

## **State Of U.P. & Anr vs Pawan Kumar Tiwari & Ors on 4 January, 2005**

**Equivalent citations: AIR 2005 SUPREME COURT 658, 2005 (2) SCC 10, 2005 AIR SCW 211, 2005 LAB. I. C. 572, 2005 ALL. L. J. 291, (2005) 1 JCR 147 (SC), (2005) 1 SCALE 17, (2005) 1 JT 150 (SC), 2005 (1) SLT 309, 2005 (2) ALL CJ 882, 2005 (2) SRJ 77, (2005) 28 ALLINDCAS 774 (SC), 2005 (1) JKJ 22, 2005 (2) SERVLJ 386 SC, 2005 SCC (L&S) 193, (2005) 104 FACLR 582, (2005) 1 SCT 524, (2005) 1 SERVLR 637, (2005) 1 SUPREME 3, (2005) 2 SCJ 464, (2005) 1 ESC 86, (2005) 1 ALL WC 363**

**Author: R.C. Lahoti**

**Bench: R.C. Lahoti, G.P. Mathur, A.K. Mathur**

CASE NO.:

Appeal (civil) 4079 of 2004

PETITIONER:

State of U.P. & Anr.

RESPONDENT:

Pawan Kumar Tiwari & Ors.

DATE OF JUDGMENT: 04/01/2005

BENCH:

CJI R.C. Lahoti, G.P. Mathur & A.K. Mathur

JUDGMENT:

**J U D G M E N T** R.C. LAHOTI, CJI 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 centres around the application of percentage as against the total number of posts.

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

Category Percentage (prescribed) Percentage worked out to Number of Posts reserved General 50% 46.50 Scheduled Castes 21% 19.53 Other Backward Classes 27% 25.11 Scheduled Tribes 2% 1.86 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.

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.

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

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.

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.

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.

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.

The appeal is devoid of any merit and is dismissed.