

Hari Nandan Sharan Bhatnagar vs S. N. Dixit & Anr on 25 April, 1969

Equivalent citations: 1970 AIR 40, 1970 SCR SUPL. (1) 421, AIR 1970 SUPREME COURT 40, 1970 LAB. I. C. 1

Author: G.K. Mitter

Bench: G.K. Mitter, J.C. Shah

PETITIONER:

HARI NANDAN SHARAN BHATNAGAR

Vs.

RESPONDENT:

S. N. DIXIT & ANR.

DATE OF JUDGMENT:

25/04/1969

BENCH:

MITTER, G.K.

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SHAH, J.C.

CITATION:

1970 AIR 40 1970 SCR Supl. (1) 421

1969 SCC (2) 245

CITATOR INFO :

RF 1975 SC1487 (16,17)

ACT:

U.P. Legislative Assembly Rules, r. 7-Appointment to post of Superintendent to be made from 'grade of superior service assistants'-Grade', meaning of--Whether includes all persons working on same scale of pay-Post of Superintendent a selection post.

HEADNOTE:

According to r. 7 of the United Provinces Legislative Department Rules recruitment to the post of Superintendent shall be made by promotion from 'the grade of superior service assistants in the Council Department'. While regard was to be shown to seniority full authority was reserved to

appoint the assistant most fitted for the post and when no suitable assistant was available recruitment might be made from outside.

The appellant entered the service of the U.P. Legislative Assembly in 1954 through a competitive examination held by that Public Service Commission of the State. In 1955 he was confirmed in the post of Upper Division Assistant. In September, 1961 a vacancy occurred in the post of a Superintendent in the Legislative Assembly Secretariat. The first respondent who was working as a Treasurer in the same office in the same scale of pay as the appellant was appointed to the said post by the Speaker of the Assembly. Being aggrieved by the rejection of his claim as the senior qualified superior service assistant the appellant filed a suit in the court of the Munsif. The Munsif decreed the suit in his favour but the District Judge in first appeal and the High Court in second appeal decided against him. According to the view taken by the High Court the word 'grade' in r. 7 meant the scale of pay, and therefore all persons on the same scale of pay as a superior service assistant were qualified for the post of Superintendent in whichever department and under whatever designation they might be working. In appeal by special leave before this court,

HELD : The post of Superintendent was a selection post and seniority by itself was not a sufficient qualification. The Speaker had taken into consideration the claims of the senior Upper Division Assistants but under the rules his choice was not limited to the Upper Division Assistants. He could consider the claims of others who were -in the same grade, that is to say, enjoying the same scale of pay and pick out the person considered by him to be qualified in all respects to perform the duties of a Superintendent. The High Court had rightly held that all officials of the U.P. Legislative Assembly Secretariat holding posts in the same scale of pay as Upper Division Assistants were eligible for promotion to the post of Superintendent. [423H-424B]

The danger that on the above interpretation persons like book-binders and chauffeurs, if they were getting a salary in the same grade as the senior service assistants would be eligible for the post, was imaginary, for in making appointment to a selection post the qualifications of a person would certainly have to be considered. [424D]

The fact that the appellant entered service through a competitive examination while the respondent had failed to pass such a test was not one

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which could be taken into consideration by this Court because the appointment was made after thorough scrutiny of representations received and after consideration of the recommendation made by the Secretary of the Legislative Department. [424E]

JUDGMENT :

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1020 of 1966. Appeal by special leave from the judgment and order dated October 28, 1965 of the Allahabad High Court, Lucknow Bench in Second Appeal No. 356 of 1964.

R. K. Garg and D. P. Singh, for the appellant. S. S. Shukla, for respondent No. 1.

The Judgment of the Court was delivered by Mitter, J. The only question in this appeal by special leave is, whether there was -a violation of Rule 7 of the United Provinces Legislative Department Rules in the appointment of the first respondent, S. N. Dixit, as the Superintendent in the Legislative Assembly of the State of Uttar Pradesh in preference to the appellant.

The facts are as follows. The appellant was appointed as an Upper Division Assistant (formerly known as superior service assistant) in the Legislative Assembly Secretariat Uttar Pradesh in 1954 on the result of a competitive examination held by the Public Service Commission of the State. He was confirmed in the post of Upper Division Assistant with effect from June 16, 1955. In September 1961 a vacancy occurred in the post of a Superintendent in the Legislative Assembly Secretariat. The first respondent was working as a Treasurer in the same office. According to the -appellant, one Uma Shanker was the senior Upper Division Assistant and he was immediately after Uma Shanker in order of seniority. In view of the fact that Uma Shanker had not put in the minimum period of ten years' service as Upper Division Assistant the Speaker of the Assembly did not think it fit to appoint him as Superintendent but he ignored the appellant's claim to the post after Uma Shanker and appointed Dixit in violation of the mandatory provisions of Rule 7. The said Rule reads :

"Recruitment to the post of the Superintendent shall be made by promotion from the grade of superior service assistants in the Council Department. While due regard will be paid to seniority, no assistant will be appointed to the post of Superintendent unless he is considered qualified in all respects to perform the duties of a Superintendent and full authority will be reserved to appoint the assistant most fitted for the post. If, however, no suitable assistant is -available for promotion from amongst the grade of superior service assistants in the Council Department, recruitment may, as a special case, be made from outside."

The appellant filed a suit in the court of the Munsif of South Lucknow impleading the State of Uttar Pradesh, the Speaker, Legislative Assembly of the State and Dixit as defendants therein and praying for a decree for declaration that he should be deemed entitled to the post of Superintendent in the Legislative Assembly with effect from 1st January 1962 and a further declaration that the order dated October 7, 1961 appointing defendant No. 3 as Superintendent was illegal and ultra vires. Written statements were filed on behalf of the defendants. The learned Munsif held in the plaintiff's favour. His judgment was upheld in appeal by the Civil Judge Lucknow. The same was reversed in Second Appeal to the High Court. The order of the Speaker passed in October 1961 shows that he

had considered the matter carefully before appointing Dixit to the post. The contention of learned counsel for the appellant was 'that the post could not be given to a person who was not a superior service Assistant and the "grade of superior service assistants in the Council Department" meant and included only those persons whose

-names were borne on the roll of Upper Division Assistants. Ex. 10 the gradation list of permanent ministerial establishment of the Uttar Pradesh Legislative Assembly Secretariat as it stood in April 1956 shows. that the scales of pay of Upper Division Assistants, Translators, Reference Clerk, Treasurers, Stenographer to Secretary and Assistant Librarian were the same, namely, Rs. 160-15-280-EB-20-400. By an order of the Governor dated March 16, 1959 efficiency bars in the scales of pay of all the above posts were uniformly altered and fixed at Rs. 220 and Rs. 300. The High Court took the view that 'grade' in R. 7 was suggestive of status and it did not refer to a class or a particular class. According to the High Court "All officials working in the same scale of pay in a department, although holding posts with different designations, shall be deemed to be holding posts in the same grade, because their rank in the same department will be the same and equal to one another."

The High Court noted that the dictionary meaning of "grade" was 'rank' position in scale, a class or position in a class according to the value.' In our view the High Court came to the correct conclusion in holding that the post was a selection post and seniority by itself was not a sufficient qualification for promotion. The Speaker had to take into consideration the claims of Senior.

Upper Division Assistants but under the rules his choice was not limited to the Upper Division Assistants. He could consider the claims of others who were in the same grade, that is to say, enjoying the same scales of pay and pick out the person considered by him to be qualified in all respects to perform the duties of a Superintendent. All officials of the Legislative Assembly Secretariat holding posts in the same scale of pay as Upper Division Assistants were eligible for promotion to the post of the Superintendent Counsel argued that this would be an unreasonable interpretation of the rule for in that case even a book-binder or a chauffeur would have to be considered if their scales of pay were the same as those of Upper Division Assistants. We do not think that anyone would place such an absurd

-construction on the rule. The appointing authority had to consider not only the eligibility based on the grade (assuming that the rules unreasonably place a chauffeur, a book-binder, an accountant and a special duty clerk in the same grade) but also the qualification of the person appointed to perform the duties of the Superintendent and a book-binder or a chauffeur would certainly not be eligible for consideration. It was said that the educational qualification of the appellant was much superior to that of Dixit and while the appellant had joined service by passing a competitive examination held by the Public Service Commission the first respondent had failed to pass such a test. These are matters on which we can express no opinion. As noted already, the Appointment was made after a thorough scrutiny of representations received and after consideration of the recommendation made by the Secretary, of the Legislative Department.

In the result the appeal is dismissed, but we make no order as to costs.

G.C.

Appeal dismissed.