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**(2002) 04 AHC CK 0194**

**In the Allahabad High Court**

**Case No : Civil Miscellaneous Writ Petition No. 5905 of 1998**

Rannoo Yadav

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

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**Date of Decision : 29-04-2002**

**Acts Referred:**

**Citation : (2002) 3 UPLBEC 2407**

**Hon'ble Judges : Sunil Ambwani, J**

**Bench : Single Bench**

**Final Decision : Allowed**

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## **Judgement**

Sunil Ambwani, J.—Heard Counsel for petition and learned Standing Counsel. An advertisement was made for selection of the posts of Class-IV employees in the office of Commissioner, Azamgarh Division, Azamgarh. These posts included orderly 1; Peon 3; Messenger 1; Waterman 1; Chowkidar 1 and Mali 1.

2. Names of candidates were called from Employment Exchange which forwarded a list of candidates to the office of the Commissioner, Azamgarh Division. The Selection Committee in its meeting dated 22nd July, 1997, selected by interviews and prepared separate merit lists of candidates of general category, backward class and scheduled caste on the basis of marks secured by candidates.

3. Petitioner Rannoo Yadav and Respondent No. 3, Barkhoo Ram, both belonging to backward class, were awarded 28.4 marks each and that the name of petitioner Rannoo Yadav was placed at serial No. 2 on account of age whereas Barkhoo Ram was placed at serial No. 3, in the category of backward class candidates. Ignoring petitioner's claim, Barkhoo Ram was appointed as Mali on the ground that he is Mali by caste and has experience of gardening and planting trees. The petitioner was kept in waiting list.

4. By means of this writ petition, petitioner Rannoo Yadav has challenged appointment of respondent No. 3 Barkhoo Ram over reaching his placement in

select list. Notices were issued on 1st November, 1999, in response to which counter-affidavit of Sri Anil Kumar Misra, Tahsildar Sadar, Azamgarh has been filed on behalf of respondent No. 1 in which it has been Stated in para 5 that in February, 1997, petitioner's name was forwarded by Employment Exchange for consideration of his selection by the Selection Committee. Both petitioner and Barkhoo Ram, respondent No. 3, secured equal marks of 28.4 each. Since respondent No. 3 Barkhoo Ram is Mali by caste and he had experience of gardening work, including plantation, he was given preferene in appointment.

5. There is nothing on record to show that each category of post was to be considered separately for selection and that for the post of Mali, some experience in gardening and plantation was required. Names of petitioner Rannoo Yadav and respondent Barkhoo Ram were forwarded by Employment Exchange for appointment as Peon, Orderly and messenger and both of them fell in category of other backward class. After having made selection and prepared select list in accordance with their case, it was not open to the respondents to have further subdivided the appointees into different categories and superseded petitioner Rannoo Yadav in order to appoint respondent No. 3 Bakhoo Ram on the ground of experience in gardening and plantation. This sub-division amounts to creating class within a class. The respondents cannot be permitted to sub-divide other backward class on the ground of caste for appointment on the post of Mali, or any other category unless statutory rules permit such categorisation. Petitioner was thus arbitrarily discriminated by superseding him by a junior in the select list.

6. The writ petition is consequently allowed. The appointment order of respondent No. 3 Barkhoo Ram on the post of Mali by the impugned order dated 22nd December, 1997 is quashed. Petitioner, being placed higher in the merit list, is directed to be appointed as Mali in the office of the Commissioner, Azamgah Division, Azamgarh. In case, in the meantime, any other post has fallen vacant during the validity of select list, respondent No. 3 Barkhoo Ram shall be considered for appointment. His fresh appointment, however, shall not give him benefit of seniority over and above petitioner.

7. There shall be no order as to costs.