

Bindeshwari Ram

Vs

State of Bihar and Others

Civil Appeal No. 3982 of 1989

(M. N. Venkatachaliah, N. D. Ojha, J. S. Verma JJ)

19.09.1989

JUDGMENT

OJHA, J. -

1. Special leave granted.

2. This appeal has been preferred against the judgment dated April 20, 1988 of the Patna High Court dismissing a writ petition filed by the appellant challenging a seniority list. Necessary facts in brief are these :

The appellant and respondents 7 to 13 are Assistant Conservators of Forest in Bihar Forest Service. Their service conditions are governed by the Bihar Forest Service Rules, 1953 (hereinafter referred to as 'the Rules') made by the Government of Bihar in exercise of the powers conferred on it by the proviso to Article 309 of the Constitution of India. According to Rule 2(vii) of the Rules "the service" means the Bihar Forest Service. Rule 3 provides that the appointments of the service shall ordinarily be made by (a) direct recruitment in accordance with the rules in Part II of these Rules by competitive examination to be held by the Commission; and (b) by promotion in accordance with the rules contained in Part V of selected rangers specified therein. The appellant and respondents 7 to 12 were selected rangers and were appointed as Assistant Conservator of Forest by promotion under Rule 3(b). As is apparent from the counter-affidavit on behalf of respondents 8 to 10, respondent 11 was promoted as Assistant Conservator of Forest on December 21, 1976, respondents 7,8,9 and 12 on November 29, 1977 and respondent 10 on December 15, 1978. Insofar as the appellant is concerned, even though, he was appointed subsequently, his appointment was made effective retrospectively from November 29, 1977. Respondent 13, on the other hand, as is apparent from the seniority list which was challenged by the appellant, was appointed under Rule 3(a) of the Rules by direct recruitment on May 3, 1978. The counter-affidavit further indicates that respondent 13 was confirmed as Assistant Conservator of Forest on June 30, 1983. Respondents 7 to 11 were confirmed on August 30, 1983. and respondent 12 was confirmed on August 5, 1986 whereas the appellant was confirmed on December 31, 1986. In the said counter-affidavit the dates of appointment as rangers of respondents 11,7,8,9,10,12 and the appellant respectively are stated as April 3, 1958, April 4, 1958, April 9, 1958, April 7, 1959, April 1, 1966 and April 2, 1967. Even though a rejoinder has been filed by the appellant, the correctness of the aforesaid facts has not been denied therein nor has it been urged by the learned counsel for the appellant

before us that these facts are inaccurate. It is the basis of these facts, therefore, that the respective submissions made by learned counsel for the parties have to be considered.

3. It has been urged by learned counsel for the appellant mainly relying on a memorandum to the Cabinet dated November 24, 1977 which contains a note that if the appellant was found fit for promotion by the selection committee, his place will be above 10 general category rank officers mentioned therein, that in the seniority list the name of the appellant should have been placed above those officers. According to the learned counsel for the appellant the memorandum was approved by the Cabinet on the same date and yet in the impugned seniority list the aforesaid direction was not carried out. For the respondents, it was urged that the Cabinet had not approved the memorandum in its entirety. In our opinion, however, it is not necessary to go into this controversy. It was on the above premise that the writ petition challenging the seniority list was filed by the appellant in the High Court and according to his learned counsel, the High Court committed an error in dismissing the same.

4. Having heard learned counsel for the parties, we find it difficult to agree with the submission made by the learned counsel for the appellant. As seen above, the service conditions of Assistant Conservators of Forest who are members of the Bihar Forest Service, are governed by the Rules. Rule 35 which specifically deals with the matter of seniority reads as hereunder :

"35. Seniority of officers appointed to the service shall be determined with reference to the date of their substantive appointment to the service :

Provided that -

(i) in the case of members of the service appointed by direct recruitment at the same time, their seniority inter se shall be in the order of merit in which their names are placed in the list of successful candidates at the final examination of the India Forest College, Dehra Dun;

(ii) in case where appointments are made to the Service both by direct recruitment and promotion of selected rangers at the same time, the promoted members of the service shall be senior to the members directly recruited; and

(iii) the seniority inter se of rangers on substantive appointment to the service by promotion at the same time shall be their seniority inter se held as rangers."

5. In the instant case we are not concerned with clause (i) of the proviso. Even clause (ii) is not attracted inasmuch as respondent 13 even though was appointed by direct recruitment, was not appointed " at the same time" as the appellant and respondents 7 to 12 as already indicated above. It is clause (iii) of the proviso, therefore, which is relevant for the determination of the seniority inter se of the appellant and respondents 7 to 12. On a plain reading of this clause it is apparent that on substantive appointment of rangers to the service by promotion, their seniority inter se in the service is to be governed by " their seniority inter se held as rangers. " As seen above, the appellant as well as respondents 7 to 12 have already been confirmed as Assistant Conservator of Forest and meet the requirement of " substantive appointment to the service by promotion". In order to determine their inter se seniority as Assistant Conservator of Forest, therefore, their seniority inter se held as rangers shall be the determining factor. The respective dates of appointment as rangers of the appellant and

respondents 7 to 12 have already been given above. Its perusal indicates that respondents 7 to 12 had been appointed as rangers much before April 2, 1967 which was the date on which the appellant was appointed as a ranger. The dates of appointment and confirmation of respondent 13 who is a direct recruit, have been noted earlier. In this view of the matter the claim of seniority as made by the appellant has on substance.

6. It is settled law that the provisions of statutory rules cannot be modified or altered by executive instructions and it is only in the absence of statutory rules that executive instructions have relevance. As such even if for the sake of argument it may be accepted that on account of the memorandum to the Cabinet or any other executive instruction the appellant was to be given seniority as claimed by him it could not be done as in case of a conflict the statutory provisions contained in this behalf in proviso (iii) of Rule 35 of the Rules shall prevail. In the result this appeal fails and is dismissed but in the circumstances of the case there shall be no order as to costs.

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