

(1994) 11 SC CK 0102

In the Supreme Court Of India

Case No : Civil Appeals Nos. 4349-50 Of 1986 With No. 5330 Of 1993 And Of 1994

Dr R.K.S. Chauhan and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 08-11-1994

Acts Referred:

Citation : (1995) 3 SCC 688 Supp

Hon'ble Judges : A. M. Ahmadii, C.J;Sujata V. Manohar, J;S. Mohan, J

Bench : Full Bench

Final Decision : Disposed Of

Judgement

1. The question of promotion from the post of Assistant Director to that of Joint Director had to be considered in accordance with the U. P. Agricultural Department (Recruitment to Senior Posts) Rules, 1976 . According to Rule 3 of the aforesaid rules, overriding effect is given over U.P. Agriculture Service, Class I Rules, 1934. Rule 4 of the 1976 Rules lays down the method of recruitment by promotion. That rule provides:

"4. Promotion to the post of Joint Director shall be from amongst permanent officers below the rank of Joint Director in the U.P. Agriculture Service, Class 1."

Those posts of Joint Directors had to be filled in by promotion and all officers below the rank of Joint Director numbering 27 were considered for promotion. The criterion for promotion laid down in Rule 4(3 is merit. That sub-rule in terms states that the criterion for promotion to the post of Joint Director ... shall be merit. A Selection Committee consisting of three senior officers, namely, Agriculture Director, U.P., secretary, PWD, and secretary, Agricultural Production Department was constituted to assess the respective merits of the candidates. According to sub-rule (I)(KA) of Rule 4 of the 1976 Rules, the post of Joint Director had, therefore, to be filled by promotion on the basis of merit. A list of eligible officers was required to be prepared in accordance with their seniority in

consultation and with the approval of Department of Personnel and Law on the basis of the date of substantive appointment in service under Rule 30(1) of the 1934 Rules. Character rolls and other relevant information on record was placed before the Selection Committee in respect of the eligible officers. Since in the instant case all the 27 officers below the rank of Joint Director were considered for promotion, there is no dispute that any officer was left out from consideration.

2. On the basis of the selection made by the aforesaid Selection Committee 10 persons were selected for promotion on the basis of merit. Those who were left out, therefore, challenged the selection on the ground that the selection had to be made on the basis of seniority and their seniority had been overlooked. The tribunal accepted this contention and quashed the selection. The present appellants, therefore, approached the High court under Articles 226/227 of the Constitution challenging the decision of the tribunal. The High court came to the conclusion that the criterion was merit though seniority was not an irrelevant consideration but upheld the order of the tribunal on the ground that the selection made by the Committee did not reflect the basis on which comparative merit of the eligible candidates was determined. The High court observed as under:

"If the Committee has in fact adjudged comparative merit of all the eligible candidates, the record should disclose it whether there had been an application of mind in that record. The record should also disclose some reasons for non-promotion of at least of those candidates who have better service record and have been rated to be good and very good officers during the past ten years as compared to some of those selected candidates who had in past only few such entries and even one of them i.e. Shri 1.C. Agarwal. had to his credit two adverse entries during the said period, but in spite of it he has been selected. The original record relating to selection of candidates by the Departmental Selection Committee does not at all reveal any reason as to why other eligible candidates were not found fit to be promoted and it reveals absolutely no reason for their non-selection. The Selection Committee has apparently picked up first ten candidates figuring in the so-called eligibility list and jotted down their names in the list of selected candidates prepared by it. It, therefore, cannot be assumed that the Committee had applied its mind in making selection of candidates after adjudging the comparative merit of all the eligible candidates."

3. On a plain reading of the relevant rules there can be no doubt that the criterion for appointment to the post of Joint Director by promotion is merit pure and simple. Seniority can become a relevant consideration only when there is a tie between two candidates on merit. If out of two candidates possessing equal merit one has to be selected, seniority may become a relevant consideration. But it is nobody's case that such a situation had arisen in the instant selection. Therefore, even if we are to assume that the respondents were senior to the appellants, it would not help the respondents since the selection was based on merit. Merely because the first ten candidates in the eligibility list came to be

selected it cannot be said that the selection was not made on merit. It was contended by the unsuccessful respondents in their application to the tribunal that the selection was vitiated for non-application of mind, in that, comparative merit-cum-seniority had not been taken into consideration. If it was put in issue the parties would have placed their point of view in that behalf in the pleadings and perhaps the State would also have filed an affidavit explaining how merit was assessed. It seems to us that the only ground on which the selection was challenged was that a wrong criterion was adopted for the purpose of promotion to the post of Joint Director. According to the unsuccessful respondents the correct criterion was seniority and not merit and that was upheld by the tribunal. It was for that reason that the appellants felt aggrieved and moved the High court by way of a writ petition. The High court conceded that the correct criterion was merit but it knocked down the selection on the ground that there was no proper application of mind in that the Committee had not adjudged the comparative merit of the eligible candidates; at least the record did not reflect it. Now this was never the contention raised before the tribunal and the pleadings were not completed on that contention. It seems that the High court called for the file, looked into it and virtually made out the case which was never pleaded by the unsuccessful candidates. In doing so the High court placed the appellants to a disadvantage, in that, the selection had never been quashed by the tribunal on that ground. The ground on which the selection was quashed was not one which found favour with the High court. Even if we are to assume that the unsuccessful respondents were senior to the appellants as their ad hoc service had to be reckoned for the purposes of seniority, we fail to see how it would make any difference if the selection is purely on merit and there was no contention that there was a tie between two candidates of equal merit. We are, therefore, of the opinion that the High court fell into an error in making out a case which was not pleaded by the unsuccessful candidates in the application filed before the tribunal and which it appears was made out for the first time by the High court. Even when the matter was pending before the High court, the unsuccessful candidates never sought leave to amend their application and include this plea. The appellants as well as the State, therefore, had hardly any opportunity to place their point of view in that behalf. We are, therefore, of the opinion that the said ground on which the High court quashed the selection cannot be allowed to stand. Needless to clarify that we have not gone into the question of inter se seniority.

4. Mr. Raju Ramachandran tried to persuade us to the view that since the tribunal had quashed the selection on the ground that criterion was not properly applied, the High court was justified in looking into the file and coming to the conclusion that there was non-application of mind on the part of the Selection Committee. If the High court desired to examine this contention and if the unsuccessful candidates were inclined to raise it the proper course was to seek an amendment of the application and then give the appellants as well as the State an opportunity to contest that contention. By merely calling for the file, looking into

it and deciding without pleadings and without a proper opportunity to rebut the impression formed by the High court on a perusal of the File it was not correct to conclude that there was non-application of mind. We therefore, cannot entertain this contention urged on behalf of the unsuccessful candidates.

5. For the above reasons we allow these appeals, set aside the order of the tribunal as well as the High court and direct that the application filed before the tribunal shall stand dismissed with no order as to costs.

6. In view of the decision just recorded in Civils Nos. 4349-50 of 1986, this appeal which is directed against the interim order based on the decision of the High court in the aforesaid two appeals can no more stand and must be set aside. The appeal will, therefore, stand allowed by setting aside the impugned order since we have already upheld the selection made earlier in point of time which was the subject-matter of the aforesaid two appeals. Therefore, the regularisation of Dr R.K.S. Chauhan cannot be questioned. There will be no order as to costs.

7. Special leave granted.

8. In view of our decision in CAs Nos. 4349-50 of 1986 the impugned decisions of the tribunal as well as the High court must also be set aside in this appeal, since even in the case of Additional Director promotion has to be on the basis of merit as in the case of the Joint Director. The appeal will, therefore, stand allowed and the orders of the tribunal as well as the High court impugned herein shall stand set aside and the applications shall stand dismissed with no order as to costs. Needless to clarify that we have not gone into the question of inter se seniority.