

PETITIONER:
VASANT KUMAR JAISWAL

Vs.

RESPONDENT:
STATE OF MADHYA PRADESH

DATE OF JUDGMENT 08/09/1987

BENCH:
MUKHARJI, SABYASACHI (J)
BENCH:
MUKHARJI, SABYASACHI (J)
OZA, G.L. (J)

CITATION:
1987 AIR 2322 1988 SCR (1) 73
1987 SCC (4) 450 JT 1987 (3) 550
1987 SCALE (2)509
CITATOR INFO :
APL 1989 SC 278 (22)

ACT:
Service matter-Seniority on the basis of length of service-Determination of-In the absence of any statutory rule or executive memorandum or order relating to determination of seniority.

HEADNOTE:

This was an appeal against the judgment and order of the High Court of Madhya Pradesh, which in accordance with the well-settled principle laid down by this Court as also the High Court, held that in the absence of any statutory rule or executive memorandum or order laying down the rule for determination of seniority in a grade, the normal rule applicable would be to determine the seniority on the basis of length of service.

Disposing of the Appeal, the Court,
HELD: Counsel for the appellant contended that there were two rules in the case being Rules 12 (b) and 12 (c) of the M.P. Civil Services (General Conditions of Services) Rules, 1961, which governed the case. In the proper perspective, these two rules did not apply in this case. The High Court was right in the view it took in the matter. This Court was unable to sustain the reasoning and view of the Single Judge of the Madhya Pradesh High Court in Umeshnarayan Mishra & ors. v. The State of M.P. & Ors. in Civil Misc. Petition No. 181 of 1983. [74C; 75F]

In view of the short length of service of the appellant, if the appellant made a representation, the respondent would consider the same in the light of the principles of law and equity. [75G]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2 189 of 1987.

From the Judgment and order dated 21st January, 1985 of the Madhya Pradesh High Court in Misc. Petition No. 1657 of 1984.

V.A. Bobde, and D.N. Mishra for the Appellant.

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T.C. Sharma for the Respondent.

The Judgment of the Court was delivered by
SABYASACHI MUKHARJI, J. Special leave granted.

This is an appeal against the judgment and order of the High Court of Madhya Pradesh which in accordance with the well settled principle of this Court as also the High Court held that in the absence of any statutory rule of executive memorandum or order laying down the rule for determination of seniority in a grade, the normal rule applicable would be to determine the seniority on the basis of length in service. Counsel for the appellant contends that in the instant case there were two rules being 12(b) and 12(c) of the M.P. Civil Services (General Conditions of Services) Rules 1961 governing the case. These rules read as follows:-

"(b). Promoted Government Servants:

A promoted Government servant shall count his seniority from the date of his confirmation in the service to which he has been promoted and shall be placed in the gradation list immediately below the last confirmed member of that service but above all the probationers.

Provided that where two or more promoted Government servants are confirmed with effect from the same date the appointing authority shall determine their inter-se-seniority in the service in which they are confirmed, with due regard to the order in which they were included in the merit list, if any prepared for determining their suitability for promotion, and their relative seniority in the lower service from which they have been promoted.

(c) Officiating Government Servants:-

The inter-se-seniority of Government servants promoted to officiate in a higher service or a higher category of posts shall during the period of their officiation, be the same as that in their substantive service or grade irrespective of the dates on which they began to officiate in the higher service or grade; Provided that-

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(i) If they were selected for officiation from a list in which A the names of Government servants considered suitable for trial in or promotion to the higher service or grade were arranged in order of merit. Their inter-se-seniority shall be determined in accordance with the order of merit in such list;

(ii) the seniority of a permanent servant appointed to officiate in another service or post by transfer shall be determined adhoc by the appointing authority;

Provided that the seniority proposed to be assigned to such Government servant shall be determined and intimated to him in the order of appointment; C

(iii) where a permanent Government servant is reduced to a lower service, grade or category of posts, he shall rank in the gradation list of the latter service, grade or category of posts above all the other in that gradation list unless the authority ordering such reduction by a special order indicates a different position in the gradation list for

- such reduced Government servant,
(iv) where an officiating Government servant is reverted to this substantive service or posts he shall revert to his position in that gradation list relating to his substantive appointment which he held before he was appointed to officiate in the other service or post."

In the proper perspective these two rules do not apply in this matter. In that view of the matter we are of the opinion that the High Court was right. We are unable in this connection to sustain the reasoning and the view expressed by the learned Single Judge of the said High Court in Civil Misc. Petition No. 181 of 1983-Umeshnaryan Mishra & ors. v. The State of M. P. & ors.

In the aforesaid view of the matter we are of the opinion that the High Court is right in dismissing the petition under appeal and the view it took was correct.

In view of the short length of service of the appellant, if the appellant makes a representation, the respondent in the light of the principles of law and equity will consider such representation.

The appeal is disposed of accordingly.

S.L.

Appeal disposed of.

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