

CASE NO.:
Appeal (civil) 1280 of 2008

PETITIONER:
STATE OF U.P.

RESPONDENT:
GOPENDRA DUTT PANDEY & ORS

DATE OF JUDGMENT: 13/02/2008

BENCH:
A.K.MATHUR & AFTAB ALAM

JUDGMENT:
JUDGMENT
O R D E R

CIVIL APPEAL NO.1280 OF 2008
(Arising out of SLP(C) No.20997 of 2006)

1. We have heard learned counsel for the parties.
2. This Special Leave Petition is barred by 378 days. However, learned counsel for the respondent does not seriously oppose the delay. Therefore, the delay of 378 days is condoned.
3. Leave granted.
4. This appeal is directed against the judgment and order dated 13th July, 2005 passed by the Division Bench of the High Court of Judicature at Allahabad Lucknow Bench, Lucknow in Writ Petition No.546 of 1995 and interim order dated 25th September, 2006 passed in Contempt Petition (C) No.2142 of 2005. The Division Bench of the High Court has directed to issue a writ of mandamus directing the State to promote the petitioner (Contesting Respondent No.1 herein) on the post of Assistant Engineer

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with effect from 14.2.1983 instead of 18.1.1995 and also on the post of Executive Engineer with effect from 18.3.1994. Aggrieved against this order the present appeal was filed before this Court.

5. The brief facts which are necessary for the disposal of this appeal are that Respondent No.1 was appointed by the order dated 5th December, 1975 as Junior Engineer (Civil) in Kanpur Development Authority, Kanpur with effect from 18.2.1974 giving him the benefit of his past services in the erstwhile development department. Upon creation of the Development Authorities Centralised Service vide Ordinance dated 19.10.1984, the respondent No.1 stood absorbed on the post of Junior Engineer in Agra Development Authority, Agra. The Respondent's seniority was fixed by the State Government in the cadre of Junior Engineer with effect from 18.2.1974 and the seniority of Shri Bharatendu Bandhula Koti (Respondent No.2 herein), Shri T.C. Pandey (Respondent No.3 herein), Shri S.S. Gupta (Respondent No.4 herein) and Shri Kanhaiya Lal (Respondent No.5 herein) has also been fixed in the cadre of Junior Engineer respectively with effect from 21.11.1975, 21.11.1975, 10.1.1977 and 10.1.1977. Respondent No.1 submitted that persons junior to him have been promoted to the post of Assistant Engineer and Executive Engineer.

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Therefore, he is also entitled for promotion on the post of Assistant Engineer and on the post of Executive Engineer according to his seniority. After considering the matter, the Division Bench passed the aforesaid direction giving the same benefit as was given to the persons junior to him. Aggrieved against this order the present appeal was filed. This Court in D.R. Yadav & Anr. versus R.K. Singh & Anr. reported in 2003 (7) SCC 110 direction was given for preparation of seniority list on the basis of norms fixed by this Court and in pursuance of that a

seniority list has now been issued on 10th September, 2007. So far as present case is concerned, there is a dispute between the State and four respondents as mentioned above. We have been informed that number of petitions are pending before the Allahabad High Court pertaining to the seniority and promotion of the Junior Engineer and the Executive Engineer of the Development Authority. We are not concerned with that litigation as this is a matter between the State and the four respondents. This judgment was given on 13th July, 2005 whereby the Division Bench of the High Court held that as the Respondent No.1 has not been promoted to the post of Assistant Engineer and the Executive Engineer according to his seniority and the persons junior to him have been

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promoted to the post of Assistant Engineer and Executive Engineer, as such the Respondent No.1 is entitled for promotion on the post of Assistant Engineer and on the post of Executive Engineer according to his seniority. Therefore, the Division Bench held that the Respondent No.1 should be given the same treatment as was given to the persons junior to him from the date from which the persons junior to him were given. In our opinion this order is just and fair.

6. While issuing notice in this petition, the order of the Division Bench was not stayed by this Court but only the contempt proceedings for non compliance of this order before the Allahabad High Court was stayed. Since now the matter has come up for final disposal and after going through the impugned order we are satisfied that the view taken by the Division Bench appears to be just and fair. It is admitted position that the persons junior to Respondent No.1 have been promoted to the post of Assistant Engineer and Executive Engineer. Therefore, the Division Bench rightly held that the same treatment should be given to Respondent No.1. As such we do not find any fault with the impugned order passed by the High Court. However, we are informed that lot of litigation is pending before the Allahabad High Court. Those facts are not

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before us. As such we do not appreciate the nature of the litigation pending before the High Court. So far as this case is concerned, the facts of which are very apparent and as such we are not inclined to interfere with the impugned order. However, any promotion made by the State Government in pursuance of the directions given by the Division Bench shall be subject to the other litigation.

7. The Contempt Petition which has been filed by the respondent before the High Court cannot survive and the same is accordingly, dismissed.

8. However, the State Government is directed to comply with the order dated 13th July, 2005 passed by the Division Bench of the High Court within a period of three months from today. We are not examining the merit of the final seniority list issued on 10th September, 2007 in pursuance of the order passed in D.R. Yadav & Anr. versus R.K. Singh & Anr. as the same is not under challenge before us. In this seniority list the name of Respondent No.1 appears as Item No.128. We are not expressing any opinion in this matter at present.

9. Consequently, this appeal is disposed of.

10. No order as to costs.