

SUPREME COURT OF INDIA

State of U.P.

Vs.

U.P. Excise Subordinate O. M. Assocn.

C.A.No.7340 of 1997

(G. B. Pattanaik and U. C. Banerjee, JJ.)

14.09.2000

ORDER

1. The State of Uttar Pradesh is the appellant, assailing the judgment of the Allahabad High Court dated 20th November, 1996 on the Writ Petition filed by the Excise Clerks in the Subordinate offices. Before the High Court, the clerks of the Subordinate offices made two claims, one, they are entitled to the same scale of pay as is available to the clerks of the Head Office, and two, the seniority drawn up by the departmental authorities after coming into force of the Recruitment Rules called Uttar Pradesh Excise Department, Ministerial Service Rules, 1980 is based upon an erroneous assumption and the seniority has to be determined in accordance with Rule 21 of the Recruitment Rules and read with Uttar Pradesh Government Servants Seniority Rules, 1991, as amended from time to time. Before the High Court, the counsel appearing for the State fairly conceded to the prayer of the Writ Petitioner with regard to the scale of pay which they are entitled to, and on that basis the High Court granted the first relief. So far as the seniority is concerned, the High Court also considered the relevant provisions of the Recruitment Rules, more particularly Rule 21 of the Recruitment Rules dealing with the seniority and Rule 5 of the Uttar Pradesh Government Servants Seniority Rules, 1991 and came to the conclusion that the basis on which the seniority list has been drawn up by the authority is incorrect, and accordingly allowed the Writ Petition with the direction that the seniority list may be re-drawn up.

2. Prior to the Recruitment Rules, though the selection of the post of clerks in the Excise Department was being held on the basis of a combined test, and on the basis of merit obtained in the said test, but the appointments were made either to the Head office or to the Subordinate offices according to the decision of the employer. Under the Recruitment Rules of 1980, the "service" was defined to mean the Uttar Pradesh Excise Department Ministerial Service, and "member of the service" under 3(f) would mean a person appointed in a substantive capacity under the provisions of these rules or rules and orders in force prior to the commencement of these rules to a post in the service. Rule 4 of the Recruitment Rules defines the cadre of Service to mean the strength of the service and of each category of posts therein shall be such as may be determined by the Governor from time to time. Sub-rule (2) of Rule 4 provides that until orders varying the same have been passed the cadre strength shall be as specified in the Appendix. In the Appendix, the cadre of Senior Clerks in Item No. 5 and the total strength is 42. Thus, the Recruitment Rules wipes of the distinction between the clerks of the Head Office and clerks of the Subordinate Office and the clerks of the Subordinate Office and the Head Office became one cadre. Rule 21 of the Recruitment Rules provides for determination of seniority. It stipulates that the seniority of persons substantively appointed in any category of posts shall be determined in accordance with the Uttar Pradesh Government Servants Seniority Rules, 1991. Under the said Seniority Rules of 1991, Rule 5 provides that where according to the service rules appointments are to be made only by the Direct Recruitment, the seniority inter se of the persons appointed on the result of any one selection shall be the same as it is shown in merit list prepared by the Commission or the Committee, as the case may be. The appointments to the post of senior clerks have been made on the basis of direct recruits, and therefore the inter-se-seniority of those personnel have to be determined in accordance with Rule 5 of the Seniority Rules read with Rule 21 of the Recruitment Rules. The High Court has considered the appropriate provisions, and has issued appropriate direction quashing the seniority list drawn up by the authority on the erroneous assumption, we see no infirmity with the said conclusion of the High Court requiring our interference. The appeal fails and is accordingly dismissed.

Appeal dismissed.