

SUPREME COURT OF INDIA

State of Rajasthan

Vs.

Anil Kumar

C.A.No.1048 of 2001

(M.B. Shah and S.N. Variava JJ.)

06.02.2001

JUDGMENT

S. N. Variava, J.

1. Leave granted.

2. Heard parties.

3. This Appeal is against an Order dated 3rd April, 2000 by which the Appeal filed by the Appellant herein has been dismissed in limine. Applying Rule 28 of the Rajasthan Engineering Subordinate Service (Public Health Branch) Rules, 1967 certain persons, who were earlier Diploma holders and who had subsequently obtained Degrees, were placed above the Respondent in a seniority list. The Respondent had challenged his placement in this seniority list as prepared by the Public Health Engineering Department, Government of Rajasthan. The Respondent had in the petition inter alia challenged the vires of Rule 28.

4. The Learned Single Judge, by an Order dated 21st September, 1999, made the Petition absolute by holding that the controversy was covered by a judgment of this Court in the case of *Vijay Singh Deora and Others vs. State of Rajasthan and Another*¹. The learned single Judge did not at all consider the effect or validity of Rule 28, which reads as follows:

"Rule 28 : - Seniority - Seniority of persons appointed to the lowest post of the Service or lowest categories of posts in each of the group/section of the service, as the case may be, shall be determined from the date of confirmation of such persons to the said posts but in respect of persons appointed by promotion to other higher posts in the service or other higher categories of posts in each of the group/section in the service, as the case may be, shall be determined from the date of their regular selection to such posts."

5. In Deora's case (supra) the applicability, effect or validity of Rule 28 had not been dealt with at all. In that case seniority was not fixed on basis of this Rule. The questions raised in

this Writ Petition were therefore not covered by that decision. The aspects raised in this Petition should have been considered on merits. The Learned Single judge did not consider them. Unfortunately the Division Bench dismissed the appeal in limine. Accordingly we set aside the impugned order and remit the matter back to the Division Bench for consideration of the Appeal on its merits. This being an Appeal of 1999, we hope that the High Court shall dispose of the Appeal as expeditiously as possible.

6. The Appeal stands disposed of accordingly. There shall be no order as to costs.

¹1997 (3) SCC 118