

T. N. Saxena and others

Vs

State of U.P. and others

Civil Writ Petns. Nos. 9149-51 of 1983

(Ranganath Misra, M.M. Punchhi, K. Ramaswamy JJ)

22.08.1990

ORDER

1. These writ petitions are under Art. 32 of the Constitution. The dispute which forms the subject-matter relates to one of inter se seniority between direct recruits and promotees to the post of Senior Marketing Inspector.

2. The same dispute was before this Court in C.A. No. 3148 of 1979. The petitioners in present W.P. Nos. 9149-51 of 1983 were the appellants. By judgment dated May 7, 1982 (reported in AIR 1982 SC 1244: 1982 All LJ 1080) this Court while disposing of the appeal gave the following direction (Para 17):

"The Government shall now issue a fresh seniority list in the light of the observations made and principles enunciated by this Court and the High Court so as to avoid any reversion of promotees, who had been promoted within their quota as Senior Marketing Inspectors or above,"

A fresh seniority list has been duly published on August 4, 1983 pursuant to the said direction and is Annexure III to the said writ petition. This seniority list has been assailed in the main matter by contending that the direction of the Court has not been implemented. The said writ petitions raised similar contentions but in W.P. No. 9074 of 1983 the facts are somewhat different and we shall advert to them in due course.

3. In W.P. Nos. 9149-51 of 1983, five sets of respondents have been impleaded - the first set being public officers and authorities and the other four sets being four sets of promotees. The petitioners in those cases are direct recruits. At the hearing it has been conceded that the cause of action does not survive as against the third, fourth and fifth sets and petitioners have made their submissions confined to the second set only.

4. From the year 1964 the quota of direct recruits and promotees was fixed at 50: 50 in the cadre of Senior Marketing Inspectors. The first direct recruit was made in the year 1967. It has not been disputed by Mr. Yogeshwar Prasad, appearing for the State of Uttar Pradesh that the seniority list which is now impugned before us had been drawn up on the basis of credit of total service given to the Inspectors impleaded as the second set even though they were beyond the quota. The question for consideration, therefore, is as to whether there was any mandate in the judgment of this Court to draw up the seniority list on such basis.

5. We have gone through the judgment of this Court and though Mr. Yogeshwar Prasad wanted us to accept that the observations were not confined to respondents 2-5 of that appeal and could be taken to support what has been done by the State, we are of the view that all that had been said therein was with reference to respondents 2-5 only and this Court clearly indicated that those four formed a special category and would not be covered by the general rule. That being so, the only other aspect which we are required to @page-SC236 consider is what would be the law applicable to present situation.

6. We may refer to two decisions of this Court being V. B. Badami v. State of Mysore (1976) 2 SCC 901: (AIR 1980 SC 1561) and Gonal Bhimappa v. State of Karnataka (1987) Suppl SCC 207: (AIR 1987 SC 2359). Padami's case was a decision of a three-Judge Bench while the other is by a two-Judge Bench. Both these cases have laid down the rule. that where recruitment was from two sources for a cadre and a quota rule had been prescribed, seniority had to be regulated on the basis of the quota. A Constitution Bench of this Court in The Direct Recruit Class II Engineering Officers' Association v. State of Maharashtra (1990) 2 JT 264: (-AIR 1990 SC 1607 (to which one of us is a party) has laid down in paragraph 47 (of JT) : (Para 44 of AIR) of the judgment the guidelines to be adopted in dealing with disputes of inter se seniority in the same situation. The relevant guideline applicable to the present case appears to be:

"When appointments are made from more than two sources, it is permissible to fix the ratio for recruitment from the different sources and if rules are framed in this regard, it must ordinarily be followed strictly."

It is not in dispute that the recruitment of the cadre is subject to the rules of 1964 and recruitment to the cadre is from two sources. Therefore, inter se seniority has to be guided by the quota rule.

7. This is not a case where the exception as indicated in the decision would be applicable. Accordingly, we must hold that the seniority list as drawn up by the State said to be in terms of this Court's order is not in conformity with the judgment nor with the general law applicable to meet the situation. We allow the writ petitions and quash the seniority list and direct a fresh one to be drawn up. We make it clear that our decision shall only apply in respect of the petitioners of one side and the second set of respondents on the other in the batch of three cases and would not operate in regard to others.

8. So far as W.P.No. 9074 of 1983 is concerned is what would be the law applicable concerned, Mr. Garg appearing for the petitioner wanted to contend that the petitioner was a recruit of the year 1964. Though that appointment was on ad hoc basis and he came to be regularly recruited in the year 1967, he should be assigned the seniority of 1964 and not that of 1967 as has been done. We see no justification to accept this contention particularly when the petitioner by his own conduct has not claimed recruitment on the basis of 1964 appointment and became a candidate for selection in 1967. Since he had been given an inter se rating among the recruits of that year we do not think it would be open to change the seniority afresh. The relief to the petitioner is not available but the general principle decided otherwise would be applicable to him.

9. The writ petitions are disposed of without any order as to costs.

Order accordingly.

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