

C.A.No. 5554 OF 1999
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ITEM No.110

Court No. 3

SECTION XI

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

Civil Appeal No.5554 of 1999@@
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SB Mishra

Appellant(s)

VERSUS

Badri Prasad Sachan & Ors.
(with office report)

Respondent (s)

Date : 20/02/2002 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.B. PATTANAIAK
HON'BLE MR. JUSTICE S.N. VARIAVA

For Appellant (s) Mr. RB Mehrotra, Sr.Adv.
Mr. Rajesh, Adv.

For Respondent (s) Mr. Shree Pal Singh, Adv. (NP)
Ms. Anu Mohla, Adv. (NP)

UPON hearing counsel the Court made the following
O R D E R

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.SP2

Mr. RB Mehrotra, learned sr.counsel for the
appellant commenced his arguments at 3.10 P.M. and
concluded at 3.35 P.M.

The Civil Appeal is dismissed in terms of the
signed order.

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Hemalatha

(Suneet Bala Sharma)
Court Master

(signed order is placed on file)

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No.5554 of 1999@@
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S.B. Mishra

... Appellant(s)

vs.

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The present appeal is directed against the judgment of the Allahabad High Court. The inter se seniority between the appellant and respondent no.1 is the subject matter of controversy. There cannot be any dispute that if continuous length of service in the college is taken into account, the appellant would be held senior to respondent no.1. But the fact remained that after there was an upgradation of the college and the privilege of post graduate classes were made available in 1965 and advertisement issued, after creation of such posts, both the appellant and the respondent no.1 applied for the same and on being selected they were appointed against those upgraded posts.

The question of seniority was taken for consideration by the Vice Chancellor who decided the respondent no.1 to be senior but the matter being carried to the Chancellor, he held the present appellant to be

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senior to respondent no.1. Respondent No.1, therefore, moved the High Court in a writ petition. The High Court by the impugned judgment being of the opinion that the appointment to the post in the upgraded college is a fresh appointment and both the appellant and the respondent no.1 having been appointed on the same day, their inter se seniority has to be decided under Statute 7(B). Under the said provision, the inter se seniority is determined according to the date of birth as mentioned in the School Leaving Certificate. Since the respondent no.1 was born on 7.8.1940 and the present appellant born on 4.11.1942, the High Court set aside the decision of the Chancellor and upheld the decision of the Vice Chancellor. It is this order of the High Court which is the subject matter of challenge in this appeal.

It is contended by the learned counsel appearing on behalf of the appellant that the appellant and the respondent no.1 having been employees of the same institute which was later on upgraded, continuous length of service should have been the basis for determination of inter se seniority. But the position is that after the posts were upgraded, there was a fresh advertisement and pursuance to the advertisement, applications having been made by both the appellant as well as the respondent

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no.1, ultimately on the basis of selection, both were appointed against the upgraded posts on the same day. Necessarily, therefore, they would be treated to be fresh entrants and their past services rendered cannot be counted for the purpose of seniority in the cadre. Once they were held to be recruited on the same day, Statute 7(B) would operate. We, therefore, do not find any infirmity in the impugned judgment of the High Court requiring our interference in the matter. This appeal is accordingly dismissed.

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(G.B.Pattanaik)@@

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New Delhi

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February 20, 2002

(S.N.Variava)@@

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