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ATUL KUMAR NIGAM
v.
STATE OF U.P. AND ORS.

SEPTEMBER 27, 1995

B

[S.C. AGRAWAL AND B.P. JEEVAN REDDY, JJ.]

Subordinate Offices Ministerial Staff (District Recruitment) Rules, 1975: Rule 22.

C

Subordinate Offices Ministerial Staff (District Recruitment) Rules, 1985:

D

Registration Clerk—Appointment on daily wages—Subsequently regular selection and appointment—Termination—Writ—Challenge—High Court dismissing writ without examining the question whether selection was in contravention of Rules—Matter remitted to High Court for disposal on merits.

E

The appellant, initially appointed as a Registration Clerk on daily wage basis was later appointed on regular basis. However, his services were terminated. His writ petition challenging the termination, heard along with appeals and petitions of Clerks employed on daily wage basis, was dismissed. In appeal to this Court it was contended for the respondent—State that the appellant's selection was void as it was made in contravention of the Rules.

Allowing the appeal, this Court

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HELD : The question whether the selection was made without complying with the mandatory provisions of Rule 22 of the Subordinate Offices Ministerial Staff (District Recruitment) Rules, 1975 which had been replaced by the Subordinate Offices Ministerial Staff (District Recruitment) Rules, 1985 and thus the selection was void, has not been considered by the High Court. Therefore, the order of the High Court in so far as it relates to dismissal of writ petition of the appellant is set aside and the said petition is remitted to the High Court for disposal on merits.

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[109-H, 110-A-B]

H

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 9135 of 1995.

From the Judgment and Order dated 8.2.95 of the Allahabad High Court in C.M.W.P. No. 17883 of 1991. A

S.K. Bisaria for the Appellant.

R.B. Misra for the Respondents. B

The Judgment of the Court was delivered by

S.C. AGRAWAL, J. Leave granted.

The appellant was initially appointed as Registration Clerk on daily wage basis by the District Registrar, District Jhansi, by order dated September 27, 1990. While the appellant was working as Registration Clerk, the District Registrar, District Jhansi, issued a notice/advertisement for filling up six posts of Registration Clerks on regular basis. Out of six posts five posts were to be filled up from and amongst the general candidates and the sixth post was reserved for Scheduled Caste candidates. The District Registrar, District Jhansi constituted a Selection Committee for the said appointment. The appellant appeared before the said Selection Committee on February 24, 1991 and was selected. He was appointed on the post of Registration Clerk on the basis of said selection and he joined as Registration Clerk on February 25, 1991, but by order dated June 15, 1991 his services were terminated. The appellant filed a writ petition (W.P. No. 17883/91) in the Allahabad High Court which was heard alongwith special appeals and writ petitions of other Registration Clerks employed on daily wage basis and the same was dismissed by common judgment and order dated February 8, 1995. C D E

It has been urged on behalf of the appellant that his case differs from other cases dealt with by the High Court inasmuch as he had been selected for regular appointment by a duly constituted Selection Committee in accordance with the rules and the High Court has not considered this aspect of the matter. In the counter affidavit that has been filed on behalf of the respondents before this Court, it has not been disputed that the Selection Committee was duly constituted by the District Registrar, District Jhansi on February 24, 1991 but it is asserted that while doing so the District Registrar, District Jhansi, did not comply with the mandatory provisions of Rule 22 of the Subordinate Offices Ministerial Staff (District Recruitment) Rules, 1975 which had been replaced by the Subordinate F G H

- A Offices Ministerial Staff (District Recruitment) Rules, 1985 as amended upto date and thus there was defect in the procedure of the said selection and the selection was void. This question has not been gone into by the High Court while dismissing the writ petition of the appellant. It is a question which should have been considered by the High Court before dismissing the writ petition of the appellant.
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The appeal is, therefore, allowed, the judgment and order of the High Court dated February 8, 1995 in so far as it relates to dismissal of writ petition No. 17883/91 is set aside and the said writ petition is remitted to the High Court to dispose of the same on merits. No costs.

T.N.A.

Appeal Allowed.