

Laxman Vs. State of Rajasthan and ors.

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Court : Rajasthan

Decided On : May-27-2003

Reported in : RLW2004(1)Raj649

Judge : Sunil Kumar Garg, J.

Acts : [Constitution of India](#) - Article 226

Appeal No. : S.B. Civil Writ Petition No. 1826 of 2002

Appellant : Laxman

Respondent : State of Rajasthan and ors.

Advocate for Def. : Kusum Rao, Adv. for Respondent Nos. 1 to 6 and; Gajendra Maheshwari, Adv. for;

Advocate for Pet/Ap. : Sangeet Lodha, Adv.

Judgement :

Sunil Kumar Garg, J.

1. This writ petition under Article 226 of the [Constitution of India](#) has been filed by the petitioner on 5.6.2002 against the respondents with the prayer that by an appropriate writ, order or direction,

(i) the merit list dated 24.5.2002 (Annex.9) prepared by the respondent No. 4 Additional Development Officer (Elementary Education), Panchayat Samiti, Ahore (Jalore) for appointment of Para Physical Teachers in Government Upper Primary School, Rundmal-ki-dhani, Gram Panchayat Valdara in which the name of the respondent No. 7 Dilip Singh was shown at Serial No. 1 while the name of the petitioner was shown at Serial No. 2, be quashed and set aside;

(ii) the impugned order dated 2.7.2002 (Annex.13A) passed by the respondent No. 5 District Collector, Jalore by which the revision of the petitioner was dismissed holding inter-alia that the petitioner was not having requisite qualification for appointment as Para Physical Teacher as the PC Diploma in Physical Education of one year possessed by the petitioner was not equivalent to BPD/CPD/DPD, be quashed and set aside.

(iii) the impugned order dated 27.5.2002 (Annex.13) passed by re-spondent No. 4 Additional Development Officer (Elementary Education), Panchayat Samiti, Ahore by which the respondent No. 7 Dilip Singh was given appointment to the post of Para Physical Teacher in Government Upper Primary School, Rundmal-ki-dhani and sent for training be quashed and set aside.

(iv) the original panel/merit list dated 20.5.2002 (Annex. 6) prepared by the Selection Committee (respondent No. 6 Gram Panchayat Valdara, Ahore (Jalore)) in which the name of the petitioner was shown at serial No. 1 while the name of the respondent No. 7 Dilip Singh was shown at serial No. 3 for appointment as Para Physical Teacher in Government Upper Primary School, Rundmal-ki-dhani be restored.

(v) the respondent No. 1 to 6 be further directed to appoint the petitioner as Para Physical Teacher in Government Upper Primary School, Rundmal-ki-dhani, Gram Panchayat Valdara, Ahore (Jalore).

2. The case of the petitioner as put forward by him in this writ petition is as follows:-

The State Government took a decision to establish Rajiv Gandhi Swaran Jayantee Pathshala and the procedure for recruitment of Para Teachers for imparting education to the children in various schools was laid down by the Government of Rajasthan, Rural Development and Panchayati Raj Department, Jaipur through circular dated 23.4.1999 (Annex. 1) addressed to all Collectors and concerned authorities. Further, the instructions for appointment of Para Teachers were issued by the Government of Rajasthan, Panchayati Raj Department, Jaipur through order dated 30.4.2001 (Annex.2).

The further case of the petitioner is that the respondents I to 6 started the process of filling up 1082 posts of Para Physical Teachers in various middle schools and the criteria for determination of the merits of the eligible candidates was laid down by the Director, Elementary Education, Rajasthan, Bikaner (respondent No. 2) through order dated 14.5.2002 (Annex.3).

The further case of the petitioner is that he passed his senior examination in the year 1994 and higher secondary examination in the year 1996 from the Board of Secondary Education, Rajasthan, Ajmer. He acquired the B.A. degree in the year 1999 from Jai Narain Vyas University, Jodhpur and further, a PG Diploma in Physical Education in the year 2000 from Mohan Lal Sukhadiya University, Udaipur. Apart from this, he also possessed the following Sports Certificates:-

(i) Games and Sports Proficiency Certificate (Annex. 4) issued by the University Board, Rajasthan Vidyapeeth, Udaipur which shows that he participated in Inter University Boxing (All India) Tournament held at M.D. Uni; Rohatak from 26th Dec. to 30th Dec. 2000 as a player.

(ii) Games and Sports Proficiency Certificate (1999-2000) (Annex. 5) issued by the University Sports Board, Mohanlal Sukhadiya University, Udaipur which shows that he participated in Inter University West Zone Hockey (M) Tournament held at Jai Narain Vyas University, Jodhpur from 21.12.1999 to 29.12.1999 as a player.

The further case of the petitioner is that his case for appointment as Para Physical Teacher in Government Upper Primary School, Rundmal-ki-dhani Gram Panchayat Valdara, Ahore (Jalore) was considered by the Selection Committee

(respondent No. 6 Gram Panchayat Valdara, Ahore (Jalore)) in the meeting held on 20.5.2002 and the petitioner was awarded 65.15 marks and was placed at serial No. 1 in the panel/merit list, while the respondent No. 7 Dilip Singh was awarded 44.74 marks and was placed at serial No. 3 in the panel/merit list and for that Annex.6 (panel/merit list prepared by the respondent No. 6 Gram Panchayat Valdara, Ahore) and Annex.7 (resolution passed in the meeting dated 20.5.2002 by the respondent No. 6 Gram Panchayat Valdara, Panchayat Samiti, Ahore (Jalore)) may be referred to.

The further case of the petitioner is that as per Press Note Annex.8 dated 20.5.2002, if any person felt aggrieved by the decision/order (Annex.6 or Annex.7 as the case may be) of the Selection Committee (respondent No. 6), he could raise grievance before the Block Development Officer.

The further case of the petitioner is that thereafter, a merit list (Annex.9) was prepared on 24.5.2002 by the respondent No. 4 Additional Development Officer (Elementary Education), Panchayat Samiti, Ahore (Jalore) in which the name of the petitioner was placed at serial No. 2 while the name of the respondent No. 7 Dilip Singh was placed at serial No. 1 for appointment to the post of Para physical Teacher in Government Upper Primary School, Rundmal-ki-dhani and that merit list Annex.9 has been challenged by the petitioner as his name was placed at serial No. 2 and the name , of respondent No. 7 Dilip Singh was shown at serial No. 1 while in the original panel/merit list (Annex.6), the name of the petitioner was shown at serial No. 1 and the name of the respondent No. 7 was shown at serial No. 3.

The further case of the petitioner is that while the original panel/merit list (Annex. 6) was prepared by the Selection Committee (respondent No. 6 Gram Panchayat Valdara, Ahore (Jalore)), at that time, the Selection Committee gave to the petitioner 15 bonus marks for National Level Sport Certificate and 10 bonus marks for State Level Sport Certificate and thus, the petitioner secured total 65.15 marks and was placed at serial No. 1 while the respondent No. 7 Dilip Singh secured 44.47 marks and was placed at serial No. 3, but while preparing second merit list (Annex. 9) dated 24.5.2002 by the respondent No. 4 Additional Development

Officer (Elementary Education), Panchayat Samiti, Ahore, 10 bonus marks for State Level Sport certificate awarded to the petitioner at the time of preparing original panel/merit list were minus and on the contrary 10 bonus marks were given to the respondent No. 7 Dilip Singh on the basis of Certificate Annex. 16 (Rajasthan State Senior Football Championship, 1991) and thus, in the second merit list (Annex. 9), the petitioner was awarded 55.15 marks and was placed at serial No. 2 while the respondent No. 7 Dilip Singh was awarded 55.47 marks and was placed at serial No. 1 and in this way, the respondent No. 7 Dilip Singh was selected in disregard of the claim of the petitioner. In scheduler A both the merit lists are shown.

The further case of the petitioner is that aggrieved by the decision of the Grievance Committee, he preferred a revision before the respondent No. 5 District Collector, Jalore and a copy of that revision is marked as Annex. 10 and before that revision was decided by the respondent No. 5 District Collector, Jalore, the present writ petition was filed by the petitioner challenging the order Annex.13 dated 27.5.2002 by which the respondent No. 7 Dilip Singh was appointed as Para Physical Teacher in Government Upper Primary School, Rundmal-ki-dhani, but during the pendency of this writ petition, the revision of the petitioner was dismissed by the respondent No. 5 District Collector, Jalore through order dated 2.7.2002 (Annex.13A) holding inter-alia that the petitioner was not having requisite qualification for appointment as Para Physical Teacher as he was having a PG Diploma in Physical Education for one year, which was not equivalent to BPD/CPD/DPD and the said order Annex. 13A passed by the respondent No. 5 District Collector, Jalore has also been challenged by amending this petition.

A reply to the writ petition was filed on behalf of the respondents No. 1 to 6 and their case may be summarised in the following manner:-

(i) The when the petitioner's name was placed at serial No. 1 in the original panel/merit list (Annex.6), a complaint was filed by the respondent No. 7 Dilip Singh before the Grievance Committee and copy of which is marked as Annex. R/2 and the Grievance Committee came to the conclusion that the petitioner was granted bonus marks both for National Level Sport Certificate as well as for State

Level Sport Certificate while bonus marks should have been awarded only for one i.e. 15 bonus marks for National Level Sport Certificate and 10 bonus marks for State Level Sport Certificate were wrongly awarded to the petitioner and in this respect, reliance has been placed on Annex. R/3 dated 10.3.2000.

(ii) That no doubt the petitioner was sent for training in compliance of the order of this Court, but the petitioner had not taken the training after 25.6.2002.

(iii) That the petitioner had in his credit one year PG diploma in Physical Education, but the requisite qualification is BPD/CPD/DPD and since the petitioner was not having requisite qualification for appointment as Para Physical Teacher, therefore, his revision was rightly rejected by the respondent No. 5 District Collector, Jalore through order Annex. 13A dated 2.7.2002.

Hence, the writ petition filed by the petitioner be dismissed.

A reply to the writ petition was also filed by the respondent No. 7 Dilip Singh and he has also taken the same stand which was taken by the respondent No. 1 to 6.

3. I have heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents and gone through the materials available on record.

4. In this writ petition, the following three questions arise for determination:-

(i) That whether the original panel/merit list (Annex.6) prepared by the respondent No. 6 Gram Panchayat Valdara, Ahore (Jalore) in which the name of the petitioner was shown at serial No. 1 while the name of the respondent No. 7 Dilip Singh was shown at serial No. 3 was correct list or not. In other words, whether the petitioner was entitled to both 15 bonus marks for National Level Sport Certificate and 10 bonus marks for State Level Sport Certificate or not.

(ii) That whether the revision of the petitioner was rightly rejected by the respondent No. 5 District Collector, Jalore through impugned order Annex.13A dated 2.7.2002 or not.

(iii) That whether the respondent No. 7 was rightly given 10 bonus marks on the basis of Annex. 16 Certificate of Rajasthan State Senior Football Championship 1991 or not.

5. Before proceeding further, it may be stated here that the stand which was taken by the respondent No. 5 District Collector, Jalore while rejecting the revision of the petitioner through impugned order Annex.13A dated 2.7.2002 was altogether different one from the stand which was taken by the respondent No. 4 Additional Development Officer (Elementary Education), Panchayat Samiti, Ahore.

Point No, (i)

6. Both the merit lists prepared for appointment as Para Physical Teacher are shown in the Schedule-A at page 20.

7. The first merit list mentioned in Schedule-A shows that the petitioner was given 15 bonus marks for National Level Sport Certificate and 10 bonus marks for State Level Sport Certificate and thus, he secured total 65.15 marks and was placed at serial No. 1 while the respondent No. 7 Dilip Singh secured 44.47 marks and was placed at serial No. 3 and in that first merit list, 10 bonus marks on the basis of Certificate Annex. 16 (Rajasthan State Senior Football Championship, 1991) were not added to the credit of the respondent No. 7 Dilip Singh.

8. Later-on, second merit list mentioned in Schedule-A was prepared which shows that 10 bonus marks on the basis of Certificate Annex.16 (Rajasthan State Senior Football Championship, 1991) were added to the credit of respondent No. 7 Dilip Singh and thus, he secured 55.47 marks while 10 bonus marks, which was awarded to the petitioner on the basis of State Level Sport Certificate, were minus and thus, he secured 55.15 marks and in this way, in the second merit list, the petitioner was shown at serial No. 2 while the respondent No. 7 Dilip Singh was shown at serial No. 1 and thus, through Annex. 13 dated 27.5.2002, the respondent No. 7 Dilip Singh was appointed as Para Physical Teacher and sent for training.

9. The case of the petitioner is that he is entitled to bonus marks both for National Level Sport Certificate as well as for State Level Sport Certificate and for that, he has placed reliance on the order dated 14.5.2002 (Annex.3) issued by the respondent No. 2 Director, (Elementary Education), Bikaner.

10. On the other hand, the case of the respondent is that the petitioner is not entitled to bonus marks both for National Level Sport Certificate as well as for State Level Sport Certificate and for that, they have placed reliance on the order Annex.R/3 dated 10.3.2000 issued by the State of Rajasthan, Education (Group 2) Department, Jaipur where it was stated that if a candidate possesses both National Level Sport Certificate as well as State Level Sport Certificate, he is entitled to only bonus marks for National Level Sport Certificate.

11. Through order Annex.3 dated 14.5.2002 issued by the respondent No. 2 Director (Elementary Education), Bikaner guidelines/directions were issued for awarding marks to the candidates for the post of Para Physical Teacher and according to that, 15 bonus marks are to be given for National Level Sport Certificate and 10 bonus marks for State Level Sport Certificate. In that order Annex.3, there is no mention of the fact that if a candidate possesses both National Level Sport Certificate as well as State Level Sport Certificate, he would be entitled to bonus marks for one Certificate only.

12. No doubt in the order Annex.R/3 dated 10.3.2002, it has been stated that if a candidate possesses both National Level Sport Certificate as well as State Level Sport Certificate, only bonus marks for National Level Sport Certificate should be awarded.

13. In my considered opinion, no doubt in Annex.R/3 there is a version that out of two categories of certificate, bonus marks for only one certificate would be awarded, but that order Annex.R/3 was issued on 10.3.2000 and that was issued by the Education Department while order Annex.3 is dated 14.5.2002 meaning thereby it was issued later on and that Annex.3 specifically deals with the cases of appointment of Para Physical Teachers and since in Annex.3 there is no such version as is found in Annex.R/3. therefore, if a candidate is having both certificate i.e. National Level Sport Certificate as well as State Level Sport Certificate, he is

entitled to bonus marks for both Certificates and from this point of view, the petitioner is entitled to bonus marks both for National Level Sport Certificate as well as State Level Sport Certificate.

14. Thus, it is held that the petitioner, who is having National Level Sport Certificate as well as State Level Sport Certificate, is entitled to bonus marks for both Certificates i.e. 15 bonus marks for National Level Sport Certificate and 10 marks for State Level Sport Certificate and he was rightly given both bonus marks at the time of preparing original first panel/merit list dated 20.5.2002 (Annex.6) and thus, he was rightly placed at serial No. 1 in the original panel/merit list Annex.6 dated 20.5.2002.

15. Therefore, the second merit list Annex.9 dated 24.5.2002 which was prepared by the respondent No. 4 Additional Development Officer (Elementary Education), Panchayat Samili, Ahore after reducing 10 bonus marks of the petitioner for State Level Sport Certificate, cannot be sustained and liable to be set aside and first original panel/merit list (Annex.6) dated 20.5.2002 prepared by the respondent No. 6 Gram Panchayat Valdara, Ahore (Jalore) is to be restored.

16. Hence, in view of the above, the argument of the respondents that the petitioner is not entitled to bonus marks for both National Level Sport Certificate as well as for State Level Sport Certificate stands rejected.

17. The learned counsel for the respondents has placed reliance on the decision of the Hon'ble Supreme Court in Maharashtra State Board of Secondary & Higher Secondary Education v. Amit and Anr. (1), specially on para 15 of that judgment where it was observed that it is doubtful if a candidate can claim grace marks under more than one clause and therefore, it was submitted by the respondents that in view of above observations of the Hon'ble Supreme Court, the petitioner is entitled to bonus marks for only National Level Sport Certificate. In my considered opinion, the facts of that case stand distinguished from the facts of the present case as in that case, the matter pertained to grace marks while in the present case, the question of awarding of bonus marks is involved and furthermore, when in the order Annex, 3 dated 14.5.2002, there is specific mention of the fact that marks for both National Level Sport Certificate as well as for State Level Sport

Certificate would be awarded, therefore, it cannot be said that only bonus marks for National Level Sport Certificate should be awarded to the petitioner. Thus, that ruling would not be helpful to the respondents.

Point No. (ii)

18. The qualifications for appointment to the post of Para Physical Teacher are contained in Annex.2 dated 30.4.2001 and the minimum qualifications are that a candidate must have passed Senior Secondary (Academic)/equivalent to that, B.S.T.C./equivalent to that etc. etc.

19. The case of the respondents is that the petitioner is having a PG diploma in Physical Education for one year whereas the qualifications required are BPD/CPD/DPD and thus, the revision of the petitioner was rightly rejected by the respondent No. 5 District Collector, Jalore through order Annex. 13A dated 2.7.2002.

20. In my considered opinion, the above argument does not carry any weight in view of the Certificate dated 29.6.2002 (Annex. 14 filed alongwith the rejoinder) issued by the Principal, Bhupal Nobels Physical Education College, Udaipur where it has been clarified that the PG diploma in Physical Education for one year is equivalent to BPD/DPD and when this being the position, the above argument of the respondents cannot be accepted and stands rejected.

21. Apart from this, the Selection Committee did not touch this point that the petitioner was not having requisite qualification and this point was only decided for the first time by the respondent No. 5 District Collector in revision through order Annex.13A. As already stated above, while rejecting the revision of the petitioner, the respondent No, 5 District Collector has taken a different stand from the stand taken by the Selection Committee.

22. Thus, the impugned order Annex.13A dated 2.7.2002 passed by the respondent No. 5 District Collector, Jalore cannot be sustained and liable to be quashed and set aside.

Point No. (iii)

23. So far as the granting of 10 bonus marks to the respondent No. 7 Dilip Singh on the basis of Annex. 16 Certificate of Rajasthan State Senior Football Championship, 1991 while preparing second merit list is concerned, the case of the petitioner is that since it is a Certificate issued by the private body, therefore, on the basis of that Certificate Annex. 16, the respondent No. 7 Dilip Singh is not entitled to 10 bonus marks and 10 bonus marks were wrongly added to his credit while preparing second merit list.

24. On the contrary, the learned counsel appearing for the respondent No. 7 Dilip Singh has placed reliance on the Division Bench Judgment of this Court dated 4.8.1997 passed in State of Raj. and Ors. v. Umesh Jangid (3), where it was observed that granting of bonus marks to the participants in the District Level, State Level or National Level Tournaments cannot be restricted to the tournaments held by the Education Department alone, but it is applicable to all District Level, State Level or National Level tournaments organised by a University of Sports Board/Authority or by any other Authority recognised in this regard because restricting the bonus marks only to the tournaments organised by the Education Department is against the object of the provision itself and thus it was submitted that in view of the above observations of this Court the respondent No. 7 Dilip Singh is entitled to 10 bonus marks on the basis of Annex.16 Certificate of Rajasthan State Senior Football Championship, 1991 and he was rightly given 10 bonus marks on the basis of that Certificate Annex.16 while preparing second merit list.

25. In my considered opinion, no doubt Annex. 16 Certificate of Rajasthan State Senior Football Championship, 1991 was not issued by the Education Department and it was issued by the private body, but in view of the above observations made by the Division Bench of this Court, the respondent No. 7 Dilip Singh was entitled to 10 bonus marks on the basis of Certificate Annex. 16 and the same was rightly given to him while preparing second merit list.

26. But, if the respondent No. 7 Dilip Singh is given 10 bonus marks on the basis of Certificate Annex. 16 and the petitioner is given 25 bonus marks for National Level Sport Certificate as well as for State Level Sport Certificate, all the same, the

petitioner gets more total marks than the respondent No. 7 Dilip Singh and thus, the petitioner stood above the respondent No. 7 Dilip Singh in the merit list and in these circumstances, the petitioner is entitled to appointment as Para Physical Teacher and in disregard of his claim, the respondent No. 7 Dilip Singh was appointed as Para Physical Teacher and sent for training through order Annex. 13 dated 27.5.2002 and, therefore, the impugned order Annex. 13 cannot be sustained.

27. For the reasons stated above, this writ petition deserves to be allowed and the impugned second merit list dated 24.5.2002 (Annex.9) prepared by the respondent No. 4 for appointment of Para Physical Teachers in Government Upper Primary School, Rundmal-ki-dhani, Gram Panchayat Valdara in which the name of the respondent No. 7 Dilip Singh was shown at serial No. 1 while the name of the petitioner was shown at serial No. 2 is liable to be quashed and set aside and the original panel/merit list dated 2.0.5.2002 (Annex.6) prepared by the Selection Committee (respondent No. 6 Gram Panchayat Valdara, Ahore (Jalore)) in which the name of the petitioner was shown at serial No. 1 while the name of the respondent No. 7 Dilip Singh was shown at serial No. 3 for appointment as Para Physical Teacher in Government Upper Primary School, Rundmal-ki-dhani is to be restored and thus, the impugned order dated 27.5.2002 (Annex.13) passed by respondent No. 4 Additional Development Officer (Elementary Education), Panchayat Samiti, Ahore by which the respondent No. 7 Dilip Singh was given appointment to the post of Para Physical Teacher in Government Upper Primary School, Rundmal-ki-dhani and sent for training is liable to be quashed and set aside and the petitioner is entitled to appointment as Para Physical Teacher in Government Upper Primary School, Rundmal-ki-dhani, Gram Panchayat Valdara, Ahore (Jalore) and further the impugned order dated 2.7.2002 (Annex. 13A) passed by the respondent No. 5 District Collector, Jalore by which the revision of the petitioner was dismissed is also liable to be quashed and set aside.

28. Before parting with this order, it may be stated here that a preliminary objection was raised by the respondents that because of the pendency of revision filed by the petitioner before the respondent No. 5 District Collector and before it was finally decided by the respondent No. 5 District Collector, Jalore through order

Annex. 13A, the petitioner had approached this Court under Article 226 of the [Constitution of India](#) and thus, it was pre-mature.

29. In my considered opinion, a legal right has accrued in favour of the petitioner as soon as order Annex.13 dated 27.5.2002 was passed by the respondent No. 4 Additional Development Officer (Elementary Education), Panchayat Samiti, Ahore by which the respondent No. 7 Dilip Singh was appointed, as Para Physical Teacher and sent for training and if without waiting for the decision of the revision petition filed before the respondent No. 5 District Collector, if this writ petition was filed by the petitioner, it cannot be said that it was pre- mature.

According, this writ petition filed by the petitioner is allowed in the following manner:

(i) That the merit list dated 24.5.2002 (Annex.9) prepared by the respondent No. 4 Additional Development Officer (Elementary Education), Panchayat Samiti, Ahore (Jalore) for appointment of Para Physical Teachers in Government Upper Primary School, Rundmal-ki-dhani, Gram Panchayat Valdara in which the name of the respondent No. 7 Dilip Singh was shown at serial No. 1 while the name of the petitioner was shown at serial No. 2, is quashed and set aside;

(ii) That the original panel/merit list dated 20.5.2002 (Annex.6) prepared by the Selection Committee (respondent No. 6 Gram Panchayat Valdara, Ahore (Jalore)) in which the name of the petitioner was shown at serial No. 1 while the name of the respondent No. 7 Dilip Singh was shown at serial No. 3 for appointment as Para Physical Teacher in Government Upper Primary School, Rundmal-ki-dhani is restored.

(iii) That the impugned order dated 27.5.2002 (Annex.13) passed by respondent No. 4 Additional Development Officer (Elementary Education), Panchayat Samiti, Ahore by which the respondent No. 7 Dilip Singh was given appointment to the post of Para Physical Teacher in Government Upper Primary School, Rundmal-ki-dhani and sent for training is quashed and set aside.

(iv) That the impugned order dated 2.7.2002 (Annex.13A) passed by the respondent No. 5 District Collector, Jalore by which the revision of the petitioner was dismissed is quashed and set aside.

(v) That the respondent No. 1 to 6 are directed to appoint the petitioner as Para Physical Teacher in Government Upper Primary School, Rundmal-ki-dhani, Gram Panchayat Valdara, Ahore (Jalore) and his services shall be treated from the date he joins and not prior to that.

(vi) That however it is made clear that if the respondents No. 1 to 6 still want to retain the respondent No. 7 Dilip Singh in service, they can do so, but not at the cost of the petitioner and for that, they can create another post for the respondent No. 7 Dilip Singh.

No order as to costs.

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