

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P. (C.) No. 4890/2007**

% **Date of Decision: 30.10.2009**

UNION OF INDIA Petitioner

Through: Ms. Lata Gangwani, Advocate.

Versus

SHRI RADHEY SHYAM Respondent

Through: Mr. D.S. Chaudhary Advocate.

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE VIPIN SANGHI

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to the reporter or not? | No |
| 3. | Whether the judgment should be reported in the Digest? | No |

ANIL KUMAR, J. (Oral)

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1. The petitioner, Union of India through Director General of Meteorology has impugned the order dated 21.07.2006 passed in O.A. No. 2852/2005 titled as Radhey Shyam Vs. Union of India passed by the Central Administrative Tribunal quashing and setting aside the order dated 18.11.2005 of petitioner declining to appoint the

respondent as peon and holding that the appointments made by the petitioner are not in consonance with the reservation policy in respect of SC candidates and directing the petitioners to make appointments in respect of July, 2003 advertisement according to instructions of the Government of India relating to filling up of reserved vacancies.

2. The plea of the petitioner is that by an advertisement it was proposed to fill 30 posts of peon. The respondent had also applied on 25th July, 2003 for selection to the post of peon. The respondent was called for interview by the selection committee for selection to the posts of peon. The selection committee recommended a panel of 51 candidates in order of merit. The assertion of the petitioner is that 24 persons were appointed at Delhi from the panel in order of merit. The respondent was placed at serial no. 26 in the select panel and, therefore, he was not appointed as 24 persons had been appointed.

3. The petitioner has also contended that out of 24 posts which were at New Delhi, 15 posts were for general candidates and six posts were for OBC candidates, one post was for Scheduled Caste and two posts were for Scheduled Tribe candidates. Thus out of 30 posts of peon 24 posts were at New Delhi, one post for Scheduled Caste candidate was at Calcutta; another post for Scheduled Caste candidate was at Mumbai

and one post was at Nagpur whereas three posts for OBC candidates were at Chennai, Pune and Gowahati.

4. The respondent had challenged his non appointment on the ground that though he was at serial no.26 in the select panel there was only one Scheduled Caste candidate at serial no. 21. However considering his performance and the marks scored by him, he was appointed on his merit and not under the reserved category. The candidate at serial no.21 in the select panel had scored 77 marks whereas the last candidate selected in the general category had scored 75 marks. It was also asserted by the respondent that the petitioner has ignored the fact that to provide 15 per cent reservation to the Scheduled Caste candidates under the policy of Government for reservation, four posts out of 30 posts of peon had to be filled by the Scheduled Caste candidates. The respondent also contended that the panel drawn was in operation for a longer period and reliance was placed on the instructions of the Ministry of Home Affairs (Department of Personnel and A.R.) O.M. No.220111/2/79-Estt (D) dated 8th February, 1982 contemplating that normally fresh recruitment from open market or LDCE should be taken only after exhausting the list of candidates selected earlier. The instructions had also clarified that the declared vacancies for the next examination should take into account the number of persons already on the list of selected candidates

awaiting appointment. The plea of the respondent was that since the appointment of Sh. Vikram Singh and Sh. Anoop Kumar who were at serial nos. 3 and 9 respectively in the merit list had been terminated and those two vacancies were available consequently, the respondent should have been appointed as a peon in the category of Scheduled Caste.

5. The Central Administrative Tribunal, after considering the respective pleas had rejected the contentions on behalf of the petitioner that out of 30 vacancies of peon notified in the advertisement only 24 were meant for headquarters office of DGM, New Delhi and rest of the vacancies were to be filled up by the sub-office located in different parts of the country. The Tribunal rejected the contention of the petitioner that since all the vacancies of the headquarters were filled up by the candidates selected from the merit list up to serial no. 24, therefore, the remaining portion of the merit list had become inoperative.

6. The Tribunal had considered that in the advertisement for selection for 30 posts of peon, no region-wise breakup was given and if there were only 24 posts to be filled up, 24 posts should have been mentioned in the advertisement in place of 30 posts. Reliance was also placed by the Tribunal on the instructions of the Government of India

contained in DOPT O.M. No. 36012/13/88-Estt.(SCT) dated 22.05.1989 that in case of direct recruitment to vacancies in the posts under the Central Government, the Scheduled Castes and Scheduled Tribe candidates, who are selected on their own merit without relaxed standards along with candidates belonging to other communities, such candidates are not to be adjusted towards the reserved vacancies and such candidates are to be adjusted towards the general vacancies. Consequently, it was held that the appointment of 24 candidates was of general category in accordance with the merit and not towards the reserved seats and in the circumstances the Tribunal has directed the petitioner for filling up the reserved vacancies and to complete the process within three months from the date of the order dated 21.07.2006.

7. The learned counsel for the petitioner has contended that Sh. Devender Kumar, the Scheduled Caste candidate who secured 77 marks should not be considered as a general candidate nor could be adjusted towards the general seat as the age relaxation was given to him which was not available to a general candidate. The learned counsel has also disclosed that three other candidates namely Mukunda Ram Naskar who has been appointed at Calcutta had scored 60 marks whereas Pradeep Kumar who was appointed to a Scheduled Caste vacancy at Nagpur had scored 58 marks and Mr. Maske Dattaray

Gahininath appointed to the post of peon in the Scheduled Caste category had scored 55 marks appointed at Mumbai.

8. Considering the respective contentions and documents filed by the parties it is apparent that the advertisement was not confined to any particular region. The advertisement does not stipulates that only 24 candidates will be appointed at Delhi and three scheduled caste candidates out of four scheduled caste candidates shall be appointed in other cities on the basis of another selection process. In any case a single select panel was made and the candidates could be appointed on the basis of their merit on the said panel. This has not been disputed by the petitioner that the interview for the 30 posts were done at Delhi.

9. The respondent had secured 74 marks and on the basis of his marks he was placed in serial no. 26 in the select list. If that be so, then how the respondent has not been selected but Mukunda Ram Naskar has been appointed at Calcutta who had scored 60 marks; Pradeep Kumar has been appointed to a Scheduled Caste vacancy at Nagpur who had scored 58 marks and Mr. Maske Dattaray Gahininath was also appointed to the post of peon in the Scheduled Caste category who had scored 55 marks at Mumbai? Though it is not so stated in their pleading by the petitioner, it has come out during the arguments that these three persons belonging to the reserved class were appointed in

response to a later selection process. Therefore, the same is not of any relevance. The appointment of these three persons cannot count towards the four posts out of 30 which ought to have been reserved for the Scheduled Caste candidates. Therefore, it follows that the petitioners did not provide the requisite reservation on four posts, and even if it is accepted that Devender Kumar was appointed against a reserved post, the reservation was granted only to the extent of one post. Even if these three candidates are considered as having been appointed in response to the advertisement dated 18.07.2003, the performance of the respondent is better than the other candidates who had been appointed to three other reserved posts of peon, in different regions, then the respondent could not be denied appointment in the reserved category of Scheduled Castes and therefore the respondent shall also be entitled for appointment to the post of peon and consequently the decision of the Tribunal directing the petitioner to make the appointment of the respondent consequent to the advertisement of July 3rd, cannot be faulted.

10. The decision of the Tribunal that since the validity of the panel was not specifically refuted by the petitioner in terms of the Ministry of Home Affairs O.M. dated 08.02.1982, and that the panel was valid also cannot be faulted.

11. In Delhi Region also the twenty four candidates were appointed out of which Devender Kumar at serial no. 21 was in alleged to be in the scheduled caste category who had scored 77 marks. The plea of the respondent was that since Devender Kumar scored 77 marks and the last candidate Samunder Singh (24th Candidate) had scored 75 marks, therefore, Devender Kumar was appointed in the General category and not in the reserved category and therefore, the respondent should have been appointed in the reserved category. The petitioner filed an additional affidavit dated 21st October, 2009 contending that the crucial date for determining the age of the candidate was 01.05.2003 and since the date of birth of Devender Kumar was 27th September, 1997, therefore, he was given age relaxation and thus his appointment was in the reserved category and not in General Category. Even if the age relaxation was given to the candidate Devender Kumar, and he is considered as one of those candidates selected against a reserved post, there is no explanation offered by the petitioner as to why the respondent was not appointed against one of the other posts, when, as a matter of fact, he had scored higher marks than even the last candidate selected in the general category. In the circumstances the Tribunal has not committed any error in setting aside the order dated 18th November, 2005 whereby the representation of the respondent dated 28th April, 2005 seeking appointment as the peon was declined.

After order dated 21st July, 2006 was passed by the Tribunal the petitioner had been seeking time to comply with the order and even an M.A no. 2224 of 2006 seeking two months time was filed which was allowed by order dated 7th December, 2006. Admittedly, the appointment of two candidates was terminated.

12. In the facts and circumstances, there are no merit in the pleas and contentions raised by the petitioner and there is no such infirmity in the order dated 21.07.2006 impugned by the petitioner which will entail interference by this court in exercising of its jurisdiction under Article 226 of the Constitution of India. The writ petition is without any merit and it is, therefore, dismissed. Parties are however, left to bear their own costs.

ANIL KUMAR, J.

OCTOBER 30, 2009
DP

VIPIN SANGHI, J.