

A STATE OF MAHARASHTRA AND ANR. A.W. DHOPE AND ORS.
v.
SHRI SANJAY THAKRE AND ORS.

MARCH 7, 1995

B [K. RAMASWAMY AND B.L. HANSARIA, JJ.]

Service Law

C *Seniority—Assistant Conservator of Forests—Direct recruits—Promotees—Quota rule—Direct recruitment not made as per rule—Reasons given by State—Rejection by Tribunal—Interference by Supreme Court not called for—Held quota rule was not broken down—Appointment of Promotees held in violation of rule i.e. fortuitious—Seniority cannot be counted from the date of fortuitious promotions—Executive instructions—Deviations by State—Deprecation of.*

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F In a seniority dispute between the direct recruits and promotees belonging to the cadre of Assistant Conservator of Forests in Maharashtra Forest Service, the appellant-State and some of the promotees contended before the State Administrative Tribunal that the quota rule laid down by the service rules had broken down as direct recruitment was not made for a long period because of non-availability of pre-recruitment training facility and the requirement of the Indian Forests Service (Recruitment) Rules, 1966 to make initial recruitment from the State Forest Service. Rejecting these reasons given by State and observing that even the State was silent as to whether promotions were fortuitious, the Tribunal allowed the applications of direct recruits and directed the appellants to determine *inter-se* seniority by following the quota rules.

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H In appeal to this Court by State as well as some of the promotees it was contended on behalf of the appellants that (i) the Tribunal erred in rejecting the reasons given by the State for not making direct recruitment as per rules; (ii) the *ad hoc* service rendered by promotees should be reckoned for computing seniority; (iii) the promotees were not appointed fortuitiously; and (iv) as the concerned provisions laying down ratio between direct recruits and promotees were executive instructions having no statutory force, the State could deviate from the ratio laid down.

Dismissing the appeals, this Court

HELD : 1. The examination of the matter under Article 136 of the Constitution would not permit this Court to describe the view taken by the Tribunal so unreasonable as to merit interference with the same. The present was not a case about which it could be said that the quota rule had broken down. Therefore, the appointment of promotees has to be regarded as in violation of rules. The material placed on record of the Tribunal does not permit to accept the contention on behalf of the promotees that their promotions were not fortuitious. [544-H, 545-A, 546-F]

Keshav Chandra Joshi v. Union of India, [1992] Suppl. 1 272; *A.N. Shegal v. R.R. Sheoram*, [1992] Suppl. 1 SCC 304; *A. Janardhana v. Union of India*, [1983] 3 SCC 601 and *Narender Chadha v. Union of India*, [1986] 2 SCC 157, referred to.

State of West Bengal v. Aghore Nath Dey and Ors., [1993] 3 SCC 371 and *The Direct Recruit Class-II Engg. Officers Association v. State of Maharashtra*, AIR (1990) SC 1607, held inapplicable.

2. The State having laid down the ratio, even though the same be by way of executive instructions, it does not really lie in the mouth of the State to contend that the instructions having no statutory force could be deviated. [546-A]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 3364 and 3365 of 1995.

From the Judgment and Order dated 28.10.94 of the Maharashtra Administrative Tribunal, Nagpur in T. A. No. 1275/92 (WP No. 743/90).

M.C. Bhandare, S.K. Dholakia and V.N. Ganpate, S.M. Yadav, S. Bhasme, H. Wahi and Uday Umesh Dalit for the appearing parties.

The Judgment of the Court was delivered by :

HANSARIA, J. The incessant dispute of *inter-se* seniority between direct recruits and promotees needs solution in these appeals relating to the incumbents belonging to the cadre of Assistant Conservator of Forests in the Maharashtra Forests Service, Class- II.

2. Two of the direct recruits approached the Maharashtra Ad-

A ministrative Tribunal, Nagpur Bench, making a grievance about their seniority qua some promotees. The Tribunal after examining the matter in great detail allowed the petition by quashing two of the State Government's decisions and directing the respondents before it to determine *inter-se* seniority by following the quota rule. Feeling aggrieved, the State as well as some of the promotees have preferred these appeals.

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3. There is no dispute before us that the service rule did lay down quota of 1:1 between the promotees and direct recruits. It is also not in dispute that appointment at the relevant time had not been made as per the quota. The real bone of contention between the parties is whether on the facts it could be said that quota rule had broken down, which stand of the appellants did not favour with the Tribunal. Secondly, could it be said that promotions in the present case were not fortuitious, because of which in view of what was held by a Constitution Bench of this Court in *The Direct Recruit Class-II Engineering Officers' Association's* case, AIR (1990) RC 1607, the seniority has to be reckoned from the date of promotion.

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4. Insofar as the first aspect of the case is concerned, we find that the State had advanced two reasons for not making direct appointments to the posts in question for a long period of 10 years. The Tribunal has dealt with the same in para 22 of the impugned judgment. As to the first reason, which was non-availability of pre-recruitment training facility for the Assistant Conservator of Forests, the Tribunal has observed that this reason is perfunctory, because the State did not bring on record as to how many seats for the training were required and how many were not allotted. The second reason given was the publication of Indian Forests Service (Recruitment) Rules, 1966, in 1970, as per which Rules the initial recruitment to the Indian Forests Service was required to be made from the State Forest Service. The Tribunal has observed that even if that was so, that was in the year 1970 and it is not understandable as to why direct recruitments were not made in the succeeding years till 1981.

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5. Shri Dholakia, appearing for the some of the promotees, has strenuously urged that the Tribunal was not correct in not giving due weight to the reasons advanced by the State in not having made direct recruitment in time as required by the Rules. Having noted the reasons given by the Tribunal for non-acceptance of the stand taken by the State, we do not think if the examination of the matter by us under Article 136 of the

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Constitution would permit us to describe the view taken by the Tribunal so unreasonable as to merit interference with the same. We, therefore, hold that the present was not a case about which it could be said that the quota rule had broken down. In this connection it would be apposite to refer to *Keshav Chandra Joshi v. Union of India*, [1992] Supp. 1 SCC 272 and *A.N. Shehgal v. R.R. Sheoram*, [1992] Supp. 1 SCC 304 which are, judgments by three-judge and two-judge Benches respectively. Both these cases dealt with the promotions given to the concerned persons in excess of the quota, because of which it was stated that their promotions were not according to rules. The promotions were, therefore, held to be fortuitous; it was also observed that the seniority could not be counted from the dates of fortuitous promotions. These cases voiced the feeling of the Court that the State having made the rules, should implement the same in letter and spirit; any justification for dereliction in implementation should not be countenanced; it should really be snubbed.

6. Insofar as in the second aspect of the case is concerned, Shri Bhandare, appearing for the State, is at pains to urge that in view of what was held by a three-judge Bench of this Court in *State of West Bengal v. Aghore Nath Dey & Ors.*, [1993] 3 SCC 371, the present was pre-eminently a fit case where the service rendered by the promotees, even though *ad-hoc*, was required to be counted for the purpose of seniority. We have two observations to make regarding this submission. The first is that *Aghore Nath's* was not a case of claim by the promotees for seniority over direct recruits; as was in the cases of *Janardhana and Narender Chadha*, ratio of which cases was not applied in *Aghore Nath's* case for the reason that the cases did not deal with *inter-se* seniority between direct recruits and promotees. So the ratio of *Aghore Nath's* case cannot apply to the facts of the present case as here we are concerned with *inter-se* seniority. This apart, a perusal of *Aghore Nath's* decision shows that benefit of *ad-hoc* service would not be admissible if appointment be in violation of rules. No the quota rule had not broken down as held by the Tribunal which view we have affirmed, the appointment of promotees has to be regarded as in violation of rules.

7. The contention of Shri Bhandare that the concerned provisions are executive instructions, having no statutory force, because of which the State could deviate from the ratio, lacks force and deserves to be rejected. Apart from the fact that it was not factually pleaded and contested before the

A Tribunal, the State having laid down the ratio even though the same be by way of executive instructions, it does not really lie in the mouth of the State to contend that the instructions having no statutory force could be deviated.

B 8. For the aforesaid reason, what was stated by the Constitution Bench in *The Direct Recruit Class-II Engineering Officers Association's case* (supra) would not also apply, because to get benefit of what was stated in sub-para (B) of para 44, which is strongly pressed into service by Shri Dholakia, the appointment has to be as per the rules, which was not so in the present case so far as the promotees are concerned.

C 9. It was also faintly submitted on behalf of the appellants that the promotees in the present cases had not been appointed fortuitously. This submission has to be made to be rejected, because of what has been stated by the Tribunal in paragraph 17 of the judgment which is to the following effect :

D "..... we are constrained to mention that neither the petitioners nor any of these respondents have produced the relevant promotion orders on the basis of which it could have been possible to discern whether they were promoted fortuitously to the said posts or not. Thus, we are left in dark."

E The Tribunal has further mentioned in paragraph 18 that even the State Government was silent as to whether the promotions were fortuitous. So, the material placed on record of the Tribunal would not permit us to accept the contention on behalf of the promotees that their promotions were not fortuitous.

F 10. The result is that there is no force in these appeals which stand dismissed. On the facts and circumstances of the case, we, however, make no order as to costs.

T.N.A.

Appeals dismissed.