

Supreme Court of India

Harish Chandra Ram vs Mukh Ram Dubey on 18 February, 1994

Equivalent citations: 1994 SCC, Supl. (2) 490

Author: K Ramaswamy

Bench: Ramaswamy, K.

PETITIONER:

HARISH CHANDRA RAM

Vs.

RESPONDENT:

MUKH RAM DUBEY

DATE OF JUDGMENT 18/02/1994

BENCH:

RAMASWAMY, K.

BENCH:

RAMASWAMY, K.

HANSARIA B.L. (J)

CITATION:

1994 SCC Supl. (2) 490

ACT:

HEADNOTE:

JUDGMENT:

ORDER

1. Delay condoned.

2. Leave granted.

3. Heard counsel for the parties. The appellant was initially appointed as a Typist on 7-11-1974, and was regularised on 13-12-1976; and having become eligible for promotion as a Junior Section Grade Head Typist, he was promoted with effect from 7-11-1981. For promotion as a Senior Selection Grade Head Typist, rules require him to put in 5 years of service to become eligible for promotion. When his turn came as a reserved candidate (Scheduled Caste), he was considered by the Promotion Committee and was promoted on 13-1-1987. The respondent, a general candidate, though initially appointed as a Typist on 19-11-1960 and regularised on 12-2-1968 and was confirmed on 1-1-1969, claimed promotion in his own right as a general candidate. When he approached the Tribunal on the

first instance, a statement appears to have been made on behalf of the State that his case will be considered according to rules. On that basis the Tribunal disposed of the case. Thereafter when the appellant was promoted without considering the case of the respondent, he filed CWJC No. 5756 of 1991 in the High Court of Patna and by judgment dated 13-11-1992 the Division Bench set aside the appointment of the appellant and directed to consider the case of Mukh Ram Dubey, contesting respondent, for appointment as Senior Selection Grade Head Typist with the following directions:

"Annexure 10 is hereby quashed with a further direction to the respondents to consider the case of eligible candidates for promotion to the post of Senior Selection Grade Head Typist within a period of four months from today."

Calling that direction in question this appeal by special leave has been filed,

4. The Government in the counter-affidavit in this Court in para 3 stated that the vacancy was reserved for Scheduled Castes. The appellant being a Scheduled Caste candidate, having fulfilled all the criteria for promotion, the Departmental Promotion Committee constituted in this behalf considered the case of the appellant and promoted him. Shri Pramod Swarup, learned counsel for Mr Dubey, has stated that in the roster the vacancy on No. 3 is for general candidate and No. 2 vacancy is reserved for the Scheduled Castes. Since it was not filled up for three successive years, it must be deemed that the vacancy has been deserved and thrown open to the respondent and other general candidates who alone should be considered for promotion. We find that there is no force in the contention. In the Government Resolution dated 30-6-1983 it was stated thus:

"Reservation is Government's policy and deservation is not included in it. Dereservation is an exception for which Chief Minister's approval through the Reservation Commissioner of the Cabinet Secretariat, is essential. In anticipation of the order of the Chief Minister the reserved post could not be dereserved."

In another resolution of Government of Bihar dated 21-11- 1990, it was stated that in sub-section 4(a) in the first instance the general category candidates will be given time- bound promotion on only these unreserved vacancies which are for the general category candidates according to the approved roster. In any event the general category candidates will not be promoted against a reserved vacancy, even if in the first instance a reserved category candidate is not available. In sub-section 4(b), in the second transaction for filling the reserved vacancy which could not have been filled in the first transaction, only reserved category candidates will be considered.

5. In view of the aforesaid resolutions, it is clear that the general candidates will not be considered for promotion to the post for SC, ST or BC reserved candidates. The reserved candidates even if they are not available, it is settled law that unless dereservation is done the vacancy will not be thrown open to the general category. It is not incumbent upon the Government as soon as the vacancy arises that it must be filled by recruiting the candidates either by direct recruitment or promotion from feeder cadre or by transfer. So, as and when recruitment takes place the cases of all the candidates including reserved candidates must be considered according to rules which would arise only when recruitment takes place. Take for instance an hypothetical case. A and B are eligible for

consideration and were considered in 1980 for two vacancies and B was found suitable and was appointed to one vacancy in 1982. One more vacancy arose in 1983. In the year 1983, A, C and D were considered. A and D were promoted in 1984. The recruitment years are 1982 and 1994, and not 1980 when one vacancy existed or 1983 when two vacancies existed. So each year is not the year of recruitment. As and when recruitment takes place in a particular year, it would be the year of recruitment.

6. Take another illustration. Suppose Public Service Commission advertises for direct recruitment in the year 1980, but actually selects the candidates in 1984. Whether 1980 would be the recruitment year? Answer would be no. Second advertisement was made in 1985 and recruitment was made in 1990. The second recruitment year is 1990 and not 1985. It is thus clear that the recruitment year is the year in which recruitment takes place, but not each three successive years in which the vacancy exists. The same yardstick would apply to fill in the reserved vacancy. Dereservation will be considered only at the end of third recruitment year provided reserved candidates are not available, or considered at the recruitment and found not fit for promotion or carried forward for three successive recruitment years. Then the matter should be placed before the competent authority for consideration for dereservation of the reserved posts and a resolution or order should be made dereserving the posts. Then those alone reserved posts or vacancies will be thrown open for recruitment by the general candidates.

7. In view of the above legal position, though the vacancy had occurred in the year 1980 but recruitment was made in the year 1987 by which time the appellant had already fulfilled the qualifications and had become eligible for consideration to Vacancy No. 2 in the roster which was admittedly reserved for SC candidate. The Promotion Committee was right in considering the case of the appellant for promotion as Senior Selection Grade Head Typist since that post was kept reserved for the Scheduled Caste candidate.

8. The stand of the High Court that the rule of carry forward was for three successive years and since no one belonging to SC candidates was promoted for three years the vacancy becomes available to general candidates is illegal. Accordingly the High Court has committed grievous error of law in quashing the appointment of the appellant under Annexure 10 placed before the High Court and it is restored.

9. The appeal is allowed. The order of the High Court is set aside. The writ petition stands dismissed, but without costs.

NASRU v. STATE OF UP.

The Judgment of the Court was delivered by K. JAYACHANDRA REDDY, J.- These two appeals arise out of the same judgment of the Allahabad High Court. Original accused 6, Nasru and Jaipal Singh, original accused 7 are the appellants respectively. They along with eight others were tried for offences punishable under Sections 399, 402, 147, 148 and 307/149 IPC on the allegation that they were found making preparations to commit dacoity and when the police party surrounded them, they attacked the members of the police party by firing shots at them. The trial court convicted

Nasru, A-6, Jaipal Singh, A-7 and six others under Sections 399, 402 and 307/149 IPC and sentenced each of them to undergo four years, three years and three years' RI respectively. Nasru, A-6 along with six others was also convicted under Section 148 IPC and Section 25(1)(a) of the Arms Act and each of them was sentenced to two years' and one year's RI respectively. Jaipal Singh, A-7 and two others were convicted under Section 147 IPC and sentenced to one year's RI. Only two of them are before us.

2. One of the accused Ablu Gujar is a resident of village Alipur in District Muzaffarnagar and the other accused belong to different places. On the intervening night of May 27 and 28, 1976 at about midnight, the police got information that these accused had assembled near a tube- well in village Hamzagarh for the purpose of committing dacoity at the house of one Chanda after having made the necessary preparations. The information was recorded and Ved Prakash Sharma, the Station Officer in charge of the police station requisitioned the police force from police station Nakur and at about 10.30 p.m. with sufficient force the raiding party got organised for apprehending the dacoits assembled near the tube-well and at about midnight, they reached the place. The party in three groups took positions and surrounded the miscreants and there was an exchange of fire and some of the miscreants escaped. In the encounter three dacoits were killed and some of them were arrested and they figured as accused.

3. The plea of the accused has been one of denial and they stated that they have been falsely implicated. Both the courts below relying on the evidence of the official witnesses convicted them.

4. Shri O.P. Rana, learned counsel appearing for Jaipal Singh, A-7 submitted that this accused belongs to the same place and it cannot be said that he was one of the dacoits and that at any rate, even according to the prosecution, he was only having a stick. So far Nasru, A-6 is concerned, the case of the prosecution is that he was in possession of an unlicensed firearm.

5. Having gone through the records, we do not find any material to show that whoever was found near the tube-well was there making preparations to commit dacoity. Both the appellants belong to the same village namely Hamzagarh. It is not the case of the prosecution that these two appellants tried to attack the police party. So far A-7 is concerned, even according to the prosecution, he was only having a stick which villagers generally carry and so far Nasru, A-6 is concerned what all the prosecution has established is that an unlicensed firearm was recovered from him. For all these reasons we acquit Jaipal Singh, A-7 of all the charges and set aside the convictions and sentences awarded against him. Accordingly Criminal Appeal No. 407 of 1982 filed by Jaipal Singh, A-7 is allowed.

6. So far A-6 is concerned, his conviction under Section 25(1)(a) is confirmed. The occurrence is said to have taken place in 1976 and A-6 is aged about 80 years. Therefore his sentence of one year's RI is reduced to the period already undergone. The rest of the convictions and sentences awarded against him are set aside. Accordingly Criminal Appeal No. 135 of 1984 filed by Nasru, A-6 is party allowed.