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SLP(C)No. 7550 OF 2003

ITEM No.205

Court No. 4

SECTION IVB
A/N MATTER

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

Petition(s) for Special Leave to Appeal (Civil) No.7550/2003
(From the judgment and order dated 28/02/2003 in CWP 15152/00
of The HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH)

RAMESH CHAND

Petitioner (s)

VERSUS

STATE OF HARYANA & ORS.

Respondent (s)

(With prayer for interim relief and office report)
(For Final Disposal)

Date : 24/09/2004 This Petition was called on for hearing today.

CORAM :

HON'BLE MRS. JUSTICE RUMA PAL
HON'BLE MR. JUSTICE ARUN KUMAR

For Petitioner (s)Mr.P.N.Mishra, Sr. Adv.
Mr. Arvind Minocha, Adv.
Mr. Himanshu Upadyaya, Adv.

For Respondent (s)Mr. Nidesh Gupta, Adv.
Mr. Naveen Singh, Adv.
Ms. S. Janani,Adv.

Ms. Indu Sharma,Adv.

Mr. Satinder S Gulati, adv.
Ms. Kavita Wadia, Adv.

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

Leave granted.

The appeal is allowed, the impugned order of the High Court is set aside and the writ petition filed by the respondent No.2 is dismissed.

RUPAM(MADHU SAXENA)
COURT MASTER

(Signed order is placed on the file)

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. /2004
(Arising out of SLP(C) No.7550/2003)

RAMESH CHAND

APPELLANT

VERSUS

STATE OF HARYANA & ORS.

Respondent (s)

O R D E R

Leave granted.

The appellant and the respondent No.2 were both Assistants in the Panchayat Department of the State of Haryana. The contentious issue between the two of them is the post of Legal Officer (Panchayat) in the District Headquarters.

On 28th August, 1998, a letter was issued to all Deputy Commissioners, all District Development and Panchayat officers, all Block Development and Panchayat officers and the Principal of the State Community Development Training Centre inviting them to forward names of officers/officials for filling up one post of Legal Officer (Panchayat) which was lying vacant at the District Headquarters. The post was to be filled up by promotion amongst the eligible Officers/officials of the Development and Panchayat Department. The qualifications prescribed for the post were (a) Law Graduate

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from a recognized University; and (b) five years' experience in a ministerial/executive post in the Development and Panchayat Department. The letter required each of the addressees to forward the names of officers/officials who fulfilled the aforesaid qualifications and had "good service record" and who were desirous of being considered. The circular ends with the following words:-

"Your recommendations should reach the undersigned within one month from the date of issue of this letter failing which it will be presumed that you do not have any recommendations to offer in the matter."

In response to the letter dated 28th August, 1998, four applications were received from different officers by the Panchayat Department. The respondent No.2's name which had been forwarded by the District Development and Panchayat Officer, Kurukshetra was one of these four applications. Apart from the respondent No.2, the other three applications were rejected by the Department on the ground that those candidates were not qualified. The respondent No.2's application, however, was not accompanied by the ACRs of all the ten preceding years, and ACRs for three years, namely, 1993-94, 1996-97 and 1997-98 were not available. In addition, there was an adverse entry in the ACR of the respondent No.2 for the year 1995-96 which was communicated to the respondent No.2 in November, 1998. His representation for

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deletion of the executive's remarks ultimately was allowed and the adverse entry in the respondent No.2's ACR was expunged in December, 1999.

The appellant who is admittedly senior to the respondent No.2 was not recommended for promotion initially as he did not have the necessary academic qualification for Legal Officer (Panchayat). He obtained the degree ultimately in January, 1999 while the process of selection to the post of Legal Officer (Panchayat) was pending consideration. The appellant's application was also forwarded to the Department. The Department considered the candidature of both the respondent No.2 as well as the appellants for the post and then selected the appellant on the ground that he was senior to the respondent No.2. This selection was ultimately completed on 12th September, 2000 and the appellant joined the post.

The respondent No.2 filed a writ petition in which he challenged the promotion of the appellant as Legal Officer. The writ petition was allowed by the High Court which quashed the appellant's promotion on the ground that the appellant was ineligible on the date within which the recommendations for promotion were required to be made in terms of the letter dated 28th August, 1998. The High Court also held that since

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the respondent No.2 had obtained his Degree in Law earlier than the appellant, the appellant could not have been considered for promotion to the post of Legal Officer. The respondent authority was, accordingly, directed to consider the respondent No.2's claim for promotion to the

post of Legal Officer (Panchayat) and appoint him to the post if he was found otherwise fit and suitable.

At the time of entertaining the special leave petition filed by the appellant impugning the decision of the High Court, this Court by an order dated 6th May, 2003 directed status quo with regard to the service of the appellant to be maintained. The appellant has, accordingly, continued as Legal Officer till today.

Learned counsel on behalf of the appellant has submitted that the High Court erred in holding that the letter dated 28th August, 1998 contained a cut off date in the sense that no applications or recommendations could be entertained by the Department subsequent to the expiry of one month from the date of the letter. It is also submitted that the respondent No.2 was ineligible for being recommended within the aforesaid date as his record was not "good" as the adverse entry against the Respondent No.2 in his ACR for the year 1995-96 had been deleted only in December, 1999. It is

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submitted that by the time the respondent No.2 could have been considered for the promotion to the post of Legal Officer the appellant had obtained the necessary education/qualification for being considered for promotion. According to the appellant, the promotion policy, as applicable, provided that promotion to the post of Legal Officer from, inter alia, the Assistants (Panchayat) was required to be done on the basis of seniority-cum-merit. Since, undisputedly the appellant was senior to the respondent No.2, the respondent authority had correctly promoted the appellant instead of the respondent No.2.

The Respondent No.2 has submitted that it was well established by several decisions of this Court that only those candidates who were eligible as on the cut off date could be considered by the Selection Committee for a particular post. The qualification or eligibility obtained subsequent to such cut off date could not have been taken into account. The decision of this Court in the case of State of U.P. Vs. Vijay Kumar Mishra, AIR 2003 SC 4411, has been relied upon in this connection. It is submitted that the second issue relating to promotion policy could not be applied in this case, since the promotions were to be made inter-departmentally and

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there was no common seniority list. The only ground on which the appellant was preferred to the respondent No.2 being seniority, his promotion should not be sustained.

The State Government supported the appellant and has submitted that his promotion has been duly granted in terms of the promotion policy and that the appellant could have been considered for such promotion because he had obtained the necessary qualification before the respective merits of the candidates were considered by the Promotion Committee.

We are of the view that the High Court has erred in construing the letter dated 28th August, 1998. The paragraph which we have quoted earlier merely called upon the concerned addressees of the letter to send their recommendations within one month. If the recommendations were not so sent, the result would be a presumption that they did not have any recommendations to make. The paragraph cannot be read as in any way debarring any recommendation being made subsequent to the period of one month after the issuance of the letter.

It may also be remembered that the promotion in question was an intra departmental promotion within the Panchayat Department. The principle enunciated by this Court

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in Vijay Kumar Mishra's case (supra) which has been relied upon by the respondent No.2 applies in those cases where the applications were invited from the candidates either by advertisement or in terms of the rules. This is clear from paragraph 8 of the Report where this Court has said:-

"The position is fairly well settled that when a set of eligibility qualifications are prescribed under the rules and an applicant who does not possess the prescribed qualification for the post at the time of submission of application or by the cut off date, if any, described under the rules or stated in the advertisement, is not eligible to be considered for such post. It is relevant to note here that in the rules or in the advertisement no power was vested in any authority to make any relaxation relating to the prescribed qualifications for the post. Therefore, the case of a candidate who did not come within the zone of consideration for the post could not be compared with a candidate who possess the prescribed qualifications and was considered and appointed to the post."

This decision has no application to this case and the letter cannot be construed as setting down a cut off date for the purposes of making of recommendations by the addressees of the letter.

Admittedly, when the recommendation of the respondent No.2 had been made, all his ACRs were not available. It is also not in issue that there was an adverse entry in one of

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the ACRs although the adverse entry was subsequently communicated and expunged. All this happened while the applications were pending consideration by the Selection Committee. It is clear that the respondent No.2 did not have a "good service record" which was a precondition to recommendation and for consideration for promotion, until the adverse entry was deleted. By that date the appellant was also eligible to be recommended.

The promotion policy which had been prescribed for the post of Legal Officer, issued on 13th March, 1991 speaks of promotion within the Panchayat Department to the post of Legal Officer on the basis of seniority-cum-merit. Even if, one assumes that there is no common seniority list maintained in respect of the possible candidates for the post of Legal Officer as is contended by the respondent No.2, nevertheless between the respondent No.2 and the appellant the appellant was admittedly senior and his selection on this basis could not be said to be irrational or unfair. The mere fact that the respondent No.2 may have obtained his Law Degree earlier than the appellant would be of no consequence and there is no authority or statutory provision or executive order which has been relied upon by the High Court for granting the

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respondent No.2 a preferential right to promotion on such basis.

For the reasons aforesaid, we are of the view that the decision of the High Court cannot be sustained. The appeal is allowed, the impugned order of the High Court is set aside and the writ petition filed by the respondent No.2 is dismissed.

.....J
(RUMA PAL)

.....J
(ARUN KUMAR)

NEW DELHI,
SEPTEMBER 24, 2004.