

STATE OF U.P.

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v.

CHUNNI LAL & ORS.

(Civil Appeal No. 6945 of 2021)

NOVEMBER 23, 2021

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[M. R. SHAH AND B. V. NAGARATHNA, JJ.]

Service Law – Appointment – A Combined State Service Examination was held in the year 1985 – In the year 1987, the Public Service Commission sent the requisition for appointment of selected candidates on the post of Deputy Collector – Two candidates did not join – So, the Commission sent the names of two other candidates including the original writ petitioner for the appointment on the post of Deputy Collector – Meanwhile, private respondent filed writ petition in the High Court, which was allowed and the commission was directed to recommend the private respondent – In compliance, the commission withdrew the recommendation of the original writ petitioner – Thereafter, the original writ petitioner filed the writ petition – The High Court directed the State to re-consider the matter of the original writ petitioner for appointment to the post of Deputy Collector considering the subsequent recommendation made by the Public Service Commission in favour of the original writ petitioner – However, the High Court clarified that the appointment of the private respondent No.2 was not be disturbed in any manner – On appeal, held: The original writ petitioner cannot be appointed as on the post of Deputy Collector on which he is claiming the appointment as private respondent was already appointed pursuant to the order passed by the High Court and that there was no vacant post and even no supernumerary post can be created – Despite that, the High Court directed the State to appoint the original writ petitioner solely on the basis of some subsequent recommendation by the Public Service Commission – Even the observation made by the High Court that the original writ petitioner be appointed without disturbing the appointment of the private respondent cannot be sustained – This is because two persons cannot be directed to be appointed to a single post – Therefore, the impugned judgment and order passed by the High Court is quashed and set aside – Further, the State and the private respondent have brought to notice that

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- A *during the pendency of the present proceedings, original writ petitioner has retired in the post of Deputy Transport Commissioner on 31.08.2019 on attaining the age of superannuation and therefore also the impugned judgment and order passed by the High Court is not capable of being implemented.*
- B CIVIL APPELLATE JURISDICTION: Civil Appeal No.6945 of 2021.
From the Judgment and Order dated 16.07.2014 of the High Court of Judicature at Allahabad, Lucknow Bench at Lucknow in Writ Petition No.1181 (S/B) of 1996.
- C V. K. Shukla, Sr. Adv., Adarsh Upadhyay, Amol Chitravanshi, Advs. for the Appellant.
Rana Mukherjee, Sr. Adv., Ms. Dipika Misra, Ankit Yadav, Ms. Purnima Jain, Shrish Kumar Misra, Sandeep Kumar Jha, Rajeev Kumar Dubey, Ms. Saroj Tripathi, Advs. for the Respondents.
- D The Judgment of the Court was delivered by
M. R. SHAH, J.
1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 16.07.2014 passed by the High Court of Judicature at E Allahabad (Lucknow Bench) in Writ Petition No.1181(S/B) of 1996, the State of U.P. has preferred the present appeal.
2. The selection process for 35 posts of Deputy Collector was initiated by the U.P. Public Service Commission. A Combined State Service Examination was held in the year 1985. In the year 1987, the F Public Service Commission sent the requisition for appointment of selected candidates on the post of Deputy Collector. Two candidates namely, Shri Ram Subhag Singh (General Category candidate) and Shri Ramesh Kumar Yadav (OBC category candidate) did not join their post. Therefore, two posts of Deputy Collectors remained vacant. The Public G Service Commission sent the names of two other candidates namely Shri Digvijay Singh and Chunni Lal (original writ petitioners) for the appointment on the post of Deputy Collector. On the basis of the aforesaid recommendation by the Commission, the State Government issued letter on 24.04.1989 to the Director General, Medical and Health Services, Lucknow for medical examination of the aforesaid two persons. In the H meanwhile, private respondent herein Ajay Shankar Pandey approached

the High Court by filing Writ Petition No.22966 of 1988. The Division Bench of the High Court vide judgment and order dated 09.05.1989 allowed the said writ petition and directed the Public Service Commission to recommend the name of the private respondent herein - Ajay Shankar Pandey.

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2.1 In compliance of the judgment and order dated 09.05.1989, the Commission vide letter dated 24.06.1989 withdrew the recommendation made in favour of the original writ petitioner – Chunni Lal. That against the judgment and order dated 09.05.1989, the State approached this Court by filing special leave to appeal, which came to be disposed of by this Court.

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2.2 Thereafter the respondent No.1 herein – Chunni Lal filed a writ petition before the High Court against continuance of Ajay Shankar Pandey. He also preferred a representation. The Division Bench of the High Court vide order dated 08.11.1996 directed the State/Public Service Commission to dispose of the representation. The said representation was considered by the State and the State rejected the same vide order dated 13.12.1996. The original writ petitioner – Chunni Lal amended the writ petition and challenged the order dated 13.12.1996 rejecting his representation. By the impugned judgment and order, the High Court has quashed and set aside the order dated 13.12.1996 rejecting the representation of the respondent No.1 herein and has directed the State to re-consider the matter of the respondent No.1 herein – original writ petitioner for appointment to the post of Deputy Collector considering the subsequent recommendation made by the Public Service Commission in favour of the original writ petitioner. However, the High Court clarified that the appointment of the respondent No.2 herein – Ajay Shankar Pandey shall not be disturbed in any manner.

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2.3 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court, the State has preferred the present appeal.

3. That by order dated 30.10.2014, the impugned judgment and order passed by the High Court has been stayed, which has been continued till date. Meaning thereby, the respondent No.1 herein – original writ petitioner is not appointed to the post of Deputy Collector pursuant to the impugned judgment and order passed by the High Court.

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- A 4. Though served nobody has appeared on behalf of respondent No.1 – original writ petitioner.
5. Today when the present appeal is taken up for further hearing, learned counsel appearing on behalf of the State as well as learned counsel appearing on behalf of respondent No.2 – Ajay Shankar Pandey
- B have stated at the Bar that during the pendency of the present proceedings, respondent No.1 herein – original writ petitioner has retired in the post of Deputy Transport Commissioner on 31.08.2019 on attaining the age of superannuation. It is therefore submitted that now the impugned judgment and order passed by the High Court is not capable of being
- C implemented as there is no purpose of now appointing respondent No.1 to the post of Deputy Collector. Even otherwise on merits also, we are of the opinion that the impugned judgment and order passed by the High Court is unsustainable. The High Court ought not to have or could not have passed an order directing the State to appoint two persons to the single post of Deputy Collector, more particularly, when on the post of
- D Deputy Collector, respondent No.2 – Ajay Shankar Pandey was appointed / or was required to be appointed pursuant to the order passed by the High court in Writ Petition No. 22966 of 1988 dated 09.05.1989.
6. At this stage, it is required to be noted that while rejecting the representation, it was specifically observed that the original writ petitioner
- E cannot be appointed as on the post of Deputy Collector on which he is claiming the appointment as Ajay Shankar Pandey has been appointed pursuant to the order passed by the High Court and that there is no vacant post and even no supernumerary post can be created. Despite the above, the High Court has directed the State to appoint the respondent No.1 – original writ petitioner solely on the basis of some subsequent
- F recommendation by the Public Service Commission. Even the observation made by the High Court that the original writ petitioner be appointed without disturbing the appointment of Ajay Shankar Pandey cannot be sustained. This is because two persons cannot be directed to be appointed to a single post. Therefore, the impugned judgment and order passed by
- G the High Court deserves to be quashed and set aside.
7. We have noted the submission on behalf of State and the respondent No.2 – Ajay Shankar Pandey that during the pendency of the present proceedings, respondent No.1 has retired in the post of Deputy Transport Commissioner on 31.08.2019 on attaining the age of
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superannuation and therefore also the impugned judgment and order A
passed by the High Court is not capable of being implemented.

8. In view of the above and for the reasons stated above, the present appeal succeeds. The impugned judgment and order passed by the High Court dated 16.07.2014 passed in Writ Petition No.1181 (S/B) of 1996 is hereby quashed and set aside. However, there shall be no B order as to costs.

Ankit Gyan

Appeal allowed.