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C.A.No. 1162-1163 OF 2002

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.1162-1163 OF 2002

BALBIR SINGH

.....

APPELLANT(S)

:VERSUS:

NARINDER KUMAR & ORS.

.....

RESPONDENT(S)

O R D E R

The controversy involved in these appeals relates to the seniority dispute between the appellants and respondent No.1 who are employees of the Market Committee, Samana, District Patiala.

There is no dispute about the fact that the appellant before us Balbir Singh, respondent No.1 Narinder Kumar and two other persons, namely, Saminderjit Singh and Seesan Singh were appointed on the same date i.e. on October 30, 1971, as Auction Recorder by the Market Committee, Samana. There is also no dispute that in such a situation the seniority would be determined on the basis of the date of birth. Accordingly, the seniority was initially fixed as follows:

- 1.Balbir Singh
- 2.Saminderjit Singh
- 3.Seesan Singh
- 4.Narinder Kumar

Later on, Narinder Kumar was promoted as clerk on 24.3.1977. The appellant Balbir Singh made a representation against the promotion of Narinder Kumar on the ground that he (Balbir Singh) being senior was entitled to be promoted. During the pendency of the representation, it appears that Balbir Singh was also given promotion on 24.1.1978 on another post of clerk becoming available. The report of the Secretary was called for on the representation of the appellant. He submitted the report dated 17.3.1978 saying that the promotion of Narinder Kumar to the post of clerk was not according to the seniority. It is further indicated that the criteria for promotion is seniority-cum-merit. The representation was, however, filed in view of the fact that the appellant also got promotion to the post of clerk on 24.1.1978. The High Court, however, recorded a finding that Narinder Kumar be treated senior to the appellant having been promoted as clerk before the promotion of the appellant. But we find that the fact cannot be lost sight of that the appellant was undisputedly senior to the respondent Narinder Kumar as Auction Recorder. The criteria for promotion was seniority-cum-merit. It is also indicated that the promotion was not in accordance with the seniority. The representation, though filed, does not mean that the respondent No.1 would also get seniority as clerk since he has not been reverted due to the availability of another post of the clerk as a result of which both got accommodated. In view of the above position, we set aside the finding of the High Court treating the respondent No.1 senior to the appellant on the post of clerk. It may also be mentioned that thereafter several seniority lists were issued in the year 1992-93, 1995, 1997, showing the appellant as senior to respondent No.1.

The case, however, hinges upon the fact whether the claim of respondent No.1, that he was promoted to the post of Mandi Supervisor-cum-Fee Collector w.e.f. 21.7.1981, is correct or not. According to respondent No.1 the above promotion was made admissible to him in pursuance of a re

solution said to be passed by the Committee on 22.6.1987. The order, however, in pursuance of the said resolution is purported to have been issued on 24.2.1998 i.e. to say 11 years after the resolution was passed and 17 years after the date with effect from which promotion is sought to be made admissible to respondent No.1 on the post of Mandi Supervisor-cum-Fee Collector. With a view to show that no such resolution or order was ever passed or issued or circulated or even existed, reliance has been placed by the learned counsel for the appellant on the subsequent order passed by the Secretary on 22.2.2000, by which the appellant was promoted to the post of Mandi Supervisor-cum-Fee Collector. It is submitted that there is no whisper whatsoever of any resolution of 1987 or order dated 24.2.1998. Learned counsel appearing for respondent No.1 submits that the order dated 24.2.1998 was never challenged by the appellant. It is reiterated on behalf of the appellant that since no such order was in existence and was never brought to the notice of any one, there was no occasion to challenge the same. We tried to ascertain the fact of existence of this document from the learned counsel appearing for the Committee. According to him also, no such resolution or order was available. The counter affidavits which have been filed by the appellant and by the Committee (if any) before the High Court, in reply to the writ petition filed by respondent No.1, have not been placed on the record. Learned counsel for respondent No.1 submits that no such plea has been raised in the High Court that the resolution of 1987 and the order dated 24.2.1998 do not exist. As a matter of fact, we may have left it at that but a mere perusal of the order makes us suspicious about the whole affair regarding the order dated 24.2.1998. The order also says that in view of the office order dated 7.10.1997 it was not necessary to seek approval of the promotion since the order of promotion was passed in 1998. We feel that this position is not easily acceptable and needs to be examined as also the part whether back-dated promotion could be given without approval when the Rules for approval existed.

In the above circumstances, we feel it appropriate that the matter be remanded to the High Court for fresh consideration in regard to the question relating to the resolution of 1987, making the promotion admissible to the respondent No.1 w.e.f. 1981 and the issuance of the order in pursuance of the aforesaid resolution on 24.2.1998. The parties shall be at liberty to file their additional affidavits on the above question before the High Court. The parties shall put in their appearance in the High Court on 12.12.2003. Additional affidavits may be filed within two weeks thereafter.

In the result, these appeals are allowed, the Judgment of the High Court is set aside and the case is remanded to the High Court with the findings and observations recorded above. The High Court shall, on remand, consider the question indicated above afresh in the light of the observations contained in this order and shall pass a fresh order accordingly.

Since the matter is old the High Court shall do well to finally hear and decide the matter expeditiously.

Costs on parties.

.....J
(BRIJESH KUMAR)

.....J
(ARUN KUMAR)
NEW DELHI,
NOVEMBER 19, 2003.

ITEM NO.103COURT NO.11 SECTION-IV
S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

CIVIL APPEAL NOS.1162-1163 OF 2002

BALBIR SINGH

.....
APPELLANT(S)

:VERSUS:

NARINDER KUMAR & ORS.

.....
RESPONDENT(S)

(With Office Report)

Date : 19/11/2003 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE BRIJESH KUMAR
HON'BLE MR. JUSTICE ARUN KUMAR

For Appellant (s)Mr. M.C. Dhingra,Adv.
Ms. Alka Agrawal,Adv.

Mr. Ajay K. Agrawal,Adv.

For Respondent No.1Mr. Ashok Kumar Pande, Sr. Adv.
Mr. Sanjeev K. Pabbi,Adv.
Mr. S.K. Sabharwal,Adv.

For Respondent Mr. Har Dev Singh,Sr.Adv.
Nos.2 & 3Ms. Madhu Moolchandani,Adv.

UPON hearing counsel the Court made the following

O R D E R

Mr. M.C. Dhingra, learned counsel for appellant commenced his arguments at 12.50 p.m. and concluded at 2.40 p.m. Thereafter, Mr. Ashok Kumar Pande, learned senior counsel for respondent No .1 argued the matter for about half an hour. Mr. Har Dev Singh, learned senior counsel for respondent Nos.3 & 4 argued the matter for about 15 minutes.

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The appeals are allowed, the Judgment of the High Court is set aside and the case is remanded to the High Court is in terms of the signed order.

Costs on parties.

(A.S. BISHT)(KANWAL SINGH)
COURT MASTER

COURT MASTER

[Signed order is placed on the file]