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K.R. MUDGAL & ORS.

v.

R.P. SINGH & ORS.

SEPTEMBER 30, 1986

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[O. CHINNAPPA REDDY AND E.S. VENKATARAMIAH, JJ.]

*Civil Services.*

*Seniority list—Fixation of seniority—Necessity for aggrieved officials to approach Court at the earliest.*

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The Ministry of Home Affairs by its Office Memorandum dated 14th May, 1940 laid down that if a vacancy arose in the cycle meant for a direct recruit, the direct recruit would rank senior to the departmental candidates even though the direct recruit joined the post after the departmental candidate had been promoted and confirmed. This principle of fixation of seniority was subsequently superseded by Office Memorandum dated 22nd June 1949, which provided that the seniority would be determined on the basis of the length of service. Another Office Memorandum issued on 22nd December, 1959, in supersession of the 1949 Office Memorandum laid down that the seniority was to be fixed on the basis of the date of confirmation.

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Some of the officials, who had been directly appointed as Assistants in a department of the Government of India in the year 1957, filed a writ petition in the High Court in the year 1976 questioning the validity of the appointments of certain other Assistants who had been appointed or absorbed as Assistants prior to the induction of the writ petitioners into service as Assistants, and also the assignment of seniority to them over and above the petitioners.

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The first draft seniority list of the Assistants in that department was issued in 1958 on the basis of length of continuous service placing the officials who were respondents to the writ petition above the petitioners, and was duly circulated. No objections were received from the writ petitioners against the seniority assigned to them in the said seniority list. Subsequently, the seniority lists in the Grade of Assistants were again issued in 1961 and 1965 but again no objections were raised by the writ petitioners.

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A On the basis of the 1959 Office Memorandum the seniority list, as maintained in the department up to 1965, was revised in March, 1968. In the revised seniority list the writ petitioners became senior to many of the departmental Assistants, who had a longer length of service, but for one reason or the other had not been confirmed in the post or were confirmed after the confirmation of the writ petitioners. Consequent to the decision of this Court in *Union of India v. M. Ravi Verma*, [1972] 2 SCR 992, the said seniority list was again revised in the year 1976 resulting in the respondents in the writ petition, who were governed by the 1949 Office Memorandum, being shown as seniors to the petitioners.

C The petitioners questioned the validity of the seniority list published in 1976. The respondents in the writ petition raised a preliminary objection to the writ petition stating that it was liable to be dismissed on the ground of laches. The writ petition was dismissed by the Single Judge. The Letters Patent appeal filed by the petitioners was, however, allowed by the Division Bench, without adverting to the ground of delay. The ancillary directions given by the Court resulted in the disturbance of the seniority of the above said respondents, who had been working in the department and on the date of the judgment had put in more than twenty-five years of service as Assistants.

E Allowing the appeals by special leave filed by the Union of India as well as the officials, who had been appointed prior to the date on which the writ petitioners were appointed, the Court,

F HELD: The High Court was wrong in rejecting the preliminary objection raised on behalf of the respondents to the writ petition on the ground of laches. [1000E-F]

G It is essential that any one who feels aggrieved by the seniority assigned to him should approach the court as early as possible, as otherwise in addition to the creation of a sense of insecurity in the minds of the Government servants there would also be administrative complications and difficulties. [1000D-E]

H Satisfactory service conditions postulate that there should be no sense of uncertainty amongst the Government servants created by the writ petitions filed after several years. A Government servant who is appointed to any post ordinarily should at least after a period of 3 or 4 years of his appointment be allowed to attend to the duties attached to his post peacefully and without any sense of insecurity. [1000C; 996D-E]

The respondent-petitioners should have in the ordinary course questioned the principle on the basis of which the seniority lists were being issued from time to time from the year 1958 and the promotions which were being made on the basis of the said lists within a reasonable time. For the first time they filed the writ petition in the High Court in the year 1976 nearly 18 years after the first draft seniority list was published in the year 1958. The appellants have been put to the necessity of defending their appointments as well as their seniority after nearly three decades. This kind of fruitless and harmful litigation should be discouraged. [1000B-C; 996 E-F]

All the promotions made in the department to be reviewed in accordance with the impugned seniority list of 1976. [1001G]

*R.S. Makashi & Ors. v. I.M. Menon & Ors.*, [1982] 2 SCR 69 and *Maloon Lawrence Cecil D'Souza v. Union of India & Ors.*, [1975] Supp. SCR 409, referred to.

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 2925-26 of 1981

From the Judgment and Order dated 19th December, 1980 of the Delhi High Court in Letter Patent Appeal No. 6 of 1978.

M.K. Ramamurthi and P.P. Singh for the Appellants.

R.K. Garg, P.H. Parekh and C.V. Subba Rao for the Respondents.

The Judgement of the Court was delivered by

**VENKATARAMIAH, J.** Some of the officials who had been directly appointed as Assistants in the Intelligence Bureau of the Government of India in the year 1957 filed a writ petition in the year 1976 in Civil Writ Petition No. 638 of 1976 on the file of the High Court of Delhi questioning the validity of the appointments of certain other Assistants in the Intelligence Bureau of whom some had been appointed prior to 1.2.1954 and the remaining had been appointed or absorbed as Assistants prior to the induction of the writ petitioners into service as Assistants and also the assignment of seniority to them over and above the petitioners in the Writ Petition. The said Writ Petition was dismissed by the learned Single Judge. Aggrieved by the

- A decision of the learned Single Judge, the petitioners in the writ petition filed an appeal in the Letters Patent Appeal No. 6 of 1978 before a Division Bench of the High Court. The Division Bench allowed the appeal, set aside the judgment of the learned Single Judge and held that the posts of Assistants which existed on 1.2.1954 had to be filled by persons who were eligible in terms of Paragraph 15 of the reorganisation Scheme of 1955 effective from 1.2.1954 and that there was infringement of the terms of Paragraph 15 in their cases. The Division Bench also gave some other ancillary directions resulting in the disturbance of the seniority of the respondents who had been working in the Intelligence Bureau. By the date of the said judgment the said respondents had put in more than 25 years of service as Assistants in the Intelligence Bureau. Aggrieved by the decision of the Division Bench, the Union of India as well as the officials, who had been appointed prior to the date on which the writ petitioners were appointed have filed these two appeals by special leave.

- D At the outset it should be stated that it is distressing to see that cases of this kind where the validity of the appointments of the officials who had been appointed more than 32 years ago is questioned are still being agitated in courts of law. A Government servant who is appointed to any post ordinarily should at least after a period of 3 or 4 years of his appointment be allowed to attend to the duties attached to his post peacefully and without any sense of insecurity. It is unfortunate that in this case the officials who are appellants before this Court have been put to the necessity of defending their appointments as well as their seniority after nearly three decades. This kind of fruitless and harmful litigation should be discouraged.

- F The ministerial posts in the Intelligence Bureau were reorganised with effect from 1.2.1954 vide Ministry of Home Affairs Letter No. 40/154/49-P.III dated 17.9.1955. In accordance with the said Scheme the Ministerial Duty Posts were reorganised into following three categories:

G Category A — Administrative Officer and the Assistant Director (Non-Police)

Category B — Superintendents and Assistant Superintendents

H Category C — Assistants.

All Duty Posts in Category 'C' were required by that Scheme to be filled by Assistants or U.D.Cs placed in charge of such posts. The posts of Assistants were classified as belonging to Grade IV in the Intelligence Bureau Service. The mode of initial constitution of Grade IV, confirmation of the existing Assistants called 'departmental candidates' at the initial stage and the future recruitment to Grade IV consisting of Assistants were regulated by Paragraphs 15 and 16 of the said Scheme. The principle of fixation of seniority as laid down in the Ministry of Home Affairs Office Memorandum No. 20/1/40-Ests(S) dated 14.5.1940 was that if a vacancy arose in the cycle meant for a direct recruit, the direct recruit would rank senior to the departmental candidate even though the direct recruit joined the post after the departmental candidates had been promoted and confirmed. This principle of fixation of seniority was subsequently superseded by the Ministry of Home Affairs Office Memorandum No. 30/44/48-Appts, dated 22.6.1949 which provided that the seniority would be determined on the basis of the length of service. Prior to the reorganisation which came into force with effect from 1.2.1954 the seniority of Assistants in the Intelligence Bureau was fixed on the basis of the 1949 Office Memorandum.

Before the reorganisation of the Intelligence Bureau the direct recruitment of Assistants in the Intelligence Bureau was made through the Employment Exchange, advertisements and by inviting applications of persons working in other Ministries etc. The Intelligence Bureau was exempted from making recruitment to its ministerial posts through the Union Public Service Commission in accordance with the Government orders issued from time to time. No direct recruitment was made through the Union Public Service Commission. It was only after the reorganisation of the ministerial posts in the Intelligence Bureau that the Union Government was required to make direct recruitment of Assistants in the ratio of 85% through the Union Public Service Commission and 15% by promotion of U.D.Cs in terms of the said Scheme. The Intelligence Bureau was again exempted from the purview of the Union Public Service Commission since 1969 and now we are told that it conducts its own examination for making recruitment of Assistants directly.

The officials who were shown as Respondent Nos. 3 to 9, 12 to 31 and 42 to 49 in the Writ Petition were working as Assistants on 1.2.1954, i.e., the date of the reorganisation of the ministerial posts in the Intelligence Bureau. Respondent Nos. 10 and 11 in the Writ Peti-

A tion were appointed as direct recruits through other sources before the Intelligence Bureau Ministerial Reorganisation Scheme was issued on 17.8.1955. Respondent Nos. 32 to 41, 50 and 51 are those officers who were promoted from the posts of U.D.Cs to the posts of Assistants against 15% quota of promotees prescribed in the reorganisation scheme.

B The petitioners who had filed the Writ Petition were, however, recruited through the competitive examination held by the Union Public Service Commission in the year 1955 against the 85% quota of direct recruitment provided for in the Scheme and they joined service in 1957. The first draft seniority list of the Assistants was issued in 1958 on the basis of length of continuous service placing the officials who were respondents to the writ petition above the petitioners therein and was duly circulated. No objections were received from the writ petitioners against the seniority assigned to them in the said seniority list. Subsequently, the seniority lists in the Grade of Assistants were again issued in 1961 and 1965 but again no objections were raised by the writ petitioners except petitioner No. 6 who objected to the 1965 list.

C In 1959 the Ministry of Home Affairs issued another Office Memorandum No. 9/11/55/IPS dated 22.12.1959 in supersession of the 1949 Office Memorandum laying down the principles of fixation of seniority. According to this Memorandum, the seniority was to be fixed on the basis of the date of confirmation as against the 1949 Office Memorandum which laid down that the seniority should be fixed in accordance with the length of service. On the basis of the 1959 Office Memorandum the seniority list as maintained in the Intelligence Bureau up to 1965 was revised in March, 1968. In the revised seniority list the writ petitioners became seniors to many of the departmental Assistants (who had been impleaded as respondents) who had a longer length of service but for one reason or the other had not been confirmed in the said post or were confirmed after the confirmation of the writ petitioners.

D The 1959 Office Memorandum came up for consideration before the Supreme Court in *Union of India & Ors. v. M. Ravi Varma & Ors. etc.*, [1972] 2 S.C.R. 992. In that decision this Court held that the Office Memorandum dated 22.12.1959 had expressly made it clear that the general principles embodied in the annexure thereto were not to have any retrospective effect and in order to put the matter beyond any pale of controversy it had been mentioned that 'hereafter the seniority of all persons appointed in the various Central Services after the date of these instructions should be, determined in accordance with the general principles annexed hereto'. In accordance with the above view this Court held that the seniority of two of the respondents in that case, whose seniority was in issue, had to be

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A determined on the basis of their length of service in accordance with Office Memorandum dated 22.6.1949 and not on the basis of the date of their confirmation because they had been appointed prior to 22.12.1959. Two of the respondents in the writ petition out of which these appeals arise, i.e., respondent Nos. 7 and 36 had also filed writ petitions in the High Court of Andhra Pradesh challenging the seniority list of Assistants in the Intelligence Bureau which had been issued in March, 1968. The Andhra Pradesh High Court by its judgment dated 11.11.1974 on the basis of the decision in *Ravi Varma's* case (supra) held that the seniority of respondents 7 and 36 should be fixed on the basis of the 1949 Office Memorandum. On the basis of the judgment in *Ravi Varma's* case (supra) and the decision of the High Court of Andhra Pradesh referred to above, the seniority list of the Assistants in the Intelligence Bureau was again revised for correcting the error committed earlier and a draft partial seniority list was issued on 16.6.1975 proposing to revive the earlier list dated 22.12.1958. In this seniority list the respondents in the writ petition, who were working as Assistants at the time of the reorganisation and were governed by the 1949 Office Memorandum were shown as seniors to the petitioners who had filed the writ petition in accordance with the position in the 1958 seniority list. The petitioners filed objections to the said seniority list. Their objections were not accepted and a seniority list was issued in January, 1976 showing the officials who had been impleaded as respondents in the writ petition as seniors to the petitioners in the writ petition. In the writ petition the petitioners questioned the validity of the above seniority list published in January, 1976.

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The respondents in the writ petition raised a preliminary objection to the writ petition stating that the writ petition was liable to be dismissed on the ground of laches. Although the learned Single Judge and the Division Bench have not disposed of the above writ petition on the ground of delay, we feel that in the circumstances of this case the writ petition should have been rejected on the ground of delay alone. The first draft seniority list of the Assistants was issued in the year 1958 and it was duly circulated amongst all the concerned officials. In that list the writ petitioners had been shown below the respondents. No objections were received from the petitioners against the seniority list. Subsequently, the seniority lists were again issued in 1961 and 1965 but again no objections were raised by the writ petitioners, to the seniority list of 1961, but only the petitioner No. 6 in the writ petition represented against the seniority list of 1965. We have already mentioned that the 1968 seniority list in which the writ petitioners had been

- A shown above the respondents had been issued on a misunderstanding of the Office Memorandum of 1959 on the assumption that the 1949 Office Memorandum was not applicable to them. The June 1975 seniority list was prepared having regard to the decision in *Ravi Varma's* case (supra) and the decision of the High Court of Andhra Pradesh in the writ petitions filed by respondent Nos. 7 and 36 and thus the mistake that had crept into the 1968 list was rectified. Thus the list was finalised in January, 1976. The petitioners who filed the writ petition should have in the ordinary course questioned the principle on the basis of which the seniority lists were being issued from time to time from the year 1958 and the promotions which were being made on the basis of the said lists within a reasonable time. For the first time they filed the writ petition in the High Court in the year 1976 nearly 18 years after the first draft seniority list was published in the year 1958. Satisfactory service conditions postulate that there should be no sense of uncertainty amongst the Government servants created by the writ petitions filed after several years as in this case. It is essential that any one who feels aggrieved by the seniority assigned to him should approach the court as early as possible as otherwise in addition to the creation of a sense of insecurity in the minds of the Government servants there would also be administrative complications and difficulties. Unfortunately in this case even after nearly 32 years the dispute regarding the appointment of some of the respondents to the writ petition is still lingering in this Court. In these circumstances we consider that the High Court was wrong in rejecting the preliminary objection raised on behalf of the respondents to the writ petition on the ground of laches. The facts of this case are more or less similar to the facts in *R.S. Makashi & Ors. v. I.M. Menon & Ors.*, [1982] 2 S.C.R. 69. In the said decision this Court observed at page 100 thus:
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- F "In these circumstances, we consider that the High Court was wrong in over-ruling the preliminary objection raised by the respondents before it, that the writ petition should be dismissed on the preliminary ground of delay and laches, inasmuch as it seeks to disrupt the vested rights regarding the seniority, rank and promotions which had accrued to a large number of respondents during the period of eight years that had intervened between the passing of the impugned Resolution and the institution of the writ petition. We would accordingly hold that the challenge raised by the petitioners against the seniority principles laid down in the Government Resolution of March 22, 1968
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ought to have been rejected by the High Court on the ground of delay and laches and the writ petition in so far as it related to the prayer for quashing the said Government Resolution should have been dismissed.”

We are in respectful agreement with the above observation.

We may also refer here to the weighty observations made by a Constitution Bench of this Court in *Maloon Lawrence Cecil D'Souza v. Union of India & Ors.*, [1975] Supp. S.C.R. 409 at page 413-414 which are as follows:

“Although security of service cannot be used as a shield against administrative action for lapse of a public servant, by and large one of the essential requirements of contentment and efficiency in public services is a feeling of security. It is difficult to doubt to guarantee such security in all its varied aspects. It should at least be possible to ensure that matters like one's position in the seniority list after having been settled for once should not be liable to be reopened after lapse of many years at the instance of a party who has during the intervening period chosen to keep quiet. Raking up old matters like seniority after a long time is likely to result in administrative complications and difficulties. It would, therefore, appear to be in the interest of smoothness and efficiency of service that such matters should be given a quietus after lapse of some time.”

We feel that in the circumstances of this case, we should not embark upon an enquiry into the merits of the case and that the writ petition should be dismissed on the ground of laches alone.

We accordingly allow these appeals, set aside the judgment of the Division Bench of the High Court and dismiss the writ petition filed in the High Court. We also direct that all the promotions made in the Intelligent Bureau shall be reviewed in accordance with the impugned seniority list dated January 28, 1976. There shall be no order as to costs.