

SUPREME COURT OF INDIA

Asis Kumar Samanta & Ors

Vs.

State of West Bengal & Ors

Appeal (civil) 1331 of 2001

(A.K.Mathur and Dalveer Bhandari)

12/07/2007

JUDGEMENT

A.K. MATHUR, J.

1. This appeal is directed against the order dated 24th March, 1999 passed by the Division Bench of Calcutta High Court in W.P.S.T. No. 33 of 1997 whereby the Division Bench dismissed the writ petition. This Writ Petition was filed against the order passed by the West Bengal State Administrative Tribunal in Case No. TA 1293/1996 on 21st April, 1997, wherein 11 petitioners (appellants herein) were recruited directly to State Forest Service in March, 1990. Respondent Nos. 4 to 19 to the original petition were promoted to the State Forest Service vide Notification No. 940 dated 1.2.1991. They were given retrospective seniority with effect from 31st December, 1990, According to Rule 6(2) of West Bengal Service (Determination of Service) Rules, 1981 (hereinafter to be referred to as 'the Rules'), the promotee shall be en bloc senior to the direct recruits of the same year. Consequently, the respondents 4 to 19 who were promoted in 1991 were given retrospective seniority w.e.f 31.12.1990. Therefore, as per Rule 6(2) of the Rules, those respondents 4 to 19 got the seniority over directly recruited candidates. That was challenged by the direct recruits of the State Forest Service before the Tribunal. The State Tribunal upheld the grant of retrospective seniority and rejected their contention. Aggrieved against this, present writ petition

was filed under Article 226 of the Constitution of India by direct recruits who were rejected by the Division Bench of the High Court. Hence the present appeal by the direct recruits.

2. The main question involved in this matter is whether such retrospective promotion or seniority can be granted or not?

3. The moot question came up before this Court in various matters. But there is a conflict of opinion on this issue. Some judgments have recognized the retrospective seniority and in some cases it has not been accepted.

4. Normally, there are two modes of service i.e. one by way of recruitment or other by way of promotion. Sometimes the process of direct recruitment is carried on but the recruitment through promotion is held up on account of dispute in the seniority among the promotees or sometimes by the intervention of the Court and for some other reasons. In most of the States, the rule is that whenever direct recruitment and promotion is in the same year then the promotees are ranked senior to the direct recruits. The problem arises when the direct recruits do not accept this proposition, it leads to litigation that the promotees do not find their berth in the service, therefore, they cannot be given benefit of their service from retrospective date so as to make them senior to direct recruits. In some cases, this Court has affirmed this line of argument and in some other judgments; this line has not been accepted. In this connection, two sets of cases can be classified as under:

5. In the under mentioned cases the promotees were given retrospective promotions and seniority was accepted by this Court. The following decisions have upheld such line of reasoning: 1980 Supp. SCC 206: *Devi Prasad & Ors v. Government of A.P.& Ors.*(1997)1 SCC 111 U.D. *Lama and Ors. v State of Sikkim & Ors.*(1992) 2 SCC 241 *State of Andhra Pradesh & Anr. v. K.S. Muralidhar & Ors. etc.*AIR 1994 SC 2481 *Ram Pal Malik v State of Haryana & ors.*

6. As against this, the other line of reasoning which has been affirmed by this Court is that in case the promotees are promoted and given retrospective seniority as against the direct recruits that was held to be ultra vires in the following cases: (1974)1 SCC 188 *State of Gujarat v. C.G. Desai* AIR 1993 SC 2306: *G.S. Venkata Reddy & Ors.etc.etc. v. Government of A.P.*1994 Supp. (1) SCC 44: *K. Narayanan & Ors. v. State of Karnataka & Ors.*AIR 1991 SC 1244: *State of Bihar & Others v. Sri Akhouri Sachindra Nath & Ors.*(2006)10 SCC 346 : *Uttaranchal Forest Rangers' Assn. (Direct Recruit) & Ors. v. State of U.P. & Ors.*

7. In view of conflicting views expressed by this Court, it would be appropriate to refer this case to a larger Bench so that the controversy can finally be resolved and put to rest. Therefore, the Registry is directed to place the matter before the Hon'ble the Chief Justice of India for constitution

of larger Bench. Similar request has been made in Civil Appeal Nos.1712-1713 of 2002.