

ASIS KUMAR SAMANTA AND ORS.
v.
STATE OF WEST BENGAL AND ORS.
(Civil Appeal No. 1331 OF 2001)

SEPTEMBER 04, 2014

[R.M. LODHA CJI, KURIAN JOSEPH AND
ROHINTON FALI NARIMAN, JJ.]

Service law: Promotion - Retrospective effect - Vacancy occurring on 1.1.1989 - Private respondents seeking promotion - Their case not processed due to interim order passed by High Court restraining the authorities from giving them promotion - Selection process for promotion commenced after vacation of stay order on 11.12.1990 - Public Service Commission recommended that private respondents be given retrospective seniority with effect from 31.12.1990 - According to r.6(2) of the W.B. Services (Determination of Seniority) Rules, 1981, the promotees shall be en-bloc senior to the direct recruits of the same year - Therefore, private respondents given notional seniority with effect from 01.01.1990 - Challenge against - Held: The private respondents could not have been made to suffer because of intervention by the court by way of interim relief - State Government was not in a position to proceed with the selection by way of promotion under the Rules in view of the stay order passed by the court - No sooner the stay order was vacated, the process for the selection by way of promotion commenced - The impugned seniority list cannot, in these circumstances, be said to be legally flawed - W.B. Services (Determination of Seniority) Rules, 1981 - r.6(2).

U.D. Ldama and Ors. vs. State of Sikkim and Ors. (1997) 1 SCC 111: 1996 (9) Suppl. SCR 180 - relied on.

A Case Law Reference:

1996 (9) Suppl. SCR 180 relied on Para 2

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1331 of 2001

B From the Judgment and order dated 24.03.1999 passed by a Division Bench of the Calcutta High Court Dismissing W.P.S.T. No. 33 (W) of 1997.

C Rupesh Kumar, Parvesh Bahugana, Pankhuri Shrivastava, for the Appellant.

D P.P. Rao, Anip Sachthey, Soumitra G. Chaudhuri, Shagun Matta, Sarla Chandra, Raj Kumar Mehta Rajani K. Prasad, Abha R. Sharma, Rarry Mangsataban, Rameshwar Prasad Goyal, Satyendr Kr. Singh, Somiran Sharma, Ahanthem Bimol Singh, Ahanthem Henry, Ahanthem Rohan Singh, Anil Kumar Mishra-I, Vivek Kumar for the Respondents.

The Judgment of the Court was delivered by

E **R.M. LODHA, CJI** : 1. It is not necessary to answer the reference for two reasons.F 2. In the first place, there is already a three-Judge Bench decision, namely, *U.D. Lama and Ors. Vs. State of Sikkim*¹ and Ors.1 on the issue referred by the two-Judge Bench. In *U.D. Lama*¹, this Court held in paragraphs 20 and 21 of the report as follows :-G *"20. On the other hand, it cannot be overlooked that the appellants were not appointed by following the regular procedure of appointment. Under Rule 4(1), recruitment could be made to the newly-created State Civil Service by competitive examinations to be held by the Sikkim Public Service Commission. This competition is not*

H 1. (1997) 11 SCC 111.

confined to persons who are already in government employment. The second method of recruitment is selection from persons "serving in connection with the affairs of the State of Sikkim". In the second category of recruitment, specifically no provision of holding written and viva voce has been laid down. The respondents claim that had the procedure in Rule 4(1)(b) been followed, they would have got into the Service without any examination. But their lawful exception was denied by the failure of the Government to set up a Commission or appoint a Chairman. What would have happened in normal course, did not happen because of the Government's failure. Only because of this, quite contrary to the Rules, written and oral tests were held. This was upheld by this Court principally on the ground of what was described as "peculiar situation" which was created by the absence of a Commission and its Chairman. The selection and appointments made in 1982 were dictated by peculiar circumstances obtaining at that time. The appointments were not made strictly in accordance with the Rules but, as was held by this Court, in exercise of the executive power of the State. It is true that some of the respondents

appeared in the tests and did not qualify but there is substance in the contention of the respondents that they were entitled to be appointed even without these tests if Rule 4(1)(b) was followed. They were deprived of this chance. Even for Rule 4(1)(b), the instrumentality of Public Service Commission was necessary for making any appointment. Now that the Public Service Commission has been set up, the State Government has to undo the wrong that was initially done to these employees by subjecting them to tests which was not warranted by Rule 4(1)(b). Therefore, they should not be made to suffer in the matter of seniority or promotion in

A any way by failure of the State Government to implement
the Rules laid down by it. In these circumstances by
directing the new recruits to be treated to have been
recruited on the day the appellants were recruited, the
B State Government has not done anything contrary or
wrong but has really restored (sic removed) the injustice
done to the respondents by the State Government's
failure to recruit them into the Service in accordance with
C Rule 4(1)(b). In fact, the only door that was open to the
appellants under the Rules to enter the Service was
through Rule 4(1)(b). They might have also joined
through open competition but neither of the two steps
were taken or could be taken. In these circumstances, the
appellants have really tried to steal a march upon the
D respondents by being successful in the tests which
should not have been held in any event. (emphasis sup
plied)

21. We are of the view that the contention of the
respondents must be upheld. The point in dispute has
been examined in depth by two Committees set up by
E the State Government. The earlier judgment of this Court
upholding the recruitment of the appellants was because
of the failure of the State Government to appoint the State
Public Service Commission. As no appointments were
being made for a number of years, the Government
F adopted the device of holding a written test which was not
laid down by the Rules. This Court held that under the
peculiar circumstances, it was justified. This, however,
does not mean that the State Government would not be
entitled to regularise the service on the basis of the rules
G framed. The appellants who were appointed under very
special circumstances cannot claim any special right in
the matter of promotion or seniority. It was not the fault
of the respondents that appointments according to rules
could not be made in time. Taking an overall view of the

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matter, we are of the opinion that the High Court has come to a correct decision. The appeal is, therefore, dismissed with no order as to costs." A

3. We are in respectful agreement with the legal position expounded in U.D. Lama¹. B

4. Applying the above legal position to the facts of the present case, it may be noted that vacancy against promotion quota in the cadre of 22 Forest Rangers occurred on 1.1.1989. But their case could not be processed because of the interim order passed by the High Court restraining the authorities from giving them promotion to the West Bengal Forest Service. The stay order was vacated on 11.12.1990. It was only thereafter the selection process for promotion commenced. It was for this reason that the Public Service Commission recommended that private respondents be given retrospective seniority with effect from 31.12.1990. As per Rule 6(2) of the W.B. Services (Determination of Seniority) Rules, 1981 (for short, '1981 Rules') the promotees shall be en-bloc senior to the direct recruits of the same year, the private respondents in the writ petition were given notional seniority with effect from 01.01.1990. C D E

5. The legal position in U.D. Lama¹ squarely applies to the present fact situation. The private respondents could not have been made to suffer because of intervention by the court by way of interim relief. The State Government was not in a position to proceed with the selection by way of promotion under the Rules in view of the stay order passed by the court. No sooner the stay order was vacated, the process for the selection by way of promotion commenced. The impugned seniority list cannot, in these circumstances, be said to be legally flawed. F G

6. Secondly, some of the private respondents who were given promotion on 01.01.1990 by virtue of Rule 6(2) of the 1981 Rules have already superannuated. H

A 7. In light of the above, we think, it is not necessary to send the matter back to the two-Judge Bench. Civil Appeal is dismissed with no order as to costs.

Devika Gujral

Appeal dismissed.