

KISHOR KUMAR & ORS.

v.

PRADEEP SHUKLA & ORS.
(S.L.P.(C) Nos. 22590 of 2011)

FEBRUARY 29, 2012

[ALTAMAS KABIR AND J. CHELAMESWAR, JJ.]

*U.P. PROCEDURE FOR DIRECT RECRUITMENT OF
GROUP 'C' POSTS (OUTSIDE THE PURVIEW OF PUBLIC
SERVICE COMMISSION) RULES, 2000:*

*r.15(2) - Appointment to 766 posts of Pharmacists
advertised on 12.11.2007 - Held: As has been held in
Santosh Kumar Mishra's case, the decision taken by State
Government to accommodate the diploma-holders in batches
against their respective years could be discontinued at a later
stage, but not to the disadvantage those who had been denied
the opportunity of being appointed by virtue of the same Rules
- The subsequent policy could be introduced after the private
respondents and those similarly situated persons were
accommodated - All candidates who were similarly situated
as the original petitioners would be entitled to the benefit of
the judgment in Santosh Kumar Mishra's case.*

**The instant special leave petitions arose out of the
writ petitions questioning the select list prepared on
14.2.2011 after the decision of the Supreme Court in
Santosh Kumar Mishra's case, the subject matter whereof
was the advertisement dated 12.11.2007 for filling up 766
vacancies of pharmacists in the State of Uttar Pradesh.
The case of the petitioners was that despite having
better merit, they were not selected for filling up the 766
vacancies. The case of the respondents was that as per
r.15(2) of the U.P. Procedure for Direct Recruitment of
Group 'C' Posts (Outside the Purview of Public Service**

A Commission) Rules, 2000, diploma-holders were to be appointed against the vacancies which became available in each recruitment year, by first appointing batchwise those pharmacists who had obtained their diplomas earlier, irrespective of their merit.

B Dismissing the petitions, the Court

HELD:

C The matter has already been decided in the case of *Santosh Kumar Mishra** wherein it has been directed by this Court that the candidates could be appointed against the vacancies in order of their inter-se seniority as per the vacancies available in each year. It was directed that the decision taken by the State Government to accommodate the diploma holders in batches against their respective years, could be discontinued at a later stage, but not to the disadvantage to those who had been denied the opportunity of being appointed by virtue of the same Rules. This Court observed that the same decision which was taken to deprive the private respondents from being appointed, could not be discarded once again to their disadvantage to prevent them from being appointed, introducing the concept of merit selection at a later stage. It was further directed that the subsequent policy could be introduced after the private respondents and those similarly situated persons have been accommodated. Therefore, there is no reason to interfere with the order of the Division Bench of the High Court. All the pending applications shall stand disposed of by virtue of this judgment. All candidates, who were similarly situated as the original petitioners, would be entitled to the benefit of the judgment delivered in *Santosh Kumar Mishra's* case. [para 8, 12 and 14] [256-D-F; 257-E, G]

**State of U.P. & Anr. Vs. Santosh Kumar Mishra & Ors.*

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KISHOR KUMAR & ORS. v. PRADEEP SHUKLA & 253
ORS.

2010 (9) SCR 942 = (2010) 9 SCC 52 - relied on.

A

Case Law Reference:

2010 (9) SCR 942 relied on para 8

CIVIL APPELLATE JURISDICTION : SLP (Civil) No.
22590 of 2011.

B

From the Judgment & Order dated 12.07.2011 of the High
Court of Judicature at Allahabad Lucknow Bench, Lucknow in
Contempt Petition No. 2209 of 2009.

WITH

C

SLP (C) Nos. 27086 of 2011 & 4130 of 2012.

Mahalakshmi Pavani, Mukesh Verma, Pawan Shukla,
Yash Pal Dhingra, T. Mahipal, Dr. S. Bhardwaj, Archana P.
Dave, Mridule Ray Bhardwaj, Veera Kaul Singh, C.J. Sahu,
Jasbir Singh Malik, S.K. Sabharwal, Shree Pal Singh,
Niranjana Singh, K.L. Janjani, Satpal Singh, Vidhi International,
Anjani Kumar Mishra, Sunita Sharma for the appearing parties.

D

The Judgment of the Court was delivered by

ALTAMAS KABIR, J. 1. These three Special Leave
Petitions are directed against the judgment and order dated
12.7.2011, passed by the Lucknow Bench of the Allahabad
High Court in C.P. No.2209 of 2009, affirming the order of the
learned Single Judge which had been upheld by the Division
Bench of the High Court regarding the appointment of
Pharmacists in the State of Uttar Pradesh. So as to understand
how the matter reached the High Court, it is necessary to set
out a few facts which led to the filing of the Writ Petitions.

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2. By way of an advertisement dated 12.11.2007, 766
vacancies were advertised for being filled up by diploma
holders in Pharmacy. The advertisement provided that the
recruitment could be done as per the U.P. Procedure for Direct
Recruitment of Group 'C' Posts (Outside the Purview of Public
Service Commission) Rules, 2000. The said advertisement led

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A to controversies as to how the appointments were to be filled up.

3. According to the Respondents, the interpretation of Rule 15(2) of the U.P. Pharmacists Service Rules, 1980, hereinafter referred to as the "1980 Rules", required the diploma holders
 B to be appointed against the vacancies which became available in each recruitment year, by first appointing those Pharmacists who had obtained their diplomas earlier. It was their claim that
 C appointment to the post of Pharmacist could be made batch-wise from each year and that the vacancies which had accrued
 D were required to be filled up by giving appointment to those Pharmacists according to the dates on which they obtained their diplomas, irrespective of their merit. According to the
 E Respondents, on an interpretation of Rule 15(2) of the 1980 Rules by the State Government, they were entitled to be
 F selected and appointed first in respect of the vacancies advertised, as they belonged to previous batches and had been denied appointment by the State Government earlier on the plea that notwithstanding their merit being superior to some of the diploma holders, those who had obtained diplomas prior to the Respondents, had to be adjusted against the vacancies first, irrespective of their merit. It was submitted that those diploma holders who had obtained their diplomas before the Respondents, should be adjusted first against the vacancies available, irrespective of their merit, vis-à-vis the diploma holders of subsequent batches and the said practice was continued till 2002.

4. Questioning the interpretation of Rule 15(2) of the 1980 Rules, several Writ Petitions were filed before the Lucknow Bench of the Allahabad High Court for quashing the
 G advertisement dated 12.11.2007 and for a writ in the nature of Mandamus to command the concerned authorities to effect recruitment to the post of Pharmacist strictly in accordance with Rules 14 and 15 of the 1980 Rules, by specifying the vacancies year-wise, and, thereafter, appointing the Writ Petitioners to the
 H post of Pharmacist after providing for age relaxation.

5. According to the Respondents, it was not open to the State Government to interpret the Rules differently to the prejudice of the Respondents' right to appointment, though similarly situated persons had been given the benefit of the said Rules under which the Respondents were denied appointment when their turn came to be appointed. The order passed by the learned Single Judge, while disposing of various Writ Petitions, was challenged by the Respondents in several Writ Appeals before the Division Bench of the Lucknow Bench of the Allahabad High Court, which after recognizing the anomalous position which had arisen, disposed of the various Appeals with a direction that the case of the Appellants would be considered in accordance with the pre-existing practice by considering their appointment on the basis of their merit, but that the said process would be available only for the Appellants. It was directed that they would be accommodated if they were otherwise found eligible and the remaining vacancies would be filled up by following Rule 15(2) of the 1980 Rules strictly.

6. The said decision of the Division Bench came to be challenged before this Court by the State of U.P. by way of Special Leave Petition (Civil) Nos.20558 of 2009, which was heard along with several other Special Leave Petitions, where the issue was the same. During the course of hearing of the Special Leave Petitions, the main question which fell for decision was whether the Rules could be applied differently at different points of time, in order to deny the benefit of appointment to the same group of people at such different points of time. It was also indicated by the Division Bench that the State Government had acted arbitrarily and unfairly in not applying the same set of Rules when the turn of the Respondents came to be appointed on the basis thereof on the ground that they have become over-age. It had been submitted that such arbitrariness could not be allowed to continue and the decision of the State and its authorities not to give batch-wise promotion to those Pharmacists, who had obtained their diplomas prior to 1988, was liable to be quashed.

A 7. Some of the Petitioners moved the High Court for
 implementing the order dated 4.5.2009 passed by the Division
 Bench of the said Court. Inasmuch as, the applications were
 not being disposed of, one Sunil Kumar Rai and others moved
 Contempt Petition No.2209 of 2009 before the High Court
 B alleging willful contempt on the part of the State and its
 authorities in not implementing the directions given by the
 Division Bench on 4.5.2009. During the hearing of the Contempt
 Petition, it was also pointed out that the said order of the
 Division Bench of the High Court had been challenged in
 C Special Leave Petition (Civil) No.22665 of 2009, and that while
 issuing notice, this Court did not stay the operation of the
 judgment and order passed by the Division Bench on 4.5.2009.

8. Upholding the decision of the Division Bench of the High
 Court, this Court did not interfere with the same and dismissed
 D the Special Leave Petitions vide judgment dated 3.8.2010
 titled *State of U.P. & Anr. Vs. Santosh Kumar Mishra & Ors.*
 reported in (2010) 9 SCC 52, and directed that the decision
 taken by the State Government to accommodate the diploma
 holders in batches against their respective years, could be
 E discontinued at a later stage, but not to the disadvantage to
 those who had been denied the opportunity of being appointed
 by virtue of the same Rules. This Court observed that the same
 decision which was taken to deprive the private Respondents
 from being appointed, could not be discarded once again to
 F their disadvantage to prevent them from being appointed,
 introducing the concept of merit selection at a later stage. It was
 further directed that the subsequent policy could be introduced
 after the private Respondents and those similarly situated
 persons have been accommodated.

G 9. After the aforesaid judgment of this Court, a select list
 was prepared on 14.2.2011, which was again challenged by
 way of several Writ Petitions, of which the lead matter was Writ
 Petition No.1186 of 2011 filed by Pawan Kumar and others,
 against the State of U.P. and others. On 4.3.2011, the High
 H Court stayed the select list prepared on 14.2.2011 and directed

not to make any appointments therefrom. At the same, time, A
the contempt proceedings were also take up for consideration
and on 12.7.2011, in the said proceedings the High Court
directed the official respondents to prepare a fresh select list.

10. It is in such background that these Special Leave B
Petitions came to be filed by candidates who had not been
selected for appointment on the ground that despite having
better merit, they had not been selected for filling up the 766
vacancies.

11. The submissions which had been previously urged C
when the earlier batch of Special Leave Petitions were
disposed of, were reiterated during the hearing of these
Special Leave Petitions. An attempt was made to re-open the
issue by urging that the Petitioners have been over-looked,
despite their better merit.

12. We are unable to accept the said submissions on D
account of the fact that the matter has already been decided
and it has been directed by this Court, following the decision
of the Division Bench of the High Court, that the candidates
could be appointed against the vacancies in order of their inter-
se seniority as per the vacancies available in each year. That E
being so and having regard to the earlier decision of this Court
referred to hereinabove, we see no reason to interfere with the
order of the Division Bench of the High Court.

13. The Special Leave Petitions are, accordingly, F
dismissed, but without any order as to costs.

14. All the pending applications shall stand disposed of
by virtue of this judgment. As we have observed hereinabove,
all candidates, who were similarly situated as the original
petitioners, would be entitled to the benefit of the judgment
delivered in *State of U.P. & Anr. Vs. Santosh Kumar Mishra* G
& Ors. (supra).

R.P.

Special Leave Petition dismissed.