

Rashi Mani Mishra And 4 Others - Petitioners @HASH State of U.P. And 60 Others

Court: ALLAHABAD HIGH COURT

Date of Decision: Sept. 19, 2016

Citation: (2016) 10 ADJ 442 : (2016) 6 AILJ 465 : (2016) 6 AllWC 6302 : (2017) LIC 177 : (2016) 4 UPLBEC 3307

Hon'ble Judges: Dilip Gupta and Manoj Kumar Gupta, JJ.

Bench: Division Bench

Advocate: Anil Kumar Srivastava and T.P. Singh, Advocates, for the Petitioners; C.S.C., Ashok Khare, Ms. Meenakshi Singh, Manu Khare, Sanjay Kumar Mishra, Seemant Singh and Siddharth Khare, Advocates, for the Respondents

Final Decision: Dismissed

Judgement

Dilip Gupta, J. - Five Executive Engineers posted in different Divisions of the Rural Engineering Department of the State(the Department) have

filed this petition to assail the seniority list dated 22 March 2016. They have also sought a direction that the Department should not hold the

Departmental Promotion Committee meeting on 29 April 2016 for considering promotions on the basis of the aforesaid seniority list dated 22

March 2016. An amendment application has been filed to assail the communication dated 1 December 2015 sent by the Special Secretary in the

State Government to the Director and Chief Engineer for preparing a fresh seniority list of Assistant Engineers in the Department pursuant to the

directions issued by the Supreme Court on 7 April 2015 in Secretary, Minor Irrigation Department & R.E.S. v. Narendra Kumar

Tripathi, (2015) 11 SCC 80 and on 26 October 2015 in Special Leave Petition No. 2075 of 20063, Special Leave Petition No. 11832 of 2006

and Writ Petition No. 489 of 2005 as also in certain other writ petitions by the High Court. This amendment application also seeks the quashing of

the order dated 25 April 2016 by which additional charge of Superintending Engineer has been given to certain Executive Engineers. An

impleadment application has also been filed by Madan Mohan Srivastava. The impleadment application was allowed by order dated 18 May

2016.

2. The dispute relates to determination of the seniority of Assistant Engineers working in the Department. The seniority of such Assistant Engineers

which had been determined on 14 December 2001 did not count the ad hoc services rendered by Assistant Engineers prior to their regularisation

on 14 December 1989. It was subjected to challenge in many writ petitions earlier filed from 2001. The Assistant Engineers pleaded that the ad

hoc services should be added to their length of service for determining their seniority. Ultimately the Supreme Court decided matters relating to

Narendra Kumar Tripathi on 7 April 2015 and directed for re-determination of the seniority by adding the service rendered on ad hoc basis for the

purpose of seniority. The seniority was then re-determined on 22 March 2016.

3. The seniority list earlier prepared by the Department on 14 December 2001 placed the petitioners at serial Nos. 106, 109, 107, 122 and 108

respectively. However, even before the finalisation of the list on 14 December 2001, Narendra Kumar Tripathi had filed Writ Petition No. 9940 of

20014 for quashing the order dated 26 December 2000 by which the State Government had rejected the representation filed by him to claim

seniority from the date when he was initially appointed on 18 January 1983 in the Department on work-charge basis. It was stated that he had

subsequently been appointed as an Assistant Engineer in the Department on ad hoc basis by order dated 12 June 1985 and his services were

regularised by order dated 14 December 1989 but his seniority was being counted from 14 December 1989. He claimed the benefit of the

previous service rendered by him on work-charge basis from 18 January 1983. The representation was rejected by the State Government by

order dated 26 December 2000. The Division Bench of the High Court allowed this writ petition filed by Narendra Kumar Tripathi on 13

February 2003 and directed the Department to fix his seniority from the date of his initial appointment on work-charge basis on 18 January 1983.

4. Narendra Kumar Tripathi also filed Writ Petition No. 11542 of 20045 for a direction upon the respondents to promote him on the post of

Executive Engineer from the date juniors to him had been granted promotion by giving him seniority from 8 January 1983. Arjun Ravi Das had also

filed Writ Petition No. 2605 of 20026 for quashing the seniority list dated 14 December 2001 claiming that the period of ad hoc service rendered

by him from 1985 prior to his regularisation on 14 December 1989 should be counted for the purpose of seniority. This petition filed by Arjun Ravi

Das was decided with a bunch of writ petitions on 27 February 2004. All the writ petitions were dismissed holding that seniority had to be counted

from the date the substantive appointment was given on regularization.

5. It needs to be noted that in view of the conflicting judgments delivered in the first Writ Petition filed by Narendra Kumar Tripathi and that filed

by Arjun Ravi Das, subsequent Writ Petitions filed by Farhat Hussain Azad(Judgment is reported in (2005) 1 UPLBEC 474) and many other

Writ Petitions including the second Writ Petition filed by Narendra Kumar Tripathi for a direction upon the Department to add the services

rendered by the Assistant Engineers on ad hoc basis for determining the seniority, were referred to a Full Bench. The issue that was required to be

resolved by the Full Bench was as to whether the services rendered by an employee on ad hoc basis prior to regularisation can be counted for the

purposes of determining the seniority. The Full Bench in Farhat Hussain Azad observed in paragraph No. 54 that the view taken by the Division

Bench in Arjun Ravi Das that such ad hoc service could not be counted was correct. The observations are as follows :-

In view of the above, the said judgment in N.K. Tripathi (supra) is liable to be declared as a judgment per incuriam, as it was decided in complete

inadvertence without even making any reference to the facts or the statutory Rules applicable in the case. On the other hand, the judgment in Arjun

Ravi Das (supra) is a well reasoned judgment based on the interpretation of the statutory provisions applicable therein. In such a fact situation it

cannot be held that there is a conflict in the two judgments of this Court. The law laid down in Arjun Ravi Das (supra) is in consonance with the

judgments rendered by the Hon"ble Apex Court from time to time.

6. Thereafter, the Full Bench proceeded to examine the petitions on merits. It noticed that all the writ petitioners except Narendra Kumar Tripathi

had initially been appointed as Assistant Junior Engineers on ad hoc basis and they were subsequently regularized. A seniority list of Assistant

Engineers was then published on 4 February 1995 but it was subject to the decision of this Court in a petition filed by N.K. Agarwal. A final

seniority list was, thereafter, prepared on 14 December 2001. The case of N.K. Tripathi was found to be slightly different by the Full Bench since

he was initially appointed as an Assistant Engineer on work-charge basis on a fixed salary in the Department on 10 June 1983 and was, thereafter,

appointed as an Assistant Engineer on ad hoc basis by the order dated 12 June 1985. His services were, however, subsequently regularised like

that of other ad hoc Assistant Engineers by means of the order dated 14 December 1989. It was sought to be contended by the learned counsel

for the petitioners before the Full Bench that the petitioners had been promoted on ad hoc basis as Assistant Engineers in accordance with the

procedure prescribed under the various Government Orders and it could not be said that their appointments on ad hoc basis were dehors the

Rules. It was, however, sought to be contended by the learned counsel appearing for the State that the ad hoc promotions had not been made in

accordance with law and, therefore, the services rendered on ad hoc basis before regularisation could not be counted for the purpose of seniority.

The Full Bench did not accept the contention of the petitioners and observations are :-

We have carefully considered the aforesaid submissions advanced by the learned counsel for the parties. A perusal of the Government Orders

dated 7.12.1979 and 3.3.1981 indicate that only the quota for promotion of Junior Engineers to the post of Assistant Engineer had been provided

whereas the Government Order dated 1.12.1983 provided for the qualification/ experience require for promotion. The petitioners had not been

promoted to the post of Assistant Engineer on ad hoc basis in accordance with the 1954 Regulations or the 1970 Promotion Rules and indeed the

learned counsel for the petitioners have also not been able to point out anything which may suggest that the ad hoc promotions had been made in

accordance with the aforesaid Rules or Regulations. There is nothing on the record to indicate that the ad hoc appointment had been made in

consultation with the Commission on the basis of the recommendation of a Selection Committee as contemplated under the 1970 Promotion Rules.

All that has been submitted by the learned counsel for the petitioners is that though the departmental Selection Committee had made

recommendations for ad hoc promotion of the petitioners, they cannot be blamed for want of approval by the Commission. Thus, neither was the

constitution of the Selection Committee in accordance with the aforesaid Rules and nor was the Commission consulted. Such being the position,

the promotion of the petitioners, as ad hoc Assistant Engineer was clearly de hors the Rules and in view of the proposition of law laid down in the

aforesaid mentioned cases, such period of officiation cannot be considered for the purposes of seniority. The submissions advanced by the learned

counsel for the petitioners, therefore, cannot be accepted.

(emphasis supplied)

7. It needs to be noted that before the Full Bench it was also sought to be contended by the learned counsel for the petitioners that the seniority list

of 85 Assistant Engineers prepared on 4 February 1995 could have been altered on 14 December 2001 only in respect of the parties in the writ

petition filed by N.K. Agarwal but the State, under the garb of the aforesaid judgment, altered the entire seniority list. This contention was repelled

by the Full Bench in paragraph 65 of the judgment, which is reproduced below:-

In our opinion once the criteria for fixation of the seniority was altered, the seniority list was required to be prepared afresh and the alterations

cannot be restricted to the case of the parties alone. This is what has been done by the State after publishing a tentative seniority list and inviting

objections from the concerned persons on 1.9.2001. Thus there is no merit in this contention also.

8. Secretary, Minor Irrigation Department filed Special Leave Petition No. 18683 of 2004, which was ultimately numbered as Civil Appeal No.

3348 of 2015 against the judgment rendered on 13 February 2003 in the first writ petition filed by Narendra Kumar Tripathi that had been

allowed by the Division Bench. Special Leave Petition No. 8330 of 2005, which was ultimately numbered as Civil Appeal No. 3349 of 2005, was

also filed by Narendra Kumar Tripathi against the judgment rendered by the Full Bench on 10 December 2004. These two Civil Appeals were

decided together by the Supreme Court by a common judgment dated 7 April 2015.

9. The Supreme Court noted that the question involved in both the matters was as to whether the writ petitioner was entitled to count the service

rendered as an Assistant Engineer from 12 June 1985, the date of his initial appointment on ad hoc basis for the purpose of seniority or service

could be counted only from 14 December 1989, the date on which approval to his appointment was given by the State Government under the

provisions of the Uttar Pradesh Regularization on Ad hoc Appointments (on posts within the purview of the Public Service Commission) Rules,

1979 as amended on 7 August 1989. The Supreme Court held that when the Rules provide that ad hoc appointments have to be regularised and

the seniority has to be counted from the date of appointment, the writ petitioner could not have been deprived of the past service rendered by him

from 12 June 1985 till the date of his regularization. The Supreme Court observed that the Rules had the effect of treating the appointment as a

regular appointment from the date of initial appointment. The observations of the Supreme Court are as follows:-

The scheme of the working of the Rules in the Department shows that right from 1979, the Department has been making direct recruitment after

due selection and by applying the 1979 Rules which rules have been extended from time to time to subsequent recruitments, services were

regularized. Validity of the scheme of these recruitments is not under challenge. In such circumstances, when the rules provide that such ad hoc

appointments have to be regularised and seniority counted from the date of appointment, the writ petitioner could not be deprived of the past

service rendered by him from 12th June, 1985 till the date of regularization. It is not a case of appointments made without due selection or without

vacancy or without qualification or in violation of rules. The larger Bench failed to observe that the appointment of the writ petitioner was not

dehors the rules nor by way of stop gap arrangement. The rules had the effect of treating the appointment as a regular appointment from initial date

of appointment. In these circumstances, the principle laid down in K.C. Joshi was not applicable. It is not a case where service rendered is either

fortuitous or against rules or by way of stop gap arrangement. Applying the principle laid down in Direct Recruit Class II Engineering Officers"

Association, the writ petitioner is entitled to count service from 12th June, 1985. Moreover, the department has allowed the benefit of past service

to other similarly placed incumbents as observed in the judgment giving rise to the appeal of the department.

Accordingly, we are unable to approve the view taken by the larger Bench to the extent it proceeds on the assumption that past service of the writ

petitioner was by way of stop gap arrangement or contrary to the rules.

We, therefore, direct the State to redetermine the seniority after hearing the affected parties within six months. It is made clear that benefit of

redetermination of seniority at this stage will not disturb holding of posts by any incumbent and except for benefit in pension other benefits to which

the writ petitioner may be found entitled will be given only on notional basis.

(emphasis supplied)

10. Subsequently, Special Leave Petition(Special Leave to Appeal No.2075 of 2006, decided on 26 October, 2015) filed by S.K. Singh and

another against the judgment of the Full Bench in Farhat Hussain Azad together with Writ Petition No. 489 of 2005 and Special Leave Petition

No. 11832 of 2006 were taken up by the Supreme Court and they were disposed on 26 October 2015 in terms of the judgment in Secretary,

Minor Irrigation Department. The observations are as follows:-

Learned counsel for the petitioners submit that the questions that fall for determination in these petition stand answered in terms of our Order

dated 7th April, 2015 passed in Secretary Minor Irrigation Deptt. & R.E.S. v. Narendra Kumar Tripathi, 2015 (4) Scale 569. They

submit that these petitions could also be disposed off in terms of the said judgment. We see no reason to decline that prayer.

These special leave petitions and writ petition are accordingly disposed off on terms similar to the one set out in the judgment, mentioned above.

11. It also needs to be noted that after the decision was rendered by the Supreme Court on 7 April 2015 in Secretary, Minor Irrigation

Department & R.E.S., Madan Mohan Srivastava filed a Writ Petition bearing Service Bench No. 637 of 20159 before the Lucknow Bench for a

direction to regularise his service from the date of his initial ad hoc appointment by giving him the benefit of the aforesaid judgment of the Supreme

Court. The High Court after noticing that the petitioner had represented to the Principal Secretary, Personnel Department of the State Government

for this grievance, disposed the writ petition with a direction to the Principal Secretary, Personnel Department of the State Government to consider

his case also while considering other matters. The persons who had filed impleadment applications in this petition were also given liberty to raise

their objections.

12. Riyaz Ali had also earlier filed Claim Petition No. 2150 of 1995 before the State Public Service Tribunal. The Tribunal allowed the petition by

order dated 6 February 1997 and directed the Department to prepare a fresh seniority list by giving the petitioner seniority from the date of initial

ad hoc appointment like other Assistant Engineers and, thereafter, to place the petitioner at the proper place. The State of Uttar Pradesh filed a

Writ Petition State of U.P. v. Riyaz Ali, 2015(8) ADJ 148 (DB)(LB) to assail the order passed by the Tribunal. This petition was dismissed on

15 July 2015 in view of the law laid down by the Supreme Court in the case of Secretary, Minor Irrigation Department. The Court also directed

the State to ensure compliance of the order passed by the Tribunal.

13. It transpires that Dinesh Kumar and three others had also filed Claim Petition No. 2018 of 2015 before the State Public Service Tribunal

contending that they were given ad hoc appointments on the post of Assistant Engineer on 25 April 1985 and subsequently regularised on 14

December 1989 and so they should also be given the benefit of the decision of the Supreme Court in Secretary, Minor Irrigation Department and

the services rendered by them from 12 June 1985 should be counted for the purpose of seniority. The Tribunal disposed of the petition with a

direction to the respondents to decide the representation filed by them for this relief.

14. Pursuant to the aforesaid directions issued by the Supreme Court, the High Court and the Tribunal, the Special Secretary in the State

Government sent a communication dated 1 December 2015 to the Director and Chief Engineer pointing out that in view of the directions contained

in the judgment rendered by the Supreme Court in Secretary Minor Irrigation Department on 7 April 2015, the seniority list dated 14 December

2001 has been cancelled and a decision has been taken to prepare a fresh seniority list after adding the services rendered by Assistant Engineers

on ad-hoc basis.

15. The Department, thereafter, issued the Office Order dated 31 December 2015. This Office Order refers to the aforesaid directions issued by

the Supreme Court, the High Court and the Tribunal and states that in order to give effect to the aforesaid directions, the length of service rendered

by the Assistant Engineers on ad hoc basis was required to be counted, as a thumb rule, from the date they were initially appointed on ad hoc

basis. The seniority lists dated 14 December 2001 and 15 June 2012 were, accordingly, cancelled and a tentative seniority list was published to

which objections were invited in 15 days.

16. Brijesh Kumar Dubey (Sri Brijesh Kumar Dubey and another v. State of U.P. and other, bearing Service Bench No. 5456 of 2016,

decided on 15 March, 2016) filed a writ petition before the Lucknow Bench to challenge the Office Order dated 31 December 2015 issued by

the Principal Secretary in the State Government for re-determination of the seniority of Assistant Engineers from the date of their ad hoc

appointments. Learned counsel appearing for the interveners in the said petition contended that the tentative seniority list had been published to

give effect to the directions of the Supreme Court and the High Court. This petition was disposed of on 15 March 2015 holding that there was no

error in the impugned order issued by the State Government but since the objections submitted by the aggrieved persons were under

consideration, a direction was issued that the objections should be considered in accordance with the law laid down by the Supreme Court as well

as the Rules.

17. The objections dated 12 January 2016 submitted by Rashmi Mani Mishra, who is petitioner No.1, have been enclosed with the writ petition. It

has been stated in the objection that since he was not a party in the Civil Appeal filed by Narendra Kumar Tripathi before the Supreme Court, the

order of the Supreme Court for re-determination of the seniority would not be applicable to his case. After referring to various decisions and the

Rules it was sought to be contended that the tentative seniority list dated 31 December 2015 should be cancelled and the earlier seniority list dated

14 December 2001 should be restored.

18. The objections filed by the Assistant Engineers to the tentative seniority list dated 31 December 2015 were considered and decided by the

State Government by a detailed order dated 22 March 2016 and a final seniority list was declared. The petitioners who were at serial Nos.106,

109, 107, 122 and 108 in the earlier seniority list dated 14 December 2001 were placed at serial Nos.260, 208, 261, 274 and 262 in the seniority

list dated 22 March 2016.

19. Sri T.P. Singh, learned Senior Counsel appearing for the petitioners assisted by Sri Anil Kumar Srivastava made the following submissions :-

(i) the judgment rendered by the Supreme Court in Secretary, Minor Irrigation Department is a judgment rendered in personam and is confined to

the relief claimed by Narendra Kumar Tripathi before the Supreme Court. The Supreme Court granted relief to Narendra Kumar Tripathi after

finding that his initial appointment on ad hoc basis on 12 June 1985 was in accordance with the Rules. He, therefore, submitted that the seniority of

all the Assistant Engineers was not required to be re-determined and in support of his submission placed reliance upon the judgment of the

Supreme Court in *State of Uttar Pradesh and others v. Arvind Kumar Srivastava*, (2015) 1 SCC 347 ;

(ii) the seniority determined by the Department on 14 December 2001 could not have been reopened after a period of 15 years. In support of this

contention learned Senior Counsel placed reliance on the judgment of the Supreme Court in *Rajendra Pratap Singh Yadav & Ors. v. State of*

U.P. and others, (2011) 7 SCC 743 ; and

(iii) in any case, the Department was obliged to examine whether the ad hoc appointments of the Assistant Engineers who were claiming the benefit

of ad hoc services were in accordance with the law laid down by the Full Bench in *Farhat Hussain Azad* and were not by way of stop gap

arrangement or fortuitous.

20. Sri Ashok Khare, learned Senior Counsel appearing for the private respondents, however, submitted :-

(i) the State Government was obliged to prepare a fresh seniority list keeping in mind the principle that ad hoc services rendered by the Assistant

Engineers prior to their regularisation was required to be counted for determining the seniority in view of the law laid down by the Supreme Court

in *Secretary, Minor Irrigation Department* ;

(ii) the view taken by the Full Bench of the High Court in *Farhat Hussain Azad* that ad hoc services rendered prior to regularisation cannot be

counted for the purpose of determining the seniority was specifically overruled by the Supreme Court and it was held that ad hoc services rendered

prior to regularisation should be counted for the purpose of seniority and so this principle was required to be applied to all the Assistant Engineers ;

(iii) the State Government was, therefore, obliged to implement the directions given by the Supreme Court in *Secretary Minor Irrigation*

Department. Directions were also subsequently issued by the Supreme Court in other matters and directions were also issued by the High Court

and the Tribunal for implementing the aforesaid directions of the Supreme Court for re-determination of the seniority ;

(iv) to support the contention that the direction in *Secretary, Minor Irrigation Department* was required to be implemented for all the Assistant

Engineers, reliance was placed on the judgment of the Supreme Court in *M/s. Shenoy and Company and Others v. Commercial Tax Officer*

and Others, (1985) 2 SCC 512 ; and

(v) no objection was taken by the petitioners in their objections to the tentative seniority list that there was any distinguishing feature from that of

Narendra Kumar Tripathi or there was any factual mistake in adding the ad hoc services of the Assistant Engineers for the purpose of seniority.

21. Ms. Meenakshi Singh, learned Standing Counsel appearing for the State contended that :-

(i) no exception can be taken to the decision of the State to cancel the seniority list dated 14 December 2001 and to issue a fresh seniority list after

inviting objections from all the Assistant Engineers in the light of the law laid down by the Supreme Court in Secretary, Minor Irrigation Department

;

(ii) even otherwise, the seniority list was prepared afresh not only in the light of the decision of the Supreme Court Secretary, Minor Irrigation

Department but also to ensure compliance of the directions issued by the Supreme Court in the Special Leave Petitions and the Writ Petition that

were subsequently decided by the Supreme Court on 26 October 2015, as also the orders passed in various writ petitions by the High Court and

the Tribunal ;

(iii) by Office Order dated 31 December 2015 a tentative list was published inviting objections from all concerned and the final seniority list was

published on 22 March 2016 after taking into consideration all the objections and there is no illegality nor any factual error has been pointed out in

the petition ; and

(iv) Narendra Kumar Tripathi was selected on ad hoc basis along with many other Assistant Engineers by order dated 12 June 1985 after an

advertisement was published in December 1984 and was placed at serial No. 32 in the list. In fact 108 Assistant Engineers had been granted ad

hoc appointments in 1985. A seniority list dated 14 December 2001 was prepared in which the ad hoc services of such Assistant Engineers was

not added for the purpose of seniority. This seniority list never attained finality as it was challenged in many Writ Petitions before the Division

Bench and the Full Bench of the High Court and against the decision of the Full Bench in Farhat Hussain Azad the matter was finally decided by

the Supreme Court in Secretary, Minor Irrigation Department on 7 April 2015. A direction was given to re-determine the seniority after adding the

ad hoc services rendered by Assistant Engineers prior to regularisation. It is, therefore, not correct on the part of the petitioners to allege that the

final seniority list published on 14 December 2001 has been reopened after 15 years.

22. Sri Manu Khare, learned counsel appearing for the private respondents adopted the arguments of Sri Ashok Khare, learned Senior Counsel

and also placed reliance upon the decision of the Supreme Court in Amrit Lal Berry v. Collector of Central Excise, New Delhi and Others,

(1975) 4 SCC 714.

23. We have considered the submissions advanced by the learned counsel for the parties.

24. The dispute in this petition is about the seniority of Assistant Engineers working in the Department. As noted above, 108 Assistant Engineers

were given ad hoc appointments in 1985 after an advertisement had been issued. Their services were subsequently regularised on 14 December

1989 under the provisions of the Uttar Pradesh Regularization of Ad hoc Appointments (on posts within the purview of Public Service

Commission) (Second Amendment) Rules, 1989. A final seniority list was thereafter prepared on 14 December 2001. The services rendered by

such Assistant Engineers on ad hoc basis were not counted for seniority purpose and their seniority was determined from the date of their

regularisation on 14 December 1989. This seniority list was challenged in various writ petitions. In fact Narendra Kumar Tripathi, in the first

petition filed by him even before the declaration of the final seniority list, had challenged the order rejecting his representation that he had filed for

adding the ad hoc services rendered by him prior to 14 December 1989. The order of the State Government was set aside in this writ petition filed

by Narendra Kumar Tripathi and a direction was issued to fix his seniority from the date of his initial appointment in the work-charge establishment

of the Department on 18 January 1983. It may be stated that initially Narendra Kumar Tripathi was working in the Department on work-charge

basis from 18 January 1983 before he was given ad hoc appointment on 12 June 1985. The seniority list dated 14 December 2001 was also

challenged in various Writ Petitions. A Division Bench of this Court on 27 February 2004 in Ravi Arjun Das filed by ad hoc Assistant Engineers

for counting the service rendered on ad hoc basis prior to regularisation in 1989 for the purposes of seniority was dismissed on 27 February.

Thereafter, certain other Writ Petitions, including the second Writ Petition by Narendra Kumar Tripathi were filed and finding a conflict between

the two Division Benches in Narendra Kumar Tripathi and Arjun Ravi Das, these Writ Petitions were referred to a Full Bench. The issue before

the Full Bench was as to whether the services rendered on ad hoc basis prior to regularisation should be counted for determining the seniority. The

Full Bench observed that ad hoc services rendered after appointment made dehors the Rules and without following any procedure prescribed by

law cannot be counted for the purposes of seniority. The Full Bench, thereafter decided the petitions on merit in view of the statement made by the

learned counsel for the parties. The Full Bench found that all the petitioners had been initially appointed on ad hoc basis as Assistant Engineers in

the year 1985 except Narendra Kumar Tripathi who had been initially engaged in the work-charge establishment in 1983 and was thereafter

appointed on 12 June 1985 as an Assistant Engineer on ad hoc basis. The Full Bench noted that the services of all such ad hoc Assistant Engineers

appointed in 1985 were subsequently regularised by the order dated 14 December 1989 and a final seniority list was prepared on 14 December

2001. This seniority list did not count the services rendered by the Assistant Engineers on ad hoc basis. The Full Bench dismissed all the petitions

holding that the ad hoc services rendered prior to regularisation could not be counted for the purposes of seniority. The seniority list was, therefore,

not disturbed by the Full Bench.

25. Narendra Kumar Tripathi filed a Special Leave Petition before the Supreme Court against the judgment rendered by the Full Bench on 10

December 2004. Secretary, Minor Irrigation Department also filed a Special Leave Petition against the judgment rendered on 13 February 2003

in the first petition filed by Narendra Kumar Tripathi. These Special Leave Petitions were subsequently numbered as Civil Appeal No.3348 of

2015 and Civil Appeal No.3349 of 2015 respectively. The Supreme Court noticed that in both the matters the question was whether Narendra

Kumar Tripathi was entitled to count the ad hoc service on the post of Assistant Engineer from 12 June 1985, which was the date of his initial

appointment on ad hoc basis for the purposes of seniority or his service was to be counted only from 14 December 1989, which was the date on

which he was regularised in service. It needs to be stated that Narendra Kumar Tripathi had made a statement before the Supreme Court that his

seniority should be counted from 12 June 1985 and not from 18 January 1983 when he was appointed on work-charge basis. The Supreme Court

held that when the Rules provide for regularisation of such ad hoc appointments, then Narendra Kumar Tripathi could not be deprived of the past

services rendered by him from 12 June 1985 till the date of regularisation for the reason that the Rules had the effect of treating the appointment as

a regular appointment from the initial date of appointment. The Supreme Court also observed that the Department had allowed the benefit of the

past services rendered on ad-hoc basis to other similarly placed incumbents as was noted by the High Court in the first writ petition filed by

Narendra Kumar Tripathi. The Supreme Court, therefore, directed the State to re-determine the seniority after hearing the affected parties within

six months. Thereafter, as noticed above, Special Leave Petition filed by S.K. Singh and others against the judgment of the Full Bench rendered on

10 December 2004 with one more Special Leave Petition and a Writ Petition were disposed of by the Supreme Court on 26 October 2015 in

terms of the directions set out in the judgment rendered in Secretary, Minor Irrigation Department on 7 April 2015. Certain other writ petitions

were also disposed of by the High Court and the Tribunal in the same terms.

26. On a consideration of various directions issued by the Supreme Court, the High Court and the Tribunal, the State Government issued an Office

Order dated 31 December 2015 notifying the tentative seniority list and requiring all concerned to file objections, if any, within fifteen-days.

Objections were filed and were considered and thereafter a final seniority list was published on 22 March 2016. The writ petitioners, who were at

Serial Nos.106, 109, 107, 122, 108 in the seniority list dated 14 December 2001 have now been placed at Serial Nos.260, 208, 261, 274, 262

in the seniority list dated 22 March 2016. They have, accordingly, filed this petition for setting aside this seniority list dated 22 March 2016 and for

reviving the earlier seniority list dated 14 December 2001.

27. Thus, right from 2001 the seniority list dated 14 December 2001 has been in constant litigation and in 2015 directions were given by the

Supreme Court to re-determine the seniority. The State Government has now determined the seniority on 22 March 2016. It is, therefore, not

possible to accept the contention of learned Senior Counsel for the petitioners that the seniority list dated 14 December 2001 has now been

reopened after 15 years in 2016 without any basis. The decision of the Supreme Court in Rajendra Pratap Singh Yadav, therefore, does not help

the petitioners.

28. The main contention of Sri T.P. Singh, learned Senior Counsel appearing for the petitioners was that the directions that were issued by the

Supreme Court related to Narendra Kumar Tripathi and, therefore, his seniority was only required to be re-determined. There was, in such

circumstances, no occasion for the State Government to re-determine the seniority of all the Assistant Engineers who had been working on ad hoc

basis.

29. The contention of learned Standing Counsel appearing for the State and the learned Senior Counsel appearing for the private respondents is

that the Supreme Court did not accept the stand of the State Government that the ad hoc services rendered prior to regularisation should not be

counted for the purpose of seniority and a specific direction was issued that ad hoc services rendered from 1985 upto the date of regularisation

should also be counted for the purpose of seniority. It was, therefore, contended that it was incumbent upon the State Government to have re-

determined the seniority by giving the benefit to all the Assistant Engineers who had rendered such ad hoc services and not to Narendra Kumar

Tripathi alone, more particularly when such a direction was subsequently issued by the Supreme Court in two Special Leave Petitions and one

Writ Petition filed by other Assistant Engineers as also the directions issued by the High Court as well as the Tribunal subsequently to prepare a

fresh seniority list in the light of the directions issued by the Supreme Court on 7 April 2015 in Secretary, Minor Irrigation Department.

30. It is not in dispute that the seniority list dated 14 December 2001 did not count the ad hoc services rendered by the Assistant Engineers prior

to their regularisation. The Full Bench upheld the seniority list dated 14 December 2001 holding that the State was justified in not giving this benefit.

In the opinion of the Full Bench, all the Assistant Engineers had been appointed on ad hoc basis dehors the Rules as neither the constitution of the

Selection Committee was in accordance with the Rules nor was the Public Service Commission consulted. This view of the Full Bench in Farat

Hussain Azad was not accepted by the Supreme Court. The Supreme Court held that the High Court failed to notice that the appointment was not

dehors the Rules nor by way of stop gap arrangement or fortuitous. The Supreme Court held that in such circumstances the writ petitioner could

not be deprived of the past ad hoc service rendered by him from 12 June 1985 till the date of regularisation. The Supreme Court also specifically

observed that it was unable to approve the view taken by the Full Bench to the extent it proceeded on the assumption that past service of the writ

petitioner was by way of stop gap arrangement or contrary to the Rules and directed the State to re-determine the seniority after hearing the

affected parties within six months. The Supreme Court also observed that the benefit of re-determination of seniority at this stage will not disturb

holding of posts by any incumbent and except for the benefit in pension, other benefits to which the writ petitioner may be found entitled will be

given only on notional basis.

31. Once the principle on the basis of which the seniority list was prepared on 14 December 2001 did not find favour of the Supreme Court, the

entire seniority had to be re-determined in the light of the observations made and the directions issued by the Supreme Court, more so when such

directions were subsequently also issued by the Supreme Court in Special Leave Petition (C) No.2075 of 2006, Writ Petition No.489 of 2005

and Special Leave Petition (C) No.11832 of 2006 and also by the High Court in matters referred to above as well as by the Tribunal.

32. It is not a case where there was a factual error committed by the Department while placing Narendra Kumar Tripathi in the seniority list. The

principle that ad hoc services rendered prior to the regularisation should not be counted formed the basis on which the seniority list dated 14

December 2001 was prepared but this did not find favour of the Supreme Court and it was specifically held that ad hoc services rendered prior to

the regularisation should be counted for the purpose of seniority. Narendra Kumar Tripathi was amongst the 108 Assistant Engineers who had

been appointed on ad hoc basis in 1985. In fact, the appointment order dated 12 June 1985 related to a number of Assistant Engineers and

Narendra Kumar Tripathi was placed at Serial No.32. Three other similar orders were issued in 1985 as a result of which 108 ad hoc

appointments were made.

33. It needs to be remembered that as the seniority list dated 14 December 2001 did not count the period of ad hoc services rendered by

Assistant Engineers prior to their regularisation, large number of Writ Petitions had been filed to challenge the seniority list dated 14 December

2001 and they were heard together and decided by a common judgment by the Full Bench in Farhat Hussain Azad. Common contentions were

raised on behalf of the petitioners as would be apparent from the judgment and it cannot be said that any particular petitioner raised an issue

peculiar and individual to his petition. The High Court did not accept the contention of the petitioners and dismissed all the writ petitions holding

that ad hoc services rendered by such Assistant Engineers prior to regularisation could not be added. However, the Supreme Court did not accept

this view of the High Court and directed in the matters relating to Narendra Kumar Tripathi that ad hoc services rendered by Assistant Engineers

prior to regularisation should be counted for the purpose of seniority. It needs to be reiterated that a principle for determining the seniority of

Assistant Engineers had been determined by the Supreme Court and this principle was, therefore, required to be followed for all the similarly

situated Assistant Engineers.

34. Thus, when relief was granted to Narendra Kumar Tripathi then identically situated Assistant Engineers were required to be treated alike by

extending that benefit to them and this is what was done. On the other hand, if this was not done, it would have resulted in discrimination and this

would be violative of Article 14 of the Constitution. It was, therefore, incumbent upon the State Government to have given the benefit of such ad

hoc services to all the other ad hoc Assistant Engineers. It is for this purpose that the State Government issued the Office Order dated 31

December 2015 indicating this position and inviting objections from all concerned to the tentative seniority list.

35. In this connection, it will be useful to refer to the decision of the Supreme Court in M/s. Shenoy & Company (supra), on which reliance has

been placed by learned Senior Counsel for the respondents. A batch of 1590 writ petitions were filed in the Karnataka High Court by a large

number of traders including Hansa Corporation to challenge the constitutional validity of The Karnataka Tax on Entry of Goods into Local Areas

for Consumption, Use or Sale Therein Act, 1979. The Division Bench of the Karnataka High Court, by a common judgment dated 24 August

1979, struck down the Act, allowed the writ petitions and issued a mandamus to the State Government forbearing it from taking any proceedings

under the Act. The State Government, however, filed only one appeal against the writ petition filed by Hansa Corporation and the Supreme Court

by the judgment dated 25 September 1980 allowed the appeal, set aside the judgment of the Karnataka High Court and upheld the validity of the

Act. The Authorities, thereafter, issued notices to all the dealers including those who had filed writ petitions in the High Court calling upon them to

register themselves under the Act and to file returns and pay the amount of tax due under the original 1979 Act. Writ petitions were then filed by

such dealers in the Karnataka High Court contending that notices issued to them were bad in law inasmuch as the State had not filed any appeal

against the judgment rendered in the writ petitions filed by them and that the judgment of the Supreme Court could rescue the State from taking

proceedings only against Hansa Corporation and not against them. The writ petitions were dismissed by the Karnataka High Court. The Supreme

Court examined whether the judgment in the writ petition filed by Hansa Corporation validated the action of the State and after referring to the

earlier decisions of the Supreme Court in *State of Punjab v. Joginder Singh*, AIR 1963 SC 913 and *Makhanlal Waza v. Jammu &*

Kashmir State, AIR 1971 SC 2206, the Supreme Court held that the decision of the Supreme Court would not only bind Hansa Corporation

but all the writ petitioners before the High Court. The observations are:

22. Though a large number of writ petitions were filed challenging the Act, all those writ petitions were grouped together, heard together and were

disposed of by the High Court by a common Judgment. No petitioner advanced any contention peculiar or individual to his petition, not common

to others. To be precise, the dispute in the cause or controversy between the State and each petitioner had no personal or individual element in it

or anything personal or peculiar to each petitioner. The challenge to the constitutional validity of 1979 Act proceeded on identical grounds common

to all petitioners. This challenge was accepted by the High Court by a common judgment and it was this common judgment that was the subject

matter of appeal before this Court in Hansa Corporation case. When the Supreme Court repelled the challenge and held the Act constitutionally

valid, it in terms disposed of not the appeal in Hansa Corporation case alone, but petitions in which the High Court issued mandamus on the non-

existent ground that the 1979 Act was constitutionally invalid. It is, therefore, idle to contend that the law laid down by this Court in that judgment

would bind only the Hansa Corporation and not the other petitioners against whom the State of Karnataka had not filed any appeal. To do so is to

ignore the binding nature of a judgment of this Court under Article 141 of the Constitution. Article 141 reads as follows:

The law declared by the Supreme Court shall be binding on all courts within the territory of India

.....

24. A writ or an order in the nature of mandamus has always been understood to mean a command issuing from the Court, competent to do the

same, to a public servant amongst others, to perform a duty attaching to the office, failure to perform which leads to the initiation of action. In this

case, the petitioners-appellants assert that the mandamus in their case was issued by the High Court commanding the authority to desist or forbear

from enforcing the provisions of an Act which was not validly enacted. In other words, a writ of mandamus was predicated upon the view that the

High Court took that the 1979 Act was constitutionally invalid. Consequently the court directed the authorities under the said Act to forbear from

enforcing the provisions of the Act qua the petitioners. The Act was subsequently declared constitutionally valid by this Court. The Act, therefore,

was under an eclipse, for a short duration; but with the declaration of the law by this Court, the temporary shadow cast on it by the mandamus

disappeared and the Act revived with its full vigour, the constitutional invalidity held by the High Court having been removed by the judgment of

this Court. If the law so declared invalid is held constitutionally valid, effective and binding by the Supreme Court, the mandamus for bearing the

authorities from enforcing its provisions would become ineffective and the authorities cannot be compelled to perform a negative duty. The

declaration of the law is binding on everyone and it is therefore, futile to contend that the mandamus would survive in favour of those parties against

whom appeals were not filed.

(emphasis supplied)

36. In the present case also, a batch of writ petitions were decided by a common judgment by the Full Bench in Farat Hussain Azad. The dispute

was not personal or individual to any particular petitioner but was a common dispute as to whether the ad hoc services rendered by Assistant

Engineers prior to regularisation should be counted for the purpose of seniority. Though all the writ petitioners may not have approached the

Supreme Court, certainly Narendra Kumar Tripathi did approach the Supreme Court. In such circumstances, when the Supreme Court directed as

a principle that ad hoc services rendered by Assistant Engineers prior to the regularisation should be counted for the purpose of seniority and the

seniority should be re-determined, it cannot be contended by the petitioners that the State Government was not justified in re-determining the

seniority of such ad hoc Assistant Engineers. We must, however, hasten to add that directions had also been issued by the Supreme Court, the

High Court and the Tribunal in other matters to which we have adverted earlier. The State was, therefore, justified in issuing the Office Order

dated 31 December 2001 inviting objections from all concerned against the tentative seniority list based on the thumb rule indicated in the judgment

of the Supreme Court.

37. Learned Senior Counsel for the petitioners, however, placed reliance upon the decision of the Supreme Court in Arvind Kumar Srivastava &

Ors. to contend that the seniority of Narendra Kumar Tripathi alone was required to be re-determined. In paragraph 22, the Supreme Court

summed up the legal principles as follows:

22. The legal principles which emerge from the reading of the aforesaid judgments, cited both by the appellants as well as the respondents, can be

summed up as under.

22.1. The normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated

alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This

principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates

that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated

persons did not approach the Court earlier, they are not to be treated differently.

22.2 However, this principle is subject to well recognised exceptions in the form of laches and delays as well as acquiescence. Those persons who

did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their

counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the

judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays,

and/or the acquiescence, would be a valid ground to dismiss their claim.

22.3 However, this exception may not apply in those cases where the judgment pronounced by the Court was judgment in rem with intention to

give benefit to all similarly situated persons, whether they approached the Court or not. With such a pronouncement the obligation is cast upon the

authorities to itself extend the benefit thereof to all similarly situated person. Such a situation can occur when the subject matter of the decision

touches upon the policy matters, like scheme of regularisation and the like see K.C. Sharma & Ors. v. Union of India, (1997) 6 SCC 721. On

the other hand, if the judgment of the Court was in personam holding that benefit of the said judgment shall accrue to the parties before the Court

and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who

want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or

acquiescence.

(emphasis supplied)

38. It has been held by the Supreme Court in the aforesaid decision that normally relief should be given to all other identical situated persons if a

particular set of employees are given relief by the Court as not doing so would amount to discrimination and would be violative of Article 14 of the

Constitution. The Supreme Court emphasised that this principle needs to be applied more emphatically in services matters as service jurisprudence

postulates that all similarly situated persons should be treated similarly. An exception was, however, carved out in cases of laches and delay as well

as acquiescence but even this exception, it has been held, would not apply where the judgment pronounced by the Court is a judgment in rem with

the intention to give benefit to all similarly situated persons. Such a situation would arise when the subject matter of the decision touches upon

policy matters, like a scheme for regularisation of service. However, if the judgment of the Court is in personam, benefit of such judgment shall

accrue to the parties before the Court and this would be when it is either expressly stated or can be impliedly found out from the tenor and

language of the judgment.

39. In the present case, the subject matter of the decision before the Supreme Court was a policy matter as to whether the benefit of ad hoc

services rendered by Assistant Engineers prior to their regularisation should be extended or not for the purpose of seniority. The State Government

issued the Office Order dated 31 December 2015 immediately after the decisions were rendered by the Supreme Court and the High Court as

also the Tribunal. The judgment of the Supreme Court did direct for re-determination of the seniority list in six months and it cannot by any stretch

of imagination be said that the judgment was a judgment in personam.

40. Learned Senior Counsel for the petitioners also contended that even if the directions issued by the Supreme Court on 7 April 2015 in

Secretary, Minor Irrigation Department were required to be implemented for all the ad hoc Assistant Engineers, then too the facts of each ad hoc

Assistant Engineer were required to be examined. In this connection, it needs to be noted that objections were filed to the tentative seniority list.

No distinguishing factor was pointed out in the objections nor it has been pointed out in the writ petition. The Office Order dated 31 December

2015 specifically stated that the seniority would be determined after adding the ad hoc services rendered by Assistant Engineers prior to

regularisation as a thumb rule and so if such an objection had to be raised, it was incumbent to raise this particular objection but learned Senior

Counsel for the petitioners has not been able to point out from the objections or the order dated 22 March 2016 that such an objection was

raised. It was only submitted by learned Senior Counsel for the petitioners during the course of hearing that the State Government was required to

examine each individual case to find out whether the facts relating to the other Assistant Engineers were the same as that of Narendra Kumar

Tripathi. The only distinguishing feature pointed out by the Full Bench regarding Narendra Kumar Tripathi was that prior to his ad hoc appointment

on 12 June 1985, he was working in the work-charge establishment from 18 January 1983. Narendra Kumar Tripathi gave up the plea for

counting his seniority from 18 January 1983 before the Supreme Court and stated that only his ad hoc service from 12 June 1985 should be

counted. Thus also there is nothing which may distinguish the factual aspects of the other Assistant Engineers from that of Narendra Kumar Tripathi

who had been granted relief by the Supreme Court. We are, therefore, not inclined to accept this submission when it was neither raised before the

Department at the time of filing the objections or in this writ petition. In any case, as noted above, 108 ad hoc Assistant Engineers had been

appointed in four batches in 1985 and even in the appointment order dated 12 June 1985, the petitioner was placed at Serial No.32. All the

Assistant Engineers were similarly situated as would be seen from the case set up by them before the Full Bench in Farhat Hussain Azad.

41. Thus, as none of the submissions advanced by learned Senior Counsel for the petitioners have any force, the writ petition deserves to be

dismissed. It is, accordingly, dismissed. The interim order stands vacated.