

# SUPREME COURT OF INDIA

Hon'ble Chief Justice, High Court of Bombay

Vs.

B.S. Nayak

(G.B. Pattanaik and B.N. Agrawal JJ.)

01.05.2001

## ORDER

1. The High Court of Bombay is in appeal against the judgment of the Division Bench of the Bombay High Court. The disputes relate to the fixation of criteria of merit-cum seniority for filling up the post of the Private Secretaries to the Hon'ble Judges of the High Court. The learned Chief Justice in September 1991 fixed the principle and directed that "The criteria for promotion shall be merit-cum-seniority to be adjudged with reference to confidential records and dictation-typing and interview tests. Leave and attendance records shall also be taken into consideration". When appointments were made filling up the post of Private Secretaries following the aforesaid criteria, writ petition was filed by respondent No. 1 alleging inter alia that the earlier practice of filling up these posts by seniority have been changed and the changed criteria not having been given due publicity, the so called promotion/appointment made must be struck down. The High Court, by the impugned judgment, was persuaded to accept this submission of respondent No. 1, who was the writ-petitioner, and came to hold that the criteria in question not having been duly notified or wide publicity to the same not having been given, the Court was not justified in deviating from the said norms of seniority for promotion and therefore ultimately the promotion of two of the Private Secretaries was struck down and a direction was given that all posts of Private Secretaries in accordance with the norms of seniority must be filled up. It is this direction which is the subject matter of challenge in this appeal.

2. The appointments to the posts of Private Secretaries in the High Courts could be made by the Chief Justice as indicated in Article 229 of the Constitution. In the absence of any rules framed by the Court or the learned Chief Justice, the direction of the learned Chief Justice operates in the fields of appointment. That being the position the chief Justice was well within his jurisdiction in deciding the norms of merit cum seniority for filling up the posts of Private Secretaries and, in our opinion, that is the most befitting criteria for filling up the posts which takes into consideration the merit as a prime importance though seniority is not totally obliterated. We do not find any justification for the Division Bench of the High Court to strike down the criteria in question on the ground that the same had not been given due publicity. The question of giving publicity to the criteria would not arise as the learned Chief Justice has formulated the criteria for filling up the posts of Privates Secretaries which he thought appropriate for efficient administration and for efficient discharge of the duties of the

Hon'ble Judges. It cannot be disputed that the Private Secretaries to the Hon'ble Judges play an important role in taking down dictations and writing judgment and, if merit is not given its due consideration and appointments are made on the basis of seniority, then it would be difficult for any Judge to discharge his obligations. We, therefore, find the impugned direction of the Division Bench of Bombay High Court to be wholly unsustainable in law. We accordingly set aside the same and allow this appeal.