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C.A.No. 7327 OF 2001

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.7327 OF 2001

H.P. CHETTRI AND ORS.

.....
APPELLANT(S)

:VERSUS:

STATE OF SIKKIM AND ORS.

.....
RESPONDENT(S)

O R D E R

This appeal is directed against the Judgment and Order dated 26.7.1999 passed by the Sikkim High Court, allowing the writ petition, preferred by Kunga Gyatso Bhutia, holding him senior to the present appellants, in the grades of Joint Director, Agriculture and Additional Director, Agriculture, in the State of Sikkim. The State was further directed to prepare a seniority list accordingly.

The facts which admit of no dispute are: That the appellants and respondent No.4 (Kunga Gyatso Bhutia) along with respondent No.5 (S.K. Basnet) were all working as Deputy Director, Agriculture, in the State of Sikkim. So far as the seniority position as Deputy Director is concerned, the respondent No.4 (Kunga Gyatso Bhutia) was the junior-most amongst them. By means of an order dated 7.10.1982, the respondent NO.4 Mr. Bhutia was promoted to the post of Joint Director, Agriculture with effect from 23.9.1982. The appellants and respondent No.5 who is reported to have retired now, made a representation against the promotion of respondent No.4 to the post of Joint Director, without considering their candidature and on the ground that they were senior to him. Considering their representation, the appellants were granted the Grade of Joint Director by means of an order dated 24.8.1983 with effect from 22.7.1983. However, subsequently by yet another order dated 3.8.1989, the appellants and respondent No.5 were given promotion as Joint Directors with effect from 23.9.1982, i.e. from the date of promotion of their junior, as indicated in the order itself. The earlier orders were superseded.

The resultant position thus, is that all these officers, namely, appellants and respondent Nos.4 & 5, stood promoted as Joint Director with effect from the same date, namely 23.9.1982. In the seniority list which seems to have been prepared the respondent No.4 was shown junior to the appellants and respondent No.5. It gave rise to filing of a writ petition by respondent No.4 Mr. Bhutia, before the Sikkim High Court complaining about the seniority in the Grade of Joint Director.

The High Court by means of the impugned Judgment found that the minimum qualification prescribed for promotion to the post of Joint Director was M.Sc. Agriculture in Plant Breeding. It is found that since respondent No.4 was the only candidate having that qualification he was selected for the post. It is also observed that the candidature of the senior persons, namely, the appellants and respondent No.5, was also considered but only respondent No.4 was found to answer the qualification. Hence, he was selected.

Learned counsel for the appellant submits that the qualification of M.Sc. Agriculture in Plant Breeding was never prescribed or notified to be so by any order or notification. Hence it is

not correct to say that the appellant or respondent No.5, were not eligible for consideration. His submission is that the candidature of the appellants was never considered. The High Court, it is submitted, has wrongly observed that the appellants were also considered. Learned counsel for the appellants has drawn out attention to the counter affidavit filed by the State in the High Court as also filed in this Court. The factual position that emerges out from the averments made in the counter affidavit is that no such qualification or letter was issued prescribing M.Sc. as the essential qualification for promotion to the post of Joint Director, Agriculture. It also emerges out that according to the rules, the criteria for promotion is seniority-cum-fitness. Considering these facts, it has been indicated by the learned counsel for the State that the representation of the appellants have been allowed and promotion to the post of Joint Director was made admissible to them also with effect from the same date. The promotion of the appellants and respondent No.5 with effect from the date on which respondent No.4 was promoted has never been challenged. It was only the seniority which was challenged by respondent No.4.

We, however, fail to appreciate as to when the promotion was made admissible to all, with effect from the same date, how the question of having qualification of M.Sc., has any relevance for the purposes of fixing seniority. It is an admitted fact on behalf of the State that M.Sc. qualification has never been notified for the post. The appellants and respondent No.5 have been senior to respondent No.4 in the cadre of the Deputy Director. The criteria for promotion is seniority. In the above circumstances the seniority as fixed by the State placing the respondent No.4 junior to the appellants and respondent No.5 could not be faulted with and the order passed by the High Court setting aside the seniority is not sustainable.

In the result, the appeal is allowed and the order passed by the High Court is set aside. There will, however, be no order as to costs.

.....J
(BRIJESH KUMAR)

.....J
(ARUN KUMAR)
NEW DELHI,
NOVEMBER 25, 2003.

ITEM NO.103COURT NO.11 SECTION-XIV

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.7327 OF 2001

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STATE OF SIKKIM AND ORS.

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Date : 25/11/2003 This appeal was called on for hearing today.

CORAM :

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

For Appellant (s) Mr. A.K. Srivastava, Sr.Adv.
Mr. Uma Datta,Adv.

For Respondent (s) Mr. A. Mariarputham,Adv.
Mr. Ashok Mathur,Adv.

Ms. M. Jayasree,Adv.
Mr. A.K. Sengupta,Adv.
Mr. Rajesh,Adv.

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

Mr. A.K. Srivastava, learned senior counsel for the appellants made arguments for about half an hour. Thereafter, Ms. Jayasree, learned counsel for respondent No.4 argued the matter for about 20 minutes.

The appeal is allowed and the order passed by the High Court is set aside in terms of the signed order. There will, however, be no order as to costs.

(A.S. BISHT)(PROMILA NAGPAL)
COURT MASTER

COURT MASTER

(Signed order is placed on the file)