CASE NO.:
Appeal (civil) 4571 of 2003

PETITIONER:
ASHWANI KUMAR SINGH

RESPONDENT:
U.P. PUBLIC SERVICE COMMISSION AND ORS.

DATE OF JUDGMENT: 14/07/2003

BENCH:
DORAISWAMY RAJU & ARIJIT PASAYAT

JUDGMENT:
JUDGMENT

2003 Supp(1) SCR 528

The Judgment of the Court was delivered by ARIJIT PASAYAT, J. Leave granted.

These two appeals involve identical issues and, therefore, are taken up together.

Factual position which is necessary to be noted for disposal of the appeals in a nutshell is as follows:

The appellants appeared at the Combined State Services Examination of 1987. They indicated the preference for appointment as Treasury Officer/ Accounts Officer and also for Assistant Accounts Officer as requi-ed to be indicated in the application form. The examination was conducted by the Uttar Pradesh Public Service Commission (hereinafter referred to as 'the Com mission') on the basis of requisition made by the State of U.P. Requisition for 40 vacancies was sent by the State to the Commission in July 1987. Out of said 40 vacancies, 21 were meant for General category, while 7, 1, 2, 6. 2 and 1 vacancies were meant for Scheduled Castes, Scheduled Tribes, Dependents of Freedom Fighters, Backward Classes, Retrenched Emergency / Short Service Commission Military Officers, and Handicapped persons respectively The Accounts service has two designated posts i.e. Accounts Officer/Treasury Officer and Assistant Accounts Officer. Results were declared on 29 12 1989. In the merit list, appellant - Ashwani Kumar Singh was placed at SI No. 52 while appellant - Brij Nath Srivastava was placed much below.

On the basis of recommendations received from the Commission a list of 37 candidates was made available initially. Three other candidates were included on the basis of the order passed by the Allahabad High Court. All the three candidates relate to the Retrenched Military Officers category. As three selected candidates, one each from the general category, dependent of freedom fighters and scheduled tribe and already been appointed on the basis of examination held in 1986; names of three more candidates were included in the respective categories.

In 1990, appellant - Ashwani Kumar Singh made a representation stating that on account of some selected candidates not joining, vacancies exist and since the merit list was effective for one year, persons in the waiting list should be appointed. Appellant - Ashwani Kumar Singh in view of his placement in the select list had already been appointed as Assistant Accounts Officer. However, appellant - Brij Nath Srivastava was not appointed as his position was far below in the select list.

Writ petitions were filed in 1992 by the appellants before (he Allahabad High Court. The writ petitions were filed on the foundation that the vacancies which arose on account of selected candidates not joining, should have been filled up and that having not been done, the appointments made

subsequently were illegal. The claims were resisted by the State Government and the Commission. They took the stand that there was no waiting list as such and the vacancies were carried forward to the subsequent period as required in law and persons had already been appointed on the basis of subsequent examination. A belated attempt by the appellants to get appointment is not countenanced in law. The High Court accepted the plea of the respondents and rejected the writ petitions.

Mr. A. Sharan, learned senior counsel appearing for the appellants submitted that the course adopted by the State Government and the Commission is clearly contrary to the law laid down by this Court in Jai Narain Ram v. State of U.P. and Ors., [1996] I SCC 332. It was also submitted that in several unreported judgments of the High Court, directions were given to fill up the posts on the basis of the waiting list and the stand taken by the State Government and the Commission is contrary to the factual position and in contravention of the High Court's view.

In response, learned counsel for the Commission an 1 the State Government submitted that Jai Narain's case (supra) has no application to the facts of the case since there was no vacancy and the posts which fell vacant on account of selected candidates not joining have subsequently been filled up. Initially, those persons were not impleaded as parties. Subsequently, in view of the observations made by this Court on 11.12.2001 they were directed to be impleaded as parties. Their non appearance does not strengthen the appellants' case.

It shall be necessary to first consider whether Jai Narain's case (supra) has application to the facts of the case. A bare reading of the judgment shows that it was rendered in a different factual and legal background, and related to non - appointment of persons belonging to reserved category. This is evident from even a cursory reading of paragraphs 6 and 7 of the Judgment. It has not laid down as a rule of universal application that whenever vacancy exists persons who are in the merit list perforce have to be appointed. Much would depend upon the statutory provisions governing the field. The Learned counsel for the appellants submitted that the direction given in Jai Narain 's case (supra) was not strictly on that basis. The plea has no substance as reading of the judgment goes to show otherwise.

Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are not to be read as Euclid's theorems nor as provisions of the statute. These observations must be read in the context in which they appear. Judgments of Courts are no to be construed as statutes. To interpret words, phrases and provisions of statute, it may become necessary for Judges to embark into lengthy discussions, but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. v. Horton, (1951) AC 737 at p. 761, Lord Mac Dermot observed:

"The matter cannot, of course, be settled merely by treating the ipsissima vertra of Willes, J, as though they were part of an /- ct of parliament and applying the rules of interpretation appropriate thereto This is not to detract from the great weight to be given to the language actually used by that most distinguished Judge."

In Home Officer V. Dorset Yacht Co., [1970] 2 All ER 294 Lord Reid said,

"Lord Atkin's speech.........is not to be treated as if it was a statute definition.

It will require qualification in new circumstances." Megarry, J in Shepherd Homes Ltd. v. Sandham, (No. 2) (1971) 1 WER 1062 observed: "One must not, of course, construe even a reserved judgment of Russell, L.J. as if it were

an Act of Parliament." In Herrington v. British Railways Board, (1972) 2 Wl R 537 Lord Morris said :

"There is always peril in treating the words of a speech or judgment as though they are words in legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case."

Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

The following words of Lord Denning in the matter of applying precedents have become locus classicus:

"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide, therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."

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"Precedent would be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches, else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it."

It is on record that a policy decision was taken to appoint candidates who had opted for Treasury Officer/Accounts Officer if their names were included in the first 40 of the merit list. Admittedly, appellant - Ashwani Kumar was not so included and the position is worse in the case of other appellant - Brij Nath Srivastava. It is submitted that there is no logic for such fixation. Here again the plea is without substance. If the employer fixes a cut off position, same is not to be lightly tinkered with unless it is total y irrational or tainted with malafides. Employer in its wisdom may consider a particular range of selection to be appropriate. It has not been shown as to how the fixation is irrational, much less malafide. Additionlly, it is noticed that the unfilled posts were carried forward to the next year and have been filled up on the basis of selection made by the Commission. Accepting the prayer of the appellants would mean that the position which has assumec a sort of finality for more than a decade would be unsettled. Persons who have been appointed on the basis of the subsequent examination has to give way to appellant - Ashwani Kumar Singh. Though they had been impleaded but did not appear, it does not mean that something which is not permissiole in law has to be done. It would not be fair to disturb the prevailing position. It was pointed out by learned counsel for the appellant - Ashwani Kumar Singh that he has already been promoted as Accounts Officer, and the only question left is of his seniority over those who were subsequently appointed. This plea is without any substance. Since he has been promoted later on, in the absence of any statutory prescription, person who has been appointed to the higher post earlier would be logically senior to him. The High Court was, therefore, justified in rejecting the writ petition filed by the appellant - Ashwani Kumar Singh. So far as the other appellant - Brij Nath Srivastava is a concerned, his claim is based on almost identical premises as that of Ashwani Kumar Singh. His name was far below in the select list. Therefore, he does not have a better case than that of appellant - Ashwani Kumar Singh whose stand has been negatived. Though he claims to be candidate belonging to the backward class, the posts have been filled up and his name finds place much below the zone of selected candidates. Both the appeals deserve dismissal, which we direct. However, parties shall bear their respective costs.

JUDIS