

ASIS KUMAR SAMANTA & ORS.

v.

STATE OF WEST BENGAL & ORS.

JULY 12, 2007

[A.K. MATHUR AND DALVEER BHANDARI, JJ.]

*Service Law: Seniority—State Forest Service—Appointment by promotion as also by direct recruitment—The question: Whether the officers promoted to the service can en bloc be given seniority retrospectively over the officers directly recruited to the service—Referred to the larger Bench.*

The instant appeal arose out of the controversy whether the officers promoted in 1991 to the State Forest Service can en bloc be given seniority retrospectively w.e.f. 31.12.1990 over the officers directly recruited to the said service. Noticing the conflicting decisions of the Supreme Court on the issue, the Court

**HELD:** In view of conflicting views expressed by this Court, it would be appropriate to refer this case to a larger Bench so that the controversy can finally be resolved and put to rest. Therefore, the Registry is directed to place the matter before the Hon'ble the Chief Justice of India for constitution of a larger Bench. [Para 7] [332-A-B]

*Devi Prasad & Ors. v. Government of A.P. & Ors.*, [1980] Supp. SCC 206; *U.D. Lama and Ors. v. State of Sikkim & Ors.*, [1997] 1 SCC 111; *State of Andhra Pradesh & Anr. v. K.S. Muralidhar & Ors. Etc.*, [1992] 2 SCC 241; *Ram Pal Malik v. State of Haryana & Ors.*, AIR (1994) SC 2481; *State of Gujarat v. C.G. Desai*, [1974] 1 SCC 188; *G.S. Venkata Reddy & Ors. Etc. v. Government of A.P.*, AIR (1993) SC 2306; *K. Narayanan & Ors. v. State of Karnataka & Ors.*, [1994] Supp. 1 SCC 44; *State of Bihar & Ors. v. Sri Akhourri Sachindra Nath & Ors.*, AIR (1991) SC 1244 and *Uttaranchal Forest Rangers' Association (Direct Recruit) & Ors. v. State of U.P. & Ors.*, [2006] 10 SCC 346, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1331 of 2001.

From the Final Judgment & Order dated 24.3.1999 of the High Court at

A Calcutta in W.P.S.T. No. 33(W) of 1997.

Arijit Bhattacharjee for the Appellants.

Sarla Chandra, (N.P.) Ajay Sharma, T.C. Sharma and Nelam Sharma for the Respondents.

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The Judgment of the Court was delivered by

A.K. MATHUR, J. 1. This appeal is directed against the order dated 24th March, 1999 passed by the Division Bench of Calcutta High Court in W.P.S.T. No. 33 of 1997 whereby the Division Bench dismissed the writ petition. This C Writ Petition was filed against the order passed by the West Bengal State Administrative Tribunal in Case No. TA 1293/1996 on 21st April, 1997, wherein 11 petitioners (appellants herein) were recruited directly to State Forest Service in March, 1990. Respondent Nos. 4 to 19 to the original petition were promoted to the State Forest Service vide Notification No. 940 dated 1.2.1991. They were D given retrospective seniority with effect from 31st December, 1990, According to Rule 6(2) of West Bengal Service (Determination of Service) Rules, 1981 (hereinafter to be referred to as 'the Rules'), the promotee shall be en bloc senior to the direct recruits of the same year. Consequently, the respondents 4 to 19 who were promoted in 1991 were given retrospective seniority w.e.f E 31.12.1990. Therefore, as per Rule 6(2) of the Rules, those respondents 4 to 19 got the seniority over directly recruited candidates. That was challenged by the direct recruits of the State Forest Service before the Tribunal. The State Tribunal upheld the grant of retrospective seniority and rejected their contention. Aggrieved against this, present writ petition was filed under Article 226 of the Constitution of India by direct recruits which was rejected F by the Division Bench of the High Court. Hence the present appeal by the direct recruits.

2. The main question involved in this matter is whether such retrospective promotion or seniority can be granted or not?

G 3. The moot question came up before this Court in various matters. But there is a conflict of opinion on this issue. Some judgments have recognized the retrospective seniority and in some cases it has not been accepted.

H 4. Normally, there are two modes of service i.e. one by way of recruitment or other by way of promotion. Sometimes the process of direct recruitment is carried on but the recruitment through promotion is held up on account of

dispute in the seniority among the promotees or sometimes by the intervention of the Court and for some other reasons. In most of the States, the rule is that whenever direct recruitment and promotion is in the same year then the promotees are ranked senior to the direct recruits. The problem arises when the direct recruits do not accept this proposition, it leads to litigation that the promotees do not find their berth in the service, therefore, they cannot be given benefit of their service from retrospective date so as to make them senior to direct recruits. In some cases, this Court has affirmed this line of argument and in some other judgments, this line has not been accepted. In this connection, two sets of cases can be classified as under: A

5. In the under mentioned cases the promotees were given retrospective promotions and seniority was accepted by this Court. The following decisions have upheld such line of reasoning: B

[1980] Supp. SCC 206: *Devi Prasad & Ors. v. Government of A.P. & Ors.*

[1997] 1 SCC 111 *U.D. Lama and Ors. v. State of Sikkim & Ors.,* D

[1992] 2 SCC 241 *State of Andhra Pradesh & Anr. v. K.S. Muralidhar & Ors. etc.*

AIR (1994) SC 2481 *Ram Pal Malik v. State of Haryana & Ors.* E

6. As against this, the other line of reasoning which has been affirmed by this Court is that in case the promotees are promoted and given retrospective seniority as against the direct recruits that was held to be ultra vires in the following cases:

[1974] 1 SCC 188 *State of Gujarat v. C.G. Desai,* F

AIR (1993) SC 2306: *G.S. Venkata Reddy & Ors. etc. etc. v. Government of A.P.*

[1994] Supp. 1 SCC 44 : *K. Narayanan & Ors. v. State of Karnataka & Ors.,* G

AIR (1991) SC 1244: *State of Bihar & Ors. v. Sri Akhouri Sachindra Nath & Ors.*

[2006] 10 SCC 346 : *Uttaranchal Forest Rangers' Assn. (Direct Recruit) & Ors. v. State of U.P. & Ors.* H

A 7. In view of conflicting views expressed by this Court, it would be appropriate to refer this case to a larger Bench so that the controversy can finally be resolved and put to rest. Therefore, the Registry is directed to place the matter before the Hon'ble the Chief Justice of India for constitution of larger Bench. Similar request has been made in Civil Appeal Nos.1712-1713 of 2002.

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R.P.

Referred to larger Bench.