

Dr Phani Dhar and Others

Vs

Dr B. N. Subba Rao and Others

Civil Appeal No. 1418 of 1987

(CJI R. S. Pathak, B. C. Ray, V. Khalid JJ)

29.06.1987

JUDGMENT

PATHAK, C.J. -

1. Special leave is granted in the special leave petition directed against the judgment and order dated August 22, 1985 of the High Court of Andhra Pradesh allowing Writ Appeal No. 256 of 1978.
2. The question which arises in this appeal is whether the High Court of Andhra Pradesh is right in quashing the Seniority List of 1976 in respect of Divisional Medical Officers of the Indian Railways.
3. In 1976, the Railway Board published a Seniority List of Divisional Medical Officers. The appellants who figured in that list, were promoted as Medical Superintendents. Some of the promotee officers were dissatisfied with the seniority assigned to them and filed a writ petition in the High Court of Andhra Pradesh for quashing the Seniority List of 1976. The appellants were impleaded as respondents to that writ petition. The writ petition was dismissed by a learned Single Judge of the High Court. The aggrieved promotee officers filed an appeal before the High Court, the appeal being numbered as Writ Appeal No. 256 of 1978.
4. While the appeal was pending the Railway Board published a Seniority List of 1979 setting forth the seniority assigned to Divisional Medical Officers. That list was challenged by certain officiating Divisional Medical Officers by a writ petition filed in this Court. The appellants, it seems, were not impleaded as parties in that writ petition nor indeed was the validity of the Seniority List of 1976 questioned in that case. By its judgment and order dated July 1, 1985 (D. K. Mitra v. Union of India, 1985 Supp SCC 243 : 1985 SCC (L&S) 879) this Court allowed the writ petition and quashed the Seniority List of 1979 and the consequent promotions made to the post of Medical Superintendents. The Railway Administration was directed to draw up a fresh Seniority List of Divisional Medical Officers in accordance with the principles laid down in that judgment and to make fresh appointments from among the Divisional Medical Officers to the posts of Medical Superintendents.
5. Meanwhile, the appeal numbered as Writ Appeal No. 256 of 1978 had remained pending. The High court took up that appeal, and in the belief that the judgment of this Court in the writ petition filed here and referred to above applied to the Seniority List of 1976 the High Court, by its judgment and order dated August 22, 1985, quashed the Seniority List of 1976 and directed the Railway Administration to prepare a fresh Seniority List. The appellants 1 and 2 applied for a review of the judgment and that review petition was rejected.

6. We are of opinion that this appeal must succeed. The High Court appears to have overlooked that the Seniority List with which this Court was concerned in the writ petition before it was the Seniority List of 1979. No doubt in quashing the Seniority List this Court laid down certain principles and criteria on the basis of which it proceeded to its decision. But there was no occasion whatever for this Court to apply its mind to the validity of the Seniority List of 1976. That task lay before the High Court. The High Court should have applied its mind to considerations pertaining to the Seniority List of 1976. In that task it was open to the High Court to derive whatever assistance it considered appropriate from the judgment of this Court rendered in relation to the Seniority List of 1979. The High Court will now take up the appeal afresh and examine the issues arising therein and thereafter dispose them of by a judgment indicating clearly the principles and criteria on which its conclusions are based.

7. The appeal is allowed, the judgment and order dated August 22, 1985 of the High Court are set aside and the case is remanded to the High Court for fresh consideration and decision. There is no order as to costs.

8. As we have allowed the appeal against the judgment and order of the High Court in Writ Appeal No. 256 of 1978, we consider it unnecessary to pass an order on the special leave petition directed against the rejection by the High Court of the review petition.

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