

be referred for adjudication under Sec. 10(1) by the appropriate Government. Section 10(1) provides that where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time, by order in writing, refer the dispute for adjudication. Reading Sec. 10(1) with Sec 2A, therefore, it must be held that in case of individual dispute of workman, contemplated by Sec. 2A, the appropriate Government can be approached for referring such dispute for adjudication and in case of such dispute, the procedure laid down in Sec. 10(2) can obviously not be applicable.

6. We may also in this connection refer to Sec. 12 of the Act which lays down the duties of conciliation officers. Sub-sec. (1) thereof provides that where any industrial dispute exists or is apprehended, the conciliation officer may, or where the dispute relates to a public utility service and a notice under Sec. 22 has been given shall, hold conciliation proceedings in the prescribed manner. It is, therefore, obvious that even an individual workman raising an industrial dispute as contemplated by Sec. 2A can approach the conciliation officer for resolution of that dispute and if those proceedings fail, on the submission of failure report by the concerned conciliation officer, the appropriate Government can make a reference under Sec. 10(1) and that is precisely what has been done in the present case. It is not in dispute before us that the respondent-workman raising his dispute under Sec. 2A had approached the concerned conciliation officer who tried to resolve the dispute, by bringing both the sides before him and when that resolution failed, he gave failure report which resulted in the present reference. Consequently, the first contention of Mr. Damani is found to be devoid of any substance and is rejected.

[Rest of the Judgment is not material for the Reports.]

(KMV)

*Rule discharged.*

\* \* \*

### SPECIAL CIVIL APPLICATION

*Before the Hon'ble Mr. Justice A. P. Ravani.*

SMT. DARSHANA ABHINAV SHUKLA v. REGIONAL MANAGER,  
ALLAHABAD BANK, BOMBAY & ANR.\*

**SERVICE LAW - Agreement reached between the Bank and the Employees' Union - Interpretation of - Seniority - Deciding all matters by merely basing them on seniority alone not proper - Seniority is one factor, but other relevant factors must be given due weight - Order quashed.**

In service jurisprudence the factor of seniority has so much dominating influence on the minds of the executives that almost everyone is obsessed by the seniority aspect. On account of this obsession other more important and relevant factors often pale into insignificance. Whenever seniority is made the sole basis for arriving at a particular decision it is nothing but application of an accidental or fortuitous circumstance so as to avoid another conscientious arbitrariness. To

---

\*Decided on 17-11-1988. Special Civil Application No. 4233 of 1988 for a writ annulling the posting of the Petitioner on promotion at Rajkot.

avoid malicious arbitrariness, probably as a lesser evil, criterion of seniority is being adopted. By doing so, one can, to a great extent, avoid conscientious application of malicious arbitrariness, but one cannot in most of the cases, find out meritorious and suitable persons, for merit and suitability do not depend upon accident of seniority alone. (Para 4)

Undue importance to seniority aspect cannot be given wherever suitability of a candidate is to be judged. It is obvious that in the instant case the appropriate authority of the Bank has missed this point. The Bank authority has been misled probably on account the obsession regarding seniority aspect which is almost omnipresent like God. (Para 5)

*Girish Patel*, for the Petitioner.

*K. S. Nanavati*, for the Respondent Nos. 1 and 2.

*K. G. Vakharia*, for the Respondent No. 3.

**RAVANI, J.** Rule. Mr. K. S. Nanavati waives service of Rules on behalf of respondent Nos. 1 and 2. Mr. K. G. Vakharia waives service of Rule on behalf of respondent No. 3. At the request of and with the consent of the parties the matter is ordered to be heard today.

2. Petitioner and respondent No. 3 are serving with respondent No. 1-Bank. They are serving as clerks. The dispute pertains to the posting for the post of Special Assistant. Both, the petitioner as well as respondent No. 3 are serving at Ahmedabad in different branches of respondent No. 1-Bank. As per the agreement arrived at between the employee's union of respondent No. 1-Bank and respondent No. 1-Bank posting to the post of Special Assistant is to be made according to para 15 of the agreement, which reads as follows :

“Para 15 :

It was agreed that after holding interview for the post of Special Assistants option, for the place of posting from the employees, declared successful, will be called for. Actual posting shall, however, be made as per availability of vacancies, taking into consideration the seniority aspect. Such option is to be exercised within 3 days of the receipt of the offer.”

Admittedly respondent No. 3 is senior to the petitioner and respondent No. 3 has been asked option in priority to that of the petitioner. Respondent No. 3 has exercised option in favour of a post at Ahmedabad. Hence petitioner will be required to leave Ahmedabad if she wants to avail of the promotion to the post of Special Assistant.

3. Grievance of the petitioner is that respondent-Bank has not followed the relevant provisions of the agreement and has given undue importance to the seniority aspect. In short the grievance is that seniority has been made the sole basis of decision. From the affidavit-in-reply filed by respondent-Bank it appears that seniority alone has been taken as the criterion for eliciting the option from the candidates concerned and for giving posting at a particular place. If one reads para 15 of the agreement, which has been reproduced hereinabove, it is abundantly clear that the phrase ‘taking into consideration the seniority aspect’ does not mean that seniority alone is the basis of

determination of question regarding posting. After calling the options from the successful candidates, actual posting is to be made (i) as per the availability of vacancies and (ii) by taking into consideration the seniority aspect. Thus what the agreement provides is that seniority is also one of the aspects which should be taken into consideration along with all other relevant aspects for determination of posting at a particular place. Specific mention of 'seniority aspect' in clause 15 (para 15) of the agreement does not mean that all other relevant factors for determining suitability are excluded.

4. In service jurisprudence the factor of seniority has so much dominating influence on the minds of the executives that almost everyone is obsessed by the seniority aspect. On account of this obsession other more important and relevant factors often pale into insignificance. Whenever seniority is made the sole basis for arriving at a particular decision it is nothing but application of an accidental or fortuitous circumstance so as to avoid another conscious arbitrariness. Seniority may be decided on any relevant principle such as : (i) date of entry in service; (ii) continuous officiation; (iii) date of confirmation in the order; or (iv) date of passing of certain examination. In all such cases the rank in seniority list, will be a matter of accident in service career of an employee. Seniority is being made the basis or sole criterion for determining certain points or questions with a view to avoid conscious arbitrariness (which would be nothing but legal malice). To avoid malicious arbitrariness, probably as a lesser evil, criterion of seniority is being adopted. By doing so, one can to a great extent, avoid conscious application of malicious arbitrariness, but one cannot in most of the cases, find out meritorious and suitable persons for merit and suitability do not depend upon accident (of seniority) alone.

5. Undue importance to seniority aspect cannot be given wherever suitability of a candidate is to be judged. It is obvious that in the instant case the appropriate authority of the Bank has missed this point. The Bank authority has been misled probably on account of the obsession regarding seniority aspect which is almost omnipresent like God (or Demon).

6. In above view of the matter the decision taken by the respondent authorities offering option to respondent No. 3 solely on the basis of seniority is required to be quashed and set aside.

7. In the result the petition is allowed. The decision taken by the respondent-authorities in offering option to respondent No. 3 first for posting on the post of Special Assistant at a particular branch at Ahmedabad is quashed and set aside. Respondent Nos. 1 and 2 are directed to take decision afresh taking into consideration all the relevant aspects and also by taking into consideration seniority as one of the relevant aspects. The fresh decision shall be taken on or before January 14, 1989. Rule made absolute accordingly.

(KMV)

*Rule made absolute.*

\* \* \*