

# SUPREME COURT OF INDIA

Kailash Chand Joshi

Vs.

Rajasthan High Court

(B J Reddy and S Sen JJ.)

01.02.1996

## ORDER

1. The only question in this appeal preferred against the judgment of the Rajasthan High Court is whether the appellant is entitled to claim seniority over respondents Nos. 3 to 11. The appellant and the said respondents were selected as Munsiffs in the Rajasthan Judicial Service. While the appellant belongs to an open competition quota (non reserved category) respondents Nos. 3 to 11 belong to reserved categories. In view of the vacancy position in the higher cadre namely that of Civil Judge, the respondents were promoted earlier and the appellant promoted later to that category. After getting his promotion to the category of Civil Judge, the appellant laid a claim that he should be treated as senior in the Civil Judge category over respondents No. 3 to 11 for the reason that he was senior to them in the category of Munsiffs. This was rejected by the High Court, whereupon he filed the writ petition. It appears that there was a difference of opinion among two learned Judges of the High Court on the question, whereupon it was referred to a third learned Judge. In the light of the opinion rendered by the third Judge the writ petition has been dismissed.

2. The Rule relating to seniority is Rule 22 of the Rajasthan Judicial Service Rules. It reads as follows:

22 Seniority :- Subject to the other provisions of these rules seniority in the Service shall be determined by the date of the order of substantive appointment to the service:

Provided that the seniority of candidates appointed to the Service shall, in the case of appointment of more persons than one to the Service by an order of the same date, follow the order in which they have been placed in the list prepared by the Commission under Rule 19.

3. According to this Rule (the date) of substantive appointment determines seniority). The proviso, however, says that where more than one person is promoted by an order of the same date, their seniority in the promoted category shall be the" same as their seniority in the lower category to which they were appointed through the Public Service Commission. It is not the case of the appellant the he and respondents Nos. 3 to 11 were promoted to the category of Civil Judge under an order of the same date. Admittedly, the appellant was; promoted on a later date to that of: respondents Nos. 3 to 11. In such a case, the proviso does not come into operation and according to the main limb of the Rule the respondents Nos. 3 to 11 are entitled to be and were rightly treated as seniors. The appeal is dismissed accordingly. No costs.