

(2005) 01 SC CK 0001

In the Supreme Court Of India

Case No : Civil Appeal No. 4079 of 2004

State of U.P. and Another

APPELLANT

Vs

Pawan Kumar Tiwari and Others

RESPONDENT

Date of Decision : 04-01-2005

Acts Referred:

Citation : AIR 2005 SC 658 : (2005) AIRSCW 211 : (2005) 1 AWC 363 Supp : (2005) 1 ESC 96 : (2005) 104 FLR 582 : (2005) 1 JCR 147 : (2005) 1 JKJ 22 : (2005) 1 JT 150 : (2005) SCC(L&S) 193 : (2005) 2 SCR 21 : (2005) 2 SLJ 386 : (2005) 1 Supreme 3 : (2005) 2 UPLBEC 128

Hon'ble Judges : R. C. Lahoti, C.J.;G. P. Mathur, J;A. K. Mathur, J

Bench : Full Bench

Advocate : Ravi Prakash Mehrotra, Garvesh Kabra and Deepti Mehrotra, for the Appellant; Lakshmi Raman Singh and Shail Kr. Dwivedi, (NP) for Respondent No. 1; Shobha Dikshit Sr. Advocate, Rajeev Kr. Dubey and Kamendra Mishra, for the Respondent

Final Decision : Allowed

Judgement

R.C. Lahoti, C.J.—In the year 1997 the State Public Service Commission, pursuant to the requisition made by the State Government on the advice of the High Court of Uttar Pradesh, advertised 93 posts of Civil Judge (Junior Division) in the Uttar Pradesh Judicial Service. Keeping in view the provision for reservation mandated by the U.P. Public Service (Reservation for Physically Handicapped, Dependents of Freedom Fighters and Ex-Servicemen) Act 1993 and U.P. Public Service (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act 1994, certain posts were reserved. To the extent of the percentage of reservation, as contemplated by the two Acts, mentioned above, there is no controversy. The controversy centers around the application of percentage as against the total number of posts.

2. The percentages of reservation, as applicable and as was actually applied, are set out in the following table:

3. The respondent belongs to general category. 46 selected candidates in general category were appointed. There were 3 candidates in the waiting list. The respondent was at the top of the waiting list. He was denied appointment.

4. Feeling aggrieved the respondent filed a writ petition in the High Court which has been allowed. A writ of mandamus has been issued by the High Court directing the appellants herein to issue a letter of appointment to the respondent. The State has filed this appeal by special leave.

5. Having heard the learned counsel for the parties we are satisfied that the appeal is devoid of any merit.

6. The High Court has found mainly two faults with the process adopted by the State Government. First, the figure of 46.50 should have been rounded off to 47 and not to 46; and secondly, in the category of freedom fighters and ex-servicemen, total 3 posts have been earmarked as horizontally reserved by inserting such reservation into general quota of 46 posts which had the effect of pushing out of selection zone three candidates from merit list of general category.

7. We do not find fault with any of the two reasonings adopted by the High Court. The rule of rounding off based on logic and common sense is: if part is one-half or more, its value shall be increased to one and if part is less than half then its value shall be ignored. 46.50 should have been rounded off to 47 and not to 46 as has been done. If 47 candidates would have been considered for selection in general category, the respondent was sure to find a place in the list of selected meritorious candidates and hence entitled to appointment.

8. It was submitted by the learned counsel for the appellants that if this principle of rounding off is to be applied then the percentage of reservation in scheduled tribe category would come to 2 by rounding off 1.86, to the nearest higher value, and in that case a candidate from scheduled tribe category and not the respondent would be entitled to appointment. We cannot agree. No candidate in scheduled tribe category has chosen to lay challenge to the selection. We are also not aware if there is any scheduled tribe category candidate available and qualified for appointment consequent upon his having participated in the process of selection. This plea of the appellants is without any foundation and hence does not deserve to be taken note of.

9. There is yet another reason why the judgment of the High Court has to be maintained. The total number of vacancies was 93. Consequent upon the allocation of reservation and calculation done by the appellants, the number of reserved seats would be 47, leaving only 46 available for general category candidates. Meaning thereby, the reservation would exceed 50% which would be unconstitutional. The total number of reserved seats could not have been more than 46 out of 93.

10. The appeal is devoid of any merit and is dismissed.