(2000) 11 SC CK 0004

In the Supreme Court Of India

Case No : Civil Appeal No. 2358 of 1999

Dev Raj Gupta APPELLANT

Vs

State of Punjab and Others RESPONDENT

Date of Decision : 02-11-2000

Acts Referred:
Constitution of India, 1950 — Article 136, 309

Citation : (2001) 89 FLR 475 : (2001) 4 JT 82 : (2001) 10 SCC 397

Hon'ble Judges : G. B. Pattanaik, J;B. N. Agrawal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The appellant assails the order of the Punjab & Haryana High Court. The appellant originally had been appointed as a clerk in the Office of the District & Sessions Judge in the year 1967. Having continued as a clerk in that office till 1976 and a post of clerk in the Office of Deputy Commissioner of Excise and Taxation having fallen vacant, he applied for the said post and on being duly selected he was issued a letter of appointment on 4th of January, 1977 which reads thus:

Shri Dev Raj Gupta, Reader in the Court of Subordinate Judge 1st Class, Gidderbaha is hereby appointed as clerk against the vacant post.

Sd/- (Ram Rattan)

Bhatinda Deputy Excise & Taxation Commissioner dated 4th January, 1977. Distt. Bhatinda. No. 10844 Estt. Dated 1977.

A copy is forwarded to the District & Sessions Judge, Faridkot for information with reference to his Memo No. 4091 dated 17.12.76. He is requested to relieve Shri Dev Raj Gupta, Reader in the Court of Subordinate Sub Judge 1st Class Gidderbaha and direct him to join this office at the earliest.

Sd/- (Ram Rattan) Deputy Excise & Taxation Commissioner Distt. Bhatinda.

No. 10845-46 Estt. Dated 6.11.76

2. Having joined the Office of the Deputy Excise and Taxation Commissioner, he claimed that his past services rendered in the Office of the District & Sessions Judge should be counted for the purpose of his seniority in the rank of clerks in the Office of the Deputy Excise and Taxation Commissioner. The same having not been acceded to by the employer, he approached the High Court. The High Court came to the conclusion that the past services cannot be counted for the purpose of his seniority and as such dismissed the writ petition. It is against this order the appellant has approached this Court.

3. It is contended before us that though the order of appointment indicates to be a case of recruitment but factually it was a case of transfer from one department to the other and therefore the appellant is entitled to count the past service rendered by him in the Office of the District & Sessions Judge for the purpose of seniority in the Office of Deputy Excise and Taxation Commissioner. We are unable to accept this submission of the learned Counsel for the appellant. The recruitment to the different posts in the Office of the Excise and Taxation Commissioner is governed by a set of Rules framed under Article 309 of the Constitution of India called "The Punjab Excise and Taxation Department Subordinate Officers (Ministerial Class III Service Rules". "Service" has been defined in Rule 2(h) to mean the Punjab Excise and Taxation Department Subordinate Offices (Ministerial) Class III Service. Rule 3 indicates that the service shall comprise of the posts shown in Appendix-A. Rule 10 is the Rule determining the seniority which states that the seniority inter se of the members of the services shall be determined by the dates of their continuous appointments in the service. In that view of the aforesaid statutory provision dealing with the seniority of the members of the service, it is difficult to accept the contention of the learned Counsel for the appellant that the past period rendered by the appellant in the Office of the District & Sessions Judge should also be counted for the purpose of seniority. The appellant must be held to have joined the services only, on the basis of the letter of appointment on 4th January, 1977 and therefore, any services rendered prior to that date in any other department/organization cannot qualify for counting the seniority of the appellant in the office of the Deputy Excise and Taxation Commissioner. In this view of the matter, we see no infirmity with the impugned judgment requiring our interference under Article 136 of the Constitution. The civil appeal is accordingly dismissed.

