

SUPREME COURT OF INDIA

Subhash Chander Mittal

Vs.

Bhagwant Singh Dhanada

(G Nanavati and S Kurdukar JJ.)

26.09.1997

ORDER

1. Leave granted.

2. We have heard learned counsel for the parties.

3. The Punjab State Agricultural Marketing Board issued an advertisement on 1-8-1982 inviting applications for one post of Assistant Engineer (Civil). By another advertisement dated 2-9-1982, two more posts of Assistant Engineers (Civil) were advertised by the Board. For the said 3 posts the Selection Committee recommended six names. Four were degree-holders and two were diploma-holders. Daljit Singh (degree-holder) who was at Serial No. 1 in the select list and Surjit Singh (diploma-holder), Serial No. 7 were appointed as Assistant Engineers. Four more persons were appointed as Assistant Engineers by the Chairman of the Board on 19-8-1983.

4. The appointments of persons who were subsequently appointed by the Chairman were challenged by the appellant by filing Writ Petition No. 3754 of 1984 in the Punjab and Haryana High Court. That petition was withdrawn with liberty to file a fresh petition. Thereafter the appellant filed Writ Petition No. 2010 of 1985. It was allowed by a learned Single Judge of that Court and the Board

was directed to consider the case of the appellant afresh. It was further directed that in case the appellant was found better than those four persons who were appointed subsequently, then he should be appointed as Assistant Engineer by creating a supernumerary post and without disturbing those whose appointments were challenged. It was also directed that if appointed, he should be given all consequential benefits. Pursuant to those directions, the Board reconsidered the case of the appellant and appointed him as Assistant Engineer on 19-4-1994 and then made his appointment effective from 5-7-1983.

5. Aggrieved by the order passed by the learned Single Judge and the consequential order passed by the Board, Respondents 1 and 2 in this appeal filed a review application as they were not joined as parties in the writ petition. The learned Single Judge disposed of the said application by observing that the proper course for them was to file an independent writ petition. Therefore, Respondents 1 and 2, Bhagwant Singh and Harpreet Singh, filed Writ Petition No. 1536 of 1996 challenging the order dated 19-4-1994 passed by the Board. The appointment of the appellant was challenged on the ground that it was contrary to statutory recruitment rules. The writ petition was heard by a Division Bench of that Court. It held that the order passed by the learned Single Judge in favour of the appellant was not proper and legal as the learned Single Judge had failed to notice that the appellant was not selected by the Selection Committee and, therefore, the Board could not have been directed to appoint him as Assistant Engineer. Accordingly, the consequential order which was passed by the Chairman of the Board on 19-4-1994 was quashed. At the same time the Division Bench made it clear that the appellant shall not lose any benefit which he would have derived from his earlier appointment as Junior Engineer and that he shall be deemed to have been continuously holding that post without any interruption. Aggrieved by that order the appellant has filed this appeal.

6. It was contended by the learned counsel for the appellant that the order passed by the learned Single Judge in WP No. 2010 of 1985 could not have been set aside by the Division Bench while hearing a writ petition filed under Article 226 of the Constitution. In view of the facts of this case, we are of the view that it is not necessary to consider whether the order passed by the Division Bench can be sustained on the ground that the writ petition could have been treated as an appeal against the order of the learned Single Judge. The Division Bench has not set aside the order passed by the learned Single Judge though it has observed in its judgment that it was improper and illegal. It has quashed the consequential order passed by the Chairman. Thus the factual position is that neither the judgment and order passed by the learned Single Judge in Writ Petition No. 2010 of 1985 was challenged nor has it been set aside, with the result that it became final.

7. In this context, we have to consider whether the judgment under challenge is correct. As the order passed by the Chairman was in compliance of the order passed by the learned Single Judge, it is difficult to appreciate how it could have been quashed and appointment of the appellant as Assistant Engineer was set aside. The only relief which could have been properly granted to the writ petitioners was protection of their seniority. We are, therefore, of the opinion that the High Court was not right in quashing the appointment of the appellant as Assistant Engineer. It should have only declared that his appointment shall not affect the seniority of those who were validly appointed in between 5-7-1983 and 19-4-1994. Respondents 2 and 3 and some more were appointed as

Assistant Engineers after proper selection before 19-4-1994. The appellant was not selected by the Selection Committee. His grievance in his petition was that four candidates who were appointed on 9-8-1983 were also not selected by the Selection Committee and yet they were appointed though they were less meritorious. The High Court found that the said grievance was correct and, therefore, gave the directions referred to above. Therefore, no benefit of seniority over properly appointed persons could have been granted. If the appellant wanted to claim seniority over those persons he ought to have joined them as parties in his writ petition. In this appeal also, only two persons who were appointed by the Chairman of the Board, even though not selected by the Selection Committee, are joined as Respondents 7 and 8. We are told that Respondent 8 has gone to the Public Health Wing which is a separate cadre and, therefore, he cannot now come in the way of the appellant's promotion to the higher post in the Civil Wing. As regards Respondent 7, it was contended by the learned counsel for the appellant that he was also appointed without being selected by the Selection Committee and was less meritorious than the appellant and, therefore, he cannot be given seniority over him. To find out if it was really so, we saw the original record. We find that the appellant had secured 18 marks while Respondent 7 had secured 20. Thus he was found better than the appellant by the Selection Committee. Therefore, this contention of the appellant has to be rejected.

8. We, therefore, partly allow this appeal and set aside the order passed by the High Court whereby appointment of the appellant as Assistant Engineer has been set aside. But we hold that the appellant cannot claim seniority over those Assistant Engineers who were properly appointed prior to 19-4-1994. Except for the purpose of arrears of salary and seniority, the appellant's appointment as Assistant Engineer shall be treated as effective from 5-7-1983. In the facts and circumstances of the case, there shall be no order as to costs.