

NON-REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO(S). 7400-7401/2018
(ARISING FROM SLP(C) NOS.27450-27451/2017)**

ROMA SONKAR

APPELLANT(S)

VERSUS

**MADHYA PRADESH STATE PUBLIC
SERVICE COMMISSION & ANR.**

RESPONDENT(S)

J U D G M E N T

KURIAN, J.

Leave granted.

2. The appellant appeared for the competitive examination for the State service conducted during the year 2010. He approached the High Court of Madhya Pradesh seeking benefit of certain answers for which marks had not been awarded, which was found out in the process of RTI application. Learned Single Judge, as per judgment dated 28.03.2016, granted the consequential benefits on appointment and seniority. That was challenged by Respondent No.1/State Public

Service Commission before the Division Bench. In the impugned judgment(s), though the Division Bench, in principle, agreed with the process, the Division Bench was not quite happy with the relief moulded by the learned Single Judge, hence the matter was remitted to the learned Single Judge in the matter of moulding the relief.

3. We have very serious reservations whether the Division Bench in an intra court appeal could have remitted a writ petition in the matter of moulding the relief. It is the exercise of jurisdiction of the High Court under Article 226 of the Constitution of India. The learned Single Judge as well as the Division Bench exercised the same jurisdiction. Only to avoid inconvenience to the litigants, another tier of screening by the Division Bench is provided in terms of the power of the High Court but that does not mean that the Single Judge is subordinate to the Division Bench. Being a writ proceeding, the Division Bench was called upon, in the intra court appeal, primarily and mostly to consider the correctness or otherwise of the view taken by the learned Single Judge. Hence, in our view, the Division Bench needs to consider the appeal(s) on merits by deciding on the correctness of the judgment of the learned Single Judge, instead of remitting the matter to the learned Single Judge.

4. When the matter came up before this Court, we directed the learned Standing Counsel for the State of Madhya Pradesh to ascertain whether there is any vacancy in the post of Commercial Tax Inspector

available as on today. A detailed counter affidavit has been filed on behalf of the State. It is pointed out that subsequent selections have been conducted and in case the appellant is appointed at this juncture it would have serious repercussions on the seniority of the officers already appointed. It is also stated in the affidavit that it is for Respondent No.1/State Public Service Commission to state whether the appellant would have otherwise been selected. On a query, the learned counsel appearing for Respondent No.1/State Public Service Commission submits that had the appellant been given the benefit of the marks, he would have been successful.

5. In the above circumstances, we are of the view that it is only in the interest of justice and for doing complete justice between the parties that the appellant is appointed in one of the available posts of Commercial Tax Inspector, without treating this as a precedent. Ordered accordingly. In order to avoid any future dispute with regard to seniority, we make it clear that the appellant shall be entitled to seniority only with effect from 01.08.2018. The appointment shall be effected within four weeks from today. We also make it clear that in case the appointment order is not issued to the appellant within four weeks from today, for all purposes the appellant shall be deemed to have been appointed with effect from 01.09.2018.

6. The appeals are, accordingly, disposed of.

7. Pending applications, if any, shall stand disposed of.

8. There shall be no orders as to costs.

.....J.
[KURIAN JOSEPH]

.....J.
[SANJAY KISHAN KAUL]

NEW DELHI;
JULY 31, 2018.