

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

Civil Appeal Nos. 4895-4904/2019

THE SECRETARY U.P. PUBLIC SERVICE COMMISSION

Appellant(s)

VERSUS

DR. SHIV VINAYAK TRIPATHI & ANR.

Respondent(s)

O R D E R

These appeals by special leave, challenge the judgment and final order dated 25.06.2016 passed by the High Court of Judicature at Allahabad in CMWP Nos.16959, 17868, 17661, 17990, 18524, 18717, 19828, 18939, 20759 and 21166 of 2016.

In the selection undertaken pursuant to Advertisement No.1/2013-14 dated 24.08.2013 issued by the appellant to fill up 177 posts of Homeopathic Medical Officers, 23 posts were reserved for Other Backward Classes (OBC) while 41 were reserved for Scheduled Castes (SC) and rest 113 were earmarked for unreserved category. It appears that pursuant to said advertisement, 5577 candidates applied which number was more than thirty times the available posts.

In order to shortlist the candidates, a screening test was undertaken by the appellant in terms of Resolution dated 04.07.2014 and ratio of 1:3 was applied for the next stage of selection process which was interview. Therefore, for General Category 113x3 candidates were shortlisted and after giving benefit

to those persons who had secured same number of marks as the last candidate, the list of persons selected for the next stage of selection was arrived at. The last person in the unreserved category in the list so prepared, had secured 86 marks whereas going by the same logic and quotient, the last person who was in the list for OBC category for whom 23 posts were earmarked, had secured 99 marks. In other words, the last person in the category of unreserved candidate had secured far less number of marks than the last person in OBC category.

The law is very well-settled that in case a person belonging to a reserved category, going by his merit position, is otherwise entitled to be considered against an unreserved post, such person has to be first absorbed insofar as seats or posts available for unreserved category candidates are concerned so as to extend the benefit of reservation to the extent possible.

Going by that logic, large number of candidates from thrice the number of OBC candidates i.e. 23x3 would easily have been considered as against the posts earmarked for unreserved category candidates.

It was in this light that the appellant relaxed the ratio of 1:3 for OBC candidates and applied the ratio of 1:12 so that the last candidate from OBC category who was called for the next stage of selection process had secured 86 marks which was comparable with the marks secured by the person in unreserved category.

The exercise so undertaken by the Commission came to be challenged by filing writ petitions before the High Court and the

ground on which the decision went against the appellant was that the appellant could not have altered the rules of game after the selection process had begun and its approach ought to be identical and similar so far as both categories are concerned. The High Court thus applied the same ratio of 1:12 for unreserved category and expanded the scope of zone for consideration which resulted in lowering the cut off further below 86 marks.

It was not the case of the original writ petitioners that the exercise undertaken by the appellant was either to favour somebody or dis-favour any section of candidates or the exercise was actuated by malice or malafides.

The intent with which the power was sought to be exercised when the appellant expanded the scope from 1:3 to 1:12 was to bring the candidates from these two categories at the same level.

We do not see any illegality or invalidity in such exercise of power by the Commission. In our view, the High Court was not justified in interfering in its writ jurisdiction. We allow these appeals and set aside the view taken by the High Court and dismiss the writ petitions.

It must be stated that pursuant to the order dated 10.05.2019 passed by this Court, the appellant was given liberty to go ahead with the interviews pursuant to Notification dated 26.04.2019. However, the appellant was injuncted from making any appointments till the pendency of the present proceedings in this case.

Having rejected the challenge raised by the original writ petitioners, we now give liberty to the appellant to effectuate the

selection in accordance with the process undertaken by it.

Since the entire selection was under challenge for six years, we direct the appellant to pass appropriate orders of recommendations within four weeks from today.

The appeals stand allowed in aforesaid terms. No costs.

.....J.  
(UDAY UMESH LALIT)

.....J.  
(INDU MALHOTRA )

New Delhi  
December 4, 2019.

