

PETITIONER:
RAM KISHORE GUPTA

Vs.

RESPONDENT:
STATE OF UTTAR PRADESH & ORS.

DATE OF JUDGMENT: 24/03/1999

BENCH:
S.N.Phukan, S.R.Babu

JUDGMENT:

RAJENDRA BABU, J. :

In this appeal, by special leave, the order made by a Full Bench of the High Court of Judicature at Allahabad in a writ petition raising a question as to whether in the matter of determining the quota of (i) 15% by direct recruitment; (ii) 30% from out of the Judicial Magistrates; and (iii) 55% from out of the members of the Nyayik Sewa whether temporary vacancies in addition to permanent vacancies should also be taken note of is challenged. The High Court in the judgment under appeal took the view that the provision of the relevant rules requires that the direct recruits should not exceed 15% of the total permanent strength of the service. On that basis the matter was disposed of by directing not to appoint more than six persons amongst the candidates selected for direct recruitment inasmuch as there are only 311 permanent posts and, therefore, direct recruits could not get more than 47. The High Court in those cases was concerned with the interpretation of the Uttar Pradesh Higher Judicial Service Rules, 1975. The effect of these rules was considered by a three Judge Bench of this Court in O.P. Garg & Ors. v. State of U.P. & Ors., 1991 Supp. (2) SCC 51. This Court, after examination of the relevant rules, took the view as follows :-

We allow the writ petitions and the civil miscellaneous petition, quash the final seniority list dated August 25, 1988 and direct the High Court to prepare, circulate, invite objections and finalise the seniority list of the service in the light of the findings given and the observations made by us in this judgment. We reiterate our findings hereunder:

(1) All the 236 promotee officers working against 236 posts (229 permanent plus 7 temporary) as Additional District and Sessions Judges on April 5, 1975 shall be deemed to be existing members of the service as constituted under the 1975 Rules and they shall en bloc rank senior to all other officers appointed to the service thereafter from three sources in accordance with their quota under the 1975 rules.

(2) We strike down first proviso to Rule 26(1)(a) of the 1975 Rules and direct that the continuous

officiation/service by a promotee appointed under the rules shall be counted for determining his seniority from the date when a substantive vacancy in permanent or temporary post is made available in his quota under the 1975 rules.

(3) We also strike down Rules 22(3) and 22(4) of the 1975 Rules but the appointments already made under these rules shall not be invalidated. We further direct that while selecting candidates under Rule 18 of the said rules the committee shall prepare a merit of candidates twice the number of vacancies and the said list shall remain operative till the next recruitment. We further direct that the appointments under Rules 22(1) and 22(2) of the 1975 Rules shall be made to permanent as well as to temporary posts from all the three sources in accordance with the quota provided under the said rules.

This Court took the view that both temporary and permanent service will be taken note of in determining the quota available for direct recruits. It was also made clear that the service consists of permanent as well as temporary posts and Rule 22 of the Rules required to make appointment to service on the occurrence of substantive vacancies and it would not mean that it would exclude temporary vacancies. The scheme of the rules indicates that there are permanent and temporary posts which are created to meet the contingencies and they may, no doubt, be made permanent and, therefore, it cannot be doubted that when appointment under Rule 22 is contemplated substantive vacancies would include both temporary or permanent but the vacancy must be in the cadre. Therefore, the decision taken by the High Court cannot be sustained at all. However, on that basis there is no need for us to give any particular direction in this present case inasmuch as during the pendency of these proceedings on December 16, 1987 an interim order was made in this appeal by this Court the relevant portion of which is reproduced as under :-

As it appears 48 temporary posts have been made permanent and, therefore, to the existing permanent posts these 48 posts are to be added. The dispute involved in the appeal is as to whether the temporary posts shall be taken into account for working out the quota. Four candidates had been selected from the Bar in 1984 after complying the procedure for recruitment, but on account of the dispute as to whether the temporary posts shall be taken into account or not, their appointments were not made. We are of the view that in the facts and circumstances of the case, these four appointments should be given effect to and if at the ultimate hearing the court takes one or other view, these four appointees can be appropriately adjusted.

There is apprehension that if these four appointments are given effect to at this stage, the promotees who may come later may lose seniority. To clarify the position and to remove any doubt, we direct that even if these four persons are allowed to join duty, the question of seniority shall be finally determined by the Court. The appointments be made within one month from today.

This Court proceeded on the basis that 48 temporary posts have been made permanent and, therefore, to the

existing permanent posts 48 posts have been added. In view of the fact that 48 temporary posts have now been made permanent the four advocates selected should also be appointed, however, subject to the seniority being adjusted at a later stage. It is now pointed out that originally six direct recruits had been selected and appointed in 1986, whereas four direct recruits were appointed pursuant to the interim order made by this Court on December 16, 1987 and they appear to have reported to duty between January 25, 1988 to January 27, 1988 and have also been confirmed on April 16, 1992. It appears that during the pendency of the case before the High Court an interim order had been granted on July 4, 1986 stating that the last four persons selected in the direct recruits shall not be appointed and the appointment of the last four persons in the direct recruits was stayed and by a modification made on September 18, 1986 the same was confined to two general vacancies and two Scheduled Caste/Scheduled Tribes vacancies. Subsequent to the judgment of the High Court which was made on February 10, 1987 55 persons had been promoted on temporary basis before the four direct recruits were appointed as ordered by this Court on December 16, 1987. Various contentions have been raised as to the seniority of these four direct recruits and whether they will rank above these 55 persons now appointed or they should be ranked along with those who were appointed in 1986 because these persons who were recruited subsequently were entitled to be appointed but wrongly excluded by reason of the interim and final orders of the High Court. A number of decisions have been cited before us as to the manner in which the direct recruits and the promotees have to be adjusted in the matter of seniority. We are afraid to determine the seniority of the direct recruits appointed pursuant to the orders made by this Court on December 16, 1987 viz-a-viz the promotees who are not before the Court would be hazardous, particularly when the question of seniority was not an issue before the High Court out of which this appeal arises. Therefore, we must confine ourselves to the issue before us as to whether these appellants could have been appointed or not and they having been appointed now and in the light of the decision of this Court in O.P. Garg (supra) they ought to have been appointed. There is no need for us to consider these matters any more. It is no doubt true that this Court has stated in the interim orders made on December 16, 1987 that to clarify the position and to remove any doubt, we direct that even if these four persons are allowed to join duty, the question of seniority shall be finally determined by the Court. This observation was made not with the object of determining the seniority of these four persons over any of the promotees or vice versa, but only to offset any difficulty arising in the matter of adjusting seniority at a subsequent date. We are of the view that the proper course is for the High Court to determine the seniority of these persons on its administrative side. In doing so the High Court will have to prepare, circulate, invite objections and finalise the seniority of these persons in the light of the law and the decision of this Court in O.P. Garg (supra), including the present decision as well as the interim orders made by this Court pursuant to which appointment of these four persons has been made. Let action be taken by the High Court as expeditiously as possible. This appeal stands disposed of accordingly.

JUDIS