

# SUPREME COURT OF INDIA

P.S. Gopinathan

Vs

State of Kerala

C.A.No..... of 2008

(S.B. Sinha J.)

09.05.2008

## JUDGMENT

### **S.B. Sinha, J:**

1. Although I respectfully agree with the opinion of my learned brother Naolekar, J., I would like to add a few words.

2. Respondents No. 3 to 5 herein were granted selection grade much prior to the appellant. They have also been granted super-selection grade. They have been thus placed in Category - I of the services. For all intent and purport they were promoted much prior to the appellant herein.

3. Such orders of promotion in terms of the Rules were granted on the basis of merit and ability. Seniority was considered to be relevant only where merit and ability were approximately equal. The inter se seniority, therefore, does not remain the sole criteria.

4. The case of the appellant for the purpose of grant of selection grade as also super-time scale must have been considered alongwith the said respondents. They must have been found to be more meritorious. In that view of the matter, it is, in our opinion, not a fit case where we should even exercise our jurisdiction under Article 136 of the Constitution of India.

5. No doubt the Governor is the appointing authority of the District Judges in the State. However, the same in terms of the constitutional provisions was required to be done in consultation with the High Court. The High Court keeping in view the amendments made in the Rule treated the appointment of the appellant as temporary. Apart from the fact that the appellant accepted his posting orders without any demur in that capacity, his subsequent order of appointment dated 15th July, 1992 issued by the Governor had not been challenged by the appellant. Once he chose to join the mainstream on the basis of option given to him, he cannot turn back and challenge the conditions. He could have opted not to join at all but he did not do so. Now it does not lie in his mouth to clamour regarding the cut-off date or for that matter any other condition. The High Court, therefore, in our opinion, rightly held that

the appellant is estopped and precluded from questioning the said order dated 14th January, 1992. The application of principles of estoppel, waiver and acquiescence has been considered by us in many cases, one of them being *Dr. G. Sarana v. University of Lucknow and others*<sup>1</sup>, stating :-

“He seems to have voluntarily appeared before the Committee and taken a chance of having a favourable recommendation from it. Having done so, it is not now open to him to turn round and question the constitution of the Committee.”

<sup>1</sup>*AIR 1976 SC 2428*