

SANJAY GUPTA AND ORS. A

v.

STATE OF U.P. AND ORS.

SEPTEMBER 27, 1995

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

Subordinate Offices Ministerial Staff (District Recruitment) Rules, 1985
: Rule 22. C

Registration Clerks—Appointment of—Termination—Writ—Challenge—High Court dismissing writ without examining the question whether selection was in contravention of Rules—Matter remitted to High Court for reconsideration on merits. C

The appellants were appointed as Registration Clerks in the office of Sub-Registrar, Jhansi. Pursuant to the directions given by the Inspector General of Registration to terminate the services of daily wages Clerks, the services of the appellants were terminated by treating them Registration Clerks appointed on daily wage basis. The appellants claimed that their case was different inasmuch as they were not employed on daily wage basis but had been appointed on regular basis. Their petition challenging the termination order was heard along with other matters of the Registration Clerks who had been appointed on daily wages but was dismissed by the High Court by a common judgment. The appellants preferred appeal before this Court. On behalf of the State it was pleaded that the appellants' selection was defective *ab initio* as it was made in contravention of Rule 22 of the Subordinate Offices Ministerial Staff (District Recruitment) Rules, 1985. D E F

Allowing the appeal, this Court

HELD : The question whether the appointment of the appellants had been made without complying with the provisions of the Rule 22 of the Subordinate Offices Ministerial Staff (District Recruitment) Rules, 1985 inasmuch as the applications were accepted directly without issuing an advertisement in the daily newspaper as required under Rule 22 has not been examined by the High Court. Consequently the order of the High Court dismissing the writ petition of the appellant is set aside. The said writ peti- G H

A **tion is remitted to the High Court for consideration on merits. [113-C-D]**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 9136 of 1995.

B From the Judgment and Order dated 8.2.95 of the Allahabad High Court in C.M.W.P. No. 17785 of 1991.

Shakil Ahmed Syed for the Appellants.

R.B. Misra for the Respondents.

C The Judgment of the Court was delivered by

S.C. AGRAWAL, J. Leave granted.

The appellants in this appeal were employed as Registration Clerks on daily wage basis in the office of Sub-Registrar, District Jhansi on various periods, during the years 1990 and 1991. The case of the appellants is that in response to the notice inviting applications for appointment on the post of Registration Clerks, the appellants had submitted their applications and they were required to appear before the Selection Committee constituted under relevant rules on February 24, 1991. Their claim is that other persons whose names were sponsored by the Employment Exchange were also called and that the appellants were selected by the Selection Committee and on the basis of the said selection, they were appointed as Registration Clerks by the District Registrar by order dated March 18, 1991. It is claimed that the said appointment of the appellants was approved by the Inspector General of Registration on April 15, 1991. Subsequently by order dated May 27, 1991 the Inspector General of Registration issued an order directing the District Registrar to terminate the services of Registration Clerks employed on daily wage basis with immediate effect. In pursuance of the said directions, the District Registrar, District Jhansi, issued orders terminating the services of the appellants with effect from May 27, 1991 by treating them as Registration Clerks employed on daily wage basis. The case of the appellants is that they were appointed on regular basis after being duly selected in accordance with the rules. They filed a writ petition (Writ Petition No. 17785/91) in the Allahabad High Court challenging the order terminating their services. The said writ petition was heard alongwith other matters of the Registration Clerks who had been appointed on daily wage basis and was disposed of by common order dated February 8, 1995.

The grievance of the appellants is that their case stands on a different footing inasmuch as they were not employed as Registration Clerks on daily wage basis but had been duly selected by the Selection Committee constituted under the rules and they had been appointed on regular basis by the District Registrar, District Jhansi, and the said appointment had also been approved by the Inspector General of Registration. The learned counsel for the appellants has submitted that in the counter affidavit filed on behalf of the respondents in the writ petition before the High Court the factual averments made by the petitioners in the writ petition were not disputed. In the counter affidavit filed on behalf of the respondents in reply to special leave petition before this Court, it has, however, been stated that the appointment of the appellants had been made without complying with the provisions of rule 22 of the Subordinate Offices Ministerial Staff (District Recruitment) Rules, 1985 inasmuch as the applications were accepted directly without issuing an advertisement in the daily newspaper as required under the provisions of the said rule. It has been submitted that as a result of the said defect the selection was defective *ab initio*. This question has not been examined by the High Court and the High Court has dismissed the writ petition without going into the said question. This is a matter which requires consideration by the High Court.

The appeal is, therefore, allowed, the judgment and order of the High Court dated February 8, 1995 in so far as it relates to writ petition No. 17785 of 1991 is set aside and the said writ petition is remitted to the High Court for consideration on merits. No. costs.

T.N.A.

Appeal allowed.