

State of Maharashtra

Vs

K. S. Rana and Others

Civil Appeals Nos. 1330-33 of 1980

(CJI R.S. Pathak, L.M. Sharma JJ)

12.04.1988

JUDGMENT

SHARMA, J. -

1. Respondent 1 in each of the present four appeals were in judicial service either in Kutch State or Saurashtra State prior to their merger in the Bombay State and Gujarat State. A provisional gradation list of the Judicial Officers prepared by the State Government in accordance with their seniority was issued in 1960. The question of the inter se seniority as indicated by the lists was in controversy, but in view of the limited scope of the present cases it is not necessary to give the details issued on the April 7, 1976. Respondent 1 in each of the present appeals filed separate writ applications before the Bombay High Court challenging the list, inter alia, on the ground that the same having been prepared by the State Government was illegal. It was contended that in view of the provision of Article 235 of the Constitution of India, the power to decide the issue of seniority of the Judicial Officers vests exclusively in the High Court. The argument was accepted by the High Court by the impugned judgment and the seniority list has been quashed. The State has filed these appeals after obtaining special leave under Article 136 of the Constitutions, and they are being disposed of by this common judgment.

2. Admittedly the merger of the States in question took place under the provisions of the States Reorganisation Act, 1956 (hereinafter referred to as 'the Act'). Mr. M. C. Bhandare, learned counsel appearing in support of the appeals, contended that in view of Section 117 of the Act, quoted below, it is the State Government which is vested with the authority to decide the question of seniority amongst the Judicial Officers, and Article 235 of the Constitution does not apply in the present cases :

117. Power of Central Government to give directions : The Central Government may at any time before or after the appointed day give such directions to any State Government as may appear to it to be necessary for the purpose of giving effect to the foregoing provisions of this Part and the State Government shall comply with such directions.

Mr. S. K. Dholakia, representing the petitioners, who are respondents before us, relied upon the decision of this Court in *B. S. Yadav v. State of Haryana* (1980 Supp SCC 524 : 1981 SCC (L&S) 343 : (1981) 1 SCR 1024), and contended that in view of the exclusive, comprehensive and effective control of the High Court over the subordinate judiciary as spelled out by Article 235, the State Government or the Central Government does not have any jurisdiction to decide the question of seniority and to prepare a list accordingly. We do not think that in the circumstances of the cases

before us it is necessary to decide the question as formulated by the learned counsel and decided by the High Court, as the appeals are bound to fail even on the assumption that the argument pressed on behalf of the State of Maharashtra is correct. According to Section 117 of the Act, the State Government does not have any power to act independently; it has to comply with the directions issued by the Central Government. In the present case it is not suggested that the gradation list was prepared in pursuance of any direction of the Central Government; on the contrary, the learned counsel representing the Union of India before us supported respondent 1, stating that the High Court has exclusive power to decide the seniority question. On behalf of the State of Gujarat also the same stand has been adopted. The result, therefore, is that even if the argument pressed on behalf of the appellant be assumed to be correct, the impugned gradation list has to go.

3. We, accordingly, dismiss the appeals without deciding the controversial point mentioned earlier. There will be no order as to costs.

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