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Special Civil Application No.3827 of 1982

Date of Decision: 4-8-95

For Approval and Signature:

HONOURABLE MR. JUSTICE M.R. CALLA

1. Whether Reporters of Local Papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether Their Lordships wish to see the fair copy of the judgment? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any other order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

Mr.P.V.Hathi, learned counsel for the petitioner.

Mr.L.R.Pujari, learned A.G.P. for the respondents.

Coram: (M.R. Calla, J.)

Dt: 4-8-95

ORAL JUDGMENT:

Petitioner was appointed as a Clerk in the year 1950 and later on was promoted as Accountant on 21-8-64. Thereafter, he was made Head Clerk on 15-12-65. He was then reverted from the post of Head Clerk by order dated 25-11-66 and was again made Accountant on 20-11-67. Petitioner's basic grievance is against his reversion order dated 25-11-66 coupled with the grievance relating

to the promotion of his juniors during the period between 25-11-66 and 20-11-67. The petitioner has challenged the seniority list of Assistant Superintendents as on 1-1-79, which is available at page 21 (Annexure B") with the Special Civil Application, as also the seniority list Annexure "A" and he claims seniority over the respondent Nos.3 to 13. His grievance is that his date of appointment as Head Clerk has been treated to be 20-11-67 and 13-8-71 as the date of confirmation. His claim is that he should be given seniority on the basis of his date of appointment as Accountant i.e. 21-8-64 or as Head Clerk from 15-12-65 and the dates on which his juniors were promoted. The seniority lists, which are under challenge, have been issued as on 1-1-79, but the grievance relates to the order dated 25-11-66. The petitioner failed to challenge his reversion order dated 25-11-66. In the reply, which has been filed on behalf of the respondents, the only ground, which has been taken, is that of delay and laches. It is unfortunate that this petition is pending in this court since 1982 and in the meantime, the petitioner had also retired from the service on 29-2-84 whereas this petition was filed on 16-8-82.

I have heard learned counsel for the petitioner Mr. Hathi and Mr. Pujari, learned A.G.P. The petitioner's case is that he had made representation against the reversion and that he has been subjected to injustice in the matter of appointment as Head Clerk and consequently for the higher post. The petitioner may have made such representation, but the fact remains that the reversion order dated 25-11-66 was not challenged before the Court at appropriate time and that is the basic order. In absence of challenge to the basic order, the petitioner's seniority has to be counted on the basis of his date of appointment as Head Clerk i.e. 20-11-67. I find that the petitioner has failed to challenge the basic order against which he was aggrieved i.e. his reversion in 1966. Seniority is nothing but a consequence of a past event relating to the appointment. Therefore, having failed to challenge the basic order, against which the petitioner was aggrieved i.e. the order dated 25-11-66, the petitioner can not maintain the challenge to the consequence i.e. the seniority. It is the settled law that without challenging the basic order, the challenge to the consequential orders can not be sustained and at this stage, when the petitioner had already retired ten years ago and had filed the petition in the year 1982 against the reversion of 1966, the challenge to the reversion order of 25-11-66 can not be entertained. Since the challenge to the basic order can not be

entertained, the question of considering the challenge to the consequential orders simply does not arise. In this view of the matter, I do not find any substance or merit in this petition and the same is accordingly dismissed. Rule is hereby discharged. No order as to costs.