

A BALESHWAR PASWAN AND ORS.

v.

STATE OF BIHAR AND ORS.

DECEMBER 16, 2003

B [S. RAJENDRA BABU AND RUMA PAL, JJ.]

C *Service Law—Seniority—Appointment in different cadres either on the basis of competitive examination or through other sources—Decision taken to merge cadres—Appellants appointed as Assistants on the basis of a test conducted by the office of the Advocate General—Assistants appointed on the basis of competitive examination shown senior to appellants—Seniority list upheld by High Court in writ petition filed by appellants—Held, there can be no difference between sets of employees, who had been recruited by the office of the Advocate General and those recruited from other sources—View taken by High Court on the basis of a Government Circular, constitutional validity of which had been upheld and affirmed by this Court, cannot be faulted with at all.*

E **Appellants were appointed as Assistants on the basis of a test conducted by the office of the Advocate General, Bihar. Assistants were also appointed in the Secretariat through a previous general competitive examination. The Government decided to merge both these cadres and all Assistants recruited through the competitive examination were to rank senior to Assistants appointed through other sources. Later on, the office of the Advocate General merged with the office of the Department of Law, Government of Bihar. The appellants were considered appointed through other sources, therefore, shown junior to Assistants appointed through the general competitive examination. High Court dismissed the writ petition filed by them upholding the seniority list. Hence this appeal.**

G **Appellants contended that all persons should have been placed in the same category and *inter se* seniority ought to have been fixed on the basis of their date of joining the service.**

Dismissing the appeal, the Court

H **HELD : 1. In principle, there cannot be any difference between**

these two sets of employees who had been recruited from other sources and recruited by the office of the Advocate General. The view taken by the High Court that the seniority of the appellants who have been recruited from other sources *vis-à-vis* those appointed on the basis of the general competitive examination must be determined by applying the principles laid down in the Government Circular dated 30.3.1981, constitutional validity of which had been upheld by the High Court and as affirmed by this Court, cannot be faulted. [951-C-E]

Uday Pratap Singh & Ors. v. State of Bihar & Ors., [1994] Supp. 3 SCC 451, relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3617 of 2000.

From the Judgment and Order dated 16.4.1999 of the Patna High Court in CWJC No. 5313 of 1994.

P.S. Misra and Amrendra Sharan, Kumar Rajesh Singh, Sujit Kumar Singh, Pawan Upadhyay, Vishnu Sharma, S.B. Upadhyay, Amit Kumar, Shrish Kumar Mishra and Irshad Ahmad for the appearing parties.

The Judgment of the Court was delivered by

RAJENDRA BABU, J. : The appellants before us participated in a test conducted by the Office of Advocate General, Bihar between 1975 and 1985 and they were appointed as Assistants. Pursuant to the general competitive examination, recruitment had taken place to the Secretariat of the Government of Bihar and when the question of merger of the two cadres arose, the Government took a decision on 14.8.1987 that all the Assistants who have been recruited through general competitive examination would rank senior to the Assistants who have not been appointed through general competitive examination but through other sources, while, of course, protecting their *inter se* seniority.

By an order made on 21.7.1991, the Government of Bihar decided that the office of Advocate General, would stand attached to the office of the Law Department of the Government of Bihar. When the question of merger of the two Departments arose, the Government followed Rule

A 14(2)(gha) that *inter se* seniority of the candidates appointed on the basis of the competitive examination and those appointed through other sources shall be determined on the basis that those appointed pursuant to the competitive examination shall rank senior and the position will be determined on the basis of the date of being put on probation below all successful candidates appointed on the basis of the result of the competitive examination. On this basis, final gradation list was published and the appellants were shown to be junior to the Assistants who have been appointed through competitive examination. Their representations against the same having been unsuccessful, they preferred a writ petition before the High Court.

C
The High Court held that the appellants admittedly did not take the general competitive examination held in the years 1971 and 1973 and that they have been selected on the basis of the test held by the Department of Advocate General and, therefore, they stood on the same footing as candidates recruited from other sources and not on the basis of the general competitive examination held for the recruitment of Assistants. It is this order of the High Court that is in challenge before us.

D
It is urged on behalf of the appellants that the appellants should have been placed in the category of persons appointed through general competitive examination and their *inter se* seniority along with other Assistants ought to have been fixed on the basis of date of joining as per the existing rules and not in the manner as has been done. The stand of the respondents is what has been accepted by the High Court. The High Court proceeded on the basis that the Assistants employed in the office of the Advocate General became members of the joint cadre only after it was declared to be an attached office pursuant to the Resolution dated 27.2.1991. The Joint Cadre Rules had already come into effect from 30.8.1988 though they were notified on 1.6.1992. The contention put forth by the appellants that they were also appointed on the basis of the test held by the office of the Advocate General and they should be equated with those Assistants who were selected on the basis of the general competitive examination, was not accepted by the High Court. The High Court observed that the appellants stood in the same position as other candidates who had not taken the general competitive examination held in the years 1971 and 1973 and, therefore, they stood on the same footing as candidates recruited from other

sources, i.e., candidates recruited departmentally and not on the basis of any general competitive examination held for the recruitment of Assistants and that on the merger of the departments, the appellants cannot claim anything what had been claimed by the parties in connected matters. In this context, the High Court placed reliance on the decision of this Court in *Uday Pratap Singh & Ors. v. State of Bihar & Ors.*, [1994] Supp. 3 SCC 451. This Court held that the appellants, who were placed in a similar situation as in the present case, had entered the merged cadre of senior branch on a particular date and while the respondents therein had entered the department as direct recruits prior thereto and, therefore, they should be treated as senior to the respondents.

In principle, there cannot be any difference between these two sets of employees who had been recruited from other sources and recruited by the office of Advocate General. Therefore, the view taken by the High Court that the seniority of the appellants who have been recruited from other sources *vis-à-vis* those appointed on the basis of the general competitive examination must be determined by applying the principles laid down in the Government circular dated 30.3.1981, constitutional validity of which had been upheld by the High Court and as affirmed by this Court in *Uday Pratap's* case [supra] cannot be faulted with at all.

This appeal, therefore, deserves to be dismissed. Ordered accordingly.

A.Q.

Appeal dismissed.