
(2013) 04 AHC CK 0325
In the Allahabad High Court
Case No : Writ Petition No. 734 (S/B) of 2012

Kamla Shanker Tripathi and Another	APPELLANT
Vs	
State of U.P. and Others	RESPONDENT

Date of Decision : 01-04-2013

Acts Referred:

Citation : (2013) 11 ADJ 372 : (2013) 6 ALJ 160 : (2013) 6 AWC 6329 : (2014) 1 ESC 257 : (2013) 3 UPLBEC 2300

Hon'ble Judges : Rajiv Sharma, J;Arvind Kumar Tripathi, J

Bench : Division Bench

Advocate : Ramesh Pandey, for the Appellant; Manish Kumar and Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

1. Rejoinder affidavit to the supplementary counter-affidavit filed on behalf of respondents Nos. 2 and 3, is admitted on record. Heard Sri Ramesh Pandey, learned Counsel for the petitioners, Sri Manish Kumar, Counsel for the respondent Nos. 2 and 3 and Standing Counsel for respondent No. 1.

2. Through the instant writ petition under Article 226 of the Constitution of India, the petitioners have prayed for following reliefs:

(i) to issue a writ, order or direction in the nature of mandamus commanding respondents to consider petitioners' candidature for appointment as direct recruits from the Bar to U.P. Higher Judicial Service, 2000 and further consider their posting as Additional District and Sessions Judge.

(ii) to issue a writ, order or direction in the nature of mandamus commanding respondents to consider petitioners' candidature for appointment to U.P. Higher Judicial Service according to their merit of selection of recruitment to the U.P. Higher Judicial Service, 2000.

(iii) to issue a writ, order or direction in the nature of certiorari quashing decision

of respondents taken on petitioners" representation dated 11.9.2011 after summoning the same.

(iv) to pass any other suitable order or direction which is deemed just and proper in the circumstances of the case.

(v) Allow the writ petition with costs.

3. Draped in brevity, facts of the case are that for the recruitment year 1998-2000, High Court of Judicature at Allahabad published an advertisement for direct recruitment to 38 vacancies in U.P. Higher Judicial Service in the pay-scale of Rs. 16,400-20,000 plus admissible allowances. In the said advertisement, it was mentioned that out of 38 vacancies, 19 vacancies were for General Candidate, 8 vacancies for Scheduled Caste Candidate, 1 vacancy for Scheduled Tribe Candidate and 10 vacancies for Other Backward Class.

4. Pursuant to the said advertisement, petitioners along with other candidates applied for the post of U.P. Higher Judicial Service and on scrutiny of the forms, eligible candidates including petitioners were called for written examination, pursuant to which petitioners and others appeared in the written examination. The result of written examination was declared, in which, petitioners along with other candidates were declared successful and subsequently all such candidates were called for interview. Thereafter, the Selection Committee submitted its report dated 18.11.2004. The said report dated 18.11.2004 was placed before Full Court, which was held on 5.2.2005 as Agenda No. 3 (a) Re: Filling of Vacancies of U.P. Higher Judicial Service by direct H.J.S. Recruitment-2000. The Full Court, vide resolution dated 5.2.2005, resolved that the recommendation made by the Selection Committee with respect to select list of General, O.B.C. and S.C. Candidates (direct recruits) be approved and directed the Registrar General to declare the result and take follow up action without any delay as per report.

5. On the basis of the said resolution of Full Court dated 5.2.2005, final result was declared in the year 2005, in which name of petitioner No. 1-Kamla Shanker Tripathi was found at Serial No. 21 in General Category, whereas petitioner No. 2-Perwaiz Ahmad was at Serial No. 11 in OBC Category.

6. According to petitioners, in view of the judgment of this Court in Writ Petition No. 316 (S/B) of 2004, only 20 candidates (13 General Category, 6 Other Backward Classes and 1 Scheduled Caste) were given appointments in the year 2005. The said judgment passed in Writ Petition No. 316 (S/B) of 2004 was challenged before the Hon"ble Supreme Court in Civil Appeal No. 1312 of 2005, which was decided on 13.9.2010 reported in Ashok Pal Singh and Others Vs. U.P. Judicial Services Association and Others, . According to him, on the direction of the Hon"ble Supreme Court in the case of Ashok Pal Singh (supra), Hon"ble High Court of Judicature at Allahabad had constituted a Three-Judge Committee to re-determine the number of vacancies for direct recruitment to Higher Judicial Service, 2000 and further to fix the seniority of Higher Judicial Service Cadre.

The Three-Judge Committee [hereinafter referred to as the "Committee"], after re-determination of the number of vacancies for direct recruitment and fixing seniority position, had submitted its report on 14.7.2011, which was accepted by the Full Court vide resolution dated 30.7.2011. In the said report dated 14.7.2011, the Committee re-determined 34 vacancies and made recommendations for grant of 14 appointments in Higher Judicial Service in addition to appointments made in the year 2005 and further seniority positions of 14 appointments, which were to be made, were also assigned by the Committee. Thus, petitioners had become entitled to be granted appointments in the light of the report of the Committee dated 14.7.2011 as accepted by the Full Court on 30.7.2011. But despite the above position, only 10 persons were offered appointment i.e. 6 General Category, 4 Other Backward Classes Category and as such, petitioners were deprived of their legitimate right. Therefore, with regard to four other vacancies as determined and remained unfilled, petitioners submitted representation dated 11.9.2011, which was rejected.

6-A. Hence the instant writ petition.

7. Sri Ramesh Pandey, learned Counsel for the petitioners submits that it has not been disputed by the respondents in the counter-affidavit that petitioners are in select list and in case all 14 vacancies, which were determined for being given appointment as per the Committee's report dated 14.7.2011, petitioners were also entitled for appointment but the respondents have only asserted that Selection/Appointment Cell has proposed only 10 names for appointment as no candidate of Scheduled Caste/Scheduled Tribe is available in select list against the vacancies reserved for them as per roster as well as advertisement. He submits that recommendations of the Committee dated 14.7.2011 approved by the Full Court vide resolution dated 30.7.2011, is binding upon the respondents. Therefore, the Selection/Appointment Cell has no jurisdiction to take a contrary view. Thus, the stand of the respondents in denying appointment to four more candidates is wholly illegal, arbitrary and unsustainable.

8. Elaborating his submission, Sri Pandey further submits that under U.P. Higher Judicial Service Rules, 1975, there is no provision for carrying forward of vacancies and also the judgment of Hon'ble Supreme Court in Ashok Pal Singh (supra) prohibits carrying forward of vacancies. Therefore, since eligible selected candidates for direct recruitment are available for appointments, as such, remaining four vacancies cannot be given to candidates of U.P. Nyayik Seva.

9. Refuting the submissions so advanced by the learned Counsel for the petitioners, Sri Manish Kumar, learned Counsel for the respondent Nos. 2 and 3 submits that pursuant to the approval by the Full Court on 30.7.2011, Selection and Appointment Committee considered the matter relating to recommendation against unfilled vacancies of U.P. Higher Judicial Services, 2000 on 16.8.2011, in which, recommendations were made with regard to appoint on vacant posts including the posts reserved for U.P. Higher Judicial Service, 2000. The Selection Committee had recommended six General Category and four Other Backward

Class Category candidates (total 10 candidates) from the select list of U.P. Higher Judicial Service, 2000 recruitment. It was also resolved that since no candidate belonging to the Scheduled Caste Category is available in the select list, therefore, the post reserved for Scheduled Caste remained unfilled.

10. Sri Manish Kumar further submits that Selection and Appointment Committee in its meeting dated 9.1.2012 determined the vacancies in the U.P. Higher Judicial Service Recruitment-2012. In the said meeting under Agenda Item No. 5, the Hon'ble Committee deliberated it over the determination of the vacancies and held that the vacancies existing as on date and likely to occur in the next two years i.e. upto 31.12.2013 have been reported as 250. The Hon'ble Selection Committee further considered the four vacancies of the direct recruits of the year 2000 and 34 vacancies of 2009 recruitment which remain unfilled and it was resolved that the said number should be added in the quota of direct recruitment of 2012. He further submits that the said resolution of the Hon'ble Selection and Appointment Committee dated 9.1.2012 was also approved by the Full Court on 11.2.2012. Thus, there remains no vacancies for the recruitment year 2000 and as such, the writ petition being devoid of merits is liable to be dismissed.

11. We have heard learned counsel for the parties and perused the records.

12. Before proceeding further on merit, we take notice of the fact that the dispute centering around the method of calculation made by the High Court in regard to the ratio between direct recruits and promotees in a given year, again came up before Apex Court in one more round between promotees and direct recruits in Sri Kant Tripathi and Others Vs. State of U.P. and Others, , wherein the Apex Court issued the following directions:

1. Appointments already made to the Higher Judicial Service, whether by direct recruitment or by promotion, need not be annulled and shall be continued.

2. With effect from 1988 recruitment and in all subsequent recruitments which are the subject-matter of challenge before us, the High Court shall determine the number of vacancies available as on the relevant year of recruitment in terms of Rule 8, as already explained by us and then, allocate the percentage to different sources of recruitment, contained in Rule 6, and after such determination is made, then find out whether the appointments of direct recruits already made for that recruitment year are in excess of the quota or within the quota. If it is found that any appointment has been made in excess of the quota, then the said appointee would be allowed to continue, but his or her seniority will have to be reckoned only when he or she is adjusted in the next recruitment.

3. If in each recruitment year, posts were available in the quota of promotees and promotion has not been made, even though selection had been made under Rule 20, then the legitimate right of the promotees cannot be denied and promotion must be made with effect from the date they should have been appointed.

4. This exercise has to be made for the recruitment of 1988 as well as for each subsequent recruitment that has been made.

5. Since the determination under Rule 8 is being made now, pursuant to the directions of this Court, in respect of past recruitment years for which recruitment has been made, the expression "vacancies likely to occur" loses its importance and determination has to be made, on the basis of the actual vacancies available in any of such recruitment year.

6. So far as the recruitment of 1998 is concerned, advertisements having been issued for 38 vacancies being filled up by direct recruitment and the process of selection being already over, but no appointment having been made, we think it appropriate to direct that the appointment of the selected candidates may be made against the quota available to direct recruits calculated in accordance with the Rules in the light of our decision.

7. For all future appointments, the High Court must take steps to fill the vacancies of every recruitment year during that year itself. The High Court must determine the vacancies not only on the basis of the actual vacancies on the date of such determination but also take into account probable vacancies by reason of superannuation of officers in the next two years from that date. Once the vacancies are so determined, the percentage of the vacancies available for recruitment by direct recruitment and by promotion must be fixed and steps taken for filling up the same expeditiously. The number of vacancies available for the direct recruits quota must be advertised without any variation clause. The Select List prepared both for direct recruits as well as for promotees prepared by the High Court will be operative only till the next recruitment commences with the fixation of the vacancies for the next recruitment year.

After going through direction No. 6 of the above, it is clear that though 38 vacancies were advertised in the year 2000 with the following break up:

General Candidate - 19

Scheduled Caste Candidate - 08

Scheduled Tribe Candidate - 01

Other Backward Class - 10

13. Yet the Apex Court directed that appointment of Selected Candidates may be made against the quota available to the direct recruits calculated in accordance with the Rules in the light of above decision.

14. U.P. Judicial Service Association questioned the determination of vacancies made by the High Court pursuant to the verdict given in Sri Kant Tripathi's case. In this Writ Petition No. 316 of 2004 (S/B), a Division Bench of this Court quashed the determination made by the Full Court on 01.2.2004 and gave following directions for re-determination of vacancies vide order dated 25.8.2004:

(1) The number of the officers of Nyayik Sewa and Judicial Service who were already promoted and appointed against temporary posts under Rule 22(3) or 22(4) of the Rules and whose appointments have been protected in O.P. Garg would be taken into consideration and the number of vacancies equal to the number of such officers shall be excluded from computation.

(2) While applying the ratio of judgment in O.P. Garg and distributing temporary as well as permanent vacancies, allocation of 15% vacancies of the quota of direct recruits under rule 6 of the Rules, has further to be subject to ceiling of 15% of the permanent strength of service, till the amendment in the rules came into effect i.e. 25th February, 1996.

(3) While making an exercise to find out (in accordance with direction No. 2) as to whether the direct recruits taken into service are in excess of the quota or not, simultaneous exercise has to be done for compliance of direction No. 3 in S. K. Tripathi and vacancies of the quota of promotees shall be deemed to have been filled up from the date they are entitled to promotion.

(4) Thirty one posts of the service which have been transferred to Uttaranchal with effect from 30.9.2001 shall be excluded while determining the strength of the service in order to workout 15% of the quota of direct recruits.

(5) Out of 13 unnoticed vacancies, found by the office in the year 1988 only two vacancies equal to 15% of the quota of direct recruits be given to them instead of adjusting five appointments en bloc and again giving one out of eight vacancies to them applying 15% quota rule.

(6) The second proviso to Rule 6 be also given effect to as and when the occasion arises.

15. The aforesaid judgment and order dated 25.8.2004 passed by a Co-ordinate Division Bench of this Court was assailed before the Apex Court in Civil Appeal No. 1312 of 2005: Ashok Pal Singh and others v. Uttar Pradesh Judicial Services Association and others. The Apex Court, vide judgment and order dated 13.9.2010: (reported in Ashok Pal Singh and Others Vs. U.P. Judicial Services Association and Others, , allowed these appeals with the following directions:

(i) Direction Nos. (1) and (2) in para 55 of the impugned order dated 25.8.2004 are set aside;

(ii) Direction No. (3) in para 55 of the impugned order dated 25.8.2004 is restricted to reiteration of direction No. 3 issued in Sri Kant Tripathi and Others Vs. State of U.P. and Others, ; and

(iii) Direction Nos. (4), (5) and (6) in the impugned order dated 25.8.2004 are upheld.

(iv) The consequential exercise directed by the High Court should be restricted to the directions which have been upheld.

(v) None of the appointments already made to the Higher Judicial Service, whether by direct recruitment or by promotion, shall be annulled, but shall be continued, even if the appointment is found to be in excess of the quota, subject to the condition that the seniority of such excess appointee will be reckoned from the date on which he becomes entitled to be adjusted at the subsequent recruitment/s. Any elevation to the High Court on the basis of seniority already given shall also not be affected.

We request the High Court to give a quietus to the long-drawn dispute, by giving effect to direction Nos. (4) to (6) of the impugned order and direction No. (3) in Srikant Tripathi, without any delay.

16. Pursuant to the above directions given by the Apex Court in Ashok Pal Singh (supra), the Administrative Committee, vide resolution dated 7.10.2010, constituted Three-Judge Committee for considering the matter relating to compliance of judgment of Apex Court in Ashok Pal Singh (supra). The Three Judges Committee had submitted a report dated 14.7.2011. In paragraph 325 of the report dated 14.7.2011, it was made clear that 20 direct recruits were appointed on substantive basis on 13.4.2005. In paragraph 326, it was also observed that 14 more direct recruits were selected but they could not be appointed on account of the judgment rendered by this Court in Writ Petition No. 316 (S/B) of 2004 : U.P. Judicial Services Association v. State of U.P. and others, wherein this Court was of the view that till fresh determination of the vacancies is made, only 20 appointments may be made as there was no dispute regarding existence of said 20 vacancies. Appointments of direct recruits against rest of the vacancies were deferred till re-determination. Accordingly, after the judgment, the Committee, after re-determination of vacancies, had recommended appointments of 14 persons on substantive basis in U.P. Higher Judicial Services with effect from the date on which other direct recruits of the same selection were appointed.

17. In para 327 of the said report dated 14.7.2011, the Committee observed as under:

Since we have found vacancies available for these 14 persons, we recommend appointments of these 14 persons on substantive basis in UPHJS with effect from date on which other DRs of the same selection were appointed. These 20 officers were appointed on various dates varying from 08.06.2005 to 04.01.2007. The last appointment of a person, higher in merit of these 14 officers, was made on 04.01.2007. Though inter se seniority of DRs shall be governed according to their merit position in the selection, but considering the fact that one person higher in merit to these 14 persons was appointed as late as on 04.01.2007, these 14 officers are recommended for substantive appointment with effect from 04.01.2007 and shall count their seniority from 04.01.2007 but shall go below DRs, higher on merit; Except arrears of salary, for all purposes this period shall count namely pay fixation, retiral benefits etc. Accordingly these 14 persons shall be assigned seniority at the vacant blocks at Sl. Nos. 772 to 785.

18. The said report dated 14.7.2011 was approved by the Full Court vide resolution dated 30.7.2011. Thereafter, Hon"ble Selection and Appointment Committee held a meeting on 16.8.2011 and while dealing with Agenda Item No. 3 has resolved as follows:

Agenda Item No. 3:

The Committee has perused the note submitted by Selection and Appointment Cell dated 12.8.2011.

The Committee in its resolution dated 11.1.2011 has already resolved that the matter be again placed before the Committee after the report is received from the Committee constituted in pursuance of direction of the Apex Court dated 13.9.2010. The report of the Three-Judge Committee which was appointed for determination of the vacancies and seniority has already submitted its report which has been approved by the Full Court vide its resolution dated 30.7.2011. Three-Judge Committee has already held that 14 vacancies of direct recruits of the U.P. H.J.S. 2000 has been kept reserved. In the note submitted by the Selection Appointment Cell out of the select list of 2000 recruitment which was approved by the Full Court has proposed 6 candidates from the General Category and 4 from Other Backward Class. No candidate belonging to the Scheduled Castes is available in the select list to be given appointment. Out of 19 vacancies of General Category, 13 General Category candidates having already been appointed, 6 vacancies are left for General Category candidates. Out of total 10 vacancies earmarked for the Other Backward Class category, 6 having already been appointed 4 vacancies are there for Other Backward Class category. From the select list of 2000, the following candidates belonging to General Category be appointed:

1. Sri Umesh Kumar Sharma (Roll No. 2278)
2. Sri Shashi Kant Shukla (Roll No. 430)
3. Sri Atul Kumar Gupta (Roll No. 268)
4. Sri Kautilya Gaur (Roll No. 2441) 5. Sri Kuldeep Kumar (Roll No. 402)
6. Sri Dinesh Kumar Sharma (Roll No. 2735)

From the select list of 2000, the following candidates belonging to Other Backward Class be appointed:

1. Sri Promod Kumar (Roll No. 3156)
2. Sri Viqar Ahmad (Roll No. 170)
3. Sri Hasnain Qureshi (Roll No. 619)
4. Sri Subhash Chand (Roll No. 2140)

Let appropriate recommendations be sent to the State Government as per the

resolution of the Full Court dated 30.7.2011 approving the Three-judge Committee report, wherein recommendations have been made as noted above. Registry to take immediate steps so that State Government may take immediate steps for appointment as the same has already been delayed for years.

19. During the course of arguments, it has been brought to the notice of the Court by Sri Manish Kumar, learned Counsel for the High Court that Hon''ble Selection and Appointment Committee held a meeting on 9.1.2012 and submitted its report, which has been annexed as Annexure No. SCA-2 to the supplementary counter-affidavit and the said report dated 9.1.2012 has been approved by the Full Court in its meeting on 11.2.2012, which has been annexed as Annexure No. SCA-2 to the supplementary counter-affidavit.

20. On perusal of the records, it reflects that the complete report dated 9.1.2012 (Annexure No. SCA-2) was not annexed along with the supplementary counter-affidavit. However, during the course of arguments, Sri Manish Kumar, learned Counsel for the High Court has furnished the complete report dated 9.1.2012 for perusal of the Court.

21. On perusal of the said report dated 9.1.2012, it reflects that the Hon''ble Appointment and Selection Committee after its meeting dated 9.1.2012 prepared a report. The relevant portion of the said report dated 9.1.2012 is reproduced as under:

The Committee while discussing the other part of the agenda item No. 3 has considered Rule 8(2) and the judgment of Ashok Pal Singh's case and had already resolved that unfilled vacancies of direct recruitment quota, which could not be filled up due to non-availability of the sufficient number of suitable candidates should be filled up by giving promotion to the officers of Nyayik Sewa. No vacancy should be carried forwarded. The Apex Court in Ashok Pal Singh's case also held that concept of carrying forward of the vacancies is applied only to the limited extent that the number of vacancies filled in as aforesaid be taken into consideration while fixing the number of vacancies to be allotted to Direct recruit in the next recruitment. The vacancies in the cadre of Higher Judicial Service which could not be filled up due to non-availability of the suitable candidates of the direct recruitment, have to be filled up in the same year so that courts may not remain vacant and the judicial work in the judgeship may not suffer. Thus, the vacancies which could not be filled up by direct recruitment due to non-availability of suitable candidates of direct recruits has to be filled up by promotion.

Committee is also of the view that vacancies of direct recruitment which are unfilled whether belonging to General or Reserved category, have to be filled up by giving promotion to the officers of Nyayik Sewa. There is no occasion to carry forward those vacancies in the next recruitment. Consequence would be that vacancies which was earmarked for reserved category, cannot be carried forward or kept vacant for being clubbed in the next recruitment for the same category.

However, the percentage of reservation as provided in 1994 have to be applied in the next recruitment keeping in view that reservation shall not exceed the ceiling limit of 50% in each recruitment.

22. The Committee in its report dated 9.1.2012 has also made following recommendations, which are as under:

(1) The vacancies earmarked for direct recruitment, belonging to any category, if remain unfilled in a recruitment year, the same shall not be carried forward and be filled up by giving promotion to the officers of Nyayik Sewa as per rule 8(2).

(2) The vacancies meant for direct recruitment which could not be filled up due to non-availability of suitable candidates and have been filled up by promotion of officers of Nyayik Sewa, shall be correspondingly added in the quota for direct recruits in the next recruitment irrespective of the categories subject to ceiling of 25% of the cadre strength. Ceiling of 50% for reserved category candidates shall be maintained in every recruitment irrespective of number of vacancies which have been added of the earlier recruitment which could not be filled due to non-availability of suitable direct recruits.

(3) The candidates belonging to reserved category i.e. Scheduled Caste, Scheduled Tribes and Other Backward Classes category in case takes advantage of the reservation and applies in the respective reserved categories for being considered for recruitment, they will be considered in the same category and their category shall not be liable to be changed on the basis of final result in the examination. The candidates once opted to apply in a particular reserved category, shall not be allowed to change his category.

23. The said report dated 9.1.2012 was placed before the Full Court held on 11.2.2012 and the Full Court, vide its resolution dated 11.2.2012 resolved as under:

Resolved that the report dated 09.01.2012 of the Hon"ble Selection and Appointment Committee comprising Hon"ble Mr. Justice Ashok Bhushan, Hon"ble Mr. Justice Imtiyaz Murtaza and Hon"ble Mr. Justice Prakash Krishna be accepted except recommendation No. (3) made on Agenda item Nos. 2 & 3 which is remitted back to the Hon"ble Committee for reconsideration of the same.

24. The above reports of the Selection and Appointment Committee as well as above Full Court's resolution clearly reveal that out of 19 vacancies of General Category, 13 General Category candidates have already been appointed and only six vacancies were left for General Category Candidates, whereas out of 10 vacancies earmarked for Other Backward Class Category, 6 candidates have already been appointed and as such, only four vacancies were there for Other Backward Class Category. Since no candidate belonging to Schedule Castes was available in the select list to be given appointment, as such, four vacancies as determined by the Three-Judge Committee were treated to be unfilled as in pursuance of Rule 8(2) and its proviso of U.P.H.J.S. Rules and in view of the

judgment of Apex Court in Ashok Pal Singh and Others Vs. U.P. Judicial Services Association and Others, , the same cannot be given to the petitioners.

25. It is also relevant to add that in the H.J.S. Recruitment, the High Court has to adopt the percentage of reservation as provided in Uttar Pradesh Public Services (Reservation for Scheduled Caste, Scheduled Tribes and Other Backward Classes) Act, 1994 i.e. 21% for Scheduled Castes, 2% for Scheduled Tribes and 27% for Other Backward Category candidates.

26. Much emphasis has been placed by the learned Counsel for the petitioners that it is not open for the Hon'ble Appointment and Selection Committee to resolve contrary to the view expressed by the report of the Three-Judge Committee in its report dated 14.7.2011. It may be added that the said Committee was constituted by the Administrative Committee vide resolution dated 7.10.2010 in compliance of the judgment of the Apex Court in Ashok Pal Singh (supra), which was subsequently approved by the Full Court vide resolution dated 30.7.2011. It would be relevant to point out that Three-Judge Committee have provided for appointment of 14 persons after re-determining the vacancies in accordance with merit To substantiate his assertions, reliance has been placed upon paras 325, 326 and 327 of the report dated 14.7.2011.

27. On perusal of the aforesaid paragraphs of the said report dated 14.7.2011, as reproduced hereinabove, it would be imminently clear that Three-Judge Committee was entrusted for re-determining the vacancies of Direct Recruits only. In compliance thereof, on re-determining the vacancy, the Committee has recommended for appointment of 14 persons on substantive basis in UPHJS with effect from date on which other Direct Recruits of the same selection were appointed. But nowhere it has been recommended by the Three-Judge Committee that irrespective of the reservation as provided in Uttar Pradesh Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994, which has been adopted by the High Court in recruitment of candidates for U.P.H.J.S., 14 vacancies as determined afresh by the Committee be filled. Thus, the Committee has only re-determined the vacancy and recommended 14 persons to be appointed in accordance with merit. As stated hereinabove, there was no post available in General category, to which the petitioner No. 1 belong and also no post was available in Other Backward Class, to which petitioner No. 2 belong and further no candidate was available for appointment in S.C/S.T. category and as such, we find no defect in report dated 9.1.2012 of the Selection and Appointment Committee, which was subsequently approved by the Full Court in its meeting dated 11.2.2012. Thus, it cannot be said that report dated 9.1.2012 runs contrary to the report dated 14.7.2011 submitted by the Three-Judge Committee, which was subsequently approved by the Full Court in its meeting dated 30.7.2011.

28. Admittedly, in the instant case, the petitioner No. 1 was placed at serial No. 21 in the select list of General Candidate, whereas petitioner No. 2 was at serial No. 11 in the select list of Other Backward Class Candidates. Since the vacancies

earmarked for General Candidates and Other Backward Class Candidates have been filled up, as such, there was no occasion to offer appointment to the petitioners, who, admittedly, were below in rank of the selected candidates. Thus, the High Court has rightly rejected the petitioners' representation.

29. Even otherwise, as referred to above, petitioners have claimed that their candidature for appointment on the post of Higher Judicial Services may be directed to be considered. From the above discussions of the matter, we are of the considered opinion that petitioners' candidature for appointment on the post of Higher Judicial Services have already been considered and as such, their prayer is misconceived.

30. In these circumstances, there is no occasion to direct the High Court to re-consider the matter afresh, particularly, when there was no post in the category to which petitioners belong. It is pertinent to add that petitioners have neither challenged the advertisement nor calculation of vacancies, therefore, we are not entering into this aspect of the matter.

31. For the reasons aforesaid, we are of the considered view that no good ground is made out for interference under Article 226 of the Constitution of India. The writ petition being devoid of merits, is hereby dismissed.