

**Jaswant Singh and Others Vs. State of U.P. and Others**

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**Court :** Allahabad

**Decided On :** Jan-11-2000

**Reported in :** 2000(2)AWC1084

**Judge :** M. Katju and; D.R. Chaudhary, JJ.

**Acts :** [Constitution of India](#) - Articles 14 and 16

**Appeal No. :** C.M.W.P. No. 17358 of 1999

**Appellant :** Jaswant Singh and Others

**Respondent :** State of U.P. and Others

**Advocate for Def. :** S.C.

**Advocate for Pet/Ap. :** L.P. Naithani, ;Amrendra Nath Singh, ;A.N. Tripathi, ;B.D. Mandhyan, ;Somesh Khare, ;P.K. Sinha and ;Ashok Bhushan, Advs.

**Judgement :**

**M. Katju and D.R. Chaudhary, JJ.**

1. Heard learned counsel for the petitioner and learned standing counsel.

2. In this writ petition as well as in connected Writ Petition No. 37304 of 1999, the petitioners have prayed for a writ of mandamus directing the respondents to issue appointment letters to the petitioners in pursuance of the result declared by the U.

P. Public Service Commission and the list submitted to the State Government on 15.5.1998. The petitioners appeared in Civil State Engineering Service Examination. 1996 which was held by the U. P. Public Service Commission (hereinafter referred to as Commission).

3. It appears that 505 vacancies were advertised but the Government decided to fill up only 322 vacancies.

4. In para 11 of the writ petition, it is stated that the Commission called the petitioners for written test in which they were declared successful and thereafter the Commission interviewed them as stated in para 13 of the writ petition. The Commission declared the result vide Annexure-6 to the writ petition. In para 17 of the writ petition, it is stated that the Commission prepared a combined list of successful candidates in order of merit and on the basis of preference given by the petitioners and others. In this list 524 candidates were recommended by the Commission for three departments. The petitioners underwent medical test and were declared successful.

5. In para 21 of the writ petition, it is stated that the State Government adopted a peculiar method in appointing Assistant Engineers in three departments in U. P. Instead of issuing appointment letters from the top of the merit list/select list prepared by the Commission, they picked up the candidates from the lowest of the list and first they tried to fill up the posts in Minor Irrigation Department. In paras 22 and 23 of the petition, it is alleged that the Government issued letters of appointment to certain candidates. In para 24 of the petition, it is alleged that the candidates who were issued letters of appointment in Minor Irrigation Department did not figure in the merit top select list recommended by the Commission. They were given appointments although they were either at the bottom in the list or opted for first preference. Similar list has been prepared for other departments,

6. A counter-affidavit has been filed in this case and thereafter an interim order dated 17.8.1999 was passed by this Court in which it was stated that since according to the counter-affidavit 322 posts of Assistant Engineer out of 505 were being released these 322 posts should be filled up. In pursuance of this interim order appointment orders were issued to 322 candidates.

7. Heard Sri L. P. Naithani, B. D. Mandhyan, P. K. Sinha, Somesh Khare and Ashok Bhushan learned counsel for the petitioners and learned standing counsel for respondents.

8. It has been submitted on behalf of the petitioners that the appointments made by the State Government were illegal. To give an example, Ajat Kurnar Verma who is petitioner No. 31 and Jal Prakash Yadav who is petitioner No. 42 are at serial Nos. 184 and 181 of the select list, petitioner No. 12 Ugra Sen is at serial No. 344 of the select list, Virendra Singh petitioner No. 28 is at serial No. 346 in the select list, Alok Pratap Singh petitioner No. 10 is at serial No. 345 in connected Writ Petition No. 37304 and petitioner No. 2 Rajiv is at serial No. 178 in the select list. All the abovementioned candidates belong to the backward class category, and their grievance is that while they have not been given appointment letters, persons from serial Nos. 361 to 362, 363, 365, 366, 368, 369, 370, 374, 375, 377 and 378 who also belong to the backward class category (whose names are given in the supplementary rejoinder-affidavit of Virendra Singh) have been appointed. Thus, it is strange that while persons belonging to backward class who are higher in the select list have not been given appointment while candidates belonging to the backward class who are lower in the select list have been appointed. Similarly, Surya Mani Singh petitioner No. 45 who is at serial No. 476 in the select list and belongs to scheduled caste has not been appointed while candidates who are at serial Nos. 500, 503 to 507 and who belong to scheduled caste have been appointed.

9. The same mistake has also been made in the general category. Petitioner Nos. 19 and 68 who are at serial Nos. 145 and 162 in the select list have not been given appointment, and petitioner Nos. 34 and 60 who are serial Nos. 133 and 155 respectively have not been appointed, whereas general category candidates who are at serial Nos. 187 and 207 and further below (as mentioned in the supplementary rejoinder-affidavit) have been given appointment. The petitioner No. 1 in Writ Petition No. 37307 of 1999 who is at serial No. 167 has not given appointment while candidates below him have been given appointment.

10. The above facts show that there has been total illegality and discrimination in Issuing the appointment letters issued by the State Government. No doubt It has been held in several decisions of the Supreme Court and of this Court that if a backward class or scheduled caste candidate is so superior in merit that even if he is treated as a general candidate, he deserves to be appointed then such backward class or scheduled caste candidate should be treated in the general category, and the reserved category quota will not thereby be reduced. These decisions, however, do not mean and they cannot be stretched, so far as to mean that if two candidates belong to the same reserved category, the more meritorious should be treated worse off than the less meritorious. It would be ridiculous to hold so and Article 14 of the Constitution would be violated. Hence it is obvious that the Government in issuing the appointment letters in question has committed illegality. We are of the opinion that the State Government should reconsider the matter again and Issue afresh appointment letters in accordance with merit of the candidates from their own category as recommended by the Commission. We make it clear that a candidate superior in merit to an other in the same category cannot be treated inferior vis-a-vis those of the same category who are lower in the select list. The State Government will now take a fresh decision and pass fresh orders of appointment in the light of the observations mentioned above. The vacancies must be filled up legally as mentioned above. The State Government shall do the same preferably within six weeks of production of certified copy of this order, but it must issue a show cause notice to any person who has been appointed before cancelling his appointment.

11. As regards the prayer that all the' advertised vacancies must be filled up, we do not agree with this submission. It is for the State Government to decide how many posts to fill up and the State Government can change its mind subsequently in this connection. As held by the Supreme Court, even a selected candidate has no absolute right to get appointment vide Dr. J. Shashidhara Prasad v. Governor of Karnataka and another, AIR 1999 SC 849.

12. The writ petition is allowed.