

CASE NO.:
Appeal (civil) 1776 of 2008

PETITIONER:
Subodh Kumar Jaiswal and Ors

RESPONDENT:
Union of India & Ors

DATE OF JUDGMENT: 05/03/2008

BENCH:
Dr. ARIJIT PASAYAT & S.H. KAPADIA

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NO. 1776 OF 2008
(Arising out of S.L.P. (C) No.12364/2006)

W I T H

CIVIL APPEAL NO. 1777 OF 2008
(Arising out of S.L.P.(C) No.1178/2007)

Dr. ARIJIT PASAYAT, J.

1. Leave granted.

2. Challenge in these appeals is to the order passed by a Division Bench of the Bombay High Court allowing the writ petitions filed by Gulabrao Dharmu Pol, respondent No.4 in appeal relating to SLP (C) No.12364/2006 and Mr. Suresh A. Kakkar, respondent No.4 in appeal relating to SLP (C) No.1178/2007.

3. A brief reference to the factual position would suffice. The position as obtaining in the appeal relating to S.L.P.(C) No.12364/2006 is noted as the factual scenario is common to both the appeals.

On 18.4.1979, respondent No.4 was appointed as trainee Deputy Superintendent of Police by the Government of Maharashtra subject to completion of training, practical training and passing of tests in certain subjects. According to the appellants, only if these conditions are fulfilled, he was to be appointed on regular basis to a cadre post in the cadre of Dy.SP/ACP. In other words, it is stated that on completion of the probation satisfactorily, respondent No.4 was appointed to the cadre post and started officiating as Dy.SP/ACP on regular basis w.e.f. 3.8.1981 in terms of the Home Department, Government of Maharashtra Order dated 1.2.1982. The appellants were directly recruited to the Indian Police Service (in short 'IPS') and allocated to the State of Maharashtra with the allotment year as 1985. By order dated 13.4.1989, respondent No.4 was confirmed as DSP w.e.f. 31.12.1987. According to the appellants, there was no challenge to the delay, if any, in his confirmation. On 3.8.1989, in terms of the third proviso to Regulation 5(2) of the applicable Regulations, i.e. Indian Police Service (Appointment by Promotion) Regulations, 1955 (in short 'Regulation') he became eligible for consideration for promotion to the IPS on completion of eight years of continuous service in the post of DSP in the State cadre. On 26.2.1990, the Selection Committee met and considered the candidates who were substantive Dy.SPs who

were eligible as on 1.1.1990 including respondent No.4. On 8.3.1991, respondent No.4 was promoted to IPS along with seven others, including Shri S.A. Khopde. They all became juniors to the appellants who were appointed at least six years earlier. Respondent No.4 did not press his claim for consideration for promotion in the year 1988 itself. On 9.2.1993, he and other promotees of his batch were confirmed in the IPS w.e.f. 8.3.1992. They were given 1987 as the year of allotment in the IPS. On 27.7.1994, a representation was made by respondent No.4 to treat 1984 as the year of allotment by treating him as having been appointed in the year 1988 itself. Subsequently, another representation was made in January, 1995. O.A.No.807/1996 was filed before the Central Administrative Tribunal, Mumbai Bench (in short, the Tribunal) praying for appropriate year of allotment in the IPS on the ground that though he was eligible, he was not considered for the vacancies of 1988. The Union of India and the Union Public Service Commission (in short, 'UPSC') resisted the claim of respondent No.4. The Tribunal dismissed the O.A. inter-alia holding that the O.A. was barred by time and suffered from delay and laches as the respondent No.4 made a representation for the first time on 27.7.1994, much after his alleged claim for the year of allotment being 1988. It was held that if his claims were to be allowed, it would unsettle the settled position for about eight years. The review petition filed by respondent No.4 was also dismissed. A writ petition was filed by respondent No.4 challenging the judgments of the Tribunal. The same was allowed by condoning the delay in approaching the Tribunal and it was directed that the official respondents were to redetermine his year of allotment as 1987 (which was later corrected to be 1988). It was also held that if respondent No.4 was eligible for being considered for the vacancies in 1988, his seniority shall be determined treating him as entitled to be promoted in the year 1988 and his year of allotment should be determined accordingly. A contempt petition (C.P.No.10/2006) was filed by respondent No.4 and the Union of India implemented the judgment of the High Court without preparing any seniority list for the year 1988 by changing his year of allotment from 1987 to 1984 and placing him above the appellants who were direct recruits of the year 1985. This was done under threat of contempt. The High Court disposed of the contempt petition as not pressed since the judgment had been complied with. As the appellants were not parties before the High Court, after obtaining permission to file S.L.P., the Special Leave Petitions were filed.

4. Mr. P.P. Rao, learned senior counsel for the appellants, primarily challenged the judgment of the High Court on the ground that the appellants who would be directly affected by the order of the High Court were not parties before the High Court. In any event, there was not even an application for condonation of delay in moving the Tribunal. A stale claim purportedly relating to 1988 was raised for the first time in 1994. The High Court could not have directed that the official respondents were to determine the seniority of respondent No.4 treating his year of allotment as 1988 and he was entitled to be promoted in the vacancies occurring in the year 1988. It was further submitted that had the appellants been impleaded as parties, they could have pointed out the fallacy in the claim of respondent No.4 and as to how he was not entitled to be considered for promotion. Learned counsel for respondent No.4, however, submitted that no direct relief was claimed against the appellants and, therefore, there was no need to implead them as parties. Additionally, it is submitted that

when respondent No.4 noticed that his claim has been bypassed without any legitimate reason, he made the representation. From the stand of the Union of India, it appears that the proper course was to prepare three separate lists, which is the normal procedure, for the years in question if for any year the selection was not held. But that apparently was not done in view of the High Court's direction. The writ petition before the High Court related to both eligibility and promotion.

5. As has been pointed out by learned counsel for the appellants, there are two channels for appointment to the IPS, one is by promotion from the service candidates and the other is by direct recruitment. The direction of the High Court is some-what confusing. The same reads as follows:

"13. Under the aforesaid facts and circumstances, especially in the light of the above two Supreme Court Judgments, in Union of India and Others V/s. Vipinchandra Hiralal Shah \026 (1997) Supreme Court Cases (L & S) 41, and Devendra Narayan Singh and Others V/s. State of Bihar and Others \026 AIR 1997 SC 595, we set aside both the aforesaid orders of Central Administrative Tribunal and we hold that in the case of the petitioner, the year of allotment would be 1987 and he is eligible for being considered for promotion in the vacancies occurring in the year 1988. Our view that in the case of the petitioner, the year of allotment would be 1987 is reiterated by the Government of India's communication to the Petitioner dated 26th May, 1994. In the light of the above, the Respondents shall determine the Petitioner's seniority treating his year of allotment as 1987 and that the Petitioner was entitled to be promoted in the vacancies occurring in the year 1988 itself. Rule is accordingly made absolute with costs."

Subsequently, para 13 was corrected to read as follows:

"Now the corrected Paragraph 13 in our aforesaid judgment and order will read as under:

"Under the aforesaid facts and circumstances, especially in the light of the above two supreme Judgments, in Union of India and Others V/s. Vipinchandra Hiralal Shah \026 (1997) Supreme Court Cases (L&S) 41, and Devendra Narayan Singh and Others V/s. State of Bihar and Others \026 AIR 1997 SC 595, we set aside both the aforesaid orders of Central Administrative Tribunal and we hold that in the case of the petitioner, he is eligible for being considered for promotion in the vacancies occurring in the year 1988. In the light of the above, the Respondents shall determine the Petitioners seniority treating the Petitioners as entitled to be promoted in the vacancies

occurring in the year 1988 itself and his year of allotment/seniority should be determined accordingly. Rule is accordingly made absolute with costs."

6. Somewhat inconsistent directions were given; first was to consider the year of allotment to be 1987 and consider respondent No.4's case. Subsequent part was the conclusion that respondent No.4 was entitled to promotion. It is pointed out by learned counsel for the Union of India and the State of Maharashtra that if all eligible persons are to be impleaded, that would be impossible because it is not known how many persons all over the country would be affected. We find that nobody else has moved this Court. Therefore, that question may not strictly arise for consideration in the present case. Additionally, as rightly contended by learned counsel for the appellants, there was practically no explanation for the belated approach to the Tribunal, and the normal procedure of preparing year-wise seniority list was given a go bye because of High Court's direction.

7. Be that as it may, in our view, the judgment of the High Court is clearly inconsistent and is set aside. We direct the Central Government to draw up year-wise lists for the concerned years, determine the eligibility of respondent No.4 and take a decision in that regard within a period of two months from today. Needless to say that the Central Government, while undertaking the exercise, shall not be influenced by any observations made by the High Court or by us in the present judgment. It shall be open to the parties, if any or all of them affected by the decision, to avail such remedies as are available in law. We express no opinion in that regard.

8. By order dated 17.9.2007, a Bench of this Court passed the following order:

"Government would be entitled to fill in the vacancies subject to the result of the special leave petition."

9. If any action has been taken pursuant to the said order, it shall continue to be operative until fresh decision is taken by the Central Government. It needs no reiteration that by giving this protection, we have not expressed any opinion on the merits of the case.

10. The appeals are accordingly disposed of without any order as to costs.