

2025 LiveLaw (SC) 1031

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

B.R. GAVAI; CJI., K. VINOD CHANDRAN; J.

Special Leave Petition (C) No.14980 of 2024; October 17, 2025

Sanjay Kumar Mishra & Ors. *versus* District Judge, Ambedkar Nagar (U.P.)

Service Law – Appointment in excess of advertised vacancies – Termination – Justification of termination – Scope of Rule 12 of the relevant Rules – Maintenance of Wait List – Complete Justice- Held that Rule 12 was interpreted in Naseem Ahmad case to permit a waiting list of 'reasonable dimensions' to be maintained, which is adequate to meet vacancies that might be available within a reasonable period in the year of recruitment or the year succeeding thereto - The explicit rider in the advertisement that the vacancies could be increased or decreased indicated the Appointing Authority's intention to maintain a wait list to fill up excess vacancies, as permissible under the rules - Given that the next advertisement was only after 8 years (in 2008), it was evident that vacancies arose within that period, justifying the appellants' appointments subsequent to the twelve advertised vacancies - Held that the termination was found to be unjustified. [Relied on *Naseem Ahmad and Others v. State of Uttar Pradesh and Another*, (2011) 2 SCC 734; Paras 6,7,10,11,12]

Directions in Exercise of Complete Justice: Supreme Court held that the appellants were out of employment for almost 17 years and had worked for eight years, the Court issued specific directions, making it clear that they were in the peculiar circumstances of the case and shall not be a precedent – Directed - i. To be accommodated in existing Class IV vacancies in the District Judgeship of Ambedkar Nagar - If no vacancies exist, they shall be appointed in a supernumerary post, to be adjusted against future vacancies or cease on retirement, whichever is earlier; ii. Appellants who have crossed the age of superannuation: To be entitled to minimum pension de hors (irrespective of) completing only 8 years in employment; iii. Appointed appellants: Shall be continued without any seniority but the prior service period shall be reckoned for determining pensionable service, and they shall be granted pension at the minimum; iv. Intervening period (17 years) shall not be treated as notional service or for computing pensionable service. [Paras 11]

[Arising out of impugned final judgment and order dated 23-01-2024 in SPLA No. 700/2014 passed by the High Court of Judicature at Allahabad, Lucknow Bench]

For Petitioner(s): Mr. M.C. Dhingra, Sr. Adv. Mr. Gaurav Dhingra, AOR Mr. Shashank Singh, Adv. Mr. Deepak Rana, Adv. Mr. Raghvendra Shukla, Adv. Mr. Joginder Kumar, Adv. Mr. Prabhat Pichauri, Adv.

For Respondent(s): Mr. Yashvardhan, Adv. Mr. Apoorv Shukla, AOR

J U D G M E N T

K. VINOD CHANDRAN, J.

Leave granted.

2. The appellants, four in number, who were appointed in Class IV vacancies in the District Judgeship of Ambedkar Nagar were terminated in the year 2008. The ground on which the termination was effected was that six appointments were made, in excess of vacancies notified, of which four were of the petitioners. The termination was effected on 05.05.2008 after which the appellants were out of employment.

3. The learned Single Judge and the Division Bench of the High Court of Allahabad found the termination to be justified since the appointments were made beyond the number of vacancies advertised.

4. Sh. M.C. Dhingra, learned Senior Counsel appearing for the appellants submitted that the vacancies advertised were twelve, but with a rider that it could increase or decrease. Reliance was placed on **Naseem Ahmad and Others v. State of Uttar Pradesh and Another**¹ wherein Rule 12 was found to provide for recruitment to Class IV posts from the wait list prepared; interpreted as permitting appointment to the vacancies arising in excess of that advertised, if it is done within a reasonable period. This Court according to the appellants found that appointments could be made in excess of vacancies that were advertised, which vacancies arose in the same recruitment year or the immediately succeeding year.

5. Sh. Yashvardhan, learned counsel appearing for the respondent, however, took us to the judgment to assert that as on the date of the advertisement there were only twelve vacancies and any further appointments made cannot be justified.

6. The advertisement made by the District Judge of Ambedkar Nagar is produced as Annexure P1, wherein the vacant posts are shown to be twelve, but with the rider that the number of posts may be increased or decreased. This is in consonance with the interpretation of Rule 12 as has been arrived at in **Naseem Ahmed**¹. In **Naseem Ahmed**¹, there were six vacancies advertised and a select list was prepared wherein the general candidates and reserved candidates were shown separately. After adjusting the roster, the appointments were made and the appellants therein, who were in the wait list, were appointed within one year. The additional vacancies arose when an Additional District Judge was transferred from Hamirpur to Mahoba, increasing the sanctioned strength of Class IV employees by four more posts. In the several writ petitions filed challenging the appointments made from the wait list, this Court found that Rule 12 permits a waiting list of candidates to be maintained for each judgeship for the post of process servers, orderlies and office peons and farashes. The rule provided that the waiting list should be of 'reasonable dimensions' and was possible of revision from time to time, removing the names of persons who would not be entitled to be appointed by reason of being over aged or having been found guilty of any misconduct during continuance in a temporary or officiating vacancy, when the vacancies actually occurred.

7. The word 'reasonable dimension' was interpreted in paragraph 23, as extracted below:

"23. The expression "reasonable dimension" used in Rule 12 of the aforesaid Rules signifies that the wait list should be a moderate one containing that number of candidates which is adequate to meet the vacancies which might be available within a reasonable period in the year of recruitment or the year succeeding thereto and this list should be in reasonable proportion to the notified vacancies. To be more precise, this waiting list should broadly be correlated to the number of vacancies either available in the year of recruitment or likely to become available in the succeeding year and the proportion qua the existing and anticipated vacancies. It is only in order to obviate the possibility of the waiting list becoming vitiated on account of the vice of arbitrariness or illegal discrimination that the provision contains the Rule which specifically provides for maintaining a waiting list of a reasonable dimension."

[underlining by us for emphasis]

¹ (2011) 2 SCC 734

8. The situation is almost identical here, and so is Rule 12 squarely applicable. In the select list prepared based on the advertisement of 18.10.2010, produced as Annexure P2, the appellants herein were at serial No.8 and 9 of the general category, serial No.6 of the backward class and serial No.5 of the SC/ST. The appellants were appointed vide appointment letter dated 12.02.2001 and 03.07.2001 and two of them, appellants 1 and 2 were given temporary promotions in the Ministerial Cadre. It was later after 8 years, that the termination was effected on the ground of appointments having been made in excess of vacancies.

9. Learned Government Advocate has specifically taken us to paragraph 14 of the impugned judgment, which referred to the counter affidavit filed by the State. It is contended that the State had asserted before Court that as on 18.10.2000, the date of advertisement, there were only twelve posts, and the subsequent advertisement was made on 06.06.2008 and later on 14.09.2015; which subsequent advertisements 29 and 2 vacancies were notified respectively. So obviously 29 vacancies were between 2000 and 2008, when the appellants were working in the judgeship.

10. As we noticed, the advertisement specifically indicated that there could be an increase or decrease of vacancies, which as on the date of advertisement was also indicated as twelve posts. The said recital in the advertisement would clearly indicate that the Appointing Authority intended that a wait list be maintained so as to fill up the vacancies arising in excess of those notified, which was permissible as per the rules. As has been pointed out from the counter affidavit after the advertisement of 2000, the next advertisement was only in 2008 and then in 2015. Definitely vacancies arose within the said period, and this is the reason why the appellants were appointed on various dates subsequent to the appointment to the twelve vacancies advertised. We are definite that the very same situation arose in **Naseem Ahmed¹** and the learned Single Judge as also the Division Bench erred in not accepting the said contention, especially having ignored the clear recital of the notification that the vacancies could be increased or decreased from twelve, as notified.

11. We cannot but find the termination to be unjustified. However, the fact remains that the appellants have been out of employment for almost 17 years. We also see from the select list that the date of birth of 2nd and 4th appellants indicate the said appellants having passed the age of 60, while the others have little more time to superannuate, if the age of superannuation is 60. In the above circumstances especially when the appellants have not taken any efforts to pinpoint the substantive vacancies to which they were appointed and the appointment itself having been made temporarily, we issue the following directions; reckoning the fact that all the appellants have worked for eight years:

i) The appellants if not having completed the age of superannuation shall be accommodated in the existing vacancies of Class IV in the District Judgeship of Ambedkar Nagar. If there are no vacancies existing, they shall be appointed in a supernumerary post, which shall be adjusted against the future vacancies or shall seize on their retirement, whichever occurs earlier.

ii) If any of the appellants have crossed the age of superannuation, they shall be entitled to minimum pension de hors the fact that they have completed only 8 years in employment and not entitled to an appointment as of now.

iii) Those appellants who are appointed shall be continued without any seniority but reckoning the period already spent in service also for determining pensionable service and in any event shall be granted pension at the minimum.

iv) The appellants shall not be entitled to treat the intervening period of 17 years in which they have not worked, for any purpose, neither as notional service nor even for computing pensionable service.

v) The above directions shall apply only to the four appellants herein.

12. The appeal is disposed of with the above directions making it clear that the directions issued are in the peculiar circumstances of this case and shall not be a precedent.

13. Pending application(s), if any, shall also stand disposed of.

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