

**स्पेशल अपील संख्या: 238/2011 उ०प्र० राज्य बनाम आदित्य वर्मा**

**विषय—** याची ने अपने ओ०एम०आर० शीट में किसी भी श्रेणी को नहीं भरा गया, उसे सामान्य श्रेणी में रखकर परीक्षा परिणाम घोषित किया गया। याची के अंक सामान्य श्रेणी के कटआफ अंक से कम होने के कारण उसका चयन नहीं हुआ। याची ने रिट याचिका संख्या 1(एस/एस)/2011 आदित्य वर्मा बनाम उ०प्र० राज्य योजित की जिसमें मा० उच्च न्यायालय द्वारा दिनांक 13.01.2011 को याची को चयनित किये जाने व ओबीसी संवर्ग में नियुक्त किये जाने का आदेश पारित किया गया। मा० उच्च न्यायालय के आदेश के विरुद्ध स्पेशल अपील खण्डपीठ के समक्ष योजित की गयी।

**निर्णय—** माननीय उच्च न्यायालय लखनऊ खण्डपीठ द्वारा निर्णय दिया गया कि –

So far as merit is concerned, the State is in appeal against the judgment and order dated 13-1-2011 whereby the learned Single Judge directed the appellant to consider the case of the petitioner for selection and appointment under the backward category. It is further directed that the candidates who have already been given employment, the seniority of the incumbents will not be affected by this inclusion and the petitioners will be treated as a last entrant in the selection.

It is case of the appellants that as the respondent had not applied against the O.B.C. category, he was considered against the General Category and, Therefore, the select list could not be made,

On the other hand on behalf of the respondent-petitioner, learned counsel submits that pursuant to the objections invited by the appellants, he had given an objection as by mistake he had not filled in his caste but subsequently had given the necessary documents. It is his case that similarly situated persons, who had also omitted to mention their castes, pursuant to the advertisement issued by the appellants, had filed objections and their castes had been considered but the case of respondent herein had not been considered.

Having gone through the averments made in the petition, we do not find such averment. However, considering the contention urged and to meet the ends of justice, in our opinion, the ends of justice would require that the

respondent herein be given an opportunity to amend the petition, in orders to enable the appellants herein to meet the same. What the respondent seeks to contend is that as the cases of the similarly situated persons have been considered, there is no reason why the case of the respondent has not been considered.

Considering the above, impugned order dated 13-1-2011 is set aside. Matter is remanded back to the learned Court. It will be open to the respondent to apply for amendment of the petition. The learned Court shall consider the same after giving opportunity to the appellants herein and thereafter dispose of the matter at the earliest according to law.

Appeal stands disposed of accordingly.