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**(2009) 05 SHI CK 0003**  
**In the High Court Of Himachal Pradesh**

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|------------------------------|----|------------|
| Ajeet Singh Rana and Another | Vs | APPELLANT  |
| State of H.P. and Others     |    | RESPONDENT |

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**Date of Decision :** 26-05-2009

**Acts Referred:**

Constitution of India, 1950 — Article 226, 227

**Citation :** (2009) 05 SHI CK 0003

**Hon'ble Judges :** Surjit Singh, J;R.B. Misra, J

**Bench :** Division Bench

**Final Decision :** Dismissed

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## Judgement

Per Surjit Singh, J.—Petitioners have approached this Court for judicial review of the order, dated 30th June, 2006, passed by the learned State Administrative Tribunal, in Original Application No. 1764 of 1995, by means of the present writ petition, under Articles 226 and 227 of the Constitution of India. The said Original Application had been filed by Jagdish Chand Chauhan and Devender Kumar, respondents No. 3 and 4, herein.

2. Facts, which led to the filing of the Original Application before the State Administrative Tribunal, may be noticed. Prior to 1st November, 1966, Union Territory of Himachal Pradesh had a cadre of Inspectors, Food and Supplies. There were no posts of Sub Inspectors in the Department of Food and Supplies. On and with effect from 1st November, 1966, on account of reorganization of the erstwhile State of Punjab, some Sub Inspectors, working in the erstwhile State of Punjab, were allocated to Himachal Pradesh. There being no posts of Sub Inspectors in Himachal Pradesh, the Sub Inspectors, who came from Punjab, on allocation, were promoted as Inspectors. At the same time, after the reorganization of the erstwhile State of Punjab, Himachal Pradesh Government also started recruiting Sub Inspectors, though in the Rules, pertaining to Recruitment and Promotion of the staff of Food and Supplies Department, there was no post of Sub Inspector. Respondents Jagdish Chand Chauhan and Devender Kumar were recruited as Sub Inspectors. One of them was recruited on

21st May, 1969 and the other on 16th July, 1969. On 27th February, 1973, both of them were promoted as Inspectors, on ad hoc basis, even though in the Rules, then prevailing, there was no provision for promotion of Sub Inspectors as Inspectors. It was probably for the reason that when the Rules were framed, in the year 1966, reorganization of the erstwhile State of Punjab had yet not taken place and the post of Sub Inspector was unknown to the Department of Food and Supplies of Himachal Pradesh.

3. In May, 1973, the present writ petitioners, who were impleaded as respondents in the Original Application filed by respondents No. 3 and 4, were directly recruited as Inspectors. In November, 1973, State of Himachal Pradesh framed new Recruitment and Promotion Rules, in respect of the staff of Food and Supplies Department. In October, 1977, seniority of Inspectors of Food and Supplies Department was finalized. Respondents No. 3 and 4 were shown at Serial Numbers 42 and 48, respectively, in the said list, while the present writ petitioners were shown at Serial Numbers 25 and 29. Respondents No. 3 and 4 challenged the seniority, by making representation to the concerned authorities. It appears that their representations were accepted and seniority was recast in the year 1979. In the recast seniority, they were shown above the present petitioners. Some Inspectors, other than the present writ petitioners, then made representations against the seniority list of 1979. One representation is stated to have been made in February, 1980 and another in the year 1987. Those representations were accepted in the year 1995 and the seniority was again recast. This time, the writ petitioners were placed above respondents No. 3 and 4 and the proforma-respondents. Respondents No. 3 and 4 challenged the seniority list of 1995, by filing Original Application before the Tribunal.

4. Learned Tribunal has allowed the Original Application, on the ground that the settled seniority of respondents No. 3 and 4 and some other persons, who were impleaded as proforma-respondents, ought not to have been disturbed, after long lapse of time and that too when the said respondents had acquired some benefits, like confirmation and Selection Grade, on the basis of seniority list of 1979. In taking this view, the learned Tribunal has placed reliance upon a number of judgments of Hon"ble Supreme Court. Also, it has been held by the Tribunal that no opportunity of being heard had been afforded to the respondents, while taking the decision about recasting of seniority, on the representation of some of the Inspectors. Learned Tribunal has quashed the seniority list of 1995 and restored that of 1979. Petitioners are aggrieved by this order of the learned Tribunal and have, therefore, filed the present writ petition.

5. We have heard the learned Counsel for the petitioners and gone through the record.

6. View taken by the learned Tribunal is based on a number of judicial precedents of the Hon"ble Supreme Court. We see no reason for disagreeing with the same.

7. We have also noticed that as per Rule-13 of the Recruitment and Promotion

Rules of 1973, seniority of the Inspectors, who had been appointed prior to the commencement of the Rules, was required to be determined, in accordance with the dates of their appointments, whether officiating or substantive. Admittedly, respondents No. 3 and 4 were officiating as Inspectors when the Rules of 1973 came into force, they having been promoted, on ad hoc basis, on 27th February, 1973. Their ad hoc appointments took place prior to the appointments of the present writ petitioners, as direct Inspectors in May, 1973. Therefore, as per Rule-13, they were supposed to rank above the writ petitioners.

8. Learned Counsel representing the writ petitioners submits that the appointments of the respondents as Inspectors, by promotion, were dehors the rules of 1966, which were in force at the time when their promotions were made, because the Rules of 1966, then prevailing, did not include Sub Inspectors in the feeder channel for the post of Inspector. The plea cannot be accepted, for the simple reason that the appointments of respondents No. 3 and 4 had never been challenged by anybody. The same were not challenged even in the Original Application filed before the Tribunal and, therefore, it is too late in the day for the writ petitioners to say that their promotions were illegal.

In view of the abovestated position, we are of the considered view that this is not a fit case for interfering with the order of the Tribunal, in exercise of the discretionary power of judicial review. Writ petition is, therefore, dismissed.