

PETITIONER:
A.P. MANCHANDA

Vs.

RESPONDENT:
STATE OF HARYANA

DATE OF JUDGMENT 14/10/1993

BENCH:

ACT:

HEADNOTE:

JUDGMENT:
ORDER

1. The appellant was appointed as Engineer Assistant on January 19, 1967 by the Executive Engineer of the concerned Division. Subsequently, by an order dated February 17, 1968 he was appointed as Engineer Assistant by the Chief Engineer which order was modified on November 28, 1969 to read that the period of his appointment from January 19, 1967 to February 16, 1968 shall be treated on work-charge basis and his appointment will be treated as from January 19, 1967. On this basis, he claimed seniority over respondents 4 and 5. This claim of his was rejected by the High Court. Hence this appeal.

2. We do not see any merit in this appeal. The two respondents over whom the appellant claimed seniority were regularly appointed as Engineer Assistants whereas, admittedly, the appellant claims that he was appointed by the Superintending Engineer on the verbal orders of the Chief Engineer on January 19, 1967. The High Court has stated that there is nothing on the record to show that any such verbal order was given by the Chief Engineer. Be that as it may, the fact remains that his entry was not in regular course and by the subsequent order of February 17, 1968 his entry could not have been regularised to the detriment of the two respondents who were regular appointees. The High Court has, therefore, rightly observed that no such retrospective appointment could have been granted by the Chief Engineer affecting the rights of others and in particular respondents 4 and 5, regular appointees who were already working as such on the post of Engineer Assistants. The view taken by the High Court is unassailable. Hence the appeal fails and is dismissed with no order as to costs.

ORDER

1. The appellants were directly recruited as Assistant Engineers (Mechanical) in the Public Health Engineering Department of the State of Bihar. The contesting respondents were initially appointed as Engineering Assistants (Civil) and on the basis of the 8.33 per cent quota fixed for them for promotion to the next higher post of Assistant Engineers, they were promoted as Assistant Engineers (Mechanical) on different dates, but were given retrospective promotion w.e.f. August 22, 1970. Respondents 4 and 6 were

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initially promoted on July 22, 1972 whereas respondent 5 was promoted on June 26, 1976. Respondents 4 and 6 were promoted retrospectively w.e.f. November 12, 1971 and April 15, 1972 respectively whereas Respondent 5 was promoted w.e.f. February 1, 1972. By a further order dated December 28, 1978 all the three respondents were granted promotion retrospectively w.e.f. August 22, 1970. On the basis of this retrospective promotion w.e.f. August 22, 1970, they were shown as seniors to the appellants in the gradation list prepared by the State Government. The appellants, therefore, challenged the gradation list essentially on two grounds, namely, (1) that promotion could not have been granted to respondents 4, 5 and 6 from a date prior to their having been borne on the cadre and (2) the seniority had to be determined on the basis of the relevant rules as in existence at the material date which was not done. The direct recruits, therefore, challenged the gradation list but the High Court did not accept the challenge based on the aforesaid two grounds and dismissed the writ petitions. It is against the said order of dismissal that the present appeal is preferred.

2. The learned counsel for the appellants invited our attention to the decision of this Court in *State of Bihar v. Akhoura Sachindra Nath*¹. The question in that case was more or less similar to the question arising in the present appeal. In that case also the question was regarding the fixation of inter se seniority between direct recruits and promotees. In that case also the promotees were granted seniority from retrospective date. That was the bone of contention between the parties. This Court held in the backdrop of those facts that no person could be promoted with retrospective effect from a date when he was not borne on the cadre so as to adversely affect others. It held that promotees not borne on the cadre at the time when direct recruits came to be appointed cannot be given seniority in service over direct recruits. The ratio of that decision applies squarely in the present appeal also. In view of the same, the learned counsel for the State also found it difficult to support the judgment of the High Court.

3. In the result we allow this appeal and set aside the impugned order of the High Court and direct the State to refix the seniority in the light of the decision of this Court referred to above. There will be no order as to costs.

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