

(2001) 09 SC CK 0097

In the Supreme Court Of India

Case No : Civil Appeal No: 7248 of 2001

State of Uttar Pradesh

APPELLANT

Vs

Vijay Kumar Misra

RESPONDENT

Date of Decision : 21-09-2001

Acts Referred:

Citation : AIR 2003 SC 4411 : (2002) AIRSCW 2608 : (2002) 92 FLR 772 : (2001) 10 JT 520 : (2002) 1 UPLBEC 922 : (2002) 1 UPLBEC 507

Hon'ble Judges : Shivaraj V. Patil, J;D. P. Mohapatra, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Leave is granted.

2. In this appeal filed by the State of Uttar Pradesh, the judgment rendered by a Division Bench of the Allahabad High Court (Lucknow Bench) in Special Appeal No. 381(S) B of 1999 confirming the judgment of the learned single Judge is under challenge.

3. The learned single Judge in the Judgment passed in Writ Petition No. 4756(S) of 1997 had directed the State Government and the U.P. Subordinate Services Selection Commission to appoint the petitioner, who is respondent herein, in the vacant post of Sub-Deputy Inspector (Basic) (for short "SDI (Basic)") relying on the statement made by Shri J.K. Dwivedi, Under Secretary (Karmic). who was present in the Court. On perusal of the judgment it appears that the Under Secretary had stated before the Court that persons having lower merit than the writ petitioner have been appointed in the post of SDI (Basic) and that the writ petitioner can be considered for the said post since he has in the meantime got L.T. certificate. As noted earlier, the learned single Judge issued the direction for appointment of the writ petitioner relying on the statement of the officer.

4. The Division Bench declined to interfere with the judgment of the learned single Judge for the reason that the judgment was based on confession made on

behalf of the respondent.

5. The relevant facts over which there is no dispute may be stated thus.

6. The respondent herein did not have the educational qualification prescribed under the rules for the post of SDI (Basic) as he had no degree of bachelor in education and did not have the L.T. Certificate at the time of submission of the application and also at the time of selection. Subsequent thereto he got the L.T. Certificate. As expected the Service Commission had not considered him for the post of SDI (Basic) for want of prescribed qualification.

7. The question for consideration is whether the High Court, in the facts and circumstances of the case, could issue a direction for appointment of the respondent as SDI (Basic) in a vacant post.

8. The position is fairly well settled that when a set of eligibility qualifications are prescribed under the rules and an applicant who does not possess the prescribed qualification for the post at the time of submission of application or by the cut off date, if any, described under the rules or stated in the advertisement, is not eligible to be considered for such post. It is relevant to note here that in the rules or in the advertisement no power was vested in any authority to make any relaxation relating to the prescribed qualifications for the post. Therefore, the case of a candidate who did not come within the zone of consideration for the post could not be compared with a candidate who possess the prescribed qualifications and was considered and appointed to the post. Therefore, the so-called confession made by the officer in the Court that persons having lower merit than the respondent have been appointed as SDI (Basic), having been based on misconception is wholly irrelevant. The learned single Judge clearly erred in relying on such a statement for issuing the direction for appointment of the respondent. The Division Bench was equally in error in confirming the judgment of the learned single Judge. Thus the judgment of the learned single Judge as confirmed by the Division Bench is unsustainable and has to be set aside.

9. The appeal is allowed. The judgment of the learned single Judge in Writ Petition No. 4756(SS) of 1997 as confirmed by the Division Bench in Special Appeal No. 381 (S) B of 1999 is set aside. There will be no order as to costs.