

Smt. Kiran Agarwal

Vs

State of H. P. and Others

Writ Petition No. 910 of 1987

(Ranganath Misra, M.M. Dutt JJ)

06.04.1988

ORDER

1. The petitioner, a Chief Judicial Magistrate-cum-Senior Subordinate Judge in Himachal Pradesh Judicial Service challenged in this petition under Article 32 of the Constitution the promotion of officers junior to her to the rank of Additional District and Sessions Judge in the Higher Judicial Service of the State by ignoring her claim. We gave a long and patient hearing to the petitioner who appeared in person as also to counsel for the different respondents. We have looked into the procedure evolved by the High Court in the matter of making assessment of officers for dealing with promotion. We have looked into the confidential character rolls of the concerned officers.

2. We adjourned the matter for a few weeks after hearing was concluded to enable the High Court to consider whether at its level it would be possible to entertain the relief claimed by the petitioner. The learned counsel appearing for the High Court has told us today that it has not found it convenient to do so.

3. In our view, keeping the entire record of the proceedings as also the entries in the Confidential Reports in view, the petitioner is entitled to promotion to the post in the Higher Judicial Service as an Additional District and Sessions Judge. The petitioner shall now be deemed to have been promoted from September 30, 1986, when respondent 3 was so promoted. The question of inter se seniority between the petitioner and respondent 3 is left open to be determined in due course in accordance with the relevant service rule. We would like to observe here that the learned Additional Solicitor General appearing for the State of Himachal Pradesh has agreed to create an additional post in the Higher Judicial Service (if there be no vacancy) to accommodate the petitioner. The learned Additional Solicitor General has also agreed that the post should be deemed to have been created from the date indicated. We direct all the formalities to be completed within two months hence by the High Court and the State Government, so that this order can be given effect to on or before July 1, 1988, with retrospective effect from September 30, 1986. We further direct that the creation of the additional post if necessary shall not affect the quota of direct recruits and may be adjusted in due course against promotional vacancy. The writ petition is allowed to that extent indicated. Parties are directed to bear their respective costs.

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