

Government of India and Another

Vs

C. A. Balakrishnan and Others

Civil Appeal No. 766 (N) of 1972

(CJI A. N. Ry, K. K. Mathew, A. lagiriswmi JJ)

03.10.1974

JUDGMENT

MATHEW, J. -

1. In this appeal, by special leave, the question for consideration is whether the High Court was right in directing the Government of India to consider the claim of Respondent No. 1 to seniority over Respondent No. 2 in the cadre of Godown-Dock Superintendent (hereinafter referred to as 'Superintendent') in the Food and Supplied Department, Government of India.

2. Respondents Nos. 1 and 2 were appointed as tally clerks on February 26, 1949 and February 28, 1949 respectively. Respondent No. 2 was promoted to the post of Junior Godown Keeper on January 11, 1952, and that of Senior Godown Keeper on November 19, 1954 and as Senior Godown Keeper on August 24, 1957. Respondent No. 2 was promoted as Superintendent on November 1, 1957. Respondent No. 1 promoted made representation to Government as regards his superior claim for being promoted to the post on the basis of his seniority. On April 9, 1962, the Central Government passed an order refixing the seniority of Respondent No. 1 over Respondent No. 2 both in the cadre of Junior Godown Keepers and in that of Senior Godown Keepers. The Government, however, rejected the claim of Respondent No. 1 for fixing of his seniority above Respondent No. 2 in the cadre of Superintendents for the reason that the post of Superintendent was a selection post even in 1957 and that Respondent No. 2 was appointed to the post on the basis of his superior merit and ability. Respondent No. 1 was promoted as Superintendent on July 10, 1962. In the Seniority List of Dock/Godown Superintendents prepared on January 1, 1963, Respondent No. 1 was shown as junior to Respondent No. 2. Respondent No. 1 thereupon filed a writ petition before the High Court on November 26, 1968, praying for a direction to the Government for the restoration of his seniority over Respondent No. 2 in the cadre of Superintendent. The High Court allowed the writ petition and this appeal, by special leave, is against that decision.

3. The case of Respondent No. 1 before the High Court was that he was senior to Respondent No. 2 and that his case was not considered when Respondent No. 2 was appointed to the post of Superintendent. The High Court was of the view that on November 1, 1957, when Respondent No. 2 was promoted to the post of Superintendent, the post was not a selection post but a post to which promotions were made on the basis of seniority-cum-fitness and that the case of Respondent No. 1 should have been considered on that basis and not on the basis that it was a selection post. The Court, therefore, issued a writ directing the Government to consider the case of Respondent No. 1 for promotion to the post of Superintendent as on November 1, 1957, when Respondent No. 2 was promoted and according to the rules then in force and that, if he is found fit for promotion as on that date, "the promotion already given to him to that position be dated back to November 1, 1957, and

he be granted all consequential benefits and if he is not found fit for promotion as on that date, he will not be entitle to any relief".

4. It was argued on behalf of the appellants that the post of Superintendent was a selection post in 1957, that the case of Respondent No. 1 was considered in November, 1957, along with that of Respondent No. 2 and others and it was because Respondent No. 2 was found to be superior to Respondent No. 1 in merit and ability that he was chosen and appointed to the post.

5. We see no reason to differ from the view of the High Court that in November, 1957, when Respondent No. 2 was promoted to the post, it was not a selection post. According to the High Court, the cadre and recruitment rules providing that promotions to the post of Superintendent should be by selection and not on the basis of seniority-cum-fitness came into force only in September, 1960. The materials have been placed before us to hold that the High Court was wrong in taking this view. Therefore, we think that the High Court was right in its conclusion that the case of Respondent No. 1 was not considered in November, 1957, on the basis that the post of Superintendent was a post to which promotion was to be made on the basis of seniority-cum-fitness. The ruling of this Court in *State of Mysore v. Syed Mahmood* ((1968) 3 SCR 363, 366) fully supports the direction given by the High Court in this case.

6. We dismiss the appeal. When admitting the special leave petition, it was ordered that the appellants will pay the costs of the respondents in any event. We, therefore, direct the appellant to pay the costs of Respondent No. 1.

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