vacancies and the 3 vacancies reserved for 25% quota were carried forward and therefore in 1980-81 when action was taken to fill up the vacancies there were 8 vacancies to be filled against 75% quota and 2 against the 25% quota which was the break up of 10 vacancies existing at the time and since 3 vacancies of the 25% quota were carried forward the total of 5 vacancies were to be filled against the 25% quota. The dispute has arisen because of the plaintiff respondent claiming that the 3 vacancies which were carried forward from 1977-78 quota of 25% were actually not so. Out of these 3, 2 vacancies pertain to a period prior to 3.6.77 and therefore they belong to the 75% quota and only one vacancy was to be filled against the 25% quota. Therefore there should have been 10 vacancies to be filled against the 75% quota and 3 against 25%

in the 1980-81 examination and since the plaintiff respondent was No.9 in the list of seniority for the promotees he should have been promoted as he had already qualified but he could not be promoted on account of only 8 vacancies having been filled instead of 10. In the suit No. 1090 of 1981 there were 3 plaintiffs. The plaintiff respondent in this case was the third plaintiff. The learned Munsif had made proper issues. On the issue No.1 that is whether for the 75% quota vacancies the panel should have been of 10 persons instead of 8, the learned Munsif concluded that for the 75% vacancies 10 posts were available and for the 25% quota vacancies only 3 posts were available in 1980-81 examination. To arrive at this conclusion he had relied on Railways letter of 14.7.1980(Exh.11) where the Accounts Department had mentioned that out of the 3 posts of 1977-78 which are carried forward against the 25% quota 2 posts were already available prior to the crucial date. These two vacancies had been pinpointed as having existed from 24.3.76 and 4.11.76 and since they were existing prior to the Board's directive of 3.6.77 they cannot be counted against 25% quota and they should have been filled on the promotee quota basis. In the relief prayed in the suit the plaintiffs had prayed that the panel be declared for 10 posts and their names may be included in that panel. and they may

make a panel of only 3 persons for the 25% quota vacancies. On the issue whether the plaintiff in that suit was entitled to continue on the post of Assistant Mechanical Engineer the learned Munsif had said that plaintiff No.3 was working as Assistant Mechanical Engineer class II on adhoc basis. He had also accepted the principle that adhoc promotees do not have a claim to the post to which they have been put to officiate and they can be reverted to their substantive post. Therefore it was clear that the plaintiff No.3 of that suit i.e. plaintiff respondent of this appeal had no right to the post. He had rejected the plea taken by the defendant that the relief had become infructuous because the life of the panel had finished ~~because~~ on the ground the panels were current for the 2 years or for the time a new panel is made and therefore he had decided this issue in favour of the plaintiff.

2. It is thus clear that the learned Munsif had decided the issue that the vacancies that were to be filled in 1980-81 examination were 10 for the 75% quota and 3 for the 25% quota. He had also decided that the plaintiff respondent had no right to the post till he was duly selected.

3. The question raised before us in the appeal is that the plaintiff had no lien to the post

and therefore he was liable to be reverted. This position has not been disputed in the judgement and in the judgement of the learned Munsif it is clear that the defendant appellants have the right to revert the plaintiff who was officiating only as an adhoc measure and therefore this ground of appeal was not necessary.

4. The second contention raised is that the panel was rightly prepared and the selection having been already made cannot be amended. On this point the learned Munsif had taken a ~~decision~~ view that the life of the panel was 2 years or till a new panel is formed. The judgement was delivered on 10.5.83. The panel was made sometimes in 1981, while the panel which was made in 1977-78 against which the plaintiff is seeking his selection on the plea that two posts out of the 3 which were kept for 25% vacancies actually belonged to the 75% quota vacancies and not to the 25% quota and therefore the panel should have been made for 19 + 2 = 21 vacancies against promotee quota in the year 1977-78 panel and since it was not done at that time the mistake should have been corrected when the panel for 1981 was made where only 8 vacancies were shown as belonging to the 75% quota and not 10 as has been held by the learned Munsif.

5. The defendant appellants have produced

letter of 16.9.1982 which was also produced by them earlier in the trial court and the admission of which was rejected by the trial court. This paper had tried to justify that the 3 vacancies pertaining to 1977-78 actually belonged to the 25% quota and not 75% quota as had been vetted by the Finance earlier. No action was taken by the defendant appellants against the order rejecting the admission of this document and therefore that order became final. We also do not find any justification in taking cognizance of this order as there was adequate time available to the defendant appellants to agitate this issue and to withdraw their paper earlier submitted which indicated that two posts which are under dispute belonged to the 75% quota. We therefore do not find any-thing wrong in the view taken by the learned Munsif in coming to the conclusion that 10 posts belonged to the 75% quota and not 8 as the defendant appellants have tried to contend.

6. A general statement has been made in the appeal that the suit is bad for misjoinder or non-joinder. We have not been apprised in what way the suit was bad. This plea does not seem to have been raised at the time of the arguments in the trial court and is therefore rejected.

7. Another point has been raised that the plaintiff No.3 did not appear in the selection hence

he is not entitled to challenge it and that the relief of the suit cannot be truncated for the benefit of one of the plaintiffs and the judgement was vague. On these points we note that there is no dispute about the fact that the plaintiff respondent is working on adhoc basis pending selection and he has not been selected or regularised. As a matter of fact his whole case centres round the fact that he has appeared in the examination in 1977-78 and he had qualified but he could not be empanelled because of wrong calculation of vacancies. However, ~~since~~ we also note that he has been making a prayer for an interim injunction against the holding of the viva voce examination of 1980-81 selection test hoping that if the decision is in his favour on the basis of his earlier qualifying the examination he will be regularised in his adhoc appointment. On the point of truncation of the benefit the learned Munsif had held that the first two plaintiffs in that suit had not appeared in the examination ~~on~~ on their own accord and therefore they have no case while plaintiff No.3 had appeared in the examination and therefore he considered only relief in regard to the plaintiff No.3. We do not find anything wrong in the view taken by the learned Munsif and the view taken by the defendant appellants that since relief cannot be granted to the first two plaintiffs in that suit it should not have been granted to the third plaintiff also cannot be

accepted. What is to be seen is that justice is not allowed to suffer in respect of the plaintiffs and the decision of the learned Munsif to grant relief where it was due was in keeping with the spirit of affording justice and not rejecting the plea on the flimsy ground. We also similarly do not find anything vague in the judgement. The question raised was about the number of vacancies and the judgement is very clear on what should have been taken as a number of vacancies which was based on the documents submitted by the defendants in the suit. We will however, like to make an observation that if the plaintiff respondent had already qualified in the test held in 1977-78 he would not be subjected to any other test but if he had not appeared or if he had failed in the 1977-78 examination he will be regularised only after following the due process of selection.

8. In the result we find no force in the arguments put forward by the learned counsel for the defendant appellants against the judgement and decree passed by the trial court for setting aside the judgement and decree in Suit No.1090 of 1981 and is upheld with the observations made in para supra and the appeal is dismissed with no orders as to costs.

A.M.

J.M.

Dated the 15th April, 1987

RKM