
(1989) 09 SC CK 0027

In the Supreme Court Of India

Case No : Civil Appeal No. 3982 of 1989 (From the Judgment and Order dated April 20, 1988 of the Bihar High Court in C.W.J.C. No. 1749 of 1988)

Bindeshwari Ram

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 19-09-1989

Acts Referred:

Constitution of India, 1950 — Article 309

Citation : (1989) 59 FLR 674 : (1989) 3 JT 712 : (1990) 1 PLJR 20 : (1989) 2 SCALE 655 : (1989) 4 SCC 465 : (1989) 1 SCR 201 Supp : (1990) 1 SLJ 82

Hon'ble Judges : M. N. Venkatachaliah, J;J. S. Verma, J;D. N. Ojha, J

Bench : Full Bench

Advocate : B.R.L. Iyengar and Gobind Mukhoty, K.K. Gupta and Hari Narain Ojha, for the Appellant; Anil Dev Singh and A.K. Sen, Senior Advs., D. Goburdhan, T.C. Sharma, Sushma Suri and D.P. Mukherjee, Advs., for the Respondent

Final Decision : Dismissed

Judgement

N.D. Ojha, J.—Special leave granted.

2. This appeal has been preferred against the judgment dated 20th April, 1988 of the Patna High Court dismissing a writ petition filed by the appellant challenging a seniority list. Necessary facts in brief are these:

The appellant and respondents 7 to 13 are Assistant Conservators of Forest in Bihar Forest Service. Their service conditions are governed by the Bihar Forest Service Rules, 1953 (hereinafter referred to as the Rules) made by the Government of Bihar in exercise of the powers conferred on it by the proviso to Article 309 of the Constitution of India. According to Rule 2 (vii) of the Rules "the service" means the Bihar Forest Service. Rule 3 provides that the appointments of the service shall ordinarily be made by (a) direct recruitment in accordance with the Rules in Part II of these Rules by competitive examination to be held by the Commission; and (b) by promotion in accordance with the Rules contained in

Part V of selected rangers specified therein. The appellant and respondents 7 to 12 were selected rangers and were appointed as Assistant Conservator of Forest by promotion under Rule 3(b). As is apparent from the counter affidavit on behalf of respondents 8 to 10, respondent No. 11 was promoted as Assistant Conservator of Forest on 21st December 1976, respondent Nos. 7, 8, 9 & 12 on 29th November 1977 and respondent No. 10 on 15th December 1978. In so far as the appellant is concerned, even though, he was appointed subsequently, his appointment was made effective retrospectively from 29th November 1977. Respondent No. 13, on the other hand, as is apparent from the seniority list which was challenged by the appellant, was appointed under Rule 3(a) of the Rules by direct recruitment on 3rd May, 1978. The counter affidavit further indicates that respondent No. 13 was confirmed as Assistant Conservator of Forest on 30th June 1983. Respondents 7 to 11 were confirmed on 30th August 1983 and respondent No. 12 was confirmed on 5th August 1986 whereas the appellant was confirmed on 31st December 1986. In the said counter affidavit, the dates of appointment as rangers of respondents 11, 7, 8, 9, 10, 12 and the appellant respectively are stated as 3rd April, 1958, 4th April, 1958, 5th April, 1958, 9th April 1958, 7th April 1959, 1st April 1966 and 2nd April 1967. Even though a rejoinder has been filed by the appellant, the correctness of the aforesaid facts has not been denied therein nor has it been urged by the learned Counsel for the appellant before us that those facts are inaccurate. It is on the basis of these facts, therefore, that the respective submissions made by the learned Counsel for the parties have to be considered.

3. It has been urged by learned Counsel for the appellant mainly relying on a memorandum to the Cabinet dated 24th November 1977 which contains a note that if the appellant was found fit for promotion by the selection committee, his place will be above 10 general category rank officers mentioned therein, that in the seniority list the name of the appellant should have been placed above those officers. According to the learned Counsel for the appellant the memorandum was approved by the Cabinet on the same date and yet in the impugned seniority list the aforesaid direction was not carried out. For the respondents, it was urged that the Cabinet had not approved the memorandum in its entirety. In our opinion, however, it is not necessary to go into this controversy. It was on the above premise that the writ petition challenging the seniority list was filed by the appellant in the High Court and according to his learned Counsel, the High Court committed an error in dismissing the same.

4. Having heard learned Counsel for the parties, we find it difficult to agree with the submission made by the learned Counsel for the appellant. As seen above, the service conditions of Assistant Conservators of Forest who are members of the Bihar Forest Service, are governed by the Rules. Rule 35 which specifically deals with the matter of seniority reads as hereunder:

35. Seniority of officers appointed to the Service shall be determined with reference to the date of their substantive appointment to the Service.

Provided that

(i) in the case of members of the Service appointed by direct recruitment at the same time, their seniority inter se shall be in the order of merit in which their names are placed in the list of successful candidates at the Final Examination of the Indian Forest College, Dehra Dun;

(ii) in case where appointments are made to the Service both by direct recruitment and promotion of selected Rangers at the same time, the promoted members of the service shall be senior to the members directly recruited; and

(iii) the seniority inter se of Rangers on substantive appointment to the Service by promotion at the same time shall be their seniority inter se held as Rangers.

5. In the instant case we are not concerned with Clause (i) of the proviso. Even Clause (ii) is not attracted inasmuch as respondent No. 13 even though was appointed by direct recruitment, was not appointed "at the same time" as the appellant and respondents 7 to 12, as already indicated above. It is Clause (iii) of the proviso, therefore, which is relevant for the determination of the seniority inter se of the appellant and respondents 7 to 12. On a plain reading of this Clause it is apparent that on substantive appointment of rangers to the service by promotion, their seniority inter se in the service is to be governed by "their seniority inter se held as rangers". As seen above, the appellant as well as respondents 7 to 12 have already been confirmed as Assistant Conservator of Forest and meet the requirement of "substantive appointment to the service by promotion". In order to determine their inter se seniority as Assistant Conservator of Forest, therefore, their seniority inter se held as rangers shall be the determining factor. The respective dates of appointment as rangers of the appellant and respondents 7 to 12 have already been given above. Its perusal indicates that respondents 7 to 12 had been appointed as rangers much before 2nd April 1967 which was the date on which the appellant was appointed as a ranger. The dates of appointment and confirmation of respondent No. 13 who is a direct recruit, have been noted earlier. In this view of the matter the claim of seniority as made by the appellant has no substance.

6. It is settled law that the provisions of statutory rules cannot be modified or altered by executive instructions and it is only in the absence of statutory rules that executive instructions have relevance. As such even if for the sake of argument it may be accepted that on account of the memorandum to the Cabinet or any other executive instruction the appellant was to be given seniority as claimed by him, it could not be done as in case of a conflict the statutory provisions contained in this behalf in proviso (Hi) of Rule 35 of the Rules shall prevail. In the result this appeal fails and is dismissed but in the circumstances of the case there shall be no order as to costs.