

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

Petition(s) for Special Leave to Appeal (Civil) No.9903/2000
(From the judgement and order dated 05/05/2000 in CWP 5202/00
of The HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH)

UMA DATT GILL

Petitioner (s)

VERSUS

STATE OF HARYANA & ORS.

Respondent (s)

(With prayer for interim relief)
With

CONT. PET.(Civil)212/2000

Date : 24/11/2000 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE M. JAGANNADHA RAO
HON'BLE MR. JUSTICE K.G. BALAKRISHNAN

For Petitioner (s) Dr.KPS Dalal,Adv.
Mr.Chand Kiran,Adv.
Dr. Krishan Singh Chauhan,Adv.

For Respondent (s) Mr. Mahabir Singh,Adv.
Mr.Anoop G.Chaudhary,Sr.Adv.
Mr. Sanjeev Malhotra,Adv.

UPON hearing counsel the Court made the following
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Leave granted. The appeal is allowed with no
order as to costs.

The contempt petition is disposed of.

(Usha Bhardwaj)
P.S. to Registrar

(D.D.Jindal)
Court Master

Signed order is placed on the file.

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2000@@
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(Arising out of SLP(Civil) No.9903 of 2000)

With Con.Ptn.No.212/2000 in SLP(C)9903/2000@@
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Uma Datt GillAppellant

versus

State of Haryana & Ors.Respondents

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Special leave granted.

This appeal is preferred against the judgment of the High Court of Punjab and Haryana dated 5.5.2000 in Civil Writ Petition No.5202 of 2000. The appellant sought a Writ of Mandamus directing respondents 2 and 3, the State of Haryana and the Director, P.G.I, Medical Sciences, Rohtak, Haryana to treat the appellant senior to Mr. S.S. Mann, 4th respondent in the writ petition and also to promote the appellant at the higher pay and designation. The High Court dismissed the writ petition without assigning any reason and against the said order this appeal has been preferred. The brief facts of the case are as follows.

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The appellant was initially appointed as clerk on 16.12.1960 and got accelerated promotion by way of roster as Accountant on 17.2.70 and again got an accelerated promotion by another roster as Superintendent (Non-Gazetted) on 5.5.77. At that stage during 1976 the Medical College was taken over by the M.D. University, Rohtak and with effect from 1.7.76 the appellant became an employee of the Medical College. On 5.5.77 four persons were promoted as Superintendent (Non-Gazetted) by the Vice Chancellor and one of the posts ought to have gone to the appellant at the roster point. As this did not happen, the appellant filed a Civil Suit before the Sub-Judge, 1st Class, Rohtak. In the suit, he impleaded one Dharam Vir Rohilla as defendant, he being the person who was promoted in the post which was otherwise available at the roster point to the appellant. The suit was decreed by the Trial Court. The State of Haryana and the Principal of Medical College filed Civil Appeal No.37/84. The said appeal was dismissed on 17.7.84. Thereafter a Second appeal RSA No.284/84 was filed by the State and the College and the same was also dismissed. Thus, the appellant's right to be promoted as Superintendent on 5.5.77 in the place of Mr.Rohilla became established.

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In the meantime, the 4th respondent was directly recruited on 31.8.78 as Deputy Superintendent and he came to be promoted as Superintendent (Non-Gazetted) on 9.2.85. Thereafter he was promoted as Superintendent (Non-Gazetted) on 9.2.85 and as Assistant Administrative Officer in lower scale of Rs.2000-3000 on 29.11.89 and as then Superintendent (gazetted) on 7.5.94 and as an Administrative Officer on 27.5.2000. The appellant has been claiming that he should have been appointed as Superintendent on 5.5.77 and the promotion given to any person junior to him should be reviewed in the higher posts thereafter. That was the purpose of his filing the writ petition.

The respondents have strongly relied upon the judgment of this Court in Ajit Singh II vs. State of Punjab reported in 1999(7) SCC 209 to contend that a roster point promotee will not be entitled to seniority if a general candidate reaches that particular level subsequently, the respondent being a general candidate.

The reliance by the respondent on Ajit Singh II vs. State of Punjab's case is in our view, misconceived. In that case it was held by this Court

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that if a general candidate and a reserved candidate are selected at Level I and the general candidate is senior at Level I and reserved candidate is then promoted by way of a roster point to one or more posts higher up and the general candidate reaches the same level later than the reserved candidate but before the reserved candidate goes to a further higher post, then the seniority of the general candidate will stand restored.

The basis of the abovesaid judgment is that the general candidate and the reserved candidate initially occupied a post at the same level and that the general candidate was senior to the reserved candidate at that level. Such a general candidate gets seniority when he reaches a higher level which had been reached by a reserved candidate earlier. In the present case that has not happened. The appellant and the respondent have not been recruited simultaneously nor were they recruited to the same post. In fact, the appellant was recruited as a clerk on 16.12.60 and the 4th respondent was never recruited as a clerk nor was he senior to the appellant at that level as clerk. If only he had been senior at the level of clerk he could have claimed seniority over the appellant at a higher level. If he

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had reached the Level III before the reserved candidate could get further promotion from that level. Inasmuch as the 4th respondent was never senior to the respondent at basic level at which the respondent got accelerated promotion, it is obvious that the decision in Ajit Singh II does not apply to the facts of this case.

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The appellant is therefore to be treated as a person entitled to the roster point promotion as Superintendent (non-gazetted) on 5.5.77 as declared by the civil court in the judgment above mentioned on which date Mr. Rohilla was promoted. The appellant's seniority and further promotions have therefore to be reviewed and he has to be considered for promotion to the post of Assistant Administrative Officer on the basis that he is senior to the 4th respondent in the category of Superintendent (Non-Gazetted).

The review of the promotion for the post of Administrative Officer shall therefore be made in the light of the above declaration and the seniority of the appellant within two months from today. The appellant will be entitled to all the consequential benefits of the post which were unjustly denied to him on 5.5.77.

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and in the higher post if he is now found entitled to such higher promotions. had not been so given so far, The review of seniority and of the promotions will be made notwithstanding any other promotion given to any persons including the 4th respondent.

It is contended that the 4th respondent was not a party to the Civil Suit in which the appellant had succeeded. We are of the view that that makes no difference inasmuch as the promotion of the appellant to the post of Superintendent was to be with effect from 5.5.77 and on that date the 4th respondent was not even recruited. He was recruited only on 31.8.78.

The appeal is allowed. The contempt petition is also disposed of accordingly. There shall be no order as to costs.

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.....J.
(M. Jagannadha Rao)

New Delhi,
November 24, 2000

.....J.
(K.G. Balakrishnan)