

PETITIONER:
STATE OF H.P. & ORS.

Vs.

RESPONDENT:
SURINDER KUMAR MOHINDRA & ORS.

DATE OF JUDGMENT: 07/11/1996

BENCH:
K. RAMASWAMY, G.B. PATTANAIAK

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

PATTANAIAK. J.

This Appeal by Special Leave is directed against the Judgment of the Himachal Pradesh Administrative Tribunal. By the impugned judgment the Tribunal called upon the State to consider promotion of respondent no. 1 to the post of Joint Director alongwith others as on 15.6.1979 and if is found suitable to give notional promotion to him by creating supernumerary post with all consequential benefits without reverting the persons already promoted.

Admittedly, respondent no. 1 was employed as Agricultural Inspector on 19.5.1949 and he was promoted to a post in Class II on probation on 13.9.1957. He was confirmed against the said post on 15.6.1966 and was promoted to Class I post on 22.1.1976. He had filed a representation claiming his seniority taking his length of service from the continuous date of his appointment and that representation having been allowed on 30.11.1973 his seniority was re-fixed. Consequent upon re-fixation of his seniority by order dated 4.9.76 he was granted notional promotion to Class II with effect from 13.9.57 with all consequential benefits. The Departmental Promotion Committee by its report dated 21.4.79 recommended the case of respondent no. 1 for promotion to Class I with retrospective effect from 17.12.1973 on the basis of his seniority below Shri S.S. Saini and above Shri V.P. Sobti. The Departmental Promotion Committee met on 15.6.79 to consider the case of promotion to the post of joint Director (Agriculture) but respondent no. 1's case was not considered as in accordance with the rules and on the basis of his seniority he did not come within the zone of consideration. Challenging the said action respondent no. 1 filed a Writ Petition in the High Court claiming the seniority above Shri S.S. Saini. Prior to the aforesaid filing of the Writ Petition by order dated 29.1.1990, the State Government had fixed the seniority of respondent no. 1 below Shri Charanjit Singh and above Dr. L.D. Sharma after due consultation with the State Public Service Commission. Shri V.P. Sobti, who had been directly recruited to Class I in the year 1962 could not be held to be junior to respondent no. 1, even on the basis of re-

considered seniority of respondent no. 1. Against this decision of the State Government respondent no. 1 had filed a representation to the State Government. The Government revised its earlier decision by order dated 1.8.80 proposing to fix up the seniority of respondent no. 1 below Shri I.S. Kingra and above Dr. Charanjit Singh. Accordingly the respondent no. 1 amended the Writ Petition earlier filed. The State Government filed its counter-affidavit stating therein that in view of the re-determined seniority of respondent no. 1 there has been a direction for reconsideration of his promotion with effect from the date when his juniors were promoted and pursuant to the said direction respondent no. 1 was granted retrospective promotion to Class II with effect from 13.9.57 and to Class I with effect from 17.12.1973. The gradation list of Class I officers other than Joint Director of Agriculture was finalised on 6.12.1980 wherein respondent no. 1 was shown above Dr. Charanjit Singh and below Shri I.S. Kingra. During the pendency of the Writ Petition Administrative Tribunal having been constituted, the matter was transferred to the State Administrative Tribunal, Himachal Pradesh. The State Tribunal by the impugned judgment dated 6.8.93 having directed the appellant to reconsider the case of promotion of the respondent no. 1 with retrospective effect, the present appeal has been preferred.

The stand of the appellant in this appeal is that in accordance with the prevalent rules and taking into consideration the revised seniority of respondent no. 1 his case for promotion has been considered when it fell due and as such the impugned direction is unsustainable in law. In this appeal respondent no. 1 alone contested and in the reply affidavit it has been urged that gross injustice was being meted out to the respondent by the State Government, his case for promotion not having been considered at appropriate time and he not having been given his due seniority. It has been further stated that Tribunal having done justice by directing the State to re-consider the case of promotion of respondent no. 1 it would not be proper for this Court to interfere with the said direction in exercise of powers under Article 136 of the Constitution. It has also been averred in the reply affidavit that respondent no. 1 having been duly appointed to the cadre on 19.5.1949 and other respondents though appointed on different dates to the post outside the cadre in 1949 but were regularised only during 1950. All of them should have been treated junior to respondent no. 1 but unfortunately the State Government treated them senior to respondent no. 1 which ultimately resulted gross injustice throughout his career and promotional avenues were denied to him when it fell due. In this view of the matter the Tribunal has rightly directed for re-consideration of the question of promotion.

In view of the rival stand of the parties the only question that arises for consideration is whether in accordance with the relevant rules in force the question of promotion of respondent no. 1 has been considered by the competent authority or there has been any infringement of the said right of respondent no.1. It is the settled position that under the scheme of the Constitution an employee has a right of consideration and not a right of promotion unless the rules of promotion indicate that the promotion is on the basis of seniority alone. While hearing this case on 2.9.96 this Court had called upon the appellant to file an affidavit duly sworn to by a competent officer indicating the date on which the claim for promotion to the post of Joint Director of the respondent no.1 was considered

and the criteria prescribed for consideration of promotion as well as the number of posts available in the promoted cadre and the principles adopted by the Departmental Promotion Committee for considering the cases of promotion. The Court also called upon the appellant to produce the relevant records. Pursuant to the aforesaid direction an affidavit has been filed and the relevant records of the Departmental Promotion Committee have also been produced. It appears from the proceedings of the Departmental Promotion Committee as well as other material/documents on record that the question of promotion to the post of Joint Director was considered on three occasions, namely, on 12.8.77, 15.6.79 and 26.8.81. The criteria for promotion was merit with due regard to seniority. The Departmental Promotion Committee was required to prepare a Select List and the number of persons to be considered should extend to five times the number of vacancies expected within a year. Further after elimination of the persons unfit for promotion the persons should be classified as "Outstanding", "Very Good" and "Good" and the basis for such classification would be on annual confidential reports of the employees for 3 to 5 years. In the meeting held on 12.8.77 and on the basis of the respective seniority as well as the criteria of 3 years regular service in the feeder grade only 13 officers were found eligible for being considered as against the two posts of Joint Director. Respondent no.1 did not come within the zone of consideration and therefore, is not entitled to make a grievance that his case was not considered. In the next Departmental Promotion Committee meeting held on 15th June, 1979 respondent no.1 was no doubt within the zone of consideration and his case was considered by the Departmental Promotion Committee but in view of the requirement of 3 years' service in the feeder grade and respondent no.1 not having satisfied the said criteria, ultimately he was not promoted. When the next meetings of the Departmental Promotion Committee was held on 26.8.1981 respondent no.1 was no longer available to be considered as he had superannuated on 30.11.1980. In this view of the matter we have no hesitation to come to the conclusion that the Tribunal wholly erred in directing re-consideration on the question of promotion of respondent no. 1. In view of our conclusion that respondent no. 1's case for promotion to the post of Joint Director Agriculture has been considered in accordance with the rules and the criteria for promotion as well as in accordance with his seniority in the feeder grade and he has not been selected either because he did not come within the zone of consideration or because he did not fulfil the criteria of 3 years' continuous service in the feeder grade, there has been no infringement of the constitutional right guaranteed under Article 16 of the Constitution.

We accordingly set aside the impugned direction of the Tribunal and allow this appeal. TA No. 333 of 1986 stands dismissed but in the circumstances there will be no order as to costs.