

Hari Nandan Sharan Bhatnagar

Vs

S. N. Dixit and Another

Civil Appeal No. 1020 of 1966

(J. C. Shah, G. K. Mitter JJ)

25.04.1969

JUDGMENT

MITTER, J. -

1. The only question in this appeal by special leave is, whether there was a violation of Rule 7 of the United Provinces Legislative Department Rules in the appointment of the first respondent, S. N. Dixit, as the Superintendent in the Legislative Assembly of the State of Uttar Pradesh in preference to the appellant.

2. The facts are as follows : The appellant was appointed as an Upper Division Assistant (formerly known as superior service assistant), in the Legislative Assembly Secretariat, Uttar Pradesh, in 1954 on the result of a competitive examination held by the Public Service Commission of the State. He was confirmed in the post of Upper Division Assistant with effect from June 16, 1955. In September, 1961, a vacancy occurred in the post of a Superintendent in the Legislative Assembly Secretariat. The first respondent was working as a treasurer in the same office. According to the appellant, one Uma Shanker was the senior Upper Division Assistant and he was immediately after Uma Shanker in order of seniority. In view of the fact that Uma Shanker had not put in the minimum period of ten years' service as Upper Division Assistant the Speaker of the Assembly did not think it fit to appoint him as Superintendent but he ignored the appellant's claim to the post after Uma Shanker and appointed Dixit in violation of the mandatory provisions of Rule 7. The said Rule reads :

"Recruitment to the post of the Superintendent shall be made by promotion from the grade of superior service assistants in the Council Department. While due regard will be paid to seniority, no assistant will be appointed to the post of Superintendent unless he is considered qualified in all respects to perform the duties of a Superintendent and full authority will be reserved to appoint the assistant most fitted for the post. It, however, no suitable assistant is available for promotion from amongst the grade of superior service assistants in the Council Department, recruitment may, as a special case, be made from outside."

3. The appellant filed a suit in the court of the Munsif of South Lucknow impleading the State of Uttar Pradesh, the Speaker, Legislative Assembly of the State and Dixit as defendants therein and praying for a decree for declaration that he should be deemed entitled to the post of Superintendent in the Legislative Assembly with effect from 1st January, 1962, and a further declaration that the order, dated October 7, 1961, appointing defendant No. 3 as Superintendent was illegal and ultra vires. Written statements were filed on behalf of the defendants. The learned Munsif held in the

plaintiff's favour. His judgment was upheld in appeal by the Civil Judge, Lucknow. The same was reversed in Second Appeal to the High Court.

4. The order of the Speaker passed in October, 1961, shows that he had considered the matter carefully before appointing Dixit to the post. The contention of learned counsel for the appellant was that the post could not be given to a person who was not a superior service assistant and the "grade of superior service assistants in the Council Department" meant and included only those persons whose names were borne on the roll of Upper Division Assistants. Ext. 10 the gradation list of permanent ministerial establishment of the Uttar Pradesh Legislative Assembly Secretariat as it stood in April, 1956, shows that the scales of pay of Upper Division Assistants, Translators, Reference Clerk, Treasurers, Stenographer to Secretary and Assistant Librarian were the same, namely, Rs. 160-15-280-EB-20-400. By an order of the Governor, dated March 16, 1959, efficiency bars in the scales of pay of all the above posts were uniformly altered and fixed at Rs. 220/- and Rs. 300/-. The High Court took the view that 'grade' in Rule 7 was suggestive of status and it did not refer to a class or a particular class. According to the High Court :

"All officials working in the same scale of pay in a department, although holding posts with different designations, shall be deemed to be holding posts in the same grade, because their rank in the same department will be the same and equal to one another."

5. The High Court noted that the dictionary meaning of "grade" was 'rank, position in scale, a class or position in a class according to the value'. In our view the High Court came to the correct conclusion in holding that the post was a selection post and seniority by itself was not a sufficient qualification for promotion. The Speaker had to take into consideration the claims of Senior Upper Division Assistants but under the rules his choice was not limited to the Upper Division Assistants. He could consider the claims of others who were in the same grade, that is to say, enjoying the same scales of pay and pick out the person considered by him to be qualified in all respects to perform the duties of a Superintendent. All officials of the Legislative Assembly Secretariat holding posts in the same scale of pay as Upper Division Assistants were eligible for promotion to the post of the Superintendent.

6. Counsel argued that this would be an unreasonable interpretation of the rule for in that case even a book-binder or a chauffeur would have to be considered if their scales of pay were the same as those of Upper Division Assistants. We do not think that anyone would place such an absurd construction on the rule. The appointing authority had to consider not only the eligibility based on the grade (assuming that the rules unreasonably place a chauffeur, a book-binder, an accountant and a special duty clerk in the same grade) but also the qualification of the person appointed to perform the duties of the Superintendent and a book-binder or a chauffeur would certainly not be eligible for consideration. It was said that the educational qualification of the appellant was much superior to that of Dixit and while the appellant had joined service by passing a competitive examination held by the Public Service Commission the first respondent had failed to pass such a test. These are matters on which we can express no opinion. As noted already, the appointment was made after a thorough scrutiny of representations received and after consideration of the recommendation made by the Secretary of the Legislative Department.

7. In the result the appeal is dismissed, but we make no order as to costs.

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