

PETITIONER:

M.S. PATIL, ASSTT. CONSERVATOR OFFORESTS, SOLARPUR (MAHARASH

Vs.

RESPONDENT:

STATE OF MAHARASHTRA ETC.

DATE OF JUDGMENT: 23/10/1996

BENCH:

K. RAMASWAMY, G.B. PATTANAIK

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

By order dated September 16, 1996 passed by our learned brethren Justice N.P. Singh and Justice S.B. Majmudar, placed under these matters before this Bench, since the controversy had already been decided by this Court in a matter in which one of us, K. Ramaswamy, J. was a member, viz., State of Maharastra & Anr. vs. Sanjay thakre & Ors. [1995 Supp. (2) SCC 407]. These cases arise from the common order of the Administrative Tribunal, Bombay in Application No. 83/96 etc. dismissing the above judgment.

Mr. M.S.L. Patil, party appearing-in-person has raised five contentions, namely, that the combined seniority as per the rules was to be maintained from the date of the regular appointment or promotion. As per the rules, the petitioner came to be appointed prior to the appointment of the direct recruits. Therefore, the entire length of service rendered by him as an Assistant Conservator of Forests requires to be tagged for maintaining his seniority. If so considered, he would be senior to the direct recruits. Therefore, they cannot scale march over the promotees. It is also contended that the direct recruits unfilled quota cannot be carried forward. He places reliance on the judgment of this court in Indra Sawhney vs. Union of India [1992 Supp. (3) 217] known as Mandal's case. They were not recruited according to rules. He also contended that he was not made a party to the earlier proceedings which culminated in the aforesaid judgment. Therefore, the decision passed by this Court is violative of the principles of natural justice. He also contended that the third respondent in this case is a direct recruit and has concealed several material facts which led to the open judgment by this Court. Shri Raju Ramachandran, learned senior counsel appearing for some of the promotees, contended that in the earlier case, this Court in paragraph 9 of the judgment has specifically stated the premises that specific material has not been placed on record of the appointment of the promotees, viz., whether their promotions were fortuitous or not. The quota rules was broken down between the direct recruits and the promotees. Even under Rules, 1982, the second proviso thereto gives a power to the Government to

certify that the direct recruitment could not be made. In view of the stand taken by the Government in the counter-affidavit filed in the Tribunal that the so-called rule of quota has been broken down, it would amount to certification that it did not make regular recruitment; as a result, promotees gain seniority which has to be counted from the date of the regular promotion. Thereby, they would be senior to the direct recruits.

In view of these contentions, the question that arises is: whether the judgment of this Court has been vitiated by any error of law warranting reconsideration at the behest of some of the persons who are not parties to the earlier proceedings? It is undoubted that they were not parties to their earlier petition but this Court has laid down the general principle of law, and, therefore, whether or not they are parties to the earlier proceedings, the general principle of law stands applicable to every person irrespective of the fact whether he is party to the earlier order or not. It is not in dispute that there is a ratio prescribed for the direct recruits and the promotees, namely 1:1. In other words, for every 100 vacancies the promotees are entitled only to 50 vacancies. It is not in dispute that these promotees have been promoted in excess of the quota. Under those circumstances, it is settled law that the promotees who are appointed in excess of the quota cannot get the benefit of seniority according to the rules. As to what is the date on which the promotees or the direct recruits came to be appointed into the respective quota is a matter of record and the seniority is required to be determined according to the law laid down by this Court. In several judgments of this Court, it is now firmly settled that mere by because of the fact that State Government could not make direct recruitment due to its inaction, it cannot be said that the rule of quota has been broken down. Therefore, as and when the direct recruitment has been made, the direct recruits are entitled to placement of their seniority into the vacancies reserved for them as per the ratio and the seniority determined as per the rules within the respective quota. Similarly, when the promotees came to be promoted in accordance with the rules in excess of their quota, this Court stated in *K.C. Joshi & Ors. vs. Union of India & Ors.* [AIR 1991 SC 284] though a Bench of three Hon'ble Judges, that the promotees in excess of the quota cannot be given seniority from the respective dates of their promotions. They have to be considered only from the respective dates on which their respective quota is available. The same decision was followed and reiterated in *A.N. Sehgal vs. Raje Ram* [1992 Supp. (1) SCC 304]. Under these circumstances, we do not think that the judgment of this Court is vitiated by any error of law for reconsideration. Even Rule 4, second proviso has no application to the facts in this case. Rule 4 contemplates the seniority and second proviso postulates that when the recruitment could not be made, they have to certify the ground on which it could not be made and thereafter the seniority has to be determined. In view of the law now laid down, the certification of the non-making of direct recruitment according to rules, bears no relevance. The question of carry forward in this case, as laid down in *Mandal's case*, has no application for the reason that the recruitment in proportion is one the methods of recruitment and is required to be made. The balance posts are required to be recruited by subsequent publication and the promotees have no right to get into the post reserved for the direct recruits. *Mandal's case* concerns carry

forward posts reserved under Article 16(4) for Scheduled Castes, Scheduled Tribes and Other Backward Classes which has nothing to do in this case. Though some of the grounds will be available to argue the case on merits, that is no ground to reopen the settled law laid by this Court in earlier decision.

JUDIS