
(2011) 06 PAT CK 0029

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 1768 of 2005

Bal Krishan Sahay

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 27-06-2011

Acts Referred:

Citation : (2011) 06 PAT CK 0029

Final Decision : Dismissed

Judgement

Mridula Mishra, J.—Petitioners in all these writ applications were appointed in the year 1997, 1998 and lastly in the year 2007 as Assistant Engineers in the Joint Cadre of Road/Building Construction Department, Government of Bihar. They were applicants for appointment against Advertisement No. 93 of 1985. Petitioners are claiming their notional seniority, and placement in the gradation list of Assistants Engineers of Road/Building Construction Department, just below the last person appointed on 13.2.1989, against the vacancy in the General Category, in pursuant to Cabinet decision dated 2.2.1988. Petitioners, thus claim to be senior to Respondents, who were appointed in reserved category pursuant to advertisement No. 93 of 1985, as well as against subsequent vacancies, pursuant to advertisements published subsequently.

2. Advertisement No. 93 of 1985 was published by the Bihar Public Service commission on 13.10. 1985 for appointment of 245 regular Assistant Engineers in the joint Cadre of Road/Building Construction Department. The selection process started, continued, viva voce held and subsequently the State Government sent requisition to the Bihar Public Service Commission vide letter dated 20.5.1986 and 10.6.1986 that total 738 vacancies available in works departments till 20.8.1986 will be filled from the panel of Advertisement No. 93 of 1985. The Bihar Public Service Commission on 6.4.1987 sent names of 593 general candidates, 273 reserved candidates and 5 more posts falling vacant on account of non-joining. Thus total posts were filled and 593 candidates from general category, 273 from reserved category and 5 more candidates were finally

appointed and thus, the transaction initiated vide Advertisement No. 93 of 1985 was almost closed. After the first transaction of appointment was coming to closure, on 2.2.1988, the Cabinet took a decision to fill up all vacancies till 31.12.1987, from the panel of Advertisement No. 93 of 1985. On the basis of this cabinet decision 702 general candidates, 11 economically backward candidates were recommended and last person appointed under general category was Rajesh Kumar Mishra on 13.9.1989. Since all the posts of general category were filled up and reserved posts for Scheduled Castes and Scheduled Tribes remained vacant, the Cabinet took decision to fill up these posts by issuing fresh advertisement. Pursuant to this Cabinet decision, the State took a decision dated 28.4.1988 that Road Construction Department, which was the Nodal Department will send special requisition to the Bihar Public Service commission for filling up posts reserved for Scheduled Castes and Scheduled Tribes by publication of fresh advertisement. The request was sent to the Bihar Public Service Commission for filling 77 post of Scheduled Castes, 55 for Scheduled Tribes, 181 for Economically Backward Category, 42 for Backward Category, 2 for Economically Backward Women Category and 35 for women. The Bihar Public Service commission vide letter dated 12.12.1988 informed the Secretary, Road Construction Department that advertisement had been issued for 392 reserved posts and interview were held from 1.10.1988 to 13.10.1988. It was also informed that 175 posts reserved for Scheduled Castes and Scheduled Tribes remained unfilled as suitable candidates were not available.

3. Advertisement No. 1 of 1994 was published for filling vacancies of Scheduled Castes and Scheduled Tribes candidates and advertisement No. 16 of 1994 for filling vacancies in extremely backward category. Despite these advertisement vacancies of all posts in reserved category could not be filled. There remained 72 vacancies in S.T. category which was being carried forward through three consecutive advertisements. So far general category candidates are concerned, all vacancies were already filled and last appointee was Rajesh Kumar Mishra. Since reserved posts, as per Cabinet decisions were decided to be advertised for three years, 387 persons in the panel of general category could not be appointed. Writ applications, such as CWJC Nos. 2093 of 1989, 526 of 1990 and 3072 of 1990 were filed for a direction to fill up all the vacancies available till 31.12.1987, as per the Cabinet decision dated 2.2.1988. CWJC No. 2093 of 1989 and analogous cases were allowed vide order dated 18.5.1990, in terms of a consent order of the parties. A direction was issued for taking steps in the light of the Cabinet decision dated 2.2.1988 and to identify vacancies. Life of panel was directed to remain alive, till all vacancies till 31.12.1987 were filled. The State of Bihar filed Civil Appeal No. 7517-20 of 1996 against the order passed by the High Court. The Apex Court confirmed the order passed by the High Court and directed for filling up vacant posts in terms of the cabinet decision dated 2.2.1988. The Supreme Court also directed that the Government will make fresh exercise to identify whether there exist vacancies either for general category candidates or for reserved category candidates and if so, report it to High Court

and fill up these vacancies from amongst the candidates in the waiting list.

4. Subsequently the state filed an Interlocutory application in CWJC No. 2093 of 1989, in compliance of the Supreme Courts' direction, informing the High Court that no vacancies are available in General Category occurring prior to 31.12.1987, except 72 vacancies in reserved ST category. The Interlocutory application was dismissed, with a direction to comply the earlier order passed in writ application. However, the State remained inactive, as such contempt petitions were filed. In the show cause filed on behalf of the Secretary, Road Construction Department, 72 vacancies available in S.T. category were admitted, since these vacancies were being carried forward for three years, as such the Government decided to de-reserve these posts. During the pendency of the contempt application, the State Government issued notification contained in memo No. 5640 (s) dated 25.8.1997 and appointed Petitioners against the 72 vacancies in reserved category, which were de-reserved by cabinet decision. Since these vacancies were available prior to 31.12.1987, as such the Petitioners who were applicants, of aforesaid advertisement and also in the waiting list, were appointed against 72 posts. One post out of 72 still remained vacant, as such CWJC No. 767 of 2001 was filed by the Petitioner of CWJC No. 1768 of 2005 for his appointment against the one vacancy and he was appointed against that vacancy. CWJC No. 1768 of 2005 has been filed by him claiming seniority with effect from 27.6.1987 i.e. the date since he was appointed on ad-hoc basis.

5. Petitioners have challenged the gradation list on the ground that persons who were obviously juniors to them on account of being appointed pursuant to subsequent advertisements have been shown senior to them in the gradation list. They have been considered senior to Petitioners on account of their joining prior to the Petitioners. Subsequent to advertisement No. 93 of 1985, BPSC has advertised vacancies for appointment of Assistant Engineers in the year 1988, 1989, 1990, 1991, 1995 and 1997 and near about 300 appointments had been made. Petitioners' grievance is that the Government, contrary to norms, regulations and precedents, have shown Respondents senior to the Petitioners, merely in view of the date of appointment, ignoring the fact that all appointees of Advertisement No. 93 of 1985 should have been placed higher to the appointees of subsequent advertisement. In the gradation list appointees of subsequent advertisement had been placed in between 656 to 1148. Petitioners are claiming that they should be placed above Serial No. 656 in the gradation list.

6. Petitioners' claim of notional seniority is based on the ground that they belonged to the panel prepared by the Bihar Public Service Commission vide Advertisement No. 93 of 1985, and pursuant to Cabinet decision dated 2.2.1988, their appointment should be considered to be in the same transaction. They, for this reason, should be taken to have been appointed along with the last person appointed under General category i.e. Rajesh Kumar Mishra. Since, Petitioners' appointment process was also initiated vide advertisement No. 93 of 1985. They were empanelled for appointment against vacancies occurring prior to

31.12.1987, they should have been allowed seniority, just below Rajesh Kumar Mishra, in the Gradation list. Petitioners' claim of seniority over the Respondents and others is also based on the submission that High Court vide its order dated 21.1.1995 passed in CWJC No. 2093 of 1989 and connected writ applications had directed to fill up the vacant posts from the panel prepared by the Bihar Public Service Commission (Annexed as Annexures 2,4 and 5 of the writ applications). On the other hand counsel appearing for the Respondents submits that the list of candidates contained in these Annexure is not a panel prepared according to merit, but simply a list of all appearing candidates showing their marks obtained in the interview have been enlisted. Petitioners have further based their claim on the basis of the order passed by the Supreme Court in Civil Appeal No. 7516-17/1996 dated 8.4.1996. According to the Petitioners, these two judgments have finally clinched the issue also for the purpose of fixing their seniority. Petitioners have placed reliance on two case laws, namely, Surendra Narain Singh and Others Vs. State of Bihar and Others, and Balwant Singh Narwal and Others Vs. State of Haryana and Others, . These decisions have been cited by the Petitioners on the point that if appointments made or ought to have been made, out of the same transaction, seniority must be given notionally from the date appointment ought to have been made, but on account of some legal impediment, the same could not be done.

7. Advertisement No. 93 of 1985 was originally published for selection of Assistant Engineers only for 245 posts but more vacancies were added thereto and the Bihar Public Service commission sent additional names for filling 593 posts in General Category, 273 in reserved category and 5 posts which had earlier remained vacant on account of non-joining. Total 871 posts were filled and the transaction initiated through advertisement No. 93 of 1985 almost reached to a closure. So far these writ Petitioners are concerned, they could not have been appointed because they were not within the consideration zone of 593 candidates in general category. This was the reason that they were left out in the first transaction of appointment. However in the light of the cabinet decision dated 2.2.1988 cut off date regarding vacancies was extended and some more vacancies occurring up till 31.12.1987 were decided to be filled from the panel of Advertisement No. 93 of 1985. On the basis of the Cabinet decision additional 702 general candidates, 11 economical backward candidates were recommended for appointment. Out of that 315 candidates in general category were appointed on 13.9.1989 and the second transaction was also closed. Till the second phase of appointment, Petitioners were no where in the consideration zone. Only vacancies in the reserved category for SC and St remained vacant. These posts as per cabinet decision were re-advertised with some more vacancy in the reserved category, which occurred later on. The vacancies in the reserved category were advertised on three occasions. But on account of non-availability of the Scheduled Tribe candidates 72 posts in the ST category still remain unfilled, which was subsequently de-reserved and the Petitioners were appointed against those posts. All these facts indicate that so far Petitioners' appointments

are concerned, it cannot be said to be appointments in the same transaction. The first transaction ended when 593 from general category, 273 from Reserved category and 5 posts falling vacant due to non-joining were filled. Second transaction started in view of cabinet decision dated 2.2.1988 and all vacancies till 31.12.1987 were decided to be filled from the panel of advertisement No. 93 of 1985. On the basis of this decision also total 702 appointments, (315 in general category) and other reserved category were made. Till then also Petitioners were no-where within the consideration zone. Only when reserved posts were advertised through three different advertisement and still 72 posts in ST category remained unfilled a decision was taken to de-reserve these posts. Petitioners were appointed through notification in the year 1997, 1998 and 2007 on the post reserved for ST, subsequently decided to be de-reserved, in order to comply the direction of the High Court and the Supreme Court. I do not find any merit in the submission of the Petitioners that their appointments being in the same transaction, they are entitled for notional seniority with effect from the date the last candidate in the general category was appointed from the panel of advertisement No. 93 of 1985.

8. So far two case laws, namely, Surendra Narain Singh and Others Vs. State of Bihar and Others, and Balwant Singh Narwal and Others Vs. State of Haryana and Others, are concerned, I do not find any applicability of these cases in the facts and circumstances of the present case. In both these cases the appointments could not be made on account of litigation and the interim order passed by the Hon"ble High Court and hence the court found that appointment of Petitioners could have been taken place in the first transaction itself. Notional seniority was thus allowed in those cases. In those cases there were no dispute regarding vacancy and the appointment of Petitioners were delayed entirely on account of litigation. So far the present applications are concerned, the appointment of Petitioners were not delayed on account of any litigation. The Petitioners could not be appointed simply because there were no vacancies in the general category. Only when ,subsequently, posts reserved in S.T. category remained vacant, even after three consecutive advertisements, a decision was taken to de-reserve these 72 posts, Petitioners" got advantage and benefit of appointment. Since the Petitioners have already got one advantage, there is no justification for giving the benefit of notional seniority. It is well settled law that notional seniority is permissible in exceptional circumstances, when there is some legal impediment in making appointment. No one can claim notional promotion as a matter of right or as a matter of course, as it is not a civil or statutory right. It is only awarded by the Court under Article 226 of the Constitution on the basis of equity, in cases of injustice and hardship caused by the circumstances beyond the control of the Petitioners. In the present case, Petitioners do not deserve exercise of discretionary power because apparently there is no case of injustice or hardship in their appointment, rather they have been benefited on account of their appointment on reserved posts, even though originally they did not compete for appointment in the general category. The so

called delay in their appointment was not on account of any legal impediment or act of the State, rather had the rules regarding filling up the unfilled reserved post been properly implemented, Petitioners might not have been appointed at all. Hence the Petitioners cannot be given double benefit, one of appointment and another of notional promotion.

9. Petitioners have also prayed for quashing of part of the gradation list, whereby, appointees of Advertisement No. 33 of 1988 and subsequent advertisements have been shown seniors to the Petitioners. Petitioners' case is that since Respondents were appointed in pursuance to subsequent advertisements, through which vacancies occurring subsequently were advertised, as such Respondents being appointee of subsequent advertisement cannot be treated to be senior to the Petitioners. Counsel for the Respondents on the other hand submits that the submission of the Petitioners has no merit. Although, Respondents were appointed on the basis of subsequent advertisement, admittedly they were appointed prior to the appointment of the Petitioners. Petitioners were appointed against 72 posts reserved for ST category occurring prior to 31.12.1987. These vacancies were carried forward and advertised through three consecutive advertisements still due to non availability of suitable candidates, the posts remained vacant and the cabinet took decision to de-reserve the post only after de-reservation of the posts, Petitioners could be appointed, though otherwise they could not have been appointed. The transaction through which the Petitioners got appointed was not same through which all general category candidates were appointed pursuant to advertisement No. 53 of 1985. Petitioners' appointment, as such, cannot be considered to be appointment in the same transaction, their appointment was made completely in different transaction, despite the fact that the Petitioners have been appointed against vacancies occurring prior to 31.12.1987. They cannot claim their seniority with retrospective date and their claim for notional seniority is not maintainable. I find much substance in the submission of the Respondents, for the reason that 72 posts against which Petitioners were appointed were also part of advertisement No. 33 of 1988, pursuant to which some of the Respondents were appointed. These vacancies were consecutively advertised up to 1994 and finally 72 posts were de-reserved. Only for the reason that the vacancies against which Petitioners were appointed had occurred prior to 31.12.1987, they cannot claim their seniority over the candidates, who were appointed on the basis of subsequent advertisement, who admittedly joined much earlier to the Petitioners. There is no reason for quashing of the part of the gradation list, whereby Respondents appointed on the basis of subsequent advertisement have been shown senior to the Petitioners in the gradation list.

10. Petitioners have also prayed for quashing of the part of the gradation list, whereby persons finally allocated to Jharkhand Cadre but subsequently re-allocated to Bihar Cadre on mutual transfer have been placed above the Petitioners in the gradation list. Counsel for the Petitioners submits that in terms of conditions in memo No. 14932 dated 21.11.2008, claim of seniority of any

employee, who is allocated to Jharkhand Cadre and re-allocated to Bihar on mutual transfer basis would not be acceptable. In view of the matter, that Respondents had been re-allocated to Bihar cadre on the basis of mutual transfer, they certainly would lose their seniority and should be placed in the bottom of seniority list of this cadre. In the counter affidavit filed on behalf of Respondents falling in this category, it has been stated that they have wrongly been placed in the arena of the Respondents by the Petitioners. These Respondents were appointed in the year 1987 much earlier to the appointment of the Petitioners in the year 1997, 1998 and 2007. So far allocation of their cadre to the Jharkhand State is concerned, despite the fact services of Respondent No. 30 was allocated to the State of Jharkhand, he was never relieved from the State of Bihar. He was retained in the State of Bihar and finally on mutual transfer basis re-allocated to the Bihar State Cadre. Even if Respondent No. 30 will lose his seniority, on account of mutual transfer, at best he will be placed at the bottom of the list of candidates appointed in 1987. In no case, Respondent could have been placed at bottom of entire gradation list. In this circumstance, there was no reason for losing their seniority on account of allocation and re-allocation of cadre on mutual basis.

11. It has also been submitted by the Respondent No. 29 that so far new conditions regarding losing seniority contained in memo No. 4781 dated 6th May, 2008 is concerned, otherwise also that has no application in his case. The Respondents were reallocated Bihar State on the basis of mutual transfer prior to issuance of memo No. 4781 dated 6th May, 2008. So far provision u/s 73 of Bihar Re-organization Act and earlier circular in this respect are concerned, there was no such condition regarding losing of seniority. It has also been stated that when the provisional gradation list was prepared in the year 1994, these Petitioners had not even been appointed as Assistant Engineers in the department. In another provisional gradation list published after bifurcation of the State of Bihar also these Respondents were placed higher to the Petitioners, though there was some change in their earlier position in the gradation list. Respondents were placed in the provisional gradation list following all rules, regulations with the consent of Personnel and Administrative Reforms Department. Their position in the final gradation list could not have been challenged by the Petitioners, who were appointed of the year 1997, 1998 and 2007.

12. Petitioners have challenged Para 2 (iv) of Notification No. 6027(S) dated 30.4.2008, whereby gradation list of Assistant Engineers of Road Construction/ Building construction Department, who were allocated Bihar Cadre, was published and objections were invited from the aggrieved party. It is alleged by the Petitioners that in this notification, for fixing inter se seniority of directly recruited, Assistant engineers, two contradictory criteria have been fixed in Clause (iii) and Clause (iv) of the covering letter. Clause (iii)- Merit promotion in the panel has been the basis for deciding inter se seniority in the case of direct recruits, but in Clause (iv)- it has been indicated that in the case of direct

recruits if recruitment of Assistant Engineers has been made in different years from the same panel, then their seniority will be fixed according to their specific year of appointment. Petitioners have alleged that it is contradictory to each other and violative of the statutory rule dated 12.12.1934.

13. Counsel for the Petitioners have submitted that principle for determining the inter-se seniority of directly recruited Officers had already been issued by appointment Department in memo No. 6509-A dated 12.12.1934. This Government order by virtue of notification published on 15.4.1950, has become rule made under Article 309 of the Constitution of India and thus has to be followed. In Paragraph 2(B) of the order dated 12.12.1934 it has been laid down that when direct recruits have been placed in order of merit by Selection Board, full consideration should be given to the opinion of the Board. Petitioners have also tried to make out a case of notional seniority giving reference to Government circular No. 15784 dated 26.8.1972. It has been submitted that Clause 3 (i) (C) of 1972 circular issued by Personnel and Administrative Reforms Department, provides for mode of deciding seniority. Clause 3(i) (C) provides that appointment made in same transaction, at the same time, will be placed at same pedestal. The expression " at the same transaction", refers to the decision of the competent authority to fill certain number of posts through direct recruitment. In such cases, if on account of procedural delay, appointments are made, later on, all such appointments shall be considered in the same transaction. The question is whether appointment of Petitioners can be taken to be an appointment at the same time, in the same transaction.

14. Counsel for the Respondent has submitted that facts indicate that the Petitioners' appointment cannot be deemed to be an appointment in the same transaction. The last appointment in the same transaction of general category candidate was appointment of Rajesh Kumar Mishra. Posts against which Petitioners are finally appointed, were advertised through different advertisement i.e. advertisement No. 1 of 1988, 53 of 1988 and 1 of 1994. Last 72 posts in the reserved category occurring prior to 31.12.1987, though earlier advertised through Advertisement No. 93 of 1985, subsequently became part and parcel of Advertisement No. 1 of 1988 and another advertisement. Since these reserved vacancies could not be filled by reserved category candidates, finally they were de-reserved and the Petitioners being general category candidates, were appointed. Petitioners were appointed in subsequent transaction of the recruitment, as such their appointment cannot be considered in the same transaction. In fact, none of these circulars provide for preparation of gradation list on the basis of marks position-cum-seniority position as prepared by the BPSC. Clause 3 (i) (c) of 1972 circulars, contrary to the submissions of the Petitioners' counsel, provides that seniority of direct recruits shall be according to their respective position as recorded by the competent authority at the time of their first appointment. So far ad-hoc or earlier appointment to the post is concerned, that is not to be considered for determining inter-se seniority. Seniority shall be drawn on the basis of the date of appointment in the respective

cadre. Petitioners' assertion that list of recommendation by the BPSC to the State Government should be considered for determination of seniority is unsupported by any statutory or legal provision. The legal provision as arises in the rules for determination of seniority is the date of entry of an incumbent in the cadre. Inter-se seniority, can be decided, following any other principle, only when rule either prohibits or permits otherwise. The date of substantive appointment can only be the basis for reckoning inter-se seniority. Seniority cannot be reckoned retrospectively either from the date of occurrence of the vacancy or from the date of selection. Since Petitioners were appointed much later to the Respondents, their seniority can be considered from the date of appointment. There is no reason for holding that the gradation list dated 3.7.2008 has been prepared illegally, arbitrarily without considering the legal proposition in this regard.

15. Counsel for the Petitioners have also submitted that their seniority should have been decided as per their position in the merit list dated 15.6.1987, annexed as Annexures 2,4 and 5 with the writ application, in terms of circular dated 12.12.1934. On perusal of the forwarding letter of the so-called panel dated 15.6.1987 issued by the Secretary BPSC, it transpires that it was not a merit list, but a list of all such candidates, who faced interview, pursuant to advertisement No. 93 of 1985. This list was sent to the Government by the BPSC just to intimate about total number of candidates who participated in the interview. It was not a list prepared in order of merit, observing reservation policy of the Government. In fact in the so-called merit list dated 15.6.1987, simply names of all candidates and their marks have been mentioned. On the basis of such panel, which is not a merit list, there was no reason for deciding the seniority of the Petitioners.

16. The grievance raised by some of the Petitioners, specially Petitioner No. 2 of CWJC No. 10101 of 2009 and CWJC No. 1768 of 2005 relates to conditions imposed in the last paragraph of their appointment letters. Counsels appearing for these Petitioners have submitted that their appointment letters are identical to the appointment letters of all other appointees, appointed against 72 reserved vacancies. However, in the last Paragraph of their appointment letters, an undertaking has been sought from them that they will not claim seniority on the basis of their position in the merit list published by the BPSC. They will not claim any financial benefit with retrospective effect and in case these conditions are not acceptable, these letters will not be treated as a letter of appointment. Petitioners have given their undertaking at the time of their appointment but their plea is that despite their undertaking, these conditions are not binding upon them. They have prayed for quashing of the last paragraph of the appointment letter claiming equality, and also that conditions imposed in their letters of appointment are violative of Article 14 and 21 of the Constitution of India. Petitioners have placed reliance on paragraph 28 of *Olga Tellis and Others Vs. Bombay Municipal Corporation and Others*, and it had been submitted that State has to show the legality of its administrative action. The State's action by way

of imposing such conditions, are highly arbitrary, unreasonable, unequivocally and violative of Articles 14 and 21 of the Constitution, as such fit to be quashed.

17. Counsel appearing for Respondents on the other hand have submitted that facts in Olga Tallies case was completely different and as such this decision has no application in the present case. The Respondents have placed reliance on decision reported in Shri Lachoo Mal Vs. Shri Radhey Shyam, and submitted that as a general rule every person has right to waive any advantage. Petitioners have consciously agreed to abide by the condition and waived benefits which they could have claimed in case would not have given undertaking. Since they themselves have shown their eagerness to abide by those conditions now they cannot make any complaint. I find that the State in capacity of an employer is empowered to put some condition in the interest of administration as well as for the benefits of its" employees.

18. Petitioners in CWJC No. 1768 of 2005 and Petitioner No. 2 in CWJC No. 10101 of 2009 were appointed much later, in the year 2007, on account of non-joining of some of the candidates, whose names had been recommended for appointment against 72 reserved vacancies. The last candidate in the general category was appointed in pursuant to advertisement No. 93 of 1985 in the year 1989. Petitioners were appointed in a different transaction much later, and in between more than 300 Assistant Engineers had been appointed through different advertisements. The State as an employer had apprehension that belated appointees of Advertisement No. 93 of 1985 might start claiming financial benefits and the benefit of the seniority. Such unreasonable claim would have caused serious administrative problem. It could have also caused a threat to seniority of several Assistant Engineers born in the cadre much earlier to the Petitioners. This would have created clash of interest between the Petitioners and the Assistant Engineers appointed in between 1989 up to 2007, just in order to prevent such situation, condition was imposed in the appointment letters of the Petitioners. Petitioners had option either to accept it or not to accept it. They themselves chose to give undertaking. Now cannot be allowed to retract from their undertaking. There is no reason for holding the conditions imposed is an arbitrary exercise of power and are violative of Articles 14 and 21 of the Constitution of India.

19. Petitioner in CWJC No. 1768 of 2005 had initially filed the writ application for a direction to the Respondents to regularize him on the post of Assistant Engineer with effect from 1987 since, the date he is continuing on the post of ad-hoc basis. Prayer was subsequently amended by filing IA No. 6545 of 2007 as during the pendency of the writ application he was appointed on regular basis on the post of Assistant Engineer in Road Construction Department by notification dated 3.4.2007. The additional prayer made by the Petitioner was to regularize his ad-hoc service and to fix his seniority in the gradation list granting benefit of ad-hoc appointment. He has also prayed for granting benefit of ACP as well as the other consequential benefits. This Petitioner had been appointed against one

left out vacancy, in view of non-joining of one person, whose name appeared at serial No. 490. The 1972 circular is very much clear on this point that for fixing inter-se seniority previous experience of ad-hoc appointment cannot be considered, Otherwise also the appointment of Petitioner vide notification dated 3.4.2007 was a fresh appointment. The claim of the Petitioner regarding fixing his seniority considering the experience of ad-hoc appointment of 1987 has no merit and its is rejected. Some Intervenors have also made similar prayer, for giving seniority on the basis of their ad-hoc appointment. There claim is also rejected like the prayer of Petitioner in CWJC No. 1768 of 2005.

20. For the reasons stated above, I do not find any reason to quash either whole or part of the seniority list dated 3.7.2008, whereby the Petitioners have been relegated to lower position in the gradation list. There is no reason for holding that the gradation list has been prepared, ignoring Governments" statutory rules contained in order dated 12.12.1934, and ignoring the position of Petitioners in the merit selection list prepared by the BPSC. In fact no such merit selection list was prepared by BPSC. In absence of any such merit list the Respondent authorities were not bound to consider Petitioners" position in that merit list for fixation of seniority. So far Petitioners" appointment against earlier vacancy is concerned, that can not be a guiding factor for deciding their seniority, as appointment has not been made in the same transaction. There is no reason for Petitioners" for claiming notional seniority. Since Petitioners" were appointed completely in different transactions, date of their appointment will be relevant for reckoning their seniority. The State Government has already come with notification No. 6027 (S) dated 30.4.2008 which lays down the mode for fixing inter-se seniority in Clause 2(iv), which provides that if appointment from one panel is made in different years, then those appointees will be allotted seniority, according to specific years of their appointment, in accordance with merit.

21. For the reasons stated above, I do not find any merit in any of the writ applications Different prayers made by the Petitioners in these writ applications have no merit and all these writ applications are dismissed.