

IN THE SUPREME COURT OF INDIA

INHERENT JURISDICTION

CONMT.PET.(C) No.2205/2018

In

SLP (C) DIARY No.6207/2018

SAURABH TRIPATHI & OTHERS

Petitioner

VERSUS

RAJIV KUMAR,
PRINCIPAL SECRETARY, STATE OF U.P. & ANR.

Respondents/
Alleged Contemnors

O R D E R

Pursuant to the directions issued by this Court from time to time, an Expert Committee was requested to look into the issue whether certain questions were wrongly put and whether benefit to the affected candidates could be granted or not?

It appears that the Expert Committee found one question to be wrong and consequently decided to grant the benefit of 2.0833 marks to the affected candidates. 35 such affected candidates, after having secured benefit in terms of Expert Committee's directions, were within the zone of selection. Out of these 35 candidates, 8 candidates were selected as Sub-Inspector while rest 27 candidates were selected as Platoon Commander (Home Guard).

This application is filed by 7 persons from the latter category whose contention is that in terms of the order passed by this Court on 27.11.2018, 833 vacancies were to be made available in the present selection and if the claim of the present applicants is to be reckoned as against 833 vacancies, they would be at a level far senior and superior to the rest of the candidates. Consequently, their preference to get the appointment as Sub-Inspector ought to be given precedence as against the persons at a lower level.

Since the present applicants have been selected, after giving due benefit in terms of the assessment as stated above, we see no reason to interfere in our contempt jurisdiction. This contempt petition is, therefore, closed.

We however grant to all these 27 persons time of seven days to express their willingness to accept the post which they have been offered i.e. the post of Platoon Commander (Home Guard), if not already done by them.

The Authorities shall thereafter take appropriate steps to effectuate the selection, if the candidates are otherwise entitled and eligible.

Pending applications shall also stand disposed of.

.....J.
[UDAY UMESH LALIT]

.....J.
[VINEET SARAN]

NEW DELHI;
JULY 24, 2019

ITEM NO.9 (PART-I)

COURT NO.8

SECTION XI

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

Petition for Special Leave to Appeal (C) No.20015/2018

(Arising out of impugned final judgment and order dated 16-05-2018 in WA No.21084/2017 passed by the High Court Of Judicature At Allahabad)

ASHISH KUMAR YADAV & ORS.

Petitioner(s)

VERSUS

STATE OF UTTAR PRADESH & ORS.

Respondent(s)

(IA No.19030/2019 - For appropriate orders/directions; IA No.103934/2018 - For exemption from filing OT; IA No. 116669/2018 - For Clarification/Direction; IA No.116671/2018 - For exemption from filing OT; IA No.121048/2018 - For intervention/ impleadment; IA No.122163/2018 - For intervention/impleadment; IA No.122485/2018 - For intervention/impleadment; IA No.124134/2018 - For intervention/impleadment; IA No.127694/2018 - For intervention/impleadment; IA No.127713/2018 - For intervention/impleadment; IA No.134551/2018 - For intervention/impleadment; IA No.145821/2018 - For intervention/impleadment; and, IA No.147494/2018 -For intervention/impleadment)

WITH

SLP(C) No.23223/2018 (XI)

(IA No.121759/2018 - For intervention/impleadment; IA No.127686/2018 - For intervention/impleadment; IA NO.134604/2018 - For permission to file additional documents/facts; IA No.134605/2018 - For exemption from filing OT; IA NO.143780/2018 - For intervention/impleadment; and, IA No.117317/2018 - For exemption from filing OT)

CONMT.PET.(C) No.2205/2018 in Dy. No.6207/2018 (XI)

(IA No.69924/2019 - For Clarification/Direction; and, IA No. 45981/2019 - For Clarification/Direction)

MA No.721/2019 in C.A. No.11370/2018 (III-A)

(FOR ADMISSION; IA No.54688/2019 - For appropriate Orders/Directions)

MA No.720/2019 in C.A. No.11373/2018 (III-A)

(FOR ADMISSION; IA No.55477/2019 - For exemption from filing OT; and, IA No.55474/2019 - For Clarification/Direction)

MA No.711/2019 in T.C.(C) No.283/2017 (XVI-A)
 (IA No.56519/2019 - For appropriate Orders/Directions; and, IA
 No.56521/2019 - For exemption from filing OT)

Date : 24-07-2019 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE UDAY UMESH LALIT
 HON'BLE MR. JUSTICE VINEET SARAN

Counsel for the Parties:

Ms. Vibha Datta Makhija, Sr. Adv.
 Mr. Purushottam Sharma Tripathi, AOR
 Mr. Ravi Chandra Prakash, Adv.
 Mr. Mukesh Kumar Singh, Adv.
 Ms. Vani Vyas, Adv.
 Mr. Mohit Kaushik, Adv.
 Mr. Amit, Adv.

Ms. Vibha Dutta Makhija, Sr. Adv.
 Mr. Sushil Tomar, Adv.
 Mr. Sanjeev Malhotra, AOR

Mr. Pallav Shishodia, Sr. Adv.
 Mr. Praveen Kumar Rai, Adv.
 Mohd. Asad Khan, Adv.
 Mr. Danish Zubair Khan, Adv.

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 Mr. Pushkar Sharma, Adv.
 Goldi Tyagi, Adv.
 Mr. Salim Ansari, Adv.
 Mr. Upendra, Adv.
 Mr. K. Dutta, Adv.

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 Ms. Pooja, Adv.
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 Mr. Krishna Murari, Adv.

Mr. Vinay Navare, Sr. Adv.
 Mr. Ankit Mishra, Adv.
 Kanupriya, Adv.
 Mr. Satyajeet Kumar, AOR

Mr. Vinod Diwakar, AAG (UP)
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Mr. D.N. Dubey, Adv.
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Mr. Shantanu Jugtawat, Adv.
Mr. Ranvir Singh Chillir., Adv.
Ikshit Singhal, Adv.
Mr. Abhishek Tripathi, Adv.
Mr. Anand Choudhary, Adv.
Mr. Suresh Prasad, Adv.
M/s. Mukesh Kumar Singh And Co., AOR

Mr. Sanjeeb Panigrahi, AOR
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Mr. Rajiv Kumar, Adv.
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Mr. Binod Kumar Singh, Adv.

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Mr. Tripurari Ray, Adv.
Mr. Sanjeev Malhotra, AOR

Dr. Lokendra Malik, Adv.
Mr. Danish Zubair Khan, AOR

Mr. Rahul Sharma, AOR

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

CONMT.PET.(C) No.2205/2018 in Dy. No.6207/2018 (XI)
(IA No.69924/2019 - For Clarification/Direction; and, IA No.
45981/2019 - For Clarification/Direction)

This Contempt Petition is closed, in terms of the Signed
Order.

Pending application(s), if any, shall stand disposed of.

(MUKESH NASA)
COURT MASTER

(SUMAN JAIN)
BRANCH OFFICER

(Signed Order is placed on the File)

Part -II

ITEM NO.9

COURT NO.8
SECTION XI
S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

IA

103934/2018, 116669/2018, 116671/2018, 121048/2018, 122163/2018, 122485/2018, 124134/2018, 127694/2018, 127713/2018, 134551/2018, 145821/2018, 147494/2018, 159019/2018, 163643/2018, 19030/2019, in Petition(s) for Special Leave to Appeal (C) No(s). 20015/2018

(Arising out of impugned final judgment and order dated 16-05-2018 in WA No. 21084/2017 passed by the High Court Of Judicature At Allahabad)

ASHISH KUMAR YADAV & ORS.

Petitioner(s)

VERSUS

THE STATE OF UTTAR PRADESH & ORS.

Respondent(s)

IA No. 19030/2019 - APPROPRIATE ORDERS/DIRECTIONS
 IA No. 116669/2018 - CLARIFICATION/DIRECTION
 IA No. 103934/2018 - EXEMPTION FROM FILING O.T.
 IA No. 116671/2018 - EXEMPTION FROM FILING O.T.
 IA No. 134551/2018 - INTERVENTION/IMPLEADMENT
 IA No. 127713/2018 - INTERVENTION/IMPLEADMENT
 IA No. 127694/2018 - INTERVENTION/IMPLEADMENT
 IA No. 124134/2018 - INTERVENTION/IMPLEADMENT
 IA No. 122485/2018 - INTERVENTION/IMPLEADMENT
 IA No. 163643/2018 - INTERVENTION/IMPLEADMENT
 IA No. 122163/2018 - INTERVENTION/IMPLEADMENT
 IA No. 159019/2018 - INTERVENTION/IMPLEADMENT
 IA No. 121048/2018 - INTERVENTION/IMPLEADMENT
 IA No. 147494/2018 - INTERVENTION/IMPLEADMENT
 IA No. 145821/2018 - INTERVENTION/IMPLEADMENT)

WITH

SLP(C) No. 23223/2018 (XI)

(121759/2018 INTERVENTION/IMPLEADMENT
 127686/2018 INTERVENTION/IMPLEADMENT
 134604/2018 PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS
 134605/2018 EXEMPTION FROM FILING O.T.
 143780/2018 INTERVENTION/IMPLEADMENT
 IA No. 117317/2018 - EXEMPTION FROM FILING O.T.
 IA No. 134605/2018 - EXEMPTION FROM FILING O.T.
 IA No. 121759/2018 - INTERVENTION/IMPLEADMENT
 IA No. 143780/2018 - INTERVENTION/IMPLEADMENT
 IA No. 127686/2018 - INTERVENTION/IMPLEADMENT
 IA No. 134604/2018 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)
 CONMT.PET.(C) No. 2205/2018 (XI)

IA No. 69924/2019 - CLARIFICATION/DIRECTION
 IA No. 45981/2019 - CLARIFICATION/DIRECTION)
 MA 721/2019 in C.A. No. 11370/2018 (III-A)
 (FOR ADMISSION and IA No.54688/2019-APPROPRIATE ORDERS/DIRECTIONS)
 MA 720/2019 in C.A. No. 11373/2018 (III-A)
 (FOR ADMISSION and IA No.55477/2019-EXEMPTION FROM FILING O.T. and
 IA No.55474/2019-CLARIFICATION/DIRECTION)
 MA 711/2019 in T.C.(C) No. 283/2017 (XVI-A)

IA No. 56519/2019 - APPROPRIATE ORDERS/DIRECTIONS
 IA No. 56521/2019 - EXEMPTION FROM FILING O.T.)

Date : 24-07-2019 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE UDAY UMESH LALIT
 HON'BLE MR. JUSTICE VINEET SARAN

For the parties:

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 Ms. Vani Vyas, Adv.
 Mr.Mohit Kaushik, Adv.
 Mr. Amit Adv.
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 Mr. Purushottam Sharma Tripathi, AOR

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 Mr. Shantanu Jugtawat, Adv.
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 Mr. Tripurari Ray, Adv.
 Mr. Susheel Tomar, Adv.
 Mr. Sanjeev Malhotra, AOR

 Mr. Danish Zubair Khan, AOR
 Dr. Lokendra Malik, Adv.

 Mr. Rajiv Kr., AOR
 Mr. Krishna M. Singh, Adv.
 Mr. Sanjeev Gupta, Adv.
 Mr. Jyoti K. Mishra, Adv.

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

Heard Ms. Vibha Dutta Makhija and Ms. V. Mohana, learned senior advocates for petitioners and Mr. Vinod Diwakar, learned Advocate for the State.

In the year 2013, selection process was undertaken to fill up 41,610 posts of Police Constables [U.P. Civil Police/Provincial Armed Constabulary (PAC)/Fireman]). After the requisite examination, results were declared on 16.07.2015, in which 38315 candidates were successful. Thus, as on that date there were 3295 vacancies which were not filled as no suitable candidates were available.

It must be mentioned that the process for selecting Sub-Inspectors in U.P. Police was going on simultaneously and in a challenge raised in respect of said process, the High Court of Judicature at Allahabad vide its order dated 29.05.2015 in the case of *Saket Kumar and Ors. vs State Of U.P. and Ors*¹ directed that the candidates who had used blades and whiteners while answering the answer papers of the main examination were disqualified and their names be deleted from the selection list.

The matter was carried in appeal before this Court and by its decision dated 19.01.2016 (*Hanuman Dutt Shukla & Ors. vs. State of UP*²), it was ruled that those who had used blades and whiteners ought not to have been disqualified. However, by that time, the process of selection had gone ahead with re-working of the

¹ WRIT.A.No. - 67782 of 2014, etc.

² 2018 (16) SCC 447 (C.A.No.587-588/2016)

seniority list in terms of the order passed in *Saket Kumar*. This Court, therefore, observed that those candidatures who were selected as a result of directions in *Saket Kumar* should not be thrown out from the process of selection but the candidates who had used the blades and whiteners should be given the advantage or benefit in a notional selection. In other words, the selection list was ordered to be re-worked and in case the candidates who had used blades and whiteners were now found to be part of the selection list, they be given appropriate advantage including selection to the posts in question. It was also directed that though logically equal number of candidates must be displaced from the original list of selection, since those persons had already undergone training and some of them had joined the posts, those candidates ought not to be thrown out of service. This Court also directed that in the process, the additional number of candidates who were selected over and above the normal selection should be reckoned as against additional posts and should not be taken to be part of the original posts for selection.

The principle so devised in *HD Shukla* was then adopted in the process of selection for Police Constables which was going on simultaneously and consequently the selection list was reworked. Thus all the candidates who had used blades and whiteners were considered in the process of selection and some of them did get selected. In the re-working of the selection list 4429 candidates were given advantage or benefit in terms of the law declared in *Hanuman Dutt Shukla* which is to say those 4429 candidates would be taken as additional appointments over and above number of posts for

which selection was undertaken.

In its judgment dated 16.03.2016 [*Ashish Kr. Pandey & 24 others vs. State of U.P. and 29 Others*³], the High Court of Judicature at Allahabad observed that horizontal reservation was not properly worked and as such the State was directed to undertake the process of re-calculating horizontal reservation vacancies afresh. This case was also in relation to the process of selection for Sub-Inspectors. Around same time, another decision was rendered by the High Court in *Manoj Kr. & Others*⁴ adopting the principle in *Ashish Kr. Pandey* in selection process for Constables.

On 4.5.2018, a decision was rendered by the High Court of Judicature at Allahabad in *Upendra and others vs. State of U.P. and Others*⁵ wherein challenge was raised to certain provisions of the Reservation Act. It was submitted that going by the concept of horizontal reservation, it would not be possible to carry forward the vacancies to the next selection, in case the appropriate number of candidates for horizontal reservation were not available. The High Court accepted the plea and directed that there shall not be any carry-forward of vacancies of horizontal reservation to the next selection.

Thus the matter was clear that in case appropriate number of candidates for filling up seats meant for horizontal reservation were not available, there would not be any carry forward of such vacancies. The order shows that about 2312 vacancies were not

3 Writ A.No.37559/2015

4 Writ P. No.3285/2016

5 Writ C.No.3417/2016

filled up by the State adopting the idea of carry forward principle in horizontal reservation. Therefore, as a result of the directions issued by the High Court in *Upendra's* case, 2312 vacancies must enure to the advantage of the candidates concerning the present selection process itself.

It is accepted by the learned counsel for the State that the State did not undertake any process of selection in respect of those 2312 vacancies. In the circumstances it is directed:

- (A) The State shall within a month from today complete the entire process of selection in respect of 2312 vacancies strictly in accordance with law.
- (B) The State shall follow the principle of reservation while filling up these 2312 vacancies.
- (C) While filling up these vacancies, the State shall adhere to the minimum required qualifying marks as devised during the process of selection but subject to this, the State shall consider all eligible candidates and go strictly in order of merit.
- (D) The State shall before the next date of hearing, shall file a list of all the selected candidates.

It is also accepted that apart from these 2312 vacancies, there are still 982 vacancies to be filled up in the original selection.

It is clarified that no candidate shall be excluded from the selection process merely because he had used blade or whitener. In case his merit position otherwise demands and entitles him to be

selected, no prejudice shall be caused to him merely for the use of blade and whitener.

It is also clarified that in case any other process of selection is going ahead, the same shall not be kept in abeyance and the State is entitled to go ahead with such process.

List on 14.10.2019.

(INDU MARWAH)
COURT MASTER

(SUMAN JAIN)
BRANCH OFFICER