

Shri Umananda Roy Vs The A and N Administration and Others
 Shri Zaki Ahamed Vs Shri Umananda Roy and Others

Court: Calcutta High Court

Date of Decision: Feb. 20, 2006

Acts Referred: All India Council for Technical Education Act, 1987 " Section 24, 3

Constitution of India, 1950 " Article 226

Motor Vehicles Act, 1988 " Section 68(2)

University Grants Commission Act, 1956 " Section 2, 22(1)

Citation: (2007) 2 CALLT 316

Hon'ble Judges: Indira Banerjee, J; Girish Chandra Gupta, J

Bench: Division Bench

Advocate: Krishna Rao, Shyamali Ganguly, in MAT No. 032 of 2005 and Dipankar Dutta, in C.O.T. No. 001 of 2006, for the Appellant; Shyamali Ganguly in C.O.T. No. 001 of 2006 and Dipankar Dutta in MAT No. 032 of 2005, for the Respondent

Judgement

Indira Banerjee, J.

This appeal is against a Judgment and order dated 25th November, 2005, dismissing Writ Petition No. 126 of 2005

filed by the Appellant, inter alia challenging the appointment and/or promotion of the Respondent No. 6 as Assistant Engineer with effect from 23rd

April, 1999.

2. The facts giving rise to the Appeal are briefly enumerated hereinafter.

3. The appellant and the Respondent No. 6 are both Assistant Engineers of the Port Blair Municipal Council (hereinafter referred to as the

Respondent Council).

4. By a letter No. 3389 dated 15th September, 1989, the Secretary of the Municipal Board, Port Blair informed the Employment Officer of the

Islands of the Board's requirement for a suitable candidate with diploma in Automobile Engineering for appointment as Junior Engineer and

requested her to forward a list of candidates.

5. Pursuant to the requisition of the Municipal Board made vide its aforesaid letter dated 15th September, 1989, the Employment Officer

sponsored the names of 11 candidates including the appellant and the Respondent No. 6.

6. Of the eleven candidates, about seven candidates including the appellant and the Respondent No. 6 appeared before the Selection Committee

for interview on 27th October, 1989.

7. The Selection Committee prepared a panel of three candidates. It appears that the Respondent No. 6 secured the first position and the

appellant secured the second position in order of merit.

8. Both the Respondent No. 6 and the appellant were appointed Junior Engineers on temporary and ad hoc basis. The Respondent No. 6 joined

service on 20th November, 1989 and the appellant joined service on 9th November, 1989.

9. Both the Respondent No. 6 and the appellant were appointed regular Junior Engineers with effect from 15th November, 1990 and placed on

probation for a period of two years. On expiry of the period of probation both the appellant and the Respondent No. 6 were confirmed in service.

10. In April 1999, the Respondent Council with a view to fill up the post of an Assistant Engineer (Electrical & Mechanical) prepared a statement

of prospective promotees alongwith their respective qualifications, which was placed before the Departmental Promotion Committee (hereinafter

referred to as DPC). A copy of the statement has been annexed to the writ petition as annexure P-4.

11. The name of the Respondent No. 6 was the first name in the list of prospective promotees, whereas the name of the appellant was the second

name in the said list.

12. On 23rd April, 1999, the DPC considered the cases of the candidates for promotion to two posts of Assistant Engineers i.e., Assistant

Engineer (E&M) and Assistant Engineer (Civil). The DPC found both the Respondent No. 6 and the appellant eligible for promotion to the post of

Assistant Engineer (E&M).

13. The Respondent No. 6 was, however, recommended for promotion to the post of Assistant Engineer (E&M) initially on ad hoc basis for six

months and one Ashim Kumar Paul, Junior Engineer (Civil) was recommended for promotion to the post of Assistant Engineer (Civil).

14. By an Office Order No. 1136 dated 23rd April, 1999, the Respondent No. 6 was promoted to the post of Assistant Engineer (E&M) with

immediate effect, on ad hoc basis for six months in the scale of pay of Rs. 6,500-10,500. On the same day, the said Ashim Kumar Paul was

promoted as Assistant Engineer (Civil), also on ad hoc basis. The ad hoc appointments were duly extended from time to time, till regularization in

the post of Assistant Engineer.

15. On 11th May, 2000 a provisional seniority list of Assistant Engineer was circulated by the Administrative Officer and objections thereto were

invited. The name of the Respondent No. 6 appeared at Sl. No. 3. The appellant apparently did not object to the provisional seniority list.

16. The final seniority list was published on or about 19th May, 2000. The position of the Respondent No. 6 remained unaltered. The particulars

of the educational qualifications of the Respondent No. 6 were incorporated in the final seniority list.

17. It appears that over ten years after the initial appointment of the Respondent No. 6 as Junior Engineer, questions were raised with regard to the

validity of the Diploma in Automobile Engineering obtained by the Respondent No. 6 from the College of Engineering Technology,

Nungambakkam, Chennai (then Madras).

18. In response to a query, the All India Council for Technical Education (hereinafter referred to as AICTE) by a letter dated 25th April, 2000,

informed the Administrative Officer of Dr. B.R. Ambedkar Government Polytechnic, Port Blair, that the College of Engineering Technology,

Nungambakkam, Chennai, being the institution from which the Respondent No. 6 had obtained Diploma in Automobile Engineering, was not

approved by the AICTE for conducting diploma courses in Automobile Engineering.

19. On or about 27th December, 2000, the Respondent No. 6 was asked for his comments and/or explanation with regard to the Diploma

obtained by him from the said College of Engineering Technology, Chennai. The Respondent No. 6 offered his explanation by a letter dated 21st

March, 2003 (sic) followed by another letter dated 20th April, 2001. Thereafter there was no further communication from the Respondent

Council.

20. In the meanwhile, by an office order No. 2200 dated 18th July, 2000, the appellant was promoted as Assistant Engineer on ad hoc basis for a

period of six months with immediate effect.

21. On 18th February, 2004, the services of ad hoc Group-B officers were regularized from the respective dates of their appointment and/ or

promotion. The service of the Respondent No. 6 as Assistant Engineer was regularized with effect from 23rd April, 1999 and the service of the

appellant as Assistant Engineer was regularized with effect from 18th July, 2000.

22. By an office Order No. 2430 dated 15th June, 2005 the appellant was transferred from the post of Assistant Engineer (E & M), Stores to the

post of Assistant Engineer (E & M), Solid Waste Management and the Respondent No. 6 was transferred from the post of Assistant Engineer (E

& M), Workshop to the post of Assistant Engineer (E & M), Stores.

23. After the appellant was transferred from the post of Assistant Engineer (E & M), Stores and the Respondent No. 6 was entrusted with the

duties of Assistant Engineer (E & M), Stores, the appellant, for the first time made a representation dated 14th July, 2005 alleging that the

Respondent No. 6 did not possess the requisite qualifications for appointment as Junior Engineer and had yet been assigned the duties of Assistant

Engineer (E & M), Stores. The representation of 14th July, 2005 was followed by a reminder dated 28th July, 2005.

24. From the language and tenor of the representation dated 14th July, 2005, a copy of which has been annexed to the writ petition, it is crystal

clear that the appellant was really irked by his transfer from the post of Assistant Engineer (E & M), Stores to the post of Assistant Engineer (E &

M), Solid Waste Management.

25. On 18th August, 2005 the appellant moved the writ application being W.P. 126 of 2005 which has been disposed of by the Judgment and

order under appeal. The appellant has challenged the promotion of the Respondent No. 6 as Assistant Engineer contending that the Respondent

No. 6 had obtained appointment as Junior Engineer on the strength of a fake Diploma. The appellant further contended that even otherwise, the

appellant being older in age, was senior to the Respondent No. 6.

26. Two affidavits were filed in opposition to the writ applications, one on behalf of the Respondent Council and the other on behalf of the

Respondent No. 6 and the appellant filed his Affidavits-in-Reply thereto.

27. As a counterblast to the writ petition, the Respondent No. 6 has, in his Affidavit in Opposition thrown a challenge to the appointment of the

appellant as Junior Engineer on the ground that only one vacancy having been declared and names having been requisitioned from the Employment

Exchange for one vacancy, two Junior Engineers could not have been appointed. The appointment of the appellant is, therefore, liable to be set

aside.

28. By a Judgment and order dated 25th November, 2005 which is under appeal the learned single Judge dismissed the writ application. The

learned Judge also declined to interfere in the appointment of the appellant on the ground that the appellant had been in service for about sixteen

years.

29. Being purportedly aggrieved by the dismissal of the writ application, the appellant has preferred the instant appeal. The Respondent No. 6 has

filed a cross objection to the Judgment and order under appeal in so far as the learned Judge refused to interfere with the appointment of the

appellant.

30. The main issues involved are (i) whether the diploma on the basis of which the Respondent No. 6 was appointed can be said to be fake; (ii)

whether the appointment of the Respondent No. 6 as Assistant Engineer (M & E) on promotion is liable to be set aside on the ground of his

obtaining appointment as Junior Engineer on the strength of a diploma in Automobile Engineering from an institution not recognized by the AICTE;

(iii) whether the appellant has disentitled himself to the reliefs claimed by reason of the delay in approaching this Court and (iv) whether the

appointment of the appellant is liable to be set aside, as claimed by the Respondent No. 6.

31. Ms. Shyamali Ganguly, appearing on behalf of the appellant submitted that the requisite qualification for appointment as Junior Engineer was

"Diploma" in Automobile Engineering.

32. Ms. Ganguly submitted that the Respondent No. 6 had obtained employment on the basis of a fake diploma. The institution which conferred

the Diploma was not recognized by and/or affiliated to the AICTE.

33. In support of her contention that the Respondent No. 6 had produced a fake Diploma, Ms. Ganguly relied on the definition of "fake" as given

in Black's Law Dictionary. Fake has been defined in the said dictionary as ""to make or construct falsely".

34. The meaning of the word "fake" as given in Chambers 21st Century Dictionary is "not genuine", "false", "counterfeit". Used as a verb the

meaning of fake is to alter something dishonestly or to make something up.

35. The meaning of the word fake in the New Shorter Oxford Dictionary relatable to the context in which the word has been used in the writ

petition is "spurious"; "not genuine"; "counterfeit", "forged and sham".

36. It is, however, nobody's case that the Respondent No. 6 manufactured and/or procured the manufacture of the "Diploma". It is not the case of

the Petitioner that no institution by the name of College of Engineering Technology existed at Madras, at the material time, or that the Diploma was

not at all issued by the said institution.

37. Having regard to the ordinary meaning of the word "fake" as given in New Oxford Shorter Dictionary, Chambers 21st Century Dictionary as

also Black's Law Dictionary, we are in full agreement with the learned single Judge that the diploma certificate cannot be said to be fake.

38. The next issue is whether the appointment of the Respondent No. 6 as Assistant Engineer (E & M) on promotion is liable to be set aside on

the ground of his obtained appointment as Junior Engineer on the strength of a Diploma in Automobile Engineering from an institution not

recognized by AICTE.

39. This issue can conveniently be decided along with the third issue, that is, the issue of whether the appellant had disentitled himself to relief on

account of the delay in approaching this Court.

40. Relying on the Judgment of the Supreme Court in the case of Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc.,

, Ms. Ganguly argued that a Diploma issued by the College of Engineering Technology, Madras, which was not recognized by and/or affiliated to

AICTE was useless and could not have been taken into consideration by the Municipal Board.

41. In the case of Unni Krishnan (supra), the learned Judges following the decision of nine Judge bench of the Supreme Court in the case of The

Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another, reiterated that, although the right to establish an

educational institution did not carry with it the right to affiliation or the right to recognition, affiliation and/or recognition was essential for meaningful

exercise of the right to establish and administer an educational institution. It was in the context of the practical difficulties faced by unaffiliated and

unrecognized institutions that the Supreme Court made the following observations, on which Ms. Ganguly has emphasized.

...In other words it is open to a person to establish an educational institution, admit students, impart education, conduct examination and award

certificates to them. But he, or the educational institution has no right to insist that the certificates or degrees (if they can be called as such) awarded

by such institution should be recognized by the State -- much less have they the right to say that the students trained by the institution should be

admitted to examinations conducted by the University or by the Government or any other authority, as the case may be. The institution has to seek

such recognition or affiliation from the appropriate agency.

...Ordinarily speaking, no educational institution can run or survive unless it is recognized by the Government or the appropriate authority and/or is

affiliated to one or the other Universities in the country. Unless it is recognized and/or affiliated as stated above, it's certificates will be of no use.

No one would join such educational institution.

42. The case of Unni Krishnan (supra) is not an authority for the proposition sought to be propounded by Ms. Ganguly that a diploma awarded by

an unaffiliated institution can never be taken into consideration for appointment, even though Diploma from an affiliated institution may not expressly

have been made a condition of appointment.

43. Ms. Ganguly also cited Paragraph 39 of the Judgment in Unni Krishnan's case where the Supreme Court has discussed the role and functions

of AICTE in the context of the All India Council of Technical Education Act, 1987. As recorded in the Judgment and order under appeal, the said

act came into force with effect from 28th March, 1988. The said Act had not been enacted at the material time when the Respondent No. 6

obtained Diploma from the said College of Engineering Technology.

44. Ms. Ganguly next cited the decision of the Supreme Court in the case of The Mor Modern Cooperative Transport Society Ltd. Vs. Financial

Commissioner and Secretary to Govt. Haryana and Another, . In the aforesaid case the Supreme Court set aside the appointment of Transport

Commissioner as Chairman, Regional Transport Authority, Hissar, on the ground of contravention of Section 68(2) of the Motor Vehicles Act,

1988.

45. Ms. Ganguly also cited the Judgment of the Supreme Court in the case of Dr. J.P. Kulshreshtha and Others Vs. Chancellor, Allahabad

University and Others, where appointments to the posts of Readers of Allahabad University were set aside after seven years on the ground of the

appointments being in contravention of the Ordinance 9 framed under the Allahabad University Act, 1921.

46. The cases of Mor Modern Cooperative Transport Society Limited (supra) and Dr. J.P. Kulshreshtha (supra), lay down the proposition of law

that appointments in contravention of statutes and/or statutory rules can not be sustained. The question in the instant case is whether any mandatory

condition of appointment had been contravened in appointing the Respondent No. 6.

47. Ms. Ganguly has also relied on the decision of the Supreme Court in the case of R.K. Jain Vs. Union of India and Others, where the Supreme

Court held that in Service Jurisprudence it is settled law that it is for the aggrieved person, that is, the non-appointee to assail the legality of the

offending action. The aforesaid Judgment has no relevance to the issues involved in this writ application except on the question of locus standi of

the petitioner to question the appointments. The writ application has not been dismissed on the ground of lack of locus standi of the appellant.

48. Ms. Ganguly next cited the decision of Supreme Court in the case of S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by

L.Rs. and others, where the Supreme Court held that a Judgment or decree obtained by fraud is a nullity.

49. Ms. Ganguly relied on paragraph 6 of the said Judgment, where the Supreme Court held that fraud is an act of deliberate deception to secure

something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is cheating intended to get an advantage.

50. The Judgment has no application in the instant case. It is nobody's case that the Petitioner has made any fake representation to the effect that

the College of Engineering Technology which issued the Diploma was not affiliated to the AICTE. In any case, whether the College was affiliated

or not could have been detected by due diligence.

51. As held by the Supreme Court in the case of Shri Krishnan Vs. The Kurukshetra University, Kurukshetra, cited by Mr. Dutta, where a person

on whom fraud is alleged to have been committed, is in a position to discover the truth by due diligence, fraud is not proved.

52. Ms. Ganguly cited the Judgment in the case of Central Board of Secondary Education Vs. Vineeta Mahajan (Ms) and Another, where the

Supreme Court held that to permit the students of an unaffiliated institution to appear at the examination conducted by the Central Board of

Secondary Education under the orders of the Court and to compel the Board to issue certificates in favour of those who had undertaken the

examination would amount to sub version of law and the Supreme Court would not be justified in sustaining the order issued by the High Court on

misplaced sympathy in favour of the students.

53. The findings of the Supreme Court were in the context of the issue of whether students of schools, not affiliated to the Central Board of

Secondary Examination could be compelled to be allowed to appear for examinations conducted by the Central Board of Secondary Education in

contravention of the Rules and Regulations of the Central Board of Secondary Education. In the instant case, there were no rules and regulations

governing recruitment at the material time. The Judgment is therefore not of relevance.

54. Mr. Dipankar Dutta appearing on behalf of the Respondent No. 6 submitted that the writ application should be rejected on the ground of delay

since an appointment cannot be questioned after 15/16 years.

55. Mr. Dutta further submitted and rightly so that there was no challenge to the initial appointment of the Respondent No. 6 as Junior Engineer.

There being no challenge to the initial appointment the challenge to the appointment on promotion could not be sustained.

56. Mr. Dutta next submitted that the provisional seniority list published on 11th May, 2000, was not objected to by the Petitioner. The final

seniority list was published on 19th May, 2000. The said list was also not questioned. In one of the Affidavits-in-Reply the Petitioner has barely

denied that any seniority list was published in the year 2000.

57. Mr. Dutta next submitted the letter of AICTE to the Administrator of Dr. B.R. Ambedkar Government Polytechnic annexed to the petition is

dated 25th April, 2000. The petitioner came to know that the institution from which the Respondent No. 6 had obtained Diploma was not

recognized by or affiliated to AICTE in the year 2000. Yet the appointment was not challenged by the Petitioner till 2005.

58. In response to Ms. Ganguly's submission that the appellant made representations against the appointment of the Respondent No. 6

immediately after he came to know that the institution was not affiliated to AICTE. Mr. Dutta submitted that this Court ought not to take note of

the submission of Ms. Ganguly from the Bar in the absence of any pleading either in the writ petition or in the Affidavit-in-Reply that the petitioner

had no knowledge of the letter of AICTE till June/July, 2005.

59. Mr. Dutta next argued that the All India Council of Technical Education Act, 1987 came into operation with effect from 28th March, 1988,

long after the Respondent No. 6 had obtained his Diploma. The said All India Council of Technical Education Act, 1987 is prospective in its

operation and does not affect the validity of any Diploma issued prior to its enactment.

60. Mr. Dutta argued that prior to the enactment of the All India Council of Technical Education Act, 1987 or even afterwards there was no bar in

law to any institution conferring a Diploma. It was for the employer to accept or reject the diploma, having regard to the conditions of appointment

and/or applicable Service Rules. In the instant case there were no Service Rules at the material time when the Respondent No. 6 was appointed.

As per the eligibility criteria fixed by the Respondent Council, a Diploma certificate in Automobile Engineering was necessary a Diploma certificate

from an institution recognized by the AICTE. Mr. Dutta submitted that the appointment not being in contravention of any statute or statutory Rule

or Regulation, the appointment of the Respondent No. 6 cannot be interfered with, at least not after 16 years.

61. Mr. Dutta cited the Judgments of the Supreme Court in the cases of K.R. Mudgal and Others Vs. R.P. Singh and Others, , P.S.

Sadasivaswamy Vs. State of Tamil Nadu, , Durga Prasad Vs. Chief Controller of Imports and Exports, , A.J. Fernandez v. Divisional Manager,

South Central Railway and Ors. reported in (2001) 1 SCC 240, B.V. Sivaiah and Others etc. Vs. K. Addanki Babu and Others etc., , M.S.

Mudhol and Another Vs. S.D. Halegkar and Others, and Buddhi Nath Chaudhary and Others Etc. Vs. Abahi Kumar and Others, in support of his

argument that the writ application was liable to be rejected on the ground of delay and had rightly been dismissed by the learned single Judge.

62. The principle of law which emerges from the aforesaid Judgments is that grant of relief under Article 226 of the Constitution being

discretionary, a belated writ application should generally be rejected. Appointments on selection ought not to be disturbed after long lapse of time.

Grievances with regard to determination of seniority ought to be agitated with utmost expedition and the Court approached, at best, within a year

or so. After passage of time, seniority should not ordinarily be disturbed.

63. The onus of establishing the illegality of an appointment lies on the person who questions the appointment. The Petitioner has failed to discharge

his onus of establishing that the appointment was in contravention of any statute or any statutory Rules or Regulations.

64. The assertion of incompetence of the College of Engineering Technology, Nungambakkam, Chennai to issue a Diploma certificate is not

supported by any statutory Rule or Regulation or any judicial pronouncement.

65: By reason of the provision of Section 22 of the University Grants Commission Act, 1956, the right to confer a degree can only be exercised by

a University established or incorporated by or under a Central Act, a Provincial Act or a State Act or an institution deemed to be a University u/s

3 of the said Act or an institution specially empowered by an Act of Parliament to confer or grant degrees.

66. For the purpose of Section 22, degree means any such degree, as may, with the previous approval of the Central Government, be specified in

this behalf by the University Grants Commission, by notification in the Official Gazette. Institution and/or Authorities other than those specified in

Section 22(1) are expressly prohibited from conferring, granting or holding itself out as entitled to confer or grant any degree. Contravention of

Section 22 of the University Grants Commission Act is punishable with fine u/s 24 of the said Act.

67. The All India Council of Technical Education Act, 1987, as observed above came into force in the year 1988. The reliability of the material

downloaded by Ms. Ganguly from the Internet is doubtful and the same cannot be relied upon by this Court. In any case, there is nothing in that

material to show that there was any requirement for affiliation prior to enactment of the All India Council of Technical Education Act, 1987.

68. Although, the All India Council of Technical Education Act came into existence in 1945 pursuant to a Government Resolution the same was

not vested any statutory authority. From the Statement of Object and Reasons for presentation of the All India Council of Technical Education Bill,

it is clear that the AICTE could do nothing to stop the mushrooming of sub-standard technical institutions. It was only after the enactment of the

said Act that the AICTE has been conferred with statutory power to make regulations including laying down of the norms and standards for

courses, curricula, physical and instructional facilities, staff pattern, staff qualifications, quality instructions, assessment and examinations.

69. Even the All India Council of Technical Education Act, 1987 does not contain any provision similar to Section 22 of the University Grants

Commission Act prohibiting institutions, other than those specifically permitted, from issuing Diploma certificates.

70. After the enactment of the All India Council of Technical Education Act, 1987, and the statutory recognition of the AICTE including its powers

to regulate technical education, the rules of recruitment of inter alia Government Organizations, Public Sector Undertakings and Statutory

Authorities have undergone changes to provide for a condition to the effect that only candidates with Diploma from an Institution recognized by

AICTE would qualify for appointment to a post for which the requisite qualification is a Diploma in any branch of Engineering. Even as of date

there does not appear to be any statutory bar to an unrecognized technical institution issuing a Diploma, even though the Diploma may not be of

much practical use.

71. "Diploma" is a document endorsed by authorities of an institution certifying that a person named has successfully completed a course

conducted by the institution. A "Diploma" is different from a "Degree" and cannot be equated with a "Degree". Diploma certificates are awarded

for completion of courses in Music, Physical Education, Handicrafts, Tailoring and the like.

72. The learned Judge rightly held that Diploma in Automobile Engineering from an Institution recognized by AICTE was not a condition of

appointment. There were no recruitment rules in force at the material time when the Respondent No. 6 and the appellant were appointed. It was

only as late as in October, 2005 that Service Rules were introduced making Diploma in a branch of Engineering from an Institution recognized by

AICTE a mandatory prerequisite for appointment as Junior Engineer. The Rules do not have retrospective operation. There was no contravention

of any provision of statute or statutory rule or regulation in appointing the Respondent No. 6, as held by the learned Judge.

73. An appointment in clear contravention of statute may be set aside even after lapse of time, notwithstanding the hardship to the appellant. When,

however, there is no clear cut contravention of any statute, or any rule or regulation having statutory force but allegations are in effect of

imprudence or breach of care in selection of candidates, as in the instant case, there can be no question of interference unless the Court is

immediately approached. After lapse of time, this Court would decline relief.

74. In any case, the initial appointment of the Respondent No. 6 as Junior Engineer has not even been challenged. In the absence of any challenge

to the initial appointment, the promotion cannot be questioned on the ground of ineligibility for initial appointment.

75. The appellant has not been able to advert to any service rule applicable to the Respondent Council whereunder seniority is to be determined

according to age. Admittedly the petitioner joined earlier. The reasons for the delay on the part of the appellant in joining are immaterial. In any

case the name of the Respondent No. 6 appeared before the appellant in the panel of selected candidates.

76. In any case the appellant from the inception knew that he was older than the Respondent No. 6. He did not question the promotion of the

Respondent No. 6 before the appellant in 1999. The appellant is barred by delay from agitating the question of his seniority over the Respondent

No. 6 before this Court.

77. The learned Judge rightly held that the seniority could not be disturbed in view of the delay having regard to the law laid down by the Supreme

Court in this regard. The learned Judge rightly held that the claim of the appellant to seniority was not entertainable.

78. The final issue is whether the appointment of the appellant is liable to be set aside on the ground that two persons could not have been

appointed when only one vacancy had been declared and candidates requisitioned from the Employment Exchange for one post only.

79. Mr. Dutta cited the case of Secretary, A.P. Public Service Commission Vs. B. Swapna and Others, where the Supreme Court held that there

could not be appointment beyond the number of vacancies advertised.

80. We need not embark upon the exercise of adjudicating the legality of the initial appointment of the appellant as Junior Engineer after sixteen

years. In our view, the learned Judge rightly declined to interfere on the ground of delay.

81. The learned Judge has delivered a long and reasoned Judgment elaborately discussing the respective submissions of the parties, the Judgments

cited, the statutes involved and we find no reason to differ with the findings of the learned Judge.

We, therefore, affirm the Judgment and order under appeal.

The Appeal and the Cross-Objection are disposed of accordingly.

Girish Chandra Gupta, J.

82. I agree.