CASE NO.:
Appeal (civil) 619 of 2008

PETITIONER:
Vishnu Dev Sharma

RESPONDENT:
State of U.P. & Ors

DATE OF JUDGMENT: 23/01/2008

BENCH:
Dr. ARIJIT PASAYAT & P. SATHASIVAM

JUDGMENT:
JUDGMENT
(Arising out of SLP(C) No. 12576 of 2004)

Dr. ARIJIT PASAYAT, J.

1. Leave granted.

2. Challenge in this appeal is to the order passed by a Division Bench of the Allahabad High Court dismissing the Civil Miscellaneous Writ Petition No. 18497 of 1994. The dispute related to fixation of seniority.

3. It is not necessary to go into the factual aspects in detail as the writ petition was disposed of in a summary manner observing as follows:

\023This is a writ petition challenging the final seniority list.

We have heard counsel for the parties. The seniority has been given from the date of confirmation. We see no illegality. The writ petition is dismissed.\024

4. In support of the appeal, learned counsel for the appellant submitted that such summary dismissal of writ petition was not warranted as several issues of considerable importance were involved, more particularly whether the norms for fixing seniority in the background facts of the case were to be considered.

5. Learned counsel for the appellant pointed out that in the seniority list he was placed below juniors which was impermissible. That aspect was not considered by the High Court.

6. Learned counsel for the respondent-State and its functionaries supported the order of the High Court.

7. As the quoted portion of the order goes to show that practically no reason was indicated. The dismissal of the writ petition in such summary manner without indicating any reason is clearly indefensible.

8. Reasons introduce clarity in an order. On plainest consideration of justice, the High Court ought to have set forth its reasons, howsoever brief, in its order indicative of an application of its mind, all the more when its order is

amenable to further avenue of challenge. The absence of reasons has rendered the High Court\022s judgment not sustainable.

9. Even in respect of administrative orders Lord Denning M.R. in Breen v. Amalgamated Engineering Union (1971 (1) All E.R. 1148) observed \023The giving of reasons is one of the fundamentals of good administration\024. In Alexander Machinery (Dudley) Ltd. v. Crabtree (1974 LCR 120) it was observed: \023Failure to give reasons amounts to denial of justice. Reasons are live links between the mind of the decision taker to the controversy in question and the decision or conclusion arrived at\024. Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the \023inscrutable face of the sphinx\024, it can, by its silence, render it virtually impossible for the Courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind to the matter before Court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking out. The \023inscrutable face of a sphinx\024 is ordinarily incongruous with a judicial or quasi-judicial performance.

9. This Court in State of Orissa v. Dhaniram Luhar (2004 (5) SCC 568) has while reiterating the view expressed in the earlier cases for the past two decades emphasised the necessity, duty and obligation of the High Court to record reasons in disposing of such cases. The hallmark of a judgment/order and exercise of judicial power by a judicial forum is to disclose the reasons for its decision and giving of reasons has been always insisted upon as one of the fundamentals of sound administration justice-delivery system, to make known that there had been proper and due application of mind to the issue before the Court and also as an essential requisite of principles of natural justice. Any judicial power has to be judiciously exercised and the mere fact that discretion is vested with the court/forum to exercise the same either way does not constitute any license to exercise it at whims or fancies and arbitrarily as used to be conveyed by the well-known saying: \023varying according to the Chancellor\022s foot\024. Arbitrariness has been always held to be the anathema of judicial exercise of any power, all the more so when such orders are amenable to challenge further before higher forums. Such ritualistic observations and summary disposal which has the effect of, at times, cannot be said to be a proper and judicial manner of disposing of judiciously the claim before the courts. The giving of reasons for a decision is an essential attribute of judicial and judicious disposal of a matter before courts, and which is the only indication to know about the manner and quality of exercise undertaken, as also the fact that the court concerned had really applied its mind.

10. The attempt to draw an analogy on the power of this Court under Article 136 of the Constitution of India, 1950 (in short the \021Constitution\022) and the practice of rejecting appeals at the SLP stage invariably without assigning reasons with the one to be exercised while dealing with a writ petition has no meaning and is illogical. First of all, the High Court is not the final court in the hierarchy and its orders are amenable to challenge before this Court, unlike the obvious position that there is no scope for any further appeal from the order made declining to grant special leave to appeal. It has been on more than one occasion reiterated that Article 136 of the

Constitution does not confer any right of appeal in favour of any party as such and it is not that any and every error is envisaged to be corrected in exercising powers under Article 136 of the Constitution of India. The powers of this Court under Article 136 of the Constitution are special and extraordinary and the main object is to ensure that there has been no miscarriage of justice. That cannot be said to be the same with a writ petition. Consequently, this appeal is allowed and the order of the High Court is set aside.

11. In view of the aforesaid, we set aside the impugned order of the High Court and remit the matter to it for fresh disposal in accordance with law by a reasoned order. We make it clear that we have not expressed any opinion on the merit of the case.