

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

Petition for Special Leave to Appeal (C) No. 11630/2019

(Arising out of impugned final judgment and order dated 25-03-2019 in SA No. 2014/2012 passed by the High Court of Judicature at Allahabad)

RAM ABHILASH PATEL & ORS.

Petitioner(s)

VERSUS

THE STATE OF UTTAR PRADESH & ORS.

Respondent(s)

(IA No. 131682/2019 - CLARIFICATION/DIRECTION
IA No. 192006/2022 - EXEMPTION FROM FILING O.T.
IA No. 115352/2021 - EXEMPTION FROM FILING O.T.
IA No. 131684/2019 - EXEMPTION FROM FILING O.T.
IA No. 75439/2019 - EXEMPTION FROM FILING O.T.
IA No. 192005/2022 - PERMISSION TO FILE ADDITIONAL
DOCUMENTS/FACTS/ANNEXURES
IA No. 75437/2019 - PERMISSION TO FILE LENGTHY LIST OF DATES)

Date : 31-01-2023 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE M.R. SHAH
HON'BLE MRS. JUSTICE B.V. NAGARATHNA

For Petitioner(s) Mr. Vibhakar Mishra, Adv.
Mr. Nischal Kumar Neeraj, AOR

For Respondent(s) Mr. Vishwa Pal Singh, AOR
Mr. Rajeev Kumar Dubey, Adv.
Mr. Adesh Gill, Adv.
Mr. Akash, Adv.

UPON hearing the counsel the Court made the following

O R D E R

We have heard Shri Vibhakar Mishra, learned counsel appearing on behalf of the petitioner(s) and Shri Vishwa Pal Singh, learned counsel appearing on behalf of the State of U.P.

The facts which emerge from the record is that all the petitioners applied for appointment on the post of Assistant Boring Technician (A.B.T.). All of them, though having disability applied

contd..

under the General/O.B.C. Category and they were all selected and appointed on merits. However, they were appointed in the reserved category of disabled persons. Having found that at the relevant time, the Government did not identify the post of A.B.T. as reserved for persons with disability for the purpose of Sections 32 and 33 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 nor any post had been signified/identified as reserved for that category of persons, in the advertisement dated 02.06.2003 and, therefore, after a period of approximately 7-8 years after they worked as A.B.T., their services were terminated. The learned Single Judge dismissed the writ petition. The appeal with the Division Bench also came to be dismissed.

Having heard learned counsel appearing on behalf of the respective parties and considering the facts narrated hereinabove and also considering the fact that at the relevant time the respective petitioners were selected and appointed on merits and they were working since 2003/2006 and that they are also persons with disabilities, in the peculiar facts and circumstances of the case and in exercise of powers under Article 142 of the Constitution of India, we direct that the respective petitioners be continued on the post on which they are working since their initial appointment by adjusting their appointment against the vacant posts of A.B.T.

At this stage, it is required to be noted that as such at the relevant time though the post of A.B.T. was required to be reserved

contd..

for persons with disability in view of Sections 32 and 33 of the 1995 Act for whatever reason the posts were not reserved for persons with disability and being disabled persons, they were appointed.

At the cost of repetition, it is observed that, in fact, the respective petitioners applied for the post of A.B.T. in the General/O.B.C. Category and they never applied for appointment in the reserved category of disabled persons.

In view of the above and for the reasons stated hereinabove, we dispose of/allow the present Special Leave petition by directing the concerned respondents to continue/absorb the respective petitioners on the post on which they were selected and appointed, namely, on the post of A.B.T. by adjusting their appointment on the vacant posts of A.B.T. They shall be entitled to all the consequential benefits including the seniority etc. from the date of their initial appointment. It is directed that if any of the petitioners are retired, they be reinstated in service.

Pending application(s) shall stand disposed of.

(NEETU SACHDEVA)
ASTT. REGISTRAR-cum-PS

(NISHA TRIPATHI)
ASSISTANT REGISTRAR