
(2005) 06 J&K CK 0010

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 1706 of 2003

All J and K Civil Engg. Graduates and Others

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 10-06-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11
Constitution of India, 1950 — Article 16

Citation : (2005) 3 JKJ 236

Hon'ble Judges : S.K. Gupta, J

Bench : Single Bench

Advocate : P.S. Dutta and A. Kapoor, for the Appellant; A.H. Naik, AG and I.H. Bhat, GA and J.P. Singh, for private Respondent No. 3, for the Respondent

Judgement

S.K. Gupta, J.—Public Works Department referred as many as 30 posts of Assistant Engineers (Civil) to the J&K Public Service

Commission (hereinafter for short referred to as the 'PSC') in the year 1980-81. The PSC advertised the posts, prepared and recommended the

panel of 30 selected candidates to the government for appointment as Assistant Engineers. A waiting list of 17 successful candidates prepared by

the PSC was also submitted to the government for appointment. The government after the receipt of the select list, issued the appointment orders

in two batches. The first batch appointed by the government in March, 1983, consisted of 9 candidates, out of which 7 candidates joined the posts

as Assistant Engineers (Civil). Whereas, 21 candidates in second batch were appointed by the government in the month of December, 1983. Since

the waiting list was not operated upon by the government, respondent No. 3 who figures at serial No. 12 of the waiting list commenced a writ

petition (SWP No. 559/1987) in the Court and asserted inter alia that ratio prescribed in the Recruitment Rules has not been observed in the

matter of appointment/promotion of Assistant Engineers (Civil) and claimed a relief on the analogy of Navdeep Gupta who also figured at serial

No. 12 in the waiting list of Assistant Engineers (Electrical) and was appointed as Assistant Engineer on the basis of Court directions. The writ

petition of the respondent No. 3 stood disposed of with the directions that the official respondents shall fill up the vacancies of Assistant Engineers

(Civil) substantively and shall consider the petitioner for promotion to the post of Assistant Engineer (Civil) in accordance with the Rules of 1978

and, accordingly, his seniority be fixed thereafter. This writ petition was disposed of on 13.12.1990. The Court further passed an agreed order on

24.09.1992 in CMP(SWP)No. 1043/1992 with the direction to the respondents to give due place to the petitioner in the seniority list while

making promotion in pursuance of the judgment dated 13.12.1990. Subsequently, in contempt petition filed by respondent No. 3, the Court

directed the respondents to dispose of the question relating to seniority of respondent No. 3 (petitioner in contempt proceedings) expeditiously.

Respondent No. 3, however, vide order No. PW-Estt:30/98-Coord. dated 03.03.1999, was given appointment as Assistant Engineer (Civil) from

the interior date i.e. 26.12.1983 against unfilled vacancies of two candidates, who after their appointments, did not join. It is this order, appointing

respondent No. 3 as Assistant Engineer retrospectively alongwith seniority list of Assistant Engineers (Civil) Hydraulic Wing issued by the

government vide order No. 371-Works of 2002 dated 23.07.2002, petitioners seek quashment by issuance of a writ in the nature of certiorari.

The petitioners further prayed for a declaration that they be shown seniors to respondent No. 3 as Assistant Engineers and accord them

appropriate place in the final seniority list of Assistant Engineers over and above respondent No. 3 by issuance of a writ in the nature of mandamus

and further restraining the respondents from giving any promotion based on such final seniority list of Assistant Engineers to respondent No. 3.

2. The case of the petitioners as projected in the writ petition is that they were neither party to the writ petition (service) No. 559/1987 on the

basis of which respondent No. 3 has been given benefit of retrospective appointment on 03.03.1999 nor they had any notice of such writ petition

or its judgment. The petitioners further stated to have acquired the knowledge for the first time of the issuance of appointment of respondent No. 3

as Assistant Engineer with interior date when notice was issued to them by the government inviting objections to the fixation of the seniority of

respondent No. 3 on 30.06.2002. That the final seniority list of Assistant Engineers (Civil) Hydraulic Wing was issued vide government order No.

371-Works of 2002 dated 23.07.2002, in which respondent No. 3 figured at serial No. 223 and the petitioners depicted much below the former.

Further case of the petitioners is that the order impugned is detrimental to and adversely affected the inalienable right of the petitioners guaranteed

under Article 16 of the Constitution of India. It is also alleged that respondent No. 3, who also came to be promoted and regularized as Assistant

Engineer w.e.f. 01.12.1987 alongwith petitioners, could not steal a march ahead of the petitioners who are admittedly senior to him on the post of

Junior Engineer. That this order of promotion w.e.f. 01.12.1987 never came to be challenged by respondent No. 3 nor it was modified or

superceded. Therefore, according to the petitioners for all practical purposes respondent No. 3 was a promotee of 1987 and, thus, could not be

put in higher position than the petitioners in the seniority list of Assistant Engineers.

3. Order of retrospective appointment as well as the placement of respondent No. 3 in the seniority list higher than the petitioners is neither in

accord with the judgment dated 13.12.1990 passed by this Court nor is warranted under any provision of law and is, thus, arbitrary, capricious,

discriminatory, unconstitutional and legally unsustainable.

4. Respondent Nos. 1 & 2 in their reply submitted that in the select list received by the government from the Public Service Commission,

appointments were made in the first batch of nine candidates and in the second batch twenty one candidates came to be appointed out of which

two did not join. Respondent No. 3, however, figured at serial No. 12 in the waiting list. Since waiting list was not operated upon, respondent No.

3 filed a writ petition claiming a relief on the analogy of Navdeep Kumar's case who also stood at serial No. 12 in the waiting list of Assistant

Engineers (Electrical) and was appointed as Assistant Engineer with seniority etc., in pursuance of the direction passed by this Court and further

confirmed by the Apex Court. The writ petition of respondent No. 3 was disposed of with a direction that respondent Nos. 1 to 3 in the said writ petition shall fill up the vacancy of Assistant Engineer (Civil) substantively and at that time shall consider the petitioner in the said petition for the post of Assistant Engineer (Civil) in accordance with the Rules of 1978 and thereafter seniority be fixed accordingly. The government considered the case of respondent No. 3 in the light of the judgment dated 13.12.1990 passed by the Court, granting relief on the analogy of Navdeep Kumar's case and finally appointed respondent No. 3 as Assistant Engineer (Civil) w.e.f. 26.12.1983 against one of the two unfilled vacancies vide order dated 03.03.1999. Respondents further submitted that this order has been challenged by the petitioners after a space of more than four years and is, thus, barred by delay and laches for want of explanation for inordinate delay. It is also stated that the placement of respondent No. 3 in the seniority list as per the impugned order also never came to be objected by the petitioners. That the benefit of seniority has been given to the respondent No. 3 in quota of direct recruits, whereas the petitioners belong to promotional quota. It is not the case of the petitioners that the quota meant for promotees has in any manner been usurped by making retrospective appointment of respondent No. 3 w.e.f. 26.12.1983. Even the decision in writ petition (SWP No. 559/1987) preferred by respondent No. 3 has not been challenged by the petitioners. That the respondents have only implemented the directions passed in SWP No. 559/1987 on the analogy and taking into consideration the benefit granted to one Navdeep Kumar. The name of respondent No. 3 appeared in the government order amongst promotees pertaining to regularization of promotion of Junior Engineers as Assistant Engineers due to clerical mistake which subsequently came to be rectified while issuing the tentative seniority list of Assistant Engineers (Civil) Hydraulic Wing dated 27.03.2001 and finally culminated in the final seniority list vide government order No. 371-Works of 2002 dated 23.07.2002. That it was in compliance to the judgment of the Apex Court in Suraj Parkash Gupta and Others Vs. State of Jammu & Kashmir Others, , that after inviting objections to the tentative seniority list of Assistant Engineers, a final seniority list of Hydraulic Wing was eventually issued on 23.07.2002. The petitioners in such circumstances cannot be said to be justified in objecting to the placement of

respondent No. 3 in the seniority list against quota meant for direct recruits for which, admittedly, he had been selected by the PSC. It is further

stated that respondent No. 3 (writ petitioner in SWP No. 559/1987) had taken a specific plea that the quota of direct recruits had been utilized for

Junior Engineers and Sectional Officers and the placement of the petitioner was also challenged. In the said writ petition filed by respondent No. 3,

petitioner Nos. 3, 4 & 5 of this writ petition were arrayed as respondent Nos. 39, 44 & 51 respectively and when they chose to remain absent

despite service of the notice, were set ex-parte. This clearly shows that the present writ petitioners were aware of the proceedings in the said writ

petition and obviously had the knowledge of the judgment passed in the case. Both the petitioners and respondent No. 3 are working in the same

department, it would not be believe-able that the petitioners were not aware about the placement of respondent No. 3 against the post of Assistant

Engineer w.e.f. 26.12.1983. The petitioners being a party to the writ petition filed by respondent No. 3 cannot be allowed to say that they

acquired the knowledge of the impugned order for the first time on 30.06.2002. The judgment in SWP No. 559/1987 dated 13.12.1990, having

not been challenged, has assumed finality. The respondents have emphatically contended that petitioners have no claim for the post meant for direct

recruits being promotees. Their seniority is to be fixed as per quota meant for direct recruits and promotees. The appointment of respondent No.

3, therefore, being against direct recruitment quota in pursuance of judgment of the Court to which the petitioners were also party could not be re-

agitated particularly when the same has not been challenged in the earlier round of litigation. The respondents further stated that the appointment of

respondent No. 3 was not from an interior date but from the date he was found entitled on account of his selection in competition alongwith others

and had been placed in the waiting list of selected candidates. In other words, the benefit has been given to respondent No. 3 of appointment from

the date he was found legally entitled to it. In fact, benefit of retrospective appointment has been given to respondent No. 3 on the analogy of

Navdeep Kumar's case. The petitioners, therefore, are not entitled to challenge the selection and appointment of respondent No. 3 as Assistant

Engineer from 26.12.1983. The petitioners had also competed alongwith respondent No. 3 for the posts advertised against direct recruitment

quota but were neither selected nor placed in the waiting list. The petitioners though party to the writ petition (SWP No. 559/1987) preferred by respondent No. 3 having not challenged its decision dated 13.12.1990, now cannot be permitted to raise such a question in the present writ petition. According to the respondents, the placement of respondent No. 3 against direct recruitment quota is as per ratio fixed in the Rules and the order passed by the Court is neither discriminatory nor unconstitutional and, thus, cannot be assailed by the petitioners in invoking the writ jurisdiction of the Court.

5. Whereas, respondent No. 3 on the other hand in his demurrer contended that the petitioners cannot have legitimate objection against his placement in the seniority list in quota meant for direct recruits against which post he had been selected by the PSC and appointed by the government as such. Respondent No. 3, in fact, had prayed for the operation of waiting list in filing writ petition (SWP No. 559/1987) in which the petitioners were also arrayed as respondents. He had sought his appointment in the ratio reserved for Assistant Engineers against direct recruitment quota under the J&K Engineering (Gazetted) Service Recruitment Rules, 1978. He was already selected and put in the waiting list. It was also pleaded by respondent No. 3 in the writ petition (SWP No. 559/1987) preferred by him that the quota meant for direct recruits has been usurped by Junior Engineers and Sectional Officers. The petitioners were duly served along with other respondents arrayed in the said writ petition as per the prescribed mode and they were set ex-parte on account of their non appearance. The petition, therefore, came to be contested only by the State of J&K but it remained unsuccessful in litigation and the relief prayed for was granted to respondent No. 3 (petitioner in SWP No. 559/1987). Petitioners, therefore, could not contend want of knowledge of the filing of writ petition, passing of the judgment and the impugned order dated 03.03.1999 passed by the government based on judgment that culminated his placement in the direct recruitment quota of Assistant Engineers (Civil) Hydraulic Wing and in the final seniority list dated 23.07.2002. Further plea of respondent No. 3 is that petitioners do not have legitimate grievance against his appointment to a vacant post of Assistant Engineer, which post stood reserved against direct recruitment quota. It is

also stated that respondent No. 3 and the petitioners being not from the same channel, the retrospective appointment of respondent No. 3 against direct recruitment quota could not be questioned for the purposes of seniority. The respective seniority has to be fixed by the government in accordance with ratio of the judgment of the Apex Court in Suraj Parkash Gupta's case. The petitioners not being selected or placed in the waiting list were disentitled to question the life of the wait list panel. The case of respondent No. 3 was considered by the government as per direction of the court in SWP No. 559/1987 for his placement against direct recruitment quota in accordance with ratio fixed in the rules. The government has passed an order on the analogy of the order passed in the case of Navdeep Kumar's case (SWP No. 138/1986) and is, thus, legal and valid.

6. In the rejoinder filed by the petitioners, it is strongly contended that the judgment in Navdeep Kumar's case does not lay down any law which can be construed having binding precedent. Certain directions were given based on the facts and circumstances in that case. The respondents in that case were only directed to consider the writ petitioner for promotion under the relevant rules and not to make appointment against direct quota, in operating the wait list, retrospectively. It was further submitted that respondent No. 3 could not claim to be treated on the analogy of Navdeep Kumar's case for giving promotion. It is also stated that since no law was laid down in Navdeep Kumar's case, the judgment never came to be challenged either in Letters Patent Appeal before the Division Bench nor SLP in the Supreme Court. That the report and the undertaking given by the State Government in Suraj Parkash Gupta's case before the Supreme Court to rectify the mistake is also sought to be enforced in another pending writ petition.

7. I have heard the arguments advanced by the learned counsel appearing for the respective parties and considered their rival contentions meticulously. Having challenged the final seniority list of Assistant Executive Engineers, Hydraulic Wing, dated 23.07.2002 and seeking the quashment of the order dated 03.03.1999 in appointing respondent No. 3 as Assistant Engineer w.e.f. 26.12.1983, the learned counsel Mr. P. S. Dutta submitted that the petitioners were neither party to the writ petition (SWP No. 559/1987) and nor had any notice of the said writ petition or

its judgment. About the issuance of order dated 03.03.1999, the petitioners came to know only when notice dated 30.06.2002 came to be issued

by the State Government inviting objections with regard to the fixation of the seniority of respondent No. 3. Mr. P. S. Dutta also submitted that the

Government Order No. PW-Estt:/30/98-Coord. dated 03.03.1999 is illegal because the JUDGMENT delivered in SWP No. 559/1987 does not

direct the retrospective appointment of respondent No. 3 against the direct recruitment quota of 1980-81. He also contended that there cannot be

any retrospective appointment against quota meant for direct recruitment. That the petitioners came to be promoted as Assistant Executive

Engineers much before respondent No. 3 and as such he cannot be shown senior to them. That the appointment of respondent No. 3 as Assistant

Engineer w.e.f. 26.12.1983 is bad because the period of wait list had since expired when the respondent No. 3 was ordered to be considered

against direct recruitment quota. Mr. Dutta further submits that the decision in Navdeep Kumar's case does not lay down any law which was

required to be followed by the State Government in case of respondent No. 3.

8. In repelling the contention of the petitioners' counsel, Mr. J. P. Singh submitted that the petitioners have not approached the Court with clean

hands and tried to mislead by making incorrect averments in the writ petition with an affidavit filed in support thereof. Further submission of Mr. J.

P. Singh is that the plea of the petitioners that they were not party to the writ petition (SWP No. 559/1987) and had no notice of the writ petition

as also the judgment delivered thereon is false and incorrect, and against the judicial records. The petitioners, in fact, were arrayed as party in the

writ petition (SWP No. 559/1987) and had been duly served by the Court. They had, however, chosen to remain ex-parte.

9. It is apt to point out that on going through the judgment of the Court in SWP No. 559/1987 which forms part of the writ petition as annexure

'C', it would show that the petitioners Nos. 3, 4 & 5 in this petition had been arrayed as respondents Nos. 39, 44 & 51 respectively in SWP No.

559/1987. Respondents further in their counter specifically stated that the petitioners were party in SWP No. 559/1987 and had the due notice

and knowledge both of the writ petition and the judgment delivered by the Court thereon. The counter affidavit filed by the respondent No. 3 has

not been assailed by the petitioners in the rejoinder filed by them and is significantly silent about the specific plea put forth by respondent No. 3.

The aforesaid plea of respondent No. 3 raised in the reply on affidavit is also supported by documentary evidence, thus, remained un-

controverted, un-rebutted and un-refuted by the petitioners. The inevitable conclusion reached is that the petitioners were party to the earlier writ

petition filed by respondent No. 3 (SWP No. 559/1987) and had a due notice of the judgment delivered by the Court. The petitioners' plea that

they had no knowledge of the writ petition (SWP No. 559/1987) and the judgment of the Court does not merit acceptance.

10. The petitioners, undoubtedly, therefore, were aware of the case set up by the respondent No. 3 in his writ petition (SWP No. 559/1987)

wherein he had claimed appointment against direct recruitment quota. They were also aware of the decision delivered on 13.12.1990 in the

aforesaid writ petition. They had also the knowledge and due notice of the order dated 03.03.1999 issued by the government in compliance to the

judgment of this Court whereby respondent No. 3 was appointed as Assistant Engineer retrospectively from 26.12.1983. The petitioners have not

explained the inordinate delay in coming to the Court to question the order of 1999 passed in the implementation of the judgment of 1990. There is

a delay of four and a half years in approaching the Court, which remained unexplained by the petitioners and is, thus, fatal because of the settled

position in law that the delay defeats the remedy as also the rights and, therefore, would not be justified in reopening the question of legality of the

appointment of respondent No. 3 as Assistant Engineer several years after his appointment.

11. The Hon'ble Supreme Court while dealing with the question of delay and laches in challenging the validity of the appointment in case Roshan

Lal and Others Vs. International Airport Authority of India and Others, , held as under:

4. One of the principal submissions made by Smt. Shyamla Pappu, learned counsel for the petitioners was that the appointment of the respondents

as Airport Officers (Ops.) was made at a time when there was no sanction for such posts and therefore their appointment was illegal. Other

reasons were also advanced in support of the claim that the respondents were irregularly appointed as Airport Officers. We are afraid that it is

rather late in the day for the petitioners to question the appointment of the respondents as Airport Officers (Ops.). The respondents were

appointed as Airport Officers in 1975 and the present Writ Petitions were filed in 1978. We do not think we will be justified in reopening the

questions of the legality of the appointment of respondents as Airport Officers several years after their appointment. We, also notice that the prayer

in the Writ Petitions also is confined primarily to the seniority list and the consequences flowing from the seniority list.

In *Ratan Chandra Sammanta and others Vs. Union of India and others*, , on the question of delay and laches, the Supreme Court held as under:

6. ----- Delay itself deprives a person of his remedy available in law. In absence of any fresh cause of action or any legislation a person

who has lost his remedy by lapse of time loses his right as well. -----.

This view is further reiterated in case *Central Bank of India Vs. S. Satyam and others*, and it was held as under:

In our opinion the lapse of long period of several year prior to the filing of the writ petition is sufficient to decline any relief to the respondents.

12. In the aforesaid case, all the retrenched workmen involved in the case were employed for short periods between 1974 to 1976. It was only in

1982 that a writ petition was filed by them to claim the benefit. The other persons employed in the industry during the intervening period of several

years have not been impleaded. Third party interests have arisen during the interregnum. These third parties were also workmen employed in the

industry during the intervening period of several years. Grant of relief to the writ petitioners (respondents therein) may result in displacement of

those other workmen who have not been impleaded in those proceedings, if the respondents have any claim for re-employment. The laches leading

to the long delay after which the writ petition filed in 1982 was sufficient to disentitle them to the grant of any relief in the writ petition.

13. Again in *State of Orissa Vs. Lochan Nayak (Dead) by Lrs.*, , the Supreme Court, on the question of delay and laches in filing the petition, held

as under:

2. Learned counsel appearing for the appellant urged that as the writ petitions filed by the respondents herein were extremely belated and suffered

from laches, the High Court ought too not to have entertained the petitions. We

find substance in the argument. What we find here is that the matters were decided in the year 1986, whereas the writ petitions were filed in the year 1992. There was an inordinate delay for which no sufficient cause was shown before the High Court and the High Court thus ought not to have entertained those writ petitions. On this short ground, the judgments under challenge deserve to be set aside.

14. In relying on the ratio of the aforesaid judgments, the petitioners are not entitled to invoke the extra ordinary jurisdiction of the Court to challenge the order of appointment and the seniority of respondent No. 3 vide order dated 03.03.1999. More so, when the plea of the petitioners that they came to know about the passing of the order dated 03.03.1999 only in 2002 when received a notice for filing objections to the fixation of seniority of respondent No. 3 is factually incorrect. A communication bearing No. PW/Hyd/G/26/2001 dated 27.03.2001 forming part of the counter filed by respondents Nos. 1 & 2 as annexure R-1 clearly shows that the State Government had reflected respondent No. 3 as direct recruit of 1983 and placed him at serial No. 224 in the tentative seniority list and the petitioners are shown in the said seniority list much below the respondent No. 3. Therefore, the plea put across by the petitioners of having come to know for the first time of the order dated 03.03.1999 from the notice received inviting objections in respect to the fixation of the seniority of respondent No. 3 is factually incorrect and, thus, cannot be believed and accepted. The petitioners, thus, having not explained the inordinate delay in approaching the Court with clean hands, is itself sufficient to disentitle the relief claimed viz., to assail the legality of the appointment of respondent No. 3.

15. It was next contended by Mr. Dutta, learned counsel for the petitioners, that the government order No. PW-Estt:30/98-Coord. dated 03.03.1999 is illegal because the judgment delivered in SWP No. 559/1987 does not direct the retrospective appointment of respondent No. 3 against direct recruitment quota of 1980-81.

16. On going through the judgment of this Court in SWP No. 559/1987, it is evident that the petitioner's specific plea before the Court in that writ petition was that he sought the benefit of promotion/appointment from earlier date in accordance with the 'Jammu & Kashmir Engineering

(Gazetted) Service Recruitment Rules, 1978'. While delivering the judgment on 13.12.1990, it was noticed by the Court that on the analogy of

Navdeep Kumar's case (Writ Petition No. 138/1986), the petitioner (respondent No. 3) was entitled to the relief in accordance with the Rules of

1978 and directed the State Government to fill up the vacancies of Assistant Engineers (Civil) substantively and at that time shall consider the

petitioner for promotion to the post of Assistant Engineer (Civil). This clearly implies that the petitioner (respondent No. 3) sought his case to be

considered against direct recruitment quota because he had never sought appointment against promotional quota in his writ petition but had

specifically pleaded his promotion/appointment against direct recruitment quota in accordance with the Rules of 1978. Acting on the judgment

delivered by the Court, the State Government appointed the petitioner (respondent No. 3 herein) on the basis of his selection by the Public Service

Commission. Therefore, the relief granted by the State Government to respondent No. 3 in appointing him against the direct recruitment quota

could not be said to be faulted or termed as illegal on any count. This I say so because the petitioners have no claim against the direct recruitment

quota and, thus, have no locus standi to question the promotion/appointment of respondent No. 3 as Assistant Executive Engineer/Assistant

Engineer. Before the Public Service Commission, the petitioners alongwith respondent No. 3 also competed for the aforesaid post in the selection

of 1980-81 but could not succeed and find place in the seniority list or waiting list either. Respondent No. 3, thus, having superior merit position

qua the petitioners as adjudged by the PSC, he was entitled to appointment and, thus, accordingly given benefit of appointment against direct

recruitment quota to which the petitioners could not lay any legitimate claim.

17. This is not the case of the petitioners in the writ petition that the promotional quota has been usurped by respondent No. 3. If that be the

position, the appointment of respondent No. 3 is against the direct recruitment quota as AEE/AE (Civil), therefore, it could not be challenged by

the petitioners.

18. Mr. J. P. Singh, learned counsel appearing for respondent No. 3, further contended that the government while drawing the seniority list and

showing the persons against direct recruitment quota only against the vacancies

which were meant for direct recruits and the promotees having been shown with effect from the dates when the posts became available, it could not be said that in case of appointment of respondent No. 3

against direct recruitment quota in the available vacancy in his quota, the judgment in Suraj Parkash Gupta's case has not been followed.

19. There is, in my opinion, a great weight and substance in the submissions made by Mr. J. P. Singh as is borne out from the record referred to in support of his contention.

20. Relying on the judgment in Suraj Parkash Gupta's case, Mr. P. S. Dutta, further contended that in case of direct recruits no retrospective appointment can be ordered. Whereas Mr. J. P. Singh on the other hand in repelling the contention of the petitioners' Advocate submitted that in

view of the latest judgment of the Apex Court which upheld the judgment of the Division Bench of this Court in case of 'Javed Iqbal Balwan v.

State of J&K' (W.P.No.(s) 904/93, 1247/93 and 566/95) reported in 1999 S.L.J. 303, which specifically ruled that petitioners therein were

entitled to claim notional seniority with effect from the date other direct recruits came to be appointed. This means that appointment against direct

recruitment quota could be made retrospectively against available vacancies. The judgment of the Division Bench is further stated to have been

affirmed by the Supreme Court and that too after the decision in Suraj Parkash Gupta's case.

21. In the present case, in view of the admitted facts that the posts against direct recruitment, quota were available and there is a specific statement

in the government order as also the stand taken by the State Government that respondent No. 3 had been appointed against direct recruitment

quota, the petitioners cannot be said to have any cause to agitate the appointment of respondent No. 3 against the said direct recruitment quota.

This is particularly when it is not the case of the petitioners that respondent No. 3 has usurped promotees' quota. The petitioners though were party

to the writ petition (SWP No. 559/1987) filed by respondent No. 3, in which the judgment delivered by the Hon'ble Mr. Justice K. K. Gupta,

however, was not challenged by the petitioners. It assumed finality for all intents and purposes. The State has also emphatically stated in its reply

that the respondent No. 3 has been allowed the benefit of retrospective

appointment strictly in accordance with analogous decision passed by this Court and upheld by the Supreme Court in Navdeep Kumar's case and that too as per the directions of this Court. Therefore, the assertions made by the petitioners do not weigh consideration with the Court to merit acceptance.

22. In further reiterating his submission, Mr. Dutta learned counsel for petitioners, pleaded that the petitioners cannot be shown junior to the respondent No. 3 who has been promoted much after their promotion. This plea too does not, in my opinion, weigh consideration as the earlier promotion of the respondent No. 3 against promotional quota stands since withdrawn when he was given the benefit of recruitment against direct recruitment quota in pursuance of the government order issued in this behalf in compliance with the judgment of the Court in SWP No. 559/1987.

According to Mr. Dutta, the appointment of the respondent No. 3 against direct recruitment quota is bad because the wait list on the basis of which he has been appointed by the government has outlived its life and no order could be passed on that basis. This plea, however, is not available to the petitioners in view of a clear bar u/s 11 of the CPC to raise any plea to the maintainability of the earlier writ petition to which they were parties.

23. Principle of Conclusiveness of the judgment bars the raising of any question as to the validity of the judgment of the Hon'ble Court by the petitioners. The judgment which has attained finality, to entertain any plea as to its legality is against the public policy. The Apex Court while dealing with the similar proposition in case Deva Ram and Another Vs. Ishwar Chand and Another, , held as under:

22. Section 11 contains the rule of conclusiveness of the judgment which is based partly on the maxim of Roman Jurisprudence ""Interest reipublicae ut sit finis litium"" (it concerns the State that there be an end to law suits) and partly on the maxim ""Nemo debet bis vexari pro una at eadem causa"" (no man should be vexed twice over for the same cause). The section does not affect the jurisdiction of the Court but operates as a bar to the trial of the suit or issue, if the matter in the suit was directly and substantially in issue (and finally decided) in the previous suit between the same parties litigating under the same title in a Court, competent to try the subsequent suit in which such issue has been raised.

24. Again in case entitled V.S. Charati Vs. Hussein Nhanu Jamadar (Dead) by Lrs, , the Supreme Court observed that a decision rendered by the

Tribunal/Court in absence of challenge becomes final and binding on both the parties and merely because it may be wrong, it would not become a

nullity. In other words, the judgment unopposed becomes final and binding.

25. Mr. Dutta, learned counsel for petitioners, also pleaded that the JUDGMENT in Navdeep Kumar's case does not lay down any law and, thus,

was not required to be followed by the State Government. To meet the contention of the petitioners' Advocate, it would be appropriate to refer to

the decision of this Court in SWP No. 559/1987 in which the Hon'ble Mr. Justice K. K. Gupta while disposing of the writ petition observed that

Such matter also earlier came for consideration of this Court in Writ Petition No. 138 of 1986 titled Navdeep Kumar v. State of J&K and Ors.

and this Court disposed of the same on Feb. 25, 1987 by making certain directions." Expression 'on the same analogy' used by the Court in SWP

No. 559/1987 clearly implies that the case of the petitioner was similar to that of Navdeep Kumar's case. This leaves no manner of doubt that the

State was under an obligation to follow the Navdeep Kumar's case while considering the case of respondent No. 3 and this course has rightly been

followed by the State Government in implementing the judgment in the case of respondent No. 3.

The plea of the petitioners on this score is also not tenable both legally and factually.

26. Having regard to the totality of facts and circumstances discussed above, I am of the considered view that the petitioners are not entitled to any

relief claimed in the writ petition. There is unexplained inordinate delay in approaching the Court to challenge the order of appointment of

respondent No. 3 passed way back in the year 1999 by the State Government in compliance to the judgment passed in SWP No. 559/1987.

Respondent No. 3 having not been appointed against the quota meant for the promotees is otherwise justified and tenable. Respondent No. 3 has

been appointed against his own quota of direct recruitment in competition in which the petitioners had also participated but failed to figure in the list

prepared by the Public Service Commission.

27. The writ petition, in my view, does not possess any merit and is, accordingly,

dismissed.