

M. H. Patil

Vs

State of Maharashtra and Others

Civil Appeal No. 3377 of 1981

(Sujata V. Manohar, D. P. Wadha JJ)

11.02.1998

ORDER

1. The appellant filed the writ petition before the High Court of Bombay challenging the preparation of seniority list dated 22-5-1979 of Sub-Inspectors of Prohibition and Excise framed by the Government of Maharashtra. From 1977 onwards the seniority list was prepared on the basis of the length of continuous officiation in the cadre concerned. The appellant, however, relied upon the Rules framed for the departmental examination of persons appointed to the clerical and non-gazetted executive services of the Prohibition and Excise Department in the State of Maharashtra and dated 3-1-1962.

2. Under the said Rules, every person appointed to the clerical and non-gazetted executive services of the Prohibition and Excise Department was required to take the prescribed departmental examination under the Rules unless he was exempted from taking the examination. The Rules require that the candidate must pass the departmental examination within a period of 3 years from the date of his appointment. In case of failure to pass the examination within the said period, he was liable to be removed from the department. No candidate would be allowed to appear again in the examination after the expiry of 3 years without special sanction of the Government for any additional chance to appear which would be given only in very exceptional circumstances. Under Rule 2, a candidate who failed to appear for the first examination held after completing one year of continuous service was liable to have his increment withheld until he passed the examination or his services were dispensed with. On passing the examination, however, the withheld increment would become payable. Rule 3 which is relied upon by the appellant is as follows :

"3. Seniority among the Non-Gazetted Prohibition and Excise Officers and Clerks for the purpose of confirmation shall be decided according to the dates of their passing the departmental examination held after completion of one year's continuous service in the Prohibition and Excise Department."

3. The appellant contended that in view of this Rule the seniority for the purpose of promotion should be determined on the basis of the date of passing the examination. The High Court has negated this contention relying upon the wording of Rule 3 which says that the seniority determined on the basis of the date of passing the departmental examination is for the purpose of confirmation only and not for any other purpose. The High Court has also pointed out the advantages which a candidate will derive by early confirmation if he passes the departmental examination earlier than his seniors. The High Court after considering the advantages which may flow from early confirmation under Rule 3, has held that Rule 3 will not affect the seniority on the basis of continuous officiation for the purposes of promotion provided the persons concerned have

passed the departmental examination.

4. This has also been the view taken by the department right from the year 1977 onwards although prior to 1977, the department had interpreted the Rule as contended by the appellant. The seniority lists have been prepared on the basis of continuous officiation right from 1977 onwards. We do not see any reason to now disturb the seniority lists so prepared. We, therefore, do not see any reason for taking a view different from the view taken by the High Court. The appeal is, therefore, dismissed. There shall be no order as to costs.