

# SUPREME COURT OF INDIA

Mangal Das K. Desai

Vs.

Shashikant R. Desai

(M.Jagannadha Rao and D.P. Mohapatra JJ.)

28.02.2000

## ORDER

1. Delay condoned.

2. Leave granted.

3. The appellant before us was not a party to the Writ Petition No. 103 of 1998 which was disposed of by the High Court on 8.7.98. In the said order, the Writ Petition was allowed and certain directions were given quashing the seniority list dated 21.3.1996 and directing the re-arrangement of seniority of the personnel from the Cadre of Sub-Inspector, in accordance with the actual date of their entry in that Cadre. It was further directed that if recruitment was made from both sources at the same time, then inter seniority be fixed amongst them by following the principle of rota quota and that after fixing such seniority, the Government should regulate all promotions higher to the post of Sub-Inspector.

4. The appellant has come before us contending that the Rules which were issued on 29.5.97, published in Gazette Notification No. 2/33/76 PER dated 6.2.1987 contains a Saving clause which reads as follows :

Seniority already determined in accordance with the existing rules on the date of issue of this Notification will not be reopened. In respect of the vacancies for which recruitment action has already, been taken, on the date of issue of this Notification either by way of direct recruitment or promotions, seniority will continue to be determined in accordance with the existing rules.

5. Learned senior counsel appearing on behalf of the appellant has submitted that the seniority of the appellant in the Cadre of Sub-Inspector was finalised on 21.1.1986 in which list the appellant's name occurs at serial No. 22. According to learned Counsel that seniority of the appellant cannot be interfered with in view of the above said Saving clause.

6. After hearing counsel on both sides, we are of the view that the said contention is well founded in view of the express language of the Saving clause. We, therefore, modify the directions issued by the High Court in the impugned order to the effect that, so far as the seniority of the appellant as per the seniority list dated 21.1.1986 is concerned, the same cannot be disturbed under the impugned order.

7. It appears that the appellant had filed a Writ Petition No. 298/1998 challenging the seniority list dated 21.3.1996 and also another Writ Petition No. 404/1998 challenging the seniority list dated 28.12.1998, which was issued subsequent to the judgment of the High Court, impugned before us. So far as these writ petitions are concerned, these may be disposed of on their own merits, but subject to the above modifications which we have made in this appeal.

8. The appeal is disposed of accordingly.