

## Anil Kumar Biswas and Ors Vs State of West Bengal and Others

**Court:** Calcutta High Court

**Date of Decision:** Feb. 1, 1980

**Acts Referred:** Constitution of India, 1950 Article 226, 233, 235

**Citation:** 84 CWN 405

**Hon'ble Judges:** Sabyasachi Mukherji, J

**Bench:** Single Bench

**Advocate:** B.C. Dutta and Parimal Das, for the Appellant; Tapas Roy and Sumit Panja for Respondent nos. 1-4, S.C. Dasgupta, for Respondent nos. 7-16, for the Respondent

### Judgement

Sabyasachi Mukherji, J.

The petitioners are seven in numbers who are working as Munsiffs under the Govt. of West Bengal being posted

at different places of West Bengal. In response to a notification dated 30th of November, 1968 the petitioners who claimed that they were eligible

to appear in such selection applied for the post and they thereafter appeared in the selection held in or about September, 1969. The petitioners

further state that they were selected for the posts of Munsiffs and got their appointments in the year 1971, petitioners nos. 1 to 6 in May, 1971 and

petitioners no. 7 in November, 1971 and the petitioners joined the services accordingly. On completion of the probationary period, the petitioners

were duly confirmed as Munsiffs and they have been working as Munsiffs efficiently, diligently and satisfactorily, according to the petitioners. The

letters of appointment of the petitioners were issued under the signature of the Secretary, Judicial Department and in the case of the petitioner no. 7

under the signature of the Joint Secretary, Judicial Department, copies of such letters of appointments have been annexed by the petitioners with

the petition. It may incidentally be mentioned that in the notification inviting the application which was issued on the 30th of November, 1968 it was

stated that the application for selection should reach the Registrar, High Court, Appellate Side not later than 24th of December, 1968. Copies of

the letters of appointments which were given to the petitioner were forwarded to the Accountant General, West Bengal and in the note forwarding

the copies to the Accountant General of West Bengal it was stated as follows :

Copy forwarded to :

1. Accountant General, West Bengal for information. The above two candidates are appointed against vacancies occurring in 1969. Both of them

were examined by a Medical Board and found fit for entry into Govt. Service.

2. Deptt. of Information of Public Relations, West Bengal for information and necessary action.

In all the letters similar endoresements appeared. It is further the case of the petitioners that there was selection held in September, 1969 for the

appointment of Munsiffs from the practising advocates in the Bar out of which 10 candidates got their appointment in 1970 and 12 candidates got

their appointments in 1971 out of which 4 have since left the services. In the year 1969 another selection was held for the appointment of Munsifs

by the Public Service Commission and by the said selection 10 candidates were appointed as Munsifs in the year 1970 one of whom has since left

the services. Subsequently, further candidates were appointed as Munsifs through Public Service Commission in the year 1971. The petitioner

claimed that all such appointments were made against the vacancies occurring in the year 1969. The petitioners assert that as the petitioners were

appointed as Munsifs being recruited from the Bar against the vacancies occurring in 1969 their seniority position as per prevailing West Bengal

Civil Service (Determination of Seniority) Rules, 1961 were above the recruits through Public Service Commission who also got their

appointments against the vacancies of 1969. It may in this connection be appropriate to refer to the West Bengal Civil Service (Judicial)

(Determination of Seniority) Rules, 1961. Rule 2 of the said rule provided as follows :

2. The relative seniority inter se of persons appointed as Munsifs in the West Bengal Civil Service (Judicial) against the vacancies occurring in any

particular year shall be determined in the following manner :

(a) Those appointed by selection shall be senior to those appointed on the results of examination.

(b) Subject to (a) above (i) the relative seniority of the Munsifs appointed by selection shall be according to age provided that in case of equality of

age seniority shall be according to length of practice at the Bar.

(ii) the relative seniority of munsifs appointed on the results of examination shall be according to the order of merit in the examination.

2. The petitioners further assert that the fact that they were appointed against the vacancies of 1969 would be corroborated by their positions in

West Bengal Civil List corrected as on 1st of January, 1975 which has been published in 1978. The petitioners state that the serial nos. of the

petitioners are in that civil list 194, 196, 197, . 199, 200 and 201 respectively except that the petitioner no. 3 whose seniority position has been

shown as No. 1 in the list of probationer Munsifs at page 362 of the civii list by reason of his not passing the departmental test. And the petitioners

further assert that the seniority position of petitioner no. 3 in fact should have been shown in between the serial numbers of the petitioner nos. 2 &

4. The petitioners further contend that in the said civil list the serial numbers of the first batch of 10 Munsifs recruited from the Bar against the

vacancies of 1969 are 184-193 and the respondent nos. 7 to 15 who are not recruited from the Bar but are appointed through Public Service

Commission by passing the relevant examinations are 202 to 211. The petitioners, further, assert that the seniority of the petitioners has

systematically been given effect to by the authority and petitioner no. 7 was regarded as senior to respondent no. 8 and worked as Sub-Divisional

Munsif at Diamond Harbour when both were posted at the said station for about 2 1/2 years.

3. The petitioners assert that the petitioners and the respondent nos. 7 to 15 have been appointed against the vacancies of the same year, that is to

say, 1969 and as such the petitioners were seniors to the respondent nos. 7 to 15 irrespective of their dates of joining the service as per seniority

list referred to hereinbefore.

4. The challenge made in this application under Article 226 of the Constitution is to the communication dated 21st of December, 1978 from the

Secretary, Judicial Department to the Govt, of West Bengal to the Additional Registrar High Court, Appellate Side. The said communication is

Annexure "F" to the present petition. By the said communication Registrar was informed that on the basis of the revised order issued by the

Government the position of the petitioners would be below the respondent nos. 7 to 15. The Government has asserted that the said decision has

been taken in accordance with the provisions of Rule 2 of the West Bengal Civil Service (Judicial) (Determination of Seniority) Rules, 1961. The

petitioners assert that this order passed by the Government is illegal and in breach of the rules are mala fide. The petitioners contend that the fact

that the petitioners were appointed against the vacancies of 1969 would be borne out by not only the communication to the Accountant General as

referred to hereinbefore but was also reiterated by the High Court by the letter dated 11th of May, 1973 and letter dated 25th of September,

1973 and the letter dated 15th of December, 1973 addressed to the Accountant General of West Bengal, by the Registrar and the Additional

Registrar, Appellate Side, Calcutta and was confirmed by the West Bengal Civil List as corrected up to January, 1975. In the first letter dated

11th of May, 1973 which was written by the Registrar Appellate Side, High Court, Calcutta to the Accountant General, West Bengal, it was

mentioned that the confirmation of 10 probationary Munsif's name in the accompanying list, which contained the names of the petitioners who

were recruited from the Bar against the vacancies occurring in 1969"" was under the consideration of the High Court and the Accountant General

was requested that the said persons may be allowed to draw their pay and allowance probationary till the month of September, 1973 pending the

issue of orders regarding their confirmation on extension of the probationary period as the case might be. The same request more or less in

identical terms was reiterated in the letter dated 15th of December, 1973 and in the letter dated 25th of September, 1973. The petitioners further

assert that the selection of the petitioners were held in 1969 for the vacancies of the same year that is to say 1969. The petitioners challenge the

said communication which is Annexure "F" referred to hereinbefore and in as much as the petitioners' prayers were not acceded to the petitioners

after demanding justice have moved this application under Article 226 of the Constitution on 28th of August, 1979 whereupon I issued a rule nisi

and granted certain interim orders.

5 In this application the State of West Bengal, Secretary, Judicial Department, Joint Secretary, Judicial Department, Deputy Secretary, Judicial

Department and Govt, of West Bengal are respondent nos 1 to 4 respectively, respondent nos.5&6 are the Registrar and the Additional Registrar

of the Appellate side of the High Court respectively. Respondent nos 7 to 15 are the other recruits who have been placed seniors to the petitioners

by the revised order which is the subject matter of challenge in this application.

6. There is no dispute as to how the inter se seniority of those appointed by the selection of the High Court and those appointed as a result of the

examination should be determined, that is governed by Rule 2 of the aforesaid rules. The main question that really falls for consideration in this

case, is, whether both the petitioners as well as the respondent nos. 7 to 15 were appointed against the vacancies for the year 1969. The second

question that calls for determination in this case, is whether the Government was competent to arrive at the decision as it did or whether this

question was exclusively in the domain of the High Court under the Constitution and the third question that arises for determination, is, whether the

decision of the respondent Government was arrived at arbitrarily in breach of the principles of natural justice and further, whether at this belated stage

after lapse of nearly nine years the Government could affect the seniority and the prospects of the petitioners in their service conditions as the

Government has purported to do.

7. Before I consider these questions it may not be inappropriate to refer to the West Bengal Civil Service (Judicial) Recruitment Rules. Rule 2

which dealt with the method of recruitment provides inter alia as follows :--

2. Method of Recruitment : Recruitment to the West Bengal Civil Service (Judicial) occurring in any one year shall be made in the following

manner, that is to say--

(i) by filling up fifty percent of the vacancies on the results of a competitive examination to be conducted by the Public Service Commission, West

Bengal, and

(ii) by filling up the remaining fifty percent of the vacancies by selection from amongst the members of the Bar by the High Court, Calcutta.

Provided that the State Government may, after a period of three years from the date of the first examination held by the public service commission

under this rule, by order vary the ratio between the number of vacancies to be filled by examination and the number of vacancies to be filled by

selection by the High Court in such manner as it thinks fit.

Rule 3 deals with qualification and sub-rule (d) & (e) of Rule 3 inter alia provides as follows :--

(d) The age of a candidate for the examination shall not be less than 21 years or more than 27 years on the 1st January of the year in which the

examination is held.

Provided that no candidate shall be allowed to appear at more than three examinations

(Vide Notification dt. 14.9.61)

Provided further that the upper age limit may be relaxed up to 5 years in the case of candidates who have been in the service of Government for at

least two years

(Vide Notification dt. 14.6.62).

(e) The age of a candidate for selection by the High Court shall not be less than 27 years or more than 32 years on the 1st January of the year in

which the selection is held.

8. Before I deal with the stand taken by the respondents it is necessary to deal with certain decisions referred to from the Bar. Reliance was placed

in aid of the proposition that in any event an order which prejudicially affected the rights and prospects of the petitioners should have been passed

by the Government upon notice to the petitioners on a Bench decision of the Kerala High Court in the case of Chairman, Cochin Port Trust v.

M.N. Sukumaran Nair 1979 (i) Labour Law Journal, page 242. There an employee of the Port Trust was promoted as Sounding Foreman.

Another employee aggrieved by order filed a petition to the Grievances Committee challenging the promotion on the Ground that the promotee did

not possess the prescribed qualifications. The Port Trust, claiming to correct an error, reverted the person promoted. The question was whether

the principles of natural justice requiring that he should be given an opportunity to explain was followed. The Court found that the fact was

undisputed that the person against whom the grievance was made had been in the position for over three years. In such circumstances it was only

fair and proper that person should have been given notice for affecting his position. The Court found that it could not be accepted that what was

happened was only correction of a mistake or rectification of an error. The Court was further of the opinion that if there was an error it seemed to

have required microscopic and expert examination. Therefore, the procedure adopted was unfair. It was argued that in that case the reversion

order was passed in exercise of the inherent right of correcting a mistake that had occurred in directing promotion and in such a case there was no

question of notice or affording opportunity for explanation. The Division Bench was of the view that the proposition stated in that form was well-

supported by authorities and referred to the decision of the Supreme Court in the case of State of Punjab Vs. Jagdip Singh and Others, and S.K.

Bhate and Others Vs. Union of India (UOI) and Others, and Ranjit Singh V. President of India & ors. (1971) 2 Service Law Reports page 561.

But as mentioned above the Court was of the view that the alleged mistake sought to be corrected was of such a nature which require examination

of facts for which an opportunity to the person affected should have been given.

9. Before I consider the main question whether the petitioners were appointed against the vacancies for the year 1959 it may be desirable to

dispose of the second question as to whether the Government was competent to arrive at the decision as it did or whether this question was

exclusively in the domain of the High Court under the Constitution. Article 235 of the Constitution is explicit. The control over District Courts and

Courts subordinate thereto including the posting and promotion of and the grant of leave to persons belonging to the judicial service of a State and

holding any post inferior to the post of district Judge shall be vested in the High Court. But the Article further provides that nothing in that article

should be construed to take away from any such person any right of appeal which he may have under the law regulating the conditions of service

or as authorising the High Court to deal with him otherwise than in accordance with the conditions of service prescribed under such law. It was

contended on behalf of the petitioners that the action of the respondent Government authorities violated this article. While on behalf of the

respondent Government authorities it was contended that there was no violation of this provision because according to the correct position,

according to the respondent Government authorities, the petitioners were appointed not against the vacancies for the year 1969 but against the

vacancies for the subsequent year and as per the rules which are not in dispute namely, West Bengal Civil Service (Judicial) (Determination of

Seniority) Rules, 1961, the Government has merely corrected the mistake. In the case of Chief Justice, Andhra Pradesh v. L.A. Dikshitulu AIR

1979 S.C. page 193, the Supreme Court held that the control over the subordinate judiciary vested in the High Court under Article 235 of the

Constitution is exclusive in nature, comprehensive in extent and effective in operation. It comprehends wide varieties of matters and included (a)

disciplinary jurisdiction and complete control such as to the power of the Governor in the matter of appointment, dismissal, removal, reduction in

rank of the District Judge, and initial posting and promotion to the cadre of District Judge. The Supreme Court, further, held that the High Court

only had authority in respect of the members of the subordinate judiciary dealing with the suspension from service, transfer, promotion,

confirmation, recall and award of selection grades etc. The Supreme Court emphasised that the entire scheme of Chapter V and Chapter VI in

Part VI of the Constitution was designed to ensure independence of the High Court and the subordinate judiciary. In the case of State of Assam v.

S.N. Sen AIR 1972 S.C. Page 1028 the Supreme Court held that under the provisions of the Constitution the power of promotion of persons

holding posts inferior to that of the District Judge is in the High Court and the Supreme Court was further of the view that it was reasonable to hold

that the power to confirm such promotion should also be with the High Court. In that view of the matter Rule 5 (iv) of the Assam Judicial Service

(Junior), Rules 1954 was so far in conflict with Article 235 of the Constitution should be held to be invalid. It was, further, held by the Supreme

Court that in view of the plain word of the first part of Article 235 the arguments that the power of the High Court as to promotion was limited had

no basis. In the case of Samsher v. State of Punjab AIR 1974 S.C. Page 2192 the Supreme Court held that the High Court under Article 235 was

vested with the control of the subordinate judiciary the members of the subordinate judiciary were not only under the control of the High Court but

they were also under the care and custody of the High Court. The request by the High Court in that case to have the enquiry for charges of

misconduct against the members of the subordinate judicial service through the Director of Vigilance was an act of self-abnegation. The High Court

should have conducted an enquiry preferably through a District Judge, according to the Supreme court. The Supreme Court, further, held that the

members of the subordinate judiciary look up to the High Court not only for the discipline but also for dignity and therefore the Supreme Court

was of the opinion that the High Court acted in total disregard of Article 235 of the Constitution by agreeing the Government to enquire through

the Director of Vigilance. The Patna High Court in the case of Madan Mohan v. Government of Bihar AIR 1970 Patna, page 432 was of the view

that the word "posting" under Article 233 of the Constitution, an expression which is also used under Article 235 of the Constitution, meant

assignment of job and in common parlance it meant giving of posting to a person appointed and the place of first posting. It could not mean a place

in the gradation list which has got to be determined in accordance with the Rules.

10. In the affidavit-in-opposition filed on behalf of the respondent nos. 1 to 4 being the State of West Bengal and its officers it has been mentioned

that the petitioner as well as respondent nos. 7 to 15 belong to the West Bengal Civil Service (Judicial). The mode of recruitment to the said

service is that 50% of the vacancies which would be available in a particular year would be filled up by selection from amongst members of the Bar

by this Court and the balance 50% would be recruited on the results of the competitive examination held by the Public Service Commission from

amongst the persons who have the minimum requisite qualification for the said post. So long the practice followed in the matter of recruitment to

the said post is that in case there is odd number of vacancies the greater half is filled up through the Public Service Commission by way of direct

recruitment. The respondents have further asserted that in the year 1969 there were 21 Vacancies in the posts of Munsiffs for the West Bengal and

as such by a letter No, 188-J dated 27th of January, 1969 the judicial department of the Government of West Bengal requested this High Court to

make selection for filling up of the 10 posts from 21 posts of Munsiff which fell vacant in the year 1969. Similarly, the Public Service Commission,

West Bengal was asked to recommend for recruitment of candidates for the remaining 11 vacancies. 10 names were selected by the High Court.

Accordingly, thereafter 10 names forwarded by the High Court were communicated by the letter dated 16th of March, 1970 and the judicial

department called upon the Public Service Commission to make 11 appointment. The said appointments were duly made. By a letter 24th of

January, 1970 the Registrar Appellate Side of this Court informed the Secretary, Govt. of West Bengal that on account of shortage of officers of

the West Bengal Civil Service (Judicial) some additional courts of Munsiffs were lying vacant. It is appropriate to set out the actual letter which is

as follows :--

Immediate

Special Messenger



No. 932-A

From : Shri D.P. Chatterjee,

M.A.LL.B., Registrar, High

Court, Appellate Side, Calcutta.

To : Shri K.J. Sen Gupta,

Secretary to the Govt. of

West Bengal. English Department.

Dated Calcutta, the

24th January, 1970

Sir,.

I am directed to say that on account of shortage of officers of the West Bengal Civil Service (Judicial), some additional Courts of Munsifs are now

lying vacant. Most of the Munsif Registrar "had also to be withdrawn and posted to sit in courts for relieving the difficulties caused by the shortage

which is due mainly to the employment of as many as 59 officers of the State Judicial Service as Judicial Magistrates in districts where the scheme

of separation of the Judiciary from the Executive has been implemented.

I am to add that Government have already been informed in the Court's letter No. 156A dated the 7th. January, 1970 that it would be necessary

to recruit 71 officers in 1970 particularly in view of the proposed implementation of the scheme of separation of the judiciary from the Executive in

the district of Howrah, Birbhum, Midnapore and Burdwan in the near future. The Court is strongly of opinion that some Munsifs should be

recruited immediately so that the vacant courts of Munsifs as well as the vacant posts of Registrars may be filled up at the earliest opportunity.

I am to point out that in October, 1969 the Court recommended to Government the names of 10 candidates selected as Munsifs against 1969

vacancies. Five more candidates named in the margin were at the same time selected by the Court and kept in reserve for consideration for

appointment as Munsifs in case of necessity.

1. Shri Hariranjana Ghosh.

2. Shri Harasit Kumar Ghosh.

3. Shri Lila Prakash Bhatta-charji.

4. Shri Ratan Lal Mukhopadhyay.

5. Shri Sakti Pada Hazra.

The court accordingly recommends that these five selected number of candidates selected along with the equal number of candidates selected or

by the Public Service Commission for appointment as Munsifs, as against the vacancies of 1970 may be recruited immediately to replenish the

shortage of officers as aforesaid.

A Statement showing the Academic qualifications and other particulars of the five candidates selected by the court is enclosed.

Yours faithfully,

Sd. D.P. Chatterji, Registrar.

11. It is the case of the respondent Government that the Government acceded to the said request. It is borne out by Annexure ""F"" which is to the

following effect :

Government of West Bengal

Judicial Depart:

From : Shri K. Sen Gupta,

Secy. to the Govt. of West Bengal.

To : The Registrar, High Court,

Appellate Side, Calcutta.

6128-J Dated, Calcutta,

the 6th May, 1970

Subject : Recruitment of Munsifs

from the Panel of 1969.

Sir,

With reference to your letter No. 932/A dated the 24th January, 1970, I am directed to say that in order to implement the Scheme. of Separation

of the Judiciary from the Executive in several more districts, the Government have decided, with the concurrence of the Finance Department to

increase the number of Munsifs by appointment of twenty more Munsifs (ten by the High Court and ten by the Public Service Commission) from

the panel of 1969.

I am, therefore, to request you to be so good as to send the names of five more candidates, in addition to the five candidates already

recommended in the Court's letter under reference, from the panel of 1969 for appointment of Munsifs as early as possible.

Yours faithfully,

Sd/- K. Sengupta

Secy, to the Govt. West Bengal

12. Thereafter, on the 5th of August, 1970 five more names from the panel of 1969 were forwarded. Subsequent thereto the petitioners were

appointed in 1970-71. Thereupon, on receipt of certain representation from one Sri Sanat Kumar Bose regarding fixation of the seniority same

was forwarded by the Government to the High Court. The High Court wrote as follows on 22nd of December, 1976.

Government of West Bengal

Judicial Department

Notification No. 14370A.

From : Shri K.C. Mukherjee,

Additional Registrar,

High Court,

Appellate Side, Calcutta.

To : The Joint Secretary to the

Government of West Bengal

Judicial Department

Administrative Dt. Calcutta, the 22nd

Department. December, 1976

Sir,

I am directed to refer to your letter No. 5481-J dated the 25th May, 1976 forwarding a representation dated 26.9.74 from Shri Sanat Kumar

Bose, a member of the West Bengal Civil Service (Judicial) regarding fixation of his relative seniority vis-avis certain other Munsifs.

In doing so, I am to say that the question of determination of seniority of Munsifs concerns Government and the Court may consider the matter, if

any specific proposal comes from Government.

Copies of the Judicial Department letter No. 6128-J, dt. 6.5.70 and No. 13233-J dated 20.11.70 are forwarded herewith, as requested in your

letter under reference.

Yours faithfully,

Sd : K.C. Mukherjee

Additional Registrar.

Then the Government again forwarded the request by two officers to the Judicial Secretary to grant interview seeking the permission of the

Government. The High Court wrote back on the 6th of October, 1970 that seniority of the members of the West Bengal Service (Judicial) as per

rules comes within the scope of the administrative control of the High Court alone and the High Court viewed with disfavour the request to see the

Judicial Secretary. The other respondents have also filed an affidavit more or less faking the same stand. But paragraph of which I must because it

was improper for the respondents to make that averments in Court. In the affidavit filed by one

Sri Manas Kumar Sen in paragraph 4 he has stated as follows :--

That I submit that the said petition is not maintainable and the impugned order having been passed on the basis of the decision of the Government

and this Hon"ble High Court having concurred with the said decision, this Hon"ble Court cannot sit in judgment over its own decision and if the

petitioner had any reason to be aggrieved by the said decision the petitioner should have moved appropriate forum.

The High Court has exclusive jurisdiction in my opinion to determine the question of seniority between the members of the service belonging to the

subordinate judicial service.

13. Having considered the last annexure to the affidavit-in-opposition filed on behalf of the respondent Nos. 1 to 4 specially the letter dated 24th

of January, 1970 which is Annexure "E", which categorically and unequivocally records that the Court recommended the five additional selected

candidates who were kept in the reserved category in 1969 should be appointed against vacancies of 1970 and in the light of the letter dated 22nd

of December, 1976 being Annexure "L" in my opinion, the petitioners were not appointed against 1969 vacancies, but were made against 1970

vacancies. But in order to expedite the matter of filling up vacancies because of the need for a large number of Munsiffs due to the separation of

the judiciary and the executive such vacancies were filled up from the panel of 1969 who had been Kept in reserve and in fixing the seniority

neither the High Court nor the Government could go behind the rules prevalent at the time, namely, the West Bengal Service (Judicial)

(Determination of Seniority) Rules, 1961. It is not a question of dealing with the question of seniority of a particular member or of initial posting or

of promotion; the High Court, however, was competent to take steps for altering the rules in accordance with the relevant procedure. But that is

not the situation here. In that view of the matter the first and the main question indicated before that is to say, whether the petitioners were

appointed against the vacancies of 1969 must be answered against the petitioners. So far as the question whether the Government was competent

to arrive at the decision as it did it appears that what the Government was doing was only rectifying the mistake in the civil list which had been

occasioned by the conduct of the Government in the note communicated to the Accountant General's office. The action of the Government does

not, in my opinion, curtail or affect the amplitude of the jurisdiction and authority of the High Court under Article 235 of the Constitution and

specially in view of the letter which is Annexure "L" dated 22nd of December, 1976 whereby the High Court conveyed that the question of

determination of seniority of Munsiffs concerns Government in my opinion, the action taken by the Government cannot be said to be unwarranted

or illegal. But I must say that the letter of the Additional Registrar of the High Court dated the 22nd of December, 1976 being Annexure "L" was in

very wide terms and perhaps does not represent the correct position. It is not correct to say that the question of determination of seniority of

Munsiffs as such concerns the Government. The question of determination of seniority of Munsiffs concerns primarily the High Court and is within

the exclusive jurisdiction of the High Court. But that does not mean that Government could not rectify the mistake that have crept in the

Government's action. That certainly concerns the Government. But if in rectifying that mistake if any principle is involved that principle should be

referred to the High Court.

14. The next question that falls for consideration, is, whether the decision of the respondent Government was arrived at arbitrarily in breach of the

principles of natural justice. In view of the fact that this was a mistake, unfortunate but obvious, which the Government sought to rectify and the

rectification was in accordance with the principles laid down, in the West Bengal Service (Judicial) (Determination of Seniority) Rules, 1961, and

there has been no argument or no challenge on the point that the rectification was in violation of any principles settled down by the rules, then in my

opinion it could not be said that the Government acted arbitrarily. The next question is whether the Government acted in breach of the principles of

natural justice. It is true that by the impugned communication namely, Annexure "F" the petitioners' positions and prospects have been prejudicially

affected as it would affect their seniority and therefore normally such an action should have been taken after giving the petitioners an opportunity of

being heard. But in this case as I have mentioned before the impugned action was taken only to rectify an obvious mistake. It did not require a very

microscopic examination of facts as was the situation in the case of Chairman Cochin Port Trust, v. M.N. Sukumaran Nair (supra). It is well

settled that an obvious mistake can be corrected without giving any opportunity, indeed the Supreme Court in the aforesaid decision reiterated

certain well known previous decisions noted above. But the alleged mistake in this case did not require examination of facts in the instant case

before me. Furthermore, the parties were aware and are aware of the reasons for which the impugned action has been taken. If that is the position,

in my opinion, the impugned action cannot be struck down on the ground of violation of principles of natural justice. The next question that arises

for consideration is whether the Government was justified in taking such a belated action in rectifying the mistake. It is true that the action is

belated. It is to be regretted that the respondents nos. 7 to 15 had suffered wrongs because of the wrong stand taken by the Government at the

initial stage. It has equally to be regretted that the petitioners positions are now sought to be affected and that would undoubtedly cause them

prejudice. But it is well settled that no right can be based upon a wrong. The petitioners cannot base their right of seniority because of the original

wrong committed against respondents nos. 7 to 15. If that wrong is not rectified then the respondent nos. 7 to 15 would suffer that wrong for the

rest of their lives while if this wrong is now rectified the petitioners would undoubtedly suffer certain wrong because of the lapse of time. In that

view of the matter the action taken by the Government cannot, in my opinion, be challenged as illegal. But I must make it clear that Annexure "F"

should not be so construed that the same in any way affect the rights or the positions so far enjoyed by the petitioners. But the said annexure should

be given effect to only in future cases.

With these observations the rule is discharged. Interim order, if any, is vacated. There will be no order as to costs.