

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

CIVIL APPEAL NO.3614 OF 2003

D.R. DIWAN

Appellant (s)

VERSUS

STATE OF H.P. & ORS.

Respondent(s)

(With prayer for interim relief)

Date: 30/03/2005 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE Y.K. SABHARWAL

HON'BLE MR. JUSTICE TARUN CHATTERJEE

For Appellant(s)

Mr. O.P. Sharma, Sr. Adv.

Mr. R.C. Gubrele, Adv.

Mr. K.R. Gupta, Adv.

For Respondent(s)

Ms. Kamini Jaiswal, Adv.

Ms. Shomila Bakshi, Adv.

Mr. L.R. Rath, Adv.

Mr. J.S. Attri, AAG.

UPON hearing counsel the Court made the following

O R D E R

Heard the learned counsel for the parties.

The civil appeal is dismissed with costs.

[T.I. Rajput]

[Phoolan Wati Arora]

Court Master

Court Master

[Signed order is placed on the file]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.3614 OF 2003

D.R. Diwan

...Appellant(s)

Versus

State of Himachal Pradesh & Ors.

...Respondent(s)

O R D E R

The appellant claims that his seniority shall be reckoned from the date of examination which was held within a period of two years of his appointment, i.e., 5th July, 1979. The grievance of the appellant is that his seniority has been incorrectly reckoned with effect from 19th October, 1981, namely, the date of declaration of examination. In support, reliance is sought to be placed on a decision of this Court in the case of State of Maharashtra vs. Jagannath Achyut Karandikar (1989 (1) Suppl.

S.C.C.393).

We are afraid, the aforesaid contention is not open to the appellant.

In

Mohan Lal & Ors. vs. State of Himachal Pradesh (1997 (4) S.C.C.416), while

deciding Civil Appeal No.2417 of 1997 referring to the appellant, it was specifically

directed that his seniority is to be reckoned with from the date of passing of

examination. The judgement also notices the date of passing of the examination,

being 19th October, 1981. In order to get over the observations made in this

judgement, reliance is sought to be placed by

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the learned counsel on an order dated 16th March, 1998 passed in Writ Petition (C)

No.526 of 1997 filed by the appellant herein in this Court under Article 32 of the

Constitution of India. The said order is also of no avail to the appellant since, while

dismissing the writ petition, it was noticed that the observations made in Civil Appeal

No.2417 of 1997 will apply to those persons who were parties in that case. It is not in

dispute that the appellant was a party in Civil Appeal No.2417 of 1997. The plea that

he was not a party in O.A. No.788 of 1995 is of no consequence. In this view, the

High Court has rightly come to the conclusion that, in view of the decision in Mohan

Lal & Ors. (supra), the seniority of the appellant has to be reckoned from the date of

passing of examination, i.e., 19th October, 1981, and the earlier finding cannot be

over-looked, brushed aside or ignored.

We, therefore, find no merit in the civil appeal. It is, accordingly,

dismissed with costs.

.....J.

[Y.K. SABHARWAL]

.....J.

[TARUN CHATTERJEE]

New Delhi,

March 30, 2005.