(2000) 2 GLT 483

Gauhati High Court (Imphal Bench)

Case No: W.A. No"s. 67, 77, 96 and 138 of 1997

L. Priyokumar Singh and Others		APPELLANT
	Vs	
N. Birendra Singh and Others		RESPONDENT

Date of Decision: Jan. 4, 2000

Citation: (2000) 2 GLT 483

Hon'ble Judges: N.S. Singh, J; J.N. Sharma, J

Bench: Division Bench

Advocate: H.S. Paonam, A.G, for the Appellant; A. Nilamani Singh, Kh. Nilamani Singh, T. Nanda Kumar Singh and Ch. Robinchandra, for the Respondent

Final Decision: Dismissed

Judgement

J.N. Sarma, J.

In all the Writ Appeals the judgment and order dated 16.5.97 passed in CRs 308/95, 345/95,302/90,919/96,929/96 by the learned Single Judge of this Court has been assailed. The learned Judge took up all the civil rules for hearing together and by the impugned order, the learned Judge was pleased to quash and set aside the final seniority list of the Assistant Engineer (Elect.) of the Electricity Department as on 30.6.94 which was circulated vide Office Memorandum dated 6.5.95 with a further direction to prepare the seniority list afresh.

2. The Petitioners are the Respondents in all the civil rules and they are all Assistant Engineers of the Electricity Department, Government of Manipur. In CR 308/95 the Petitioner is the promotee Assistant Engineer in the Electricity Department. He was appointed as S.O. Gr-I on regular basis on the recommendation of the MPSC on 6.10.70. Thereafter, he was promoted as Assistant Engineer on adhoc basis on 5.2.80. Thereafter on the recommendation of the DPC he was appointed on 15.7.85 as Assistant Engineer on officiating basis. Thereafter the Govt. regularised the service of the Petitioner in the post of Assistant Engineer w.e.f. 29.8.92. Being aggrieved by this order, the Petitioner

filed Civil Rule being CR 458/92 for regularisation of his service w.e.f. the year of his adhoc appointment in the post of Assistant Engineer w.e.f. 5.2.80. An order was passed in that Civil Rule regularising the service of the Petitioner w.e.f. 5.2.80, but the question of seniority was kept open to be determined by the authority as per seniority rules and in the absence of such rules according to the decisions of the Apex Court and the High Courts. After the order of the High Court in the aforesaid case, the authority by an order dated 3.2.92 annexed to the writ application regularised the service of the Petitioner in the post of Assistant Engineer w.e.f. 5.2.80. During the year 1983 and 1985, the Govt. appointed some Assistant Engineers in the Electricity Department through MPSC under direct recruitment quota. These direct recruit Assistant Engineers, though later entrant in the service, have been given seniority over the Petitioner. The Petitioner filed a representation to count his seniority w.e.f. 5.2.80, but the Govt. did not count his period of service on adhoc and officiating basis and published the seniority list on 6.5.95 (Annexure A/1 to the writ application). This Civil Rule was filed with a prayer to quash that seniority list. The stand of the Respondents 4-13 was that the writ Petitioner having been appointed on adhoc basis dehors the rules, the period of adhoc appointment cannot be counted towards seniority. It was the further stand of the Govt. that the service of the Petitioner was regularised w.e.f. 29.8.92 and as such he was not entitled to get seniority prior to the aforesaid date. The stand of the Govt. is that the Petitioner along with 6 other S.Os. Gr-I were promoted to the post of Assistant Engineer on 5.2.80 on adhoc basis against the post reserved for ST candidates and it was made clear that when ST and SC candidates will be available, the Petitioner and other adhoc promotee Assistant Engineers will be reverted to their original posts. The name of the Petitioner appeared at Serial No. 49 of the seniority list. It is the contention of the Govt. that the service of the Petitioner was regularised only on 29.8.92 and though his service was regularised w.e.f. 5.2.80 as per the order of the High Court, the question of seniority having been kept open, the Govt. has fixed the seniority of the Petitioner as per Rules w.e.f. 29.8.92. The vacant post in the promotion quota was available only in the year 1992 and as such the seniority of the Petitioner has been fixed w.e.f. 29.8.92.

3. In CR 345/95, the Petitioners challenged the seniority list All the Petitioners are degree holders promotee Assistant Engineers. They were appointed on regular basis as S.O. Gr-I on 28.1.74 and thereafter they were appointed in the post of Assistant Engineer on 6.7.79 on adhoc basis. Respondents 3 to 12 are the direct recruit Assistant Engineers who were appointed on 18.1.83. The services of Respondents 13 and 14 were regularised by the Govt. by a special DPC w.e.f. 24.1.84. The services of the Petitioners have been regularised w.e.f. 15.7.85. Since the services of the Petitioners were not regularised w.e.f. the date of their ad hoc appointment in the post of Assistant Engineer, they have filed a Civil Rule being CR 586/92 before this Court and this Court directed the authority to regularise the services of the Petitioners with effect from 6.7.79 i.e. the date on which they were appointed as Assistant Engineer on adhoc basis keeping open the question of seniority to be determined by the Govt. as per seniority rules and in the absence of such rules, as per the decisions of the Apex Court and the High Courts. The

direct recruit Assistant Engineers challenged the judgment and order dated 27.3.92 passed in CR 586/92 by filing a writ application being CR 1242/92. But the aforesaid writ application was dismissed by this Court and no appeal has been filed against the dismissal order and as such mat order has assumed finality. The contention of the Petitioners is that the direct recruit Assistant Engineers are later entrants in the service and the Petitioners being in service earlier to direct recruit Assistant Engineers, they are entitled to the seniority. The stand of the Govt. in this case also in me same as has been indicated in the earlier civil rules.

4. In CR 320/90, the Electricity Department Diploma Holder Employees Association challenged the appointment of some adhoc degree holder S.Os. It is alleged that the quota reserved for degree holders and diploma holder S.Os. has not been maintained by the Govt. and the Govt. appointed some degree holder SOs on adhoc basis by pick and choose method. A Civil Rule being CR 102/80 was filed and that was disposed of by this Court directing that the persons who have been appointed on adhoc basis in the post of SOs and thereafter again promoted to the post of AEs on adhoc basis in their case, their period of adhoc services shall not be counted towards seniority. Out of the aforesaid degree holder adhoc SOs, 4 were subsequently appointed by the Govt. through MPSC as direct recruit Assistant Engineers. There is no controversy as regards the four person who were appointed on regular basis through MPSC, but their seniority has been challenged in these set of writ applications. It is averred mat in the year 1978, 1979, 1980 & 1984 vacancies were available under promotion quota, but these vacancies were not filled up by the Govt. in time due to non-constitution of DPC. Rule requires that the DPC is to be constituted every year and if DPC would have been constituted in time, the promotee Assistant Engineers would have been regularised when they were appointed on adhoc basis.

5. In CR 919/96, the Petitioner challenged the officiating adhoc promotion of some Assistant Engineers in the post of Executive Engineer and there prayer was made that the adhoc promotion made to the post of Executive Engineer should be quashed as the final seniority list has not yet been prepared by the Govt.

6. In CR 929/96, the Petitioner who is a diploma holder SO belongs to SC community prayed that his services should be regularised w.e.f. 7.10.76 and the final seniority list should be modified counting his seniority from the date of regularisation of his service. Earlier he was appointed as SO Gr-I on 7.10.71 and thereafter he was promoted to the post of Assistant Engineer on adhoc basis on 28.5.75. The Govt. regularised the services of the Petitioner on the recommendation of the DPC by an order dated 309.85 w.e.f. 15.7.85. Moreover vacancies were available against the reserved quota, but that have not been filled up. The stand of the Govt. in all the CRs are same to that effect that no vacancy was available under promotion quota for which no regular appointment were made.

7. The learned Judge in para 11 of the judgment observed that in all these set of writ petitions the main question is the determination of seniority between the direct recruits and promotees. The learned Judge pointed out that the Govt. did not held the DPC in time.

8. The contentions of the writ Petitioners before the learned Single Judge was--(i) that in view of their uninterrupted service from the date of their initial appointment to the post of Assistant Engineer (Elect) on adhoc basis till the date of regularisation following the rules and also in view of that fact that the High Court passed an order for retrospective regularisation from the date of initial appointment on adhoc basis the writ Petitioners are entitled to seniority from the date of their initial appointment following the principles laid down by the Apex Court and hence placement of their names below the direct recruit Assistant Engineers in the impugned seniority list is not sustainable, (ii) It was also disputed that there was no regular vacancy available during the period of their adhoc and officiating appointment in the grade of Assistant Engineer. It is alleged that vacancies were available and the DPC was not held.

On the other hand, Respondents contended that the persons having been appointed on adhoc basis without following the procedure prescribed by the R.R. for appointment to the post of Assistant Engineer (Elect.) in the Electricity Department, the period of their adhoc appointment prior to regularisation cannot be taken into consideration for die purpose of determination of their seniority in view of the settled law laid down in various decisions of the Apex Court. It is also the stand on the part of the Respondent that the final seniority list prepared by the Govt. does not suffer from any infirmity and as such the civil rules filed are liable to be quashed as the same have no merit.

9. The points for determination before the learned Single Judge were as follows:

(i) Whether the writ Petitioners are entitled to claim seniority from the date of their initial appointment on adhoc basis to the post of Assistant Engineer by counting the period prior to their regular appointment and/or whether the direct recruit Assistant Engineers will have a march over the adhoc promotees?

(ii) If the service rendered by the writ Petitioners prior to their regular appointment was purely against he temporary vacancy reserved for SC/ST, the claim of the Petitioner is sustainable in the eye of law or not?

10. The basis conclusion of the learned Judge was as follows:

The learned Judge found that the adhoc appointment and subsequent officiating appointing was made as per provision of recruitment rules and subsequently their services were regularised and as such the Petitioners are entitled to claim seniority from the date of their initial appointment as per the law laid down in the decision of the Constitution Bench of the Apex Court in The Direct Recruit Class-II Engineering Officers'' Association and others Vs. State of Maharashtra and others, and accordingly the seniority

list was quashed and a direction was given to prepare the seniority list afresh by counting the period of their service from the date of their initial appointment.

The learned Judge in para 13 of the judgment held as follows:

It is not disputed by the Govt. that adhoc appointments were made from amongst the eligible officers and they continued in me post uninterruptedly for long years and subsequently their services were regularised as per provisions of the rules. In such a situation, there is no reason not to count their period of adhoc services towards seniority.

In paras 14 and 15, the learned Judge held as follows:

It is admitted by the parties that these adhoc promotee continued in their service for a long period and their adhoc appointments were made as per provisions of recruitment rules without following the procedural requirements. Consequently, their cases cannot fall within the corollary in conclusion (A) which says that the officiation in such posts cannot be taken into account for counting seniority. Corollary (A) contemplates a situation that the appointments are adhoc and not according to rules and made as a stop-gap arrangement. In the instant case, it does not appear that the adhoc appointment of the promotee AEs were stop-gap arrangement and had it been so, they would not have been continued for a long period till regularisation of their service. Further, the corollary attracts cases where the services of the employees have not been regularised according to rules. Therefore, I am of the clear view that corollary (A) of Maharashtra Engineers case cannot attract in the case of the present Petitioners. On the contrary, it appears that conclusion (B) squarely covers the cases of the Petitioners. Conclusion (B) clearly provides that initial appointee should continue in service uninterruptedly till regularisation of their service in accordance with rules. In the present case, the services of all the adhoc promotee AEs were regularised by the Govt. according to rules and therefore, I am of the clear view that the cases of the present Petitioners squarely fall within the corollary in conclusion (B) which says that the period of officiating service will be counted. If the officiating service as adhoc appointee is counted, there is no reason to deprive these promotee AEs to get their seniority from the date of their regularisation. Consequently I am of the view that the present Petitioners are entitled to get their seniority from the date of their initial appointment in the post of Assistant Engineers on adhoc basis from the which date their services have been regularised by the Govt.

15. The Petitioners have submitted some papers from where it appears that the Govt. has created some posts of Assistant Engineers in the years 1979 and 1980. But in the Govt. documents at Annexure D/1, it does not appear that these newly created posts have been included in the aforesaid letter Annexure D/1. Further, it does not appear that the Govt. has properly carried forward vacancies reserved for SC/ST candidates. If in any recruitment year vacancies reserved for SC/ST are not filled up, then in carrying forward those vacancies in the subsequent recruitment year only 50% of the vacancies can be carried forward and such carry forward can be made upto a period of three years and

thereafter if no SC/ST candidates are appointed in such vacancies then such vacancies shall be deemed to be unreserved posts. Therefore, I am of the view that the Govt. should afresh work out the vacancies for the year 1979 and 1980 and if vacancies are available under promotion quota during the years 1979 and 1980, then the Petitioners should be absorbed in those vacancies and their seniority should be fixed accordingly. If by working out the vacancies, the Govt. finds that vacancies are not available for the year 1979 and 1980, then the Govt. may examine afresh whether vacancies under promotion quota is available during the years 1981 and 1982. If vacancies are available in promotion quota during the years 1979 and 1980, the Petitioners may be absorbed accordingly. If the vacancies from 1979 to 1982 are not available and during the year 1983 vacancies are available under promotion quota, then the Petitioners may be absorbed in the vacancies of the year, 1983 and while fixing the seniority between the direct recruits and, promotees, the Govt. may follow the procedure prescribed for the determination of seniority rules, i.e. after 3 promotees, 2 direct recruits and so on.

In para 18 the learned Judge held as follows:

Having regard to the facts and circumstances stated above, all the writ petitions are allowed. But, in view of the aforesaid decision, the writ petition No. 320/90 has become infructuous. Mr. A. Nilamani Singh, learned Counsel for Petitioner submitted that in case other writ petitions are allowed, the writ petition 320/90 may be disposed of as infructuous. Accordingly the writ petition No. 320/90 is disposed of as infructuous.

All the misc. applications connected with all these writ petitions shall stand disposed of. Interim order, if any shall also stand vacated.

Hence these Writ Appeals.

11. We have heard Mr. H.S. Paonam, learned Counsel for Appellants in WA 67/97 and Mr. A. Nilamani Singh, learned senior counsel along with learned GA Kh. Nimaichand Singh, learned Advocate General, Manipur for Appellant in WA 77/97 and Mr. T. Nandakumar Singh for Respondents ; learned Advocate General, Manipur in WA 96/97 for Appellant and Mr. A. Nilamani Singh, learned Counsel for Respondents ; Mr. H.S. Paonam, learned Counsel for Appellant in WA 138/97 and Mr. Ch. Robinchandra, learned Counsel for Respondents.

12. Learned Counsel for Appellants places reliance on the following decision in support of their contention:

(I Davinder Bathia and Others Vs. Union of India and Others, That was a case where the Appellants were posted as Enquiry-cum-Reservation Clerks on adhoc basis as a stop-gap arrangement, and continued in this capacity from 1978 to 1982, and thereafter their services were regularised by subjecting them to regular selection process. It was held by the Supreme Court that adhoc service did not count for seniority and hence the Appellants could not be treated senior to those who in the meantime had been appointed

according to prescribed procedure.

This case does not help the Appellants inasmuch as these persons were appointed on adhoc basis as stop-gap arrangement. That is not the case in hand. In this particular case, it is not the case of the parties that these persons were appointed as a stop-gap basis.

(II) Abraham Jacob and Others Vs. Union of India, That was a case where the Supreme Court considered the Quota-rota rule or length of service and the Office Memorandum dated 22.12.1959 and Clause 6 thereof of the Ministry of Home Affairs Recruitment Policy, as originally framed envisaged filling up of posts by direct recruitment only but provision made in 1969 draft recruitment rules for 50% promotion quota. Draft rules approved in 1976. Adhoc promotions made from 1969 to 1976 regularised in 1978 by convening a DPC which assessed the merit of the adhoc promotees and the seniority of the promotees determined on the basis of their position in the merit list. Relative seniority of direct recruits and promotees also determined in accordance with OM dated 22.12.1959 which provided for determination of seniority according to rotation of vacancies between direct recruits and promotees. The Supreme Court rejected the plea put forward by the promotees that they were entitled to seniority on the basis of their continuous service as Assistant Engineer.

The Supreme Court in that case in para 4 pointed out as follows:

Needless to mention that this principle has to be invoked for determination of inter se seniority of the appointees both direct recruits and promotees during the period 1969 till 9.9.1976 and in fact the Government has drawn up the seniority list on following the said principle.

It was found by the learned Judge in this particular case that posts were available for promotion during the years, but they were not regularised because of non-constitution of DPC and for non-constitutions of the DPC the writ Petitioners cannot suffer.

(III) Chief of Naval Staff and another Vs. G. Gopalakrishna Pillai and others, wherein the Supreme Court has pointed out that when adhoc appointments were made without selection by a regularly constituted selection body, such an adhoc appointments even though uninterruptedly followed by regularisation in the same post held, would not count towards seniority.

The point of difference in that case was that in the order of adhoc appointment itself it was stated that such an appointment on adhoc basis cannot confer any right to claim seniority in the said post Nodoubt the Supreme Court has further pointed out that law is well settled that in the absence of specific rules of service by which a person holding an adhoc post will be entitled to get seniority to the said post if he is later on selected on regular basis to the post held on adhoc basis entitled to claim seniority on the basis of adhoc service. Reliance was placed in that case in Union of India (UOI) through

Chandigarh Administration (U.T.), Chandigarh and Another Vs. Sh. S.K. Sharma, Professor of Civil Engineering Punjab Engineering College, Chandigarh, the earlier decision of the Constitution Bench in Direct Recruit Class II Engineering Officers" Association v. State of Maharashtra has been referred to and relied on. In para 5 of the judgment reference has been made in Union of India (UOI) and Others Vs. Ansusekhar Guin and Others, It was pointed out by the Supreme Court that if an employee has been appointed on adhoc or temporary basis exceeding tile quota fixed for such appointment such employee would be entitled to get the credit of continuous officiation in fixing seniority provided such adhoc or temporary appointment had been made by a regularly constituted body for holding the selection of the candidates to be appointed. It is alleged on behalf of Appellants that in this case also the persons were appointed on adhoc basis without being duly selected and as such this case squarely covers the contentions put forward by them.

(IV Ram Ganesh Tripathi and others Vs. State of U.P. and others, . wherein the Supreme Court pointed out that an adhoc employee whose services were subsequently regularised, held, cannot for the purpose of promotion or selection be treated as regularly appointed or counted seniority from the date earlier than the date of regularisation. In that particular case the Supreme Court pointed out that the Respondents and other employees who had been appointed temporarily and whose services were regularised only w.e.f. 17.5.85 will have to be treated as permanently appointed in 1974, as they were for the first time appointed on those posts in 1972. The Supreme Court has pointed out that this order deserves to be quashed as it is not consistent with the statutory rules. The Supreme Court further pointed out that it appears to have been passed by the Government to oblige the Respondents and similarly situated adhoc appointees.

(V Krishan Yadav and another Vs. State of Haryana and others, That is a case standing on the different footing. In that case it was found that the appointment was made arbitrary as selection of Taxation Inspectors by Subordinate Selection Board was alleged to be vitiated by fraud, nepotism, favouritism and arbitrariness. There was also a CBI enquiry and the CBI found that appointments were made without interview as also on the basis of fake or ghost interviews and as such the whole selection was quashed though they were continuing in service for a period of 4 years. The Supreme Court further pointed out that individual cases of innocence are not relevant. That case is not in point with regard to this particular controversy.

(VI) Union of India and Others Vs. Kishorilal Bablani, That is a case with regard to the power of judicial review when there is delay in approaching the Court. The facts of that case are that the Respondent was declared successful in IAS and Allied Services Examination held in 1974. On the basis of his position in the panel, he was appointed as Customs Appraiser (Class II) w.e.f. 10.11.1976. In 1983, he submitted a representation that the department did not correctly work out the vacancies in the year 1974 otherwise he would have got appointment on Class I post. The representation was rejected on 23.9.85 and in 1985 itself, the Respondent moved the Court. The department conceded

that the vacancies, if worked out correctly, would have been more than they were actually reported but the contention of the department was that it was not possible to reopen the issue after several years. The Tribunal by its judgment dated 6.9.1994 allowed Respondents'' application. Union of India went on appeal against the judgment of the Tribunal but also granted benefit of Class I appointment to the Respondent, subject to outcome of the appeal. In the meantime, other persons claimed similar benefit. The Supreme Court pointed out that the delay defeats equity and that is a well known principle of jurisprudence. Delay of 15 and 20 years cannot be overlooked when an applicant before the Court seeks equity. During all these years, the Respondent had no legal right to any particular post. After more than 10 years, the process of selection and notification of vacancies cannot be and ought not be reopened in the interest of proper functioning and morale of the concerned services. It would also jeopardise existing positions of a large number of members of that service. In the facts of that case, however, the benefit which was given to the Respondent was maintained, but that relief was given to mat Respondent only and not to other similarly situated persons.

In this particular case, the question of delay is not relevant inasmuch as the writ Petitioners approached the Court with promptness.

(VII) 1998 (2) GLT 62 (Dibyadhar Gogoi and Ors. v. Jitendra Narayan Bhagawati and Ors. That is a judgment by a Division Bench of this Court wherein the Division Bench of this Court pointed out that the training period of an employee (In that case Direct Recruit ACFs of Assam Forest Service (Class-I) counted towards seniority as the training period cannot be treated to be in service and is to be excluded from computing seniority. That case is not relevant for the decision of this case.

(VIII) U. P. Secretariat U.D.A. Association v. State of U. P., 1999 (1) SCC 278 There the Supreme Court pointed out that in determining the seniority the seniority from the date of officiation on temporary appointment/promotion cannot be counted except when appointment is made in accordance with rules. The Supreme Court further pointed out as follows:

Merely because temporary appointment or promotion came to be made seniority cannot be counted from the date of officiation except when the appointment was made in accordance with rules. Though appointment is temporary, if it was made in accordance with rules and to a substantive vacancy, seniority will be counted from the date of temporary promotion. Necessarily, the quota and rota require to be maintained so as to give effect to the object envisaged under the rule. Mere inaction cannot be made the ground to contend that the quota rule was broken down. It is not in dispute that appointments have been made in officiating capacity against the vacancies reserved for direct recruitment though not recruitment has taken place. They are not according to the rules and within the quota. Direct recruitment is to be treated from the date on which a candidate actually joined the service, though vacancies did exist prior to that. As a consequence, the promotees are also required to be fitted into the service from the date

when they ate entitled to fitment in accordance with the quota and rota prescribed under the rules.

13. On the other hand the Respondents places reliance on the following decisions:

(I) I.K. Sukhija and Others Vs. Union of India (UOI) and Others, There the fact are that the Appellants were promoted as Assistant Engineers on adhoc basis, but their promotions made according to their placement in merit list and against regular vacancies in promotion quota. The appointments were not by way of stop-gap arrangement in order to meet exigency of service. The Supreme Court pointed out that in such a situation, the Appellants are entitled to benefit of period of their adhoc services for purpose of counting seniority.

(II) Keshav Deo and Another Vs. State of U.P. and Others, In that case the Appellants were promoted on adhoc basis. Appellants were fully qualified and continued to work uninterruptedly on the post till they were selected and approved by Commission. The Supreme Court pointed out that the period of service rendered by the Appellants on adhoc basis before appointment in accordance with rules that is in consultation with the Commission can be counted for the purpose of determining seniority and further it is inconformity with the rules. In para 12 of the judgment the rules has been quoted. The Rule itself provides that seniority of such persons has to be counted from that date whether he was working on that post on officiating or adhoc basis. There the Supreme Court relied on AIR 1984 SC 527 GP Dovel v. Chief Secretary, Govt. of U.P. In paras 14, 15 and 24 of the judgment are quoted below to appreciate the contention:

14. We shall now advert to "PD Aggarwal" and all the other rulings cited by counsel on both sides in the chronological order. In G.P. Doval and Others Vs. Chief Secretary, Government of U.P. and Others, it was held that subsequent approval by Public Service Commission to temporary appointments already made will relate back to the date of initial appointment for the purpose of reckoning seniority on the basis of the general rule of continuous officiation in the absence of any particular rule framed in that regard. That case related, however, to a dispute between two sets of direct recruits.

15. In O.P. Singla and Another Vs. Union of India (UOI) and Others, the contest was between promotees and direct recruits. A Bench of three judges held that the Seniority of direct recruits and promotees appointed under the Rules must be determined according to the dates on which direct recruits were appointed to their respective posts and the dates from which the promotees have been officiating continuously either in temporary posts created in the service or in substantive vacancies to which they were appointed in a temporary capacity.

24. In UP Secretariat Case (1997) JT(SC) 461: (1997) Lab IC 1021, the promotees were appointed in officiating capacity against vacancies reserved for direct recruitment as no direct recruitment Had taken place. This Court affirmed the judgment of the High Court

holding that direct recruit was to be treated from the date on which he actually joined the service and the promotee was to be fitted into the service from the date when he was entitled to fitment in accordance with quota and rota prescribed under the rules.

In para 18 the Supreme Court considered The Direct Recruit Class-II Engineering Officers'' Association and others Vs. State of Maharashtra and others, and in that case the Supreme Court quoted corollary B of that case as follows:

(B) If the initial appointment is not made by following, the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted.

(III) K. Madhavan and Another Vs. Union of India (UOI) and Others, There in para 15 the Supreme Court pointed out that if the DPC is not held arbitrarily or malafide or cancelled without any reasonable justification, the retrospective promotion can be given. In para 15 of the judgment the Supreme Court held as follows:

There can be no doubt that if the meeting of the DPC scheduled to be held is arbitrarily or malafide cancelled without any reasonable justification therefore to the prejudice of an employee and he is not considered for promotion to a higher post, the Government in a suitable case can do justice to such an employee by granting him promotion or appointing him to the higher post for which the DPC was to be held, with retrospective effect so that he is not subjected to a lower position in (he seniority list. But, if the cancellation or postponement of the meeting of the DPC is not arbitrary and is supported by good reasons, the employee concerned can have no grievance and the Government will not be justified in appointing the employee to the higher post with retrospective effect. An employee may become eligible for a certain post, but surely he cannot claim appointment to such post as a matter of right.

14. In this particular case, the learned Single Judge has found that the DPC was not held in time by the authority.

15. The Respondents further relies on Vijay Singh Deora and Others Vs. State of Rajasthan and Another, There the Supreme Court pointed out the principle regarding determination of seniority and it was pointed out that the length of service, qualification and availability of substantive vacancy, which will be the criteria for the purpose of determining seniority. In that particular'' case temporary appointment of graduate engineers were junior as Junior Engineers till the availability of regularly recruited persons. However, no regular appointment took place and screening committee constituted under rules confirmed them. It was held by the Supreme Court that temporary appointees, being qualified candidates at the time of their initial appointment, were entitled to seniority from the date of availability of substantive vacancies irrespective of the fact that they were confirmed subsequently. The Supreme Court gave the guideline how to determine the seniority in such a situation.

16. The Respondents further relies on Ram Pal Malik Vs. State of Haryana and Others, That was a case where at the time the candidate was selected by direct recruitment and was appointed as a Class I on adhoc basis and his representations to the Government for treating the date of his adhoc appointment in Class II as the date of his regular promotion and consequently the date of his appointment in Class I on adhoc basis as the date of regular promotion in Class I were pending several years later the Government acceded to promotee"s request and issued order treating the date of his adhoc promotion in Class II as the regular date of appointment. Consequently the date on which his junior was promoted to Class I was fixed as the date of his regular appointment in Class I. Fixation of the date of regular appointment was not contrary to any rules concerning promotion. This date was earlier to the date on which the direct recruit entered the service. Therefore, the Supreme Court held that there was nothing wrong in treating the promotee as senior to the direct recruit in Class I.

17. The Respondents also places reliance on Civil Appeal Nos. 5664, 5663, 5665 of 1999 passed by the Supreme Court, date of judgment dated 1st of October 1999. That was a case with regard to the principles governing the determination of seniority, of the persons belonging to Manipur Police Service governed by Manipur Police Service Rules. The question which arose for determination before the Supreme Court was as to whether or not the police officers belonging to the service who had continuous, uninterrupted, meritorious officiating service are entitled to the benefit to be counted the same towards their seniority.

There is no denial of the fact that in that case all the appointments were made not as a stop-gap arrangement, but it continued for a sufficient long period and it assumed that it was against the permanent vacancy and in that particular the Supreme Court allowed the appeals and the State of Manipur was directed to treat this officiating appointments of the Appellants as the date of their; regular appointment and re-fix their seniority in terms of the observations made in the judgment. There was a further direction to prepare a fresh seniority list giving consequential benefits under the law to the persons who are found to be senior.

18. It is on this background of this law we must decide the fate of these Writ Appeals. The learned Single Judge has found that the State of Manipur wrongly adopted the Office Memorandum dated 22.12.69. He pointed out that in determining seniority of an employee, it shall be counted from the date of his regular appointment. The persons were regularised from the date of their adhoc promotion in the post of Assistant Engineer in the year 1979-80 and as such it cannot be said that they will not get their seniority from that date, otherwise this benefit given to them will be illusory. After all in the field of service, seniority will have a religious fervour and it can brighten the future of a person or may spoil his career. That aspect of the matter must be borne in mind. Further, there is no rule in the State of Manipur which prohibits the determination of seniority of a persons from the date of their regularisation. Though that regularisation was made at a subsequent point of time, for that the Petitioners cannot be penalised. It is not the case that persons

were promoted without being qualified. They were qualified and were eligible to be promoted and that being done by the authority. It is also being regularised by the Govt. now it does not lie in the mouth of the Govt. to say that the Petitioners are not entitled to the benefit as prayed for.

19. One of the attributes of regular service (emphasis supplied) is what is called seniority. Seniority in simple English means a longer life than that of Another thing or a person taken for comparision. In the case of employees it means the "length of service". If the service of one person is longer than that of Another person, the first named person is called senior to Another. If the length of service is equal, one who is senior in age will be senior. The value of the right of seniority is the right to be considered for promotion to next grade. No doubt it is impossible to consider/compare regular service with irregular service for determining seniority between regularly appointed employees and irregularly appointed employees. The very concept of seniority makes it impossible to postulate such a comparison. Here in all the cases the appointments of the persons were regularised from back dates by the authority in pursuance of the orders of the Court, that has assumed finality, meaning thereby that the persons must be deemed to be appointed regularly from those dates and for the purpose of seniority the authority cannot fix Another date, that will mean a relief given by the right hand shall be taken away by the left hand, such an interpretation/approach cannot be made. The authority having made adhoc/officiating appointments but did not hold DPC in time (the law requires that it should be held every year and the persons get the orders from the Court, of course, the question of seniority was kept open, but that order of the Court did not give a first to do something which has no legal sanction. Seniority means precedence over other similarly situated. Here when the authority made regularisation from a back date by virtue of the order of the Court which assumed finality, all consequential right will flow from such regularisation. Such order of regularisation cannot be considered to have bestowed some right depriving/denying Ors. . A stop-gap arrangement may be necessary for exigency in service, for example promoting a person against leave vacancy, suspension of an employee, retirement of an employee. They come to an end as soon as that situation comes to an end. But if a person is allowed to continue for long period for years on being appointed on adhoc or officiating basis, no step is taken for their regularisation inspite of availability of vacancies, and later on regularised from the date of their appointment, they cannot be denied the benefit of seniority. It can be denied only when it can be shown to be fortuitous or stop-gap arrangement or merely temporary arrangement There is nothing to show in these case that the promotions were by way of stopgap arrangement Duly qualified persons according to their position in the seniority list in the next below grade were promoted. These promotions have not been shown to be arbitrary, whimsical or fanciful. As DPC was not held in time they had to be promoted against existing vacancies.

20. Accordingly, there is no merit in all these Writ Appeals and these are dismissed. However, we leave the parties to bear their own costs.

21. Though we have dismissed the appeal, yet it is made clear that things like further promotion etc. already made in accordance with R.R. on the basis of that seniority list quashed shall not be reopened. Promotions if made on adhoc basis, at the time of regularisation of such promotions the cases of the persons who come ahead of such promotees after refixation of seniority shall also be considered if they come within the zone of consideration being otherwise eligible. Adhoc promotions on the basis of seniority list quashed shall not be regularised without refixation of seniority. This judgment shall not be used as a handle by the writ Petitioners for Anrther round litigation to claim further benefit etc. on the principle of "next below rule". Things shall be allowed to rest as if on this count. We are constrained to give this direction as the learned Single Judge almost opened a pendora''s box giving direction to fix seniority from 1979-80 which will make the situation topsy turvy. That is not the function of the writ Court. A writ Court must not behave like a horned bull in a china clay shop. The seniority shall be refixed by the authority within 6 months from the date of the judgment by adhering to Rules and directions of this Court by inviting objections from all who will be affected by such redetermination. The writ Court being a Court of equity at the time of moulding the relief can put the parties to terms to make it just proper and workable. Justice does not turn up bottom side up. We must bear in mind that our justice delivery system is a human institution, created by human agents to survey human ends and in doing so always we must strike a balance in such a manner that our decision should not usually be an attempt to touch a hornet''s nest to create further complications and problems, that should be avoided as far as possible.