

(2012) 04 MP CK 0100

In the Madhya Pradesh High Court

Case No : Writ Petition No. 2742 of 2012 (S)

Dr. Ramesh Chandra Dixit

APPELLANT

Vs

The State of Madhya Pradesh

RESPONDENT

Date of Decision : 04-04-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 309, 311

General Conditions of Service Rules, 1993 — Rule 12(4)

Madhya Pradesh Civil Services (General Conditions of Service) Rules, 1961 — Rule 12(4)

Madhya Pradesh Educational Service (Collegiate Branch) Recruitment Rules, 1967 — Rule 13, 13(5), 15, 15(5), 5

Madhya Pradesh Educational Service (Collegiate Branch) Recruitment Rules, 1990 — Rule 11, 12, 13, 14, 15

Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 — Section 2

Citation : (2012) 3 MPHT 86

Hon'ble Judges : Rajendra Menon, J

Bench : Single Bench

Advocate : Rajendra Tiwari, with Mr. L.C. Patne, Mr. Rajendra Mishra, Mr. T.K. Khadka and Mr. Abhay Pandey, for the Appellant; Sanjay Dwivedi, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

Hon"ble Shri Justice Rajendra Menon

1. As common questions of law and fact are involved in all these 111 petitions, they were heard and are being decided by this common order. For the sake of convenience, pleadings and documents filed in Writ Petition No. 2742/2012(S) - Dr. Ramesh Chandra Dixit Vs. State of MP and Another, is being referred to in this order. Petitioners, who are appointed in the Higher Education Department of the State of Madhya Pradesh in the year 1986, 1987 and 1989 under Rule 13(5) of the MP Educational Services (Collegiate Branch) Recruitment Rules, 1967 [hereinafter referred to as the "Rules of 1967"] claim grant of senior pay scale

and selection grade in accordance to the provision of the Schemes and Circulars issued by the University Grants Commission and as adopted by the State of Madhya Pradesh and incorporated in the M.P. Educational Service (Collegiate Branch) Recruitment Rules, 1990 [hereinafter referred to as the "Rules of 1990"].

2. It is the case of the petitioners that they have completed eight years of service in the cadre of Assistant Professors and are entitled to senior scale and thereafter selection grade in accordance to the Rules, Circulars and the Scheme formulated by the UGC and implemented by the State Government.

3. Before advertizing to consider the merits of the matter, certain facts with regard to history of the litigation may be taken note of. Claiming the said benefit one Dr. (Smt) Seema Raizada and other Assistant Professors, who were appointed in accordance to the provisions of Rule 13(5) of the Rules of 1967, normally known as "emergency appointees", claimed same benefit for grant of senior pay scale and selection grade, and when the benefit was not extended to them, they filed an application before the State Administrative Tribunal, MP. The Tribunal allowed the application and directed for considering the case of Dr. (Smt) Seema Raizada and others for grant of benefit. Aggrieved by the order passed by the State Administrative Tribunal, a writ petition was filed by the State Government before a Division Bench of this Court, in the case of State of MP Vs. Dr. (Smt) Seema Raizada, Writ Petition No. 4863/2001. It was the case of Dr. (Smt) Seema Raizada in the aforesaid proceeding that she was appointed on the post of Assistant Professor under the emergency appointment provision contained in Rule 13(5) of the Rules of 1967, she was selected by the Public Service Commission and an appointment order after such selection was issued on 22.12.1997. She was awarded a PhD on 7.2.1982. In the meanwhile, State Government issued Circulars on 21.3.1989, 12.2.1992 and 11.10.1999 in the matter of awarding senior grade pay scale to Assistant Professors holding the Degree of PhD or otherwise. A qualifying period for placement in the senior pay scale was indicated in these circulars i.e... 8 years of service after regular appointment, and it was the case of Dr. (Smt) Seema Raizada and others that for the purpose of considering the services rendered by them to qualify for the grant of senior pay scale, the date of their initial appointment under Rule 13(5) should be taken into consideration and not on the basis of their appointment after clearing the selection from the PSC. The State Administrative Tribunal accepting the contentions of Dr. (Smt) Seema Raizada allowed the Original Application bearing No. 1763/2000 vide order-dated 26.2.2001, wherein Dr. (Smt) Seema Raizada was directed to be granted the senior pay scale with effect from 7.2.1992 i.e.... the date of which acquired the PhD Degree. The writ petition, as indicated hereinabove, was filed before the Division Bench by the State Government challenging the aforesaid order of the Tribunal. The Division Bench on 10.8.2005 found that Dr. (Smt) Seema Raizada was appointed to the post of Assistant Professor vide order-dated 17.12.1986 in accordance to Rule 13(5) of the Rules of 1967, the appointment was made after issuance of advertisement and following a selection process as contemplated under the Rules and,

therefore, it was held that grant of senior pay scale and selection grade by the Tribunal was in order and the Division Bench refused to interfere into the matter. The writ petition was therefore dismissed. State Government being aggrieved by this decision approached the Hon''ble Supreme Court and the Supreme Court dismissed the SLP filed by the State Government in the case of Dr. (Smt) Seema Raizada on the ground of delay, but left the legal question open to be considered subsequently.

4. After following the law laid down in the case of Dr. (Smt) Seema Raizada, various other cases were filed before the Tribunal and after winding up of the Tribunal, directly before this Court under Article 226 of the Constitution and when a petition bearing W.P. No. 807/2007(S) - Dr. Sandhya Prasad Vs. State of MP, was allowed by a Single Bench of this Court on 13.7.2007, a writ appeal was filed by the State Government being Writ Appeal No. 599/2008 before a Division Bench of this Court u/s 2 of the M.P. Uchha Nyayalaya (Khand Nyayapeeth Ko Appeal) Adhiniyam, 2005. The Division Bench again took note of the judgments, the averments made by the State Government and the question of law was again reconsidered, and by a common order passed on 11.2.2010, more than 25 writ appeals challenging orders passed by the learned Single Bench were dismissed and after following the law laid down in the case of Dr. (Smt) Seema Raizada, benefit was directed to be granted to the Assistant Professors. Subsequently, various writ petitions were allowed by this Court, Writ Appeals were dismissed and after dismissal of the Writ Appeals, matter travelled to the Supreme Court at the instance of the State Government. In all these writ petitions, 111 in number, which is being heard collectively, SLPs were filed before the Supreme Court by the State Government and at the time of hearing of this SLPs, it seems that voluminous documents were filed by the State Government in support of their contention and in rebuttal the Assistant Professors also filed various documents. In view of the fact that voluminous documents were filed before the Supreme Court, the Hon''ble Supreme Court thought it appropriate to remand the matter back to the High Court for fresh disposal in accordance with law and liberty was granted to the parties to produce all the documents on which they want to rely upon. The Hon''ble Supreme Court further directed the Chief Justice to entrust the matter to a Bench at the Principal Seat, Jabalpur, so that all the matters can be decided by a common order.

5. In pursuance to the remand order made by Hon''ble Supreme Court on 1.12.2011, all these matters were placed before a Division Bench of this Court and Hon''ble the Acting Chief Justice, who headed the Division Bench, vide order-dated 9.2.2012 directed for listing all these cases on 13.2.2012 before this Bench and the parties were directed to complete their pleadings by 28.2.2012 and a request was made to this Court to decide the matter at an earlier date. It is in the backdrop of the aforesaid factual aspects of the matter that all these cases are placed for hearing before this Bench and now the matter has to reconsidered and decided afresh in accordance with law, as directed by Hon''ble Supreme Court in the remand order passed on 1.12.2011. Accordingly, the writ petitions,

which were originally filed before the State Administrative Tribunal or before this Court and which were heard and decided in the light of the law laid down earlier in the case of Dr. (Smt) Seema Raizada, are now being heard and decided afresh on the basis of the submissions made and the additional documents and material adduced at the time of hearing.

6. Factual aspects of the matter are not in dispute in the cases in hand. It is an admitted position that all the petitioners herein were appointed as Assistant Professors in accordance to the provisions of Rule 13 (5) of the Rules of 1967. Advertisements were issued in the year 1986, 1987 and 1989 respectively and they are Annexure P/14 bearing advertisement No. 1/86, 2/89 and 1/89. It was indicated by the State Government that as list of eligible candidates for appointment as Assistant Professors prepared by the Public Service Commission is not available, therefore, the State Government is resorting to the provisions of emergency appointment as contained in Rule 13(5), of the Rules of 1967. Advertisements were issued in the newspaper throughout the country and applications received were processed in accordance to the procedure contemplated in Rule 13(5). The advertisement was issued as per sub-clause (a) of Rule 13 (5), applications from candidates throughout the country were received in Schedule V of the Rules; applications were registered and tabulated as per the criteria laid down in sub-rule (c) of Rule 13(5). Thereafter, a Committee was constituted, which scrutinized the applications and based on the criteria laid down in sub-clause (c) of Rule 13(5) in accordance to the marks secured by the candidates in the qualifying examinations namely: MA, MSc, M.Com etc, a merit list was prepared and the appointments were made in accordance to the said merit list. In all between the year 1986 to 1989, more than 1300 such appointments were made as no selection process was held by the PSC for more than 12 years from 1976 upto 1989.

7. As the appointments in question were made in accordance to Rule 13(5) of the Rules of 1967, at this stage it would be appropriate to take note of the said rule, which is reproduced herein under:

13. List of candidates recommended by the Commission:

Xxx xxx xxx xxx

Xxx xxx xxx xxx

(5) Emergency appointments:- If Commission's panel of selected candidates is not available, the posts may be filled by emergency appointments in the following manners:-

(a) an advertisement shall be issued by Government;

(b) Applications for emergency appointments shall be submitted in the form prescribed in Schedule V.

(c) Applications received shall be registered and tabulated according to the

following criteria:-

Category

(1)

Qualifications

(Division in M.A/M.Sc/M.Com) (2)

A

(i) I Plus Ph.D plus experience of teaching for atleast 6 months in a Government College of MP.

(ii) I Plus Ph.D.

B

(i) II Plus Ph.D plus experience of teaching for atleast 6 months in a Government College in MP;

(ii) II Plus Ph.D.

C

(i) I Plus experience of teaching for atleast 6 months in a Government college of MP;

(ii) I.

D

(i) II Plus experience of teaching for atleast 6 months in a Government college of MP;

(ii) II.

The names will be arranged in each sub- category according to the marks secured by the candidates at the M.A/M.Sc/M.Com Examination.

Provided, if and when Public Service Commission panel for these subjects is available, these teachers will be liable to be removed without notice.

It is clear from the aforesaid that the appointment in question was subject to the condition that as and when candidate selected by the PSC are made available, the incumbents appointed under Rule 13 (5) would be removed from service. Appointments made continued and all the petitioners qualified in the subsequent process of selection conducted by the PSC and their names were incorporated in the list recommended by the PSC and they continued in service. In the meanwhile, the Rules of 1990 came into force with effect from 31.8.1990 and in the said rule also the provisions for emergency appointment as contained in Rule 13(5) was incorporated in identical and similar terms vide Rule 15. It may also be taken note of that all the appointments made as per the advertisements were

on vacant substantive posts as notified in the Rules of 1967, the roster system was followed and as per the rules for reservation after adhering to the reservation roster and quota, appointments were made against the substantive vacant post in the then existing pay scale of Rs. 700-40-900-50-1300. After such appointments all the petitioners were granted increments in the pay scale and all other benefits as is granted to a regularly appointed candidate.

8. While all the petitioners were so working after their appointment under Rule 13(5) of the Rules of 1967 and most of them acquired a Degree of M. Phil or were awarded Ph. D, the UGC came out with a scheme for revision of pay scales and for fixation of pay and various other measures for maintaining the standard in Higher Education. The revised pay scale and scheme was made effective by the UGC with effect from 1.1.1986 and in the aforesaid scheme a provision for career advancement was incorporated. It was indicated in the scheme that every lecturer will be placed in a senior scale of Rs. 3000-5000/-, if he or she has completed 8 years of service after regular appointment, provided they have participated in two refresher courses and certain other conditions. The Scheme was circulated and various provisions were made for constituting a Screening Committee for evaluating the claim of employees for grant of senior pay scale. In accordance to the aforesaid Scheme formulated by the UGC, the State Government implemented it by circular dated 21.3.1989, 12.2.1992 and 10.10.1999. In all these circulars, various provisions were made for the purpose of granting senior pay scale and the selection grade. In the Circular dated 12.2.1992, for considering the claim of an employee for grant of higher pay scale and selection grade, the following conditions were incorporated:

- (i) that the post held must be equivalent and carrying the same pay scale;
- (ii) the qualifications of the post held should not be less than the prescribed qualification by the UGC for the post of lecturer;
- (iii) at the time of appointment on the earlier post on which service is to be counted an incumbent must possess the minimum qualification prescribed by the UGC;
- (iv) appointment on the post must have been made by the prescribed selection procedure by the State Government; and,
- (v) the appointment should not be purely adhoc or as against leave vacancy for less than one year.

However, even before the said circular was issued, the Rules of 1990 itself was amended and in Schedule V under Rule 15, a Note was appended wherein a provision for grant of senior pay scale and selection grade pay scale was incorporated in the Rules and, therefore, the provision for grant of senior pay scale and selection grade became part of the statutory rule framed under Article 309 of the Constitution.

9. As already indicated hereinabove, all the petitioners were issued with

appointment orders said to be "regular appointment" after they had cleared the selection process conducted by the PSC and in certain cases the employees were regularized on the basis of the MP Regularization of Adhoc Appointment Rules, 1987, 1988, 1990 etc.

10. Case of the petitioners herein are that they were appointed in accordance to a procedure contemplated under a statutory rule formulated under Article 309 of the Constitution i.e.... the Rules of 1967, their appointments even though termed as an emergency appointment was after following the procedure prescribed under the statutory rules and therefore, it is their case that it is a regular appointment in accordance to the rules prescribed and the words "emergency" used is a misnomer. It is stated that after their appointment under Rule 13(5) of the Rules of 1967, the petitioners were not treated differently. They were appointed against sanctioned vacant posts available and in a regular pay scale i.e... 700-1300, which was revised to 2200-4000 with effect from 1.1.1986, and to 8000-13,500/- with effect from 1.1.1996. They were granted annual increments from their initial date of appointment, they were not appointed in any consolidated fixed salary, but they were appointed in a running pay scale as contemplated under the Rules of 1967 and revised from time to time. After appointment they were granted due increment and in the case of such of the petitioners, who obtained additional qualification of M.Phil or Ph.D, they were given benefit of one additional increment in accordance to the directions of the UGC. For example, it is stated that Dr. R.C. Dixit in Writ Petition No. 2742/2012 was holding a M.Phil Degree at the time of his initial appointment and, therefore, by granting him one additional increment for this qualification, his pay was fixed at Rs. 2275/- as on 23.12.1987, in the revised pay scale 2200-4000 and after he was selected by the PSC vide order-dated 6.9.1993 - Annexure A/6, he was kept on probation for a period of two years and while so appointing him on 11.9.1993, in the pay scale 2200-4000, his pay was not fixed in the basic of the scale, but his pay was fixed keeping in view all the increments already earned by him as an emergency appointee and his pay was fixed in the appropriate stage. The pay fixation done in the case of Dr. Dixit is demonstrated in page six of the additional rejoinder filed and this is done only to contend that even after the appointment on 11.9.1993, after clearing the selection process undertaken by the PSC, the employee concerned was not treated to be a new incumbent, but treating him to be continuing in service from the initial date of his emergency appointment, pay was fixed granting him the benefit of the entire service rendered.

11. It is also pointed out that when the employees were appointed as an emergency appointee, their service-books were prepared from the initial date of appointment and they were given the benefit of not only increment, but orders were passed to treat their service as qualifying services for the purpose of granting them retiral benefit under the MP Civil Services (Pension) rules, 1976, they were made members of the GPF, their contributions were deducted from the initial date of appointment, confidential reports were prepared from the initial date of appointment as an emergency appointee and even in cases of some of

the employees, additional charge of Principal was given to them as and when required. They were granted the benefit of all kinds of leave under the MP Civil Services (Leave) Rules 1977, and treating them to be a regular government servant from their initial date of appointment, all service benefits accruing to a regular appointee/government servant was extended to the petitioners from their initial date of appointment as an emergency appointee. Accordingly, it is a case of each of the petitioners that their initial appointment in the year 1987-87 or 1989, even though termed as an emergency appointment, it was a regular appointment to the department of higher education in accordance to the Rules of 1967, they were appointed against regular vacant post, on their appointment they were given regular pay scale and increments and treating them to be regular appointees benefit of leave of all kind, preparation of service book, pensionary benefits and even deduction of provident fund contribution were made. Accordingly, it is emphasized that their appointment was on regular basis and by creating an artificial embargo and treating the petitioners to be emergency appointee, different from a regular appointee under the Rules, the benefit of senior scale and selection grade is denied to the petitioners. It is the case of each of the petitioners that as they are regularly appointed in accordance to a Rule framed under Article 309 of the Constitution, merely because their appointment is in an emergency clause contemplated in the Rule, the same is neither an adhoc arrangement nor a stop gap arrangement. Infact, it is a regular appointment in accordance to the Rules and the respondents cannot treat the appointments as adhoc or officiating arrangement. Pointing out the difference between an "adhoc appointee" and an "emergency appointee", the benefits to be granted to an adhoc appointee and an emergency appointee and emphasizing that an emergency appointment is also made in accordance to a mode prescribed in the Recruitment Rules and, therefore, it is a regular appointment petitioners contend that they are entitled to the benefit of considering their case for grant of senior pay scale in accordance to the Rules.

12. During the course of hearing various averments were made to show that emergency appointment made under the Rules of 1967 is different from an adhoc appointment or officiating arrangement or a stop gap arrangement and by treating the appointment to be an adhoc or stop gap arrangement benefit cannot be denied to the employees/petitioners.

13. Inviting my attention to an affidavit filed by the Officer Incharge of the State Government before the Hon"ble Supreme in SLP(C) No. 17616/2010 - Annexure P/20, indicating that an emergency appointee appointed under Rule 13(5) of the Rules of 1967 is not an adhoc appointment and it is different from an adhoc appointment, support was sought to be derived to the aforesaid contention. Further contending that the administrative instructions and circulars issued and relied upon during the course of hearing also help the case of the petitioners, relief was sought for.

14. Finally, it was pointed out that the respondents have acted in a

discriminatory manner. It is stated that even prior to 1986, Assistant Professors were appointed on emergency basis, but in the cases of appointments made prior to 1986, the initial appointment as emergency appointment has been counted for the purpose of granting higher pay scale or selection grade. It is stated that in the cases of Shri Satish Chandra Gaur (Political Science), Shri B.G. Gautam (Hindi), Dr. Devi Singh (Physics), Dr. Umakant Mishra (Physics), Shri C.P. Agarwal (Physics), Dr. K.S. Dangi (Economics), Shri R.K. Shivhare (Commerce) and Shri Nanuram Labana (Law), vide orders - Annexures P/27 and P/28, even though all these persons are appointed on emergency basis under Rule 13(5), they have been granted senior scale or selection grade by counting their services from the initial date of appointment. It is pointed out that by treating appointments prior to 1986 differently, class is being created which is violative of Article 14 of the Constitution. That apart, specific examples of 2 or 3 employees have been pointed out in paragraph 14 of the additional rejoinder to contend that in cases of influential persons, the orders passed by the Court has been implemented and it is, therefore, stated that in the department now two classes of Assistant Professors have come into existence. Even though all these Assistant Professors were appointed initially under Clause 13 (5) as emergency appointees and they were subsequently appointed on probation for two years and thereafter confirmed on clearing the selection process conducted by the PSC, in the cases of certain employees the benefit of counting their services from the initial date is granted for the purpose of considering their cases for grant of senior pay scale or selection grade, but in the cases of the present petitioners similar benefit is denied as a result within the same category of employees, different class is being carved out, which is impermissible and contrary to the mandate of Article 14 of the Constitution.

15. Accordingly, in sum and substance it is the case of the petitioners that the respondents cannot behave in the manner done and in doing so, they have committed grave error. It is stated that the judgment rendered earlier by the Division Bench of this Court in the case of Dr. (Smt) Seema Raizada (supra) and Dr. (Smt) Sandhya Prasad (supra) has considered all these aspects, and the law has been correctly laid down in these cases. Prayer made is that all the petitions be allowed and by counting the services rendered by the petitioners from the initial date of appointment as an emergency appointee, the benefit be granted to them.

16. Shri L.C. Patne, learned counsel who advanced arguments in case of Dr. R.C. Dixit, apart from making the aforesaid contentions pointed out that appointments have been made on regular basis after following the reservation roster and as no selection was done by the PSC right from the year 1976, all the petitioners were appointed in the substantive vacancies. Referring to the orders of appointment issued initially at the time of so-called emergency appointment and subsequently in the year 1991 after selection by the PSC, Shri Patne points out that the tenure of both the appointments and the conditions are similar and there is no change. On the aforesaid basis, he tried to contend that the language of the appointment

order is not conclusive, but the matter has to be considered after evaluating the totality of the circumstances. He further pointed out that under the MP General Conditions of Service Rules, 1961, a provision for promotion and grant of seniority is contemplated and Rule 12(4) of the said Rule with regard to seniority reads as under:

(4). Seniority of Adhoc employees:- (a) A person appointed on adhoc basis shall not get any seniority till the regularization of his services.

(b) If a person is appointed on adhoc basis by substantially following the procedure laid down by the Recruitment Rules and the appointee continues in the post uninterruptedly till the regularization of his service in accordance with the rules, the period of officiating service shall be counted for seniority.

It is argued by learned counsel that if the period of officiating service can be counted for grant of seniority under the aforesaid Rules, there is no reason for counting the service of the petitioners also after emergency appointment as a service for the purpose of grant of senior scale. It was further submitted by him that when certain words are not defined in the statutory provision, the ordinary dictionary meaning of the words can be considered for determining the meaning. Accordingly, he submitted that as the word "regular appointment" is not defined, the ordinary meaning of the word "regular" should be taken note of and its meaning interpreted. In support of this contention he invites my attention to certain principles laid down in this regard in the case of Rudra Kumar Sain and Others Vs. Union of India and Others 2000 AIR SCW 2945. Thereafter, inviting my attention to the provisions of Rule 5 of the Rules of 1967, pertaining to constitution of service; Rule 7 pertaining to methods of recruitment and the provisions of Rules 4 and 6 of the Rules of 1990, it was emphasized by him that all the petitioners are members of the MP Educational Service (Collegiate Branch) Gazetted Service and, therefore, the benefit cannot be denied to the petitioners. It is argued by him that persons recruited to the service in accordance to the provisions of these Rules as stipulated in sub-rule (3) of Rule 5 of the Rules of 1967 would show that when the recruitment is as per the provision of Rule 13(5), it is a recruitment in accordance to the provisions of these Rules. Further, referring to the provisions of Rule 4 of the Rules of 1990, pertaining to constitution of service, it was argued by him that the sub-clause (2) of this Rule should be harmoniously construed and the words "except on adhoc and emergency basis" should refer to the emergency appointment other than those contemplated under the Rules of 1967 or Rules of 1990. Inviting my attention to certain principles laid down by a Full Bench of this Court in the case of State of Madhya Pradesh and Another Vs. Puranlal Nahir 2012 (1) MPHT 375 Shri L.C. Pante, learned counsel for the petitioner, canvassed the contention of harmonious construction.

17. Shri Rajendra Tiwari, learned Senior Advocate appearing for some of the petitioners, also canvassed similar contentions, by referring to the meaning of the word "officiating" as appearing in the Fundamental Rules and the

interpretation of these words made by a Bench of this Court in the case of Bherusingh Vala Bamniya Vs. State of MP, Bhopal and Others 1986 MPLJ 617, argued that the appointment of the petitioners are on regular basis and they are entitled to similar benefit. Learned Senior Advocate also pointed out that the PSC has given no objection to the regular appointment of the petitioners and as the petitioners have worked continuously, they are entitled to the benefit.

18. Similar contentions were raised by Shri Rajendra Mishra and Shri Sanjay Sanyal, the other counsel who argued the matter. In support of their contentions, learned counsel for the petitioners placed reliance on the following judgments: G.P. Doval & Others Vs. Chief Secretary, Government of UP & Others 1984 SCC (L&S) 767; The Direct Recruit Class-II Engineering Officers' Association and others Vs. State of Maharashtra and others, State of West Bengal and Others Vs. Aghore Nath Dey and Others 1993 SCC (L&S) 783; L. Chandra Kishore Singh Vs. State of Manipur and Others 1999 SCC (L&S) 1460; S.K. Chopra Vs. State of MP and Others 1997 MPLSR 61 ; S. Sumnyan and Others Vs. Limi Niri and Others, Hansa Dutt Pandey & Others v. State of Uttarakhand and Others Writ Petition No. 187/2010, decided on 7.9.2011 by Uttarachal High Court (DB); Dr. (Smt) Seema Raizada v. The State of MP and Others O.A. No. 1763/2000, decided on 26.2.2001 by MP SAT; Narayanan Sankaran Mooss Vs. The State of Kerala and Another, O.P. Singla and Another Vs. Union of India (UOI) and Others, ; Food Corp. of India and Others Vs. Ashis Kumar Ganguly and Others, Abida Qureshi Vs. State of M.P. and another, B. Manmad Reddy and Others Vs. Chandra Prakash Reddy and Others, ; Union of India (UOI) and Others Vs. M. Mathivanan, State of Orissa and Others Vs. Saroj Kumar Jena, V.B. Prasad Vs. Manager, P.M.D.U.P. School and Others, ; P.D. Aggarwal and Others Vs. State of U.P. and Others, ; Ashutosh Gupta Vs. State of Rajasthan and Others, ; Rudra Kumar Sain and others (supra); Arun Kumar Chatterjee Vs. South Eastern Railway and Others, G.S. Gill and Others Vs. The State of Punjab and Others, and, D.P. Maheshwari Vs. Delhi Administration and Others AIR 1984 SC 153.

19. Refuting the aforesaid contentions and by referring to various circulars so also the Rules in question, Shri Sanjay Dwivedi -learned counsel for the State, argued that for grant of senior pay scale/selection grade, an Assistant Professor should have completed 8 years of service after regular appointment. It is emphasized that 8 years of service after regular appointment as stipulated in the Scheme formulated by the UGC in the year 1988 and adopted by the State Government and subsequently incorporated into the Rules of 1990 clearly mandates that an employee namely an Assistant Professor has to be regular appointed to the service in accordance to the requirement of the Recruitment Rules and any appointment done which is not in accordance to the Recruitment Rules cannot be a regular appointment. It is emphasized by learned counsel appearing for the State that under the Rules of 1967 and again in the Rules of 1990, two modes of appointment in the department are contemplated. It is pointed out that recruitment is to be done in accordance to the statutory rules and as the direct recruitment is by selection after due selection process

conducted by the State PSC, any appointment made without undergoing selection by the PSC would not be a regular appointment. It is the case of the State Government that an emergency appointment done under Rule 13(5) of the Rules of 1967 or Rule 15 of the Rules of 1990 is not a regular appointment as contemplated under the Rules. It is only an emergency measure undertaken for a special appointment and, therefore, it being not a regular appointment in accordance to the statutory rule, the petitioners cannot get any benefit of this appointment.

20. In sum and substance, it is the case of the State Government that an emergency appointee is nothing but a special appointment, adhoc in nature, and it is not a regular appointment as contemplated under the Recruitment Rules, it is the case of the State Government that the benefit of the service rendered under such appointment cannot be counted for the purpose of granting senior pay scale or selection grade. Referring to various circulars issued in this regard i.e... Dated 24.12.1998 & 27.11.1990 by the UGC and the State Government on 12.2.1992 and 21.3.1989, and the clarification given in these circulars, it was emphasized that the contention of the petitioners cannot be accepted and, therefore, the same be rejected.

21. As far as discrimination in the matter is concerned, it was tried to be emphasized that in cases of Dr. (Smt) Seema Raizada (supra) and Dr. (Smt) Sandhya Prasad (supra) and others, the benefit is granted to them because of the orders passed by the High Court and the SLPs being dismissed on the ground of delay and, therefore, it is stated that it cannot be treated as a precedent. Accordingly, on the aforesaid count, learned counsel for the State sought for dismissal of this writ petition. Further, Shri Sanjay Dwivedi submitted that if benefit is given to some other employees like Shri Satish Chandra Goud and Dr. Gautam erroneously, the petitioners" cannot claim similar benefit and negative equity cannot be a ground to claim the benefit.

22. I have heard learned counsel for the parties at length and perused the records.

23. Even though various orders were brought to the notice of this Court granting the benefit on previous occasions, but in the light of the directions issued by Hon"ble Supreme Court for deciding the matter afresh, the question is being considered without taking note of all these orders for the present. It may also be indicated that during the course of hearing, no voluminous circular or documents were referred to by the State Government and reference was made only to two circulars i.e.... the Circular dated 27.11.1990 issued by the UGC and the Circular dated 12.2.1992 issued by the State Government. Apart from this the only document referred to were the Rules of 1967 and 1990 respectively.

24. As far as the present petitioners are concerned, most of them have been appointed between the years 1986-1989 and the advertisements issued for their appointment available on record and filed as Annexure P/14 indicates that the

appointments were made in the year 1986, 1987 and 1989 respectively. All these appointments are issued in accordance to the provisions of Rule 13(5) of the Rules of 1967 and, therefore, it would be appropriate to take note of the said rule. The Rules of 1967 is enacted on the basis of the power conferred on the State Government under Article 309 of the Constitution. Mode of recruitment is contained in Rule 7 and it contemplates that recruitment to the service namely the MP Educational Service (Collegiate Branch) shall be in accordance to the method contemplated under sub-clause (a), (b) and (c) of Rule 7 (1). Under sub-clause (a) a provision is made for direct recruitment by selection. Under sub-clause (b) the recruitment is by promotion of members of the MP Collegiate Services from lower post cadre to higher post cadre; and, under sub-clause (c) it is by transfer of persons who are holding the post in substantive capacity as may be.

25. Under sub-rule (2) of Rule 7, the number of persons to be recruited under various clauses of sub-rule (1) are indicated and their percentage is shown in Schedule II alongwith the number of posts. Sub-rule (3) of Rule 7 contemplates that the number of persons to be recruited by each method shall be in accordance to the provisions of Schedule II and the percentage fixed thereunder. Sub-rule (4) of Rule 7 contemplates that notwithstanding anything contained in sub-rule (1), if the State Government is of the opinion that the exigency of service requires then after consulting the Commission namely the PSC, the State Government may appoint, adopt such methods for appointment other than those specified in the Rules. Rule 9 prescribes the eligibility conditions for appointment as direct recruits, the age, the educational qualification and other requirements are contemplated therein and they are also specified in the Schedule appended to the Rules. Under Rule 12, the procedure for direct recruitment by selection is indicated and under sub-rule (2), it is indicated that selection of candidates for the services shall be by the PSC after an oral interview. Thereafter, under Rule 13, list of candidates to be recommended by the Commission and the procedure is contemplated and sub-rule (5) of Rule 13 contains a provision for emergency appointment as already indicated hereinabove. If the Schedule to the Rules are taken note of, it would be seen that Schedule I indicates the number of post, which are included in service, its name and qualification alongwith pay scale. Schedule II prescribes the percentage and the manner in which the posts are to be filled up. Schedule III gives the qualification and age limit etc for appointment to the various posts; and, Schedule IV also prescribes the same criteria. In the Rules of 1967, in the Schedule to the Rules, there is no provision for grant of senior pay scale or selection grade.

26. Thereafter, the Rules of 1990 came into force with effect from 31.8.1990 and if these Rules are taken note of, it would be seen that it is para materia and exactly similar to the Rules of 1967. However, the most significant deviation in the Rules of 1990 is only with regard to the method of selection for direct recruitment through PSC. In the Rules of 1967, the selection was by an interview to be conducted by the PSC, but in Rule 11 to the Rules of 1990, the direct

recruitment is by a competitive written examination to be conducted by the PSC. The procedure for selection is under Rule 12 and the various modes of selection in this Rule are contemplated under Rules 11, 12, 13, 14 and 15. Under Rule 11, there is a provision for direct recruitment by competent examination for appointment on the post of Assistant Professors, Librarian and Sports Officer; and, under Rule 12 the direct recruitment for selection on the post of Professors are indicated. In Rule 13, the procedure for preparation of list of candidates recommended by the Commission is contemplated; and, under Rule 14 a provision for recruitment by absorption of persons already working in non-government colleges taken over by the Government is contemplated. In Rule 15, a specific provision for emergency appointment on the post of Assistant Professors, Librarians and Sports Officer are indicated and the procedure for appointment under this Rule is the same as is contemplated under Rule 13(5) of the Rules of 1967. The Schedule to the Rules are also identical except that in Schedule IV, a specific provision for grant of senior pay scale and selection grade is contemplated by appending a Note. For the purpose of granting senior pay scale, the provision of the Rule reads as under:

(A) For Senior Pay-Scale:- Assistant Professor/ Librarian/ Sports Officer will be placed in senior pay-scale of Rs.3000-5000 if he/she has (i) completed 8 years of service after regular appointment, or completed 5 years or 7 years of service in case of Ph.D or M.Phil degree holders, respectively, (ii) participated in two refresher courses/summer institutes, each of approximately 4 weeks duration or remained associated with appropriate continuing education programme, or comparable quality as may be specified by UGC; and (iii) consistently satisfactory performance appraisal report.

27. It is, therefore, clear on a complete scanning of both the Rules that emergency appointment is a method of appointment prescribed under the statutory rules framed under Article 309 of the Constitution and it is an admitted position that each of the petitioners herein were initially inducted into the department by following this procedure. It is not in dispute that an advertisement was issued by the department and the selection was made on all India basis and candidates from the entire country participated in the process of selection and after following the procedure contemplated under Rule 13(5) of the Rules of 1967, each of the petitioners herein was inducted into service from the merit list prepared as per the marks obtained by them in the qualifying examination and after following the criteria laid down in the Rules of 1967.

28. Even though it was stipulated in the order of their appointment that their services would be terminated on the appointment of the regular incumbent as per the select list to be prepared by the PSC, but the fact remains that without break in service even for a single day each of the petitioners continued to work and subsequently they were appointed on being selected by the PSC initially on probation and thereafter confirmed in service. It is not a case where appointment of the petitioners was made without following any procedure or process or

through back door entry methods. Appointments were made in accordance to some procedure prescribed in a statutory rule framed under Article 309 of the Constitution that also against vacant sanctioned post and after following the reservation roster.

29. The right of the petitioners to claim senior pay scale and selection grade is based on the scheme formulated by the UGC initially and subsequently introduced by the State Government by various circulars and ultimately given a statutory shape by incorporating it into the Rules of 1990 itself. If the provisions made by the UGC and the Rules framed by the State Government in this regard are taken note of, it would be clear that under both i.e.... the Scheme formulated by the UGC and the Rules framed by the State Government, the provision - completing 8 years of service after regular appointment is stipulated to be a necessary requirement for grant of benefit of senior pay scale. "Service after regular appointment" is, therefore, the key word to be taken note of, requiring consideration. Interpretation of these words is crucial for deciding the controversy involved in all these writ petitions.

30. Even though during the course of hearing of the writ petition, submissions were made with reference to the Circulars and clarifications issued by the Government and each of the party appearing tried to interpret the same to their advantage, for the present I am of the considered view that when a statutory rule is available, it would be appropriate to consider the rule and interpret it in its existing form and if the rule can be interpreted and a meaning of the Rule derived on such interpretation, then it is not necessary to advert to the circulars or the communications made, executive in nature for clarification of the Rules. Once the statutory Rule on the question is available, no circular, government order or administrative instruction whether it is issued by the State Government or the UGC can over-ride the provisions of the Rules made under Article 309 of the Constitution. That being so, I am of the considered view that the circulars and the instructions issued may be of not much help when the Rules itself contemplate a provision for grant of the benefit claimed by the petitioners.

31. As already indicated hereinabove under Note (a) to Schedule IV, the provision for grant of senior pay scale to Assistant Professors, Librarians and Sports Officers are indicated and it is stipulated that these officials will be placed in a senior pay scale of Rs. 3000-5000/-, if he or she fulfils the three conditions stipulated therein. The first condition is that the incumbent should have completed 8 years of service after regular appointment, or 5 years of 7 years of service in case of Ph.D or M.Phil Degree Holders. Apart from the aforesaid, an incumbent should have participated in two refresher courses, summer institutes each of approximately four weeks duration or should have remained associated with appropriate continuing education programme or comparable quality as may be specified by the UGC and finally has a consistent satisfactory performance appraisal report.

32. It is, therefore, clear that an incumbent to be eligible for grant of senior pay

scale should have completed 8 years of service after regular appointment or 5 years or 8 years of service in case of Ph.D or M.Phil Degree Holders. Service after regular appointment is the crucial condition in this provision and the question, therefore, would be as to whether the initial appointment of the petitioners under Rule 13(5) of the Rules of 1967 can be termed as regular appointment or not. That being the crucial question, it is thought appropriate to take note of the meaning of the word "regular appointment". Admittedly, petitioners' appointments are not back door appointment, they are appointed as per some provision contemplated under a statutory rule and, therefore, it is not a back door entry. The word "regular" has been defined under Law Lexicon, Second Edition, by P. Ramanatha Aiyer and the definition is so indicated:

"Regular": Webster defines "regular" to mean conformable to a rule; methodical; periodical. Regular is derived from "regula", meaning "rule", and its first and legitimate signification, according to Webster, is "conformable to a rule; agreeable to an established rule, law or principle, to a prescribed mode or according to established, customary forms.

In Black's Advanced Legal Dictionary, it is said to be "anything done which is referable to law". If the aforesaid definition is taken note of, it would be seen that anything done which is conformable to a rule or a methodology can be termed as "regular". It is also something which is as per an established rule or a prescribed mode or in accordance to a customary form. That being so, anything done in a regular manner, which is in accordance to some rule, method or procedure prescribed is "regular".

33. Supreme Court had the occasion to consider the question of meaning of the word "regular service". In the case of K. Madhavan and Another Vs. Union of India and Others (1987) 4 SCC 566, the expression "on a regular basis" was held to mean appointment to a post on a regular basis in contradistinction to appointment on adhoc or stop gap or purely temporary basis. Thereafter, it has been held that when the person is appointed on a permanent basis against a permanent vacancy, it can be an appointment on regular basis. An argument to the contrary to suggest that the expression on "regular basis" would only mean permanent appointment was negated by the Supreme Court in the aforesaid case. This judgment in the case of K. Madhavan (supra) was again considered by the Supreme Court in the case of Union of India and Others Vs. K.B. Rajoria, and in this case the question was as to how the words "two years regular service is to be interpreted". The words "regular service" in the Grade was also taken note of and definition of the word "regular" appearing in the Concise Oxford Dictionary 9th Edition was reproduced in paragraph of the aforesaid judgment, which reads as under:

(1) conforming to a rule or principle; systematic. (2) harmonious, symmetrical. (3) acting or done or recurring uniformly or calculably in time or manner; habitual, constant, orderly. (4) conforming to a standard of etiquette or procedure; correct; according to convention. (5) properly constituted or

qualified; not defective or amateur; pursuing an occupation as one's main pursuit.

Thereafter, on the basis of the aforesaid definition, the word "regular" was interpreted and it was held that the word "regular" does not mean actual. It was held that if something is done in accordance to the Rules, it could be "regular" and contrary thereto "irregular" i.e.... inconsistent to the principle of law. The judgment in the case of K. Madhavan (supra) was referred to and it was held that anything done in accordance to a prescribed Rule would be "regular".

34. In the present case, lot of emphasis was made at the time of hearing by the State Government to contend that appointment of the petitioners is not a regular appointment and the aforesaid contention was mainly on the ground that their appointment is not in accordance to the requirement of Rule 12, of the Rules of 1967. Rules of 1967 no doubt contemplates a provision for direct recruitment by selection under rule 12, but at the same time it also recognizes a method of appointment under Clause 13(5) and a prescribed mode for appointment under this Clause is contemplated. While considering as to whether an appointment is on adhoc basis or as a stop gap arrangement or whether it is a regular appointment, the mere use of the words like "stop gap" or "emergency" should not be a decisive factor. The decisive factor should be the procedure followed for appointment and the Rules and procedure if prescribed to be followed.

35. In the case of State of Uttar Pradesh and Another Vs. Dr. M.J. Siddiqui and Others, , a question arose with regard to recruitment and grant of seniority and one of the question which was to be considered by the Supreme Court in the said case was as to whether the appointments in question were not on substantive capacity or a temporary arrangement. It was held by the Supreme Court that mere use of the term "appointment on a temporary vacancy" by itself would not conclude the matter or lead to the irresistible inference that the appointment was not made in a substantive capacity. It was held by the Supreme Court that even a substantive appointment could be made on a purely temporary vacancy. In this case, it was held by the Supreme Court that in order to determine the nature of appointment, we are required to look into the heart and substance of the matter, the surrounding circumstances, the mode, manner and the terms and other relevant factors leading to the appointment. It is, therefore, clear that in the present case also to draw an inference with regard to the nature of appointment, the surrounding circumstances and the substance of the matter and all other relevant factors are to be looked into and a conclusion drawn. A conclusion cannot be drawn merely on the basis of the contention of the State Government that because the appointment is not under Rule 12 of the Rules of 1967, therefore, it is not a regular appointment or is an adhoc or stop gap arrangement. All the circumstances and the prevailing situation is to be looked into and a decision taken.

36. Article 16 of the Constitution creates a constitutional right to equality of appointment and employment in public office. Employment or appointment is,

therefore, required to be made in accordance to the mandate of Article 16 of the Constitution. In the case of Union Public Service Commission Vs. Girish Jayanti Lal Vaghela and Others, , a question arose before the Supreme Court with regard to a recruitment process to be undertaken as per the Rules framed under Article 309 of the Constitution and regularization to be granted to such recruitment to certain direct appointees, who had worked in the department for certain period of time. As per the Rules, regularization was to be granted to government servants and the question was as to whether a person appointed on a fixed salary for a fixed period on contract basis is a government servant or not. While considering the question, the import of Article 16 of the Constitution, the object of the said Article and the right to equality for appointment and the question of regular appointment to a post under the State or the Union was taken note of and in paragraphs 12 and 13, the following principle is laid down:

12. Article 16 which finds place in Part III of the Constitution relating to fundamental rights provides that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. The main object of Article 16 is to create a constitutional right to equality of opportunity and employment in public offices. The words "employment or appointment" cover not merely the initial appointment but also other attributes of service like promotion and age of superannuation etc. The appointment to any post under the State can only be made after a proper advertisement has been made inviting applications from eligible candidates and holding of selection by a body of experts or a specially constituted committee whose members are fair and impartial through a written examination or interview or some other rational criteria for judging the inter se merit of candidates who have applied in response to the advertisement made. A regular appointment to a post under the State or Union cannot be made without issuing advertisement in the prescribed manner which may in some cases include inviting applications from the employment exchange where eligible candidates get their names registered. Any regular appointment made on a post under the State or Union without issuing advertisement inviting applications from eligible candidates and without holding a proper selection where all eligible candidates get a fair chance to compete would violate the guarantee enshrined under Article 16 of the Constitution. (See: B.S. Minhas Vs. Indian Statistical Institute and Others,

13. Article 309 lays down that subject to the provisions of the Constitution, Acts of the appropriate Legislature may regulate the recruitment, and conditions of service of persons appointed, to public services and posts in connection with the affairs of the Union or of any State. The proviso to this Article confers power upon the President or the Governor, as the case may be, to make rules regulating the recruitment and the conditions of service of persons appointed to services and posts in connection with the affairs of the Union or the State. Article 311 affords several protections to persons employed in civil capacities under the Union or a State. In view of clause (2) of this Article, holder of a civil post under

the Union or a State cannot be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and he is given a reasonable opportunity of being heard in respect of those charges.

It is clear from the aforesaid principle that for appointment to the post under the State or the Union, if an advertisement is issued in a prescribed manner and if the eligible candidates are appointed after holding a selection given a fair chance of competition to all concerned, the appointment would be a regular appointment compared to an irregular appointment, which is dehors the Rules and procedure.

37. Article 309 of the Constitution empowers the appropriate legislature to frame rules to regulate recruitment to public service and the posts. Recruitment means enlisting by any method provided for inducting a person into public service, this would be recruitment. Appointment, selection, promotion, deputation are various modes of recruitment. When a Rule is framed under Article 309 of the Constitution and it lays down a procedure for recruitment, the procedure laid down in the rule is a regular mode for recruitment to public service. It is in the backdrop of the aforesaid principles that the case in hand has to be evaluated and a decision taken. By merely holding that the appointment is adhoc appointment or a stop gap arrangement or an emergency measure, it cannot be held that the appointment of the petitioners are not regular and, therefore, they are not entitled to the benefit. The question as to whether the appointment of the petitioners initially on emergency basis is a regular appointment or not is to be considered after taking note of various factors like the method followed, the rule or regulation, if any, from which the method is derived and various other factors.

38. The procedure for emergency appointment and the provision thereof is a statutory provision contemplated under Rule 13(5) and Rule 15 of the Rules of 1967 and the Rules of 1990. Appointment even on emergency basis is to the service of the Collegiate Branch of the Education Department and the recruitment even on emergency basis is on the post available as per the Schedule to the Rules i.e.... a vacant post as notified in the Schedule, and could not be filled up due to non-availability of list from the PSC. Even for appointment on emergency basis availability of post is a pre-condition and, therefore, the incumbent is appointed on a statutory prescribed substantive post. That apart, a regular advertisement by all modes at the national level is published and appointment is made on the post prescribed in the Schedule. The appointment is made by a duly constituted committee, which follows the procedure contemplated under the Rules for preparing a merit list. It may be taken note of that in the Rules of 1967 and upto 31.8.1990 there was no procedure for conducting a written examination. Selections were made on the basis of interviews conducted by the PSC even under Rule 12, of the Rules of 1967.

39. In the case of the present petitioners, therefore, the appointment preceded a prescribed procedure contemplated under the statutory rules and after they were

appointed on a substantive existing vacant post, their appointment was not as a stop gap arrangement on a consolidated salary, but it was in the pay scale prescribed under the statutory rules. Not only were they appointed on the pay prescribed in the statutory rules, but the benefit of increment in accordance to the prescribed pay scale, revision of pay scale from time to time and all other benefits accruing to a regularly appointed incumbent under Rule 12 was extended to the petitioners. Benefit of leave of all kinds under the leave rules, additional increment on acquiring extra qualification, benefit of provident fund and even posting on higher post on officiating capacity was extended to the petitioners. It is, therefore, a case where the petitioners for all practical purposes were treated as regularly appointed incumbents to the service of the department and treating them to be so appointed all service benefits as per the Rules were extended. It is not a case where the petitioners were inducted into the department by any irregular method or by adopting back door entry method or by a pick and choose discriminatory and arbitrary system of appointment. On the contrary, they are appointed in accordance to a mode prescribed under the statutory rules on existing substantive vacant post and all benefit of regular appointment to the said post was extended to them. That being so, the respondents cannot say that appointments of the petitioners were not regular. A regular appointment as indicated in the provision under Note to the Rules of 1990 for grant of senior pay scale will not only mean a regular appointment in accordance to Rule 12 of the Rules of 1967 and 1990, but would also include an appointment in accordance to any of the methods contemplated under the Rules. Even an emergency appointment in accordance to the provisions of Rule 13(5) of the Rules of 1967 and Rule 15 of the Rules of 1990 would be a regular appointment for the purpose of grant of senior pay scale.

40. At this stage, it may be appropriate to refer to an additional affidavit filed by one Shri B.S. Parihar, Additional Director, Department of Higher Education before the Supreme Court of India in SLP(Civil) No. 17616/2010. In paragraph 4 of the said affidavit, it is so indicated:

4. That these emergency appointments have been made as provided in Rule 13(5) of the Madhya Pradesh Educational Services (Collegiate) Rules, 1967. It is submitted that the respondent was appointed on emergency basis under the State Rules and he has not been appointed on adhoc basis.

Thereafter, in paragraph 5, it is stated by way of clarification that the petitioners were appointed on emergency basis and not on adhoc basis. From the aforesaid affidavit, it is clear that the respondent/State Government themselves admit in the affidavit before the Supreme Court that emergency appointments are made under Rule 13 (5) of the Rules of 1967 and their appointment is neither adhoc or a stop gap arrangement. Under such circumstances, the appointment made under Rule 13(5) has to be termed as a "regular appointment".

41. The criteria for considering a claim for grant of senior pay scale or selection grade and the criteria for granting seniority to a person are different. For the

purpose of grant of senior pay scale once it is seen that induction of an employee to the department is in accordance to a statutory prescribed mode contemplated under the Rules, then it has to be held to be a regular appointment even if on emergency basis. An emergency appointment is one of the methods for induction into the department both as per the Rules of 1967 and the Rules of 1990 and, therefore, respondents cannot contend that it is not a regular appointment. The meaning of the word regular and the import of the same clearly contemplates that anything done as per prescribed norms of the Rule and procedure is regular and, therefore, I am of the considered view that induction of the petitioners into the service after following the procedure contemplated under Rule 13(5) of the Rules of 1967 or Rule 15 of the Rules of 1990 is a regular appointment to the service and such an appointment qualifies the employee to be considered for grant of senior pay scale.

42. In the Rules of 1967, under Rule 7 the methods of recruitment are indicated. In sub-rule (1), three modes of recruitment are indicated under sub-clause (a), (b) and (c). Thereafter, in sub-clause (3) and (4) of Rule 7, the following stipulations are contained:

(3) Subject to the provision of these rules, the method or methods of recruitment to be adopted for the purpose of filling any particular vacancy or vacancies in the service as may be required to be filled during any particular period of recruitment and the number of persons to be recruited by each methods, shall be in accordance the Schedule No. II. But in case where the percentage as fixed in the Schedule cannot be strictly applied, preference will be given to Departmental candidates for promotion subject to the condition that suitable and qualified candidates are available in the Department otherwise the posts would be filled by direct recruitment irrespective of the percentage fixed for the purpose in each case.

(4) Notwithstanding anything contained in sub-rule (1), if the opinion of the Government or the exigencies of the service so require, the Government may, after consulting the Commission, adopt such methods of recruitment to the Service other than those specified in the said sub-rule as it may, by order issued in this behalf, prescribed.

It is clear from sub-clause (4) thereof that notwithstanding anything contained in sub-rule (1), power is conferred on the Government if exigency required to adopt such methods of recruitment to the service as may be specified by orders to be issued in this regard. Similar provisions are contained in Rule 6 sub-rule (3) and (4), of the Rules of 1990. The method of recruitment, therefore, contemplated under Rule 13(5) of the Rules of 1967 and Rule 15 of the Rules of 1990 are nothing but the modes of recruitment approved by the State Government in exercise of the powers conferred on it under the Rules framed under Article 309 of the Constitution i.e... sub-rule (4) of Rule 7 of the Rules of 1967 and Rule 6(4) of the Rules of 1990 and is infact a prescribed method of recruitment as contemplated under the statutory rules. It was said that the method of

recruitment contemplated under Rule 7(4) or Rule 6(4) of the Rules of 1967 and the Rules of 1990 does not include the process of appointment contained in Rule 13(5) or Rule 15 (5), this argument of the learned counsel for the State cannot be accepted. In the provisions pertaining to method of recruitment as contemplated under Rule 7 of the Rules of 1967 and Rule 6 of the Rules of 1990, an exemption is carved out in sub-rule (4) which contemplates that notwithstanding anything contained thereinabove, the State Government is given power to formulate procedure for recruitment, as may be required. It is, therefore, clear that sub-rule (4) of both Rules 7 and Rule 6, of the Rules of 1967 and the Rules of 1990, empowers the State to formulate different modes of recruitment other than provided in the Rules itself. If that be so, it can easily be construed that the Rules framed by the State Government under Rule 13(5) of the Rules of 1967 or Rule 15 of the Rules of 1990 is also a method of recruitment enacted by the State Government by exercising the powers conferred under sub-rule (4) of Rules 7 and 6, as the case may be and, therefore, the method of recruitment contemplated under Rule 13(5) and Rule 15(5) are also the method of recruitment to the service.

43. That apart, the provision for grant of senior scale and selection grade was incorporated by the UGC in the Scheme formulated by it in the revision of pay scale in November 1988. It is seen that prior to November 1988, initial induction into the department was made in the cadre of Lecturers. Thereafter, there was an avenue for promotion from Lecturer to the post of Assistant Professor and thereafter to the post of Professor and Principal. However, with effect from the year 1988, the post of Lecturers were abolished, inductions were made directly into the post of Assistant Professor and in the cadre of Assistant Professor a different pay scale and senior scale was incorporated and while indicating the provision for grant of selection grade and senior scale, a provision was incorporated by the UGC itself by stipulating certain conditions, including the condition of completing 8 years of service after regular appointment. The words "regular appointment" as used by the UGC is explained not only by the UGC, but also by the State Government in the circulars issued from time to time, particularly in the Circulars dated 27.11.1990 and 12.2.1992. The UGC clarified the notification issued by it and the clarification for counting of past services was also incorporated in these circulars. If the circulars issued by the UGC and adopted by the State Government are taken note of, it would be seen that in all these circulars certain conditions have been incorporated indicating the manner in which the service of 8 years is to be calculated. One such circular issued by the UGC is 27.11.1990 and the following stipulations are made in the said circular in this regard:

1. Previous service without any break as a lecturer or equivalent in a University, College, National Laboratory or other scientific organizations (CSIR, ICAR, DRDO, UGC etc) as a UGC Research Scientist should be counted for placement of lecturers in Senior Scale/Selection Grade provided that:-

- (a) the post was in an equivalent grade/scale of pay as the post of lecturer;
- (b) the qualification for the post were not lower than the qualification prescribed by UGC for the post of lecturer;
- (c) the lecturer concerned possessed the minimum qualifications prescribed by the UGC for appointment as lecturer;
- (d) the post was filled in accordance with the prescribed selection procedure as laid down by the University/State Government;
- (e) the appointment was not adhoc or in a leave vacancy or less than one year duration.

No distinction should be made with reference to the nature of management of the institution where previous service was rendered (private/local body/ Government) if the above criteria are satisfied.

44. Similar circulars were issued by the Additional Secretary to the UGC on 25.4.1988 and even the State Government in the circulars issued on 12.2.1992, has incorporated such a provision. In the UGC Regulation on minimum qualification published in the Gazette of India on 30.6.2010 also under Clause 10, a provision for counting of past service for direct recruitment and promotion is indicated and if these provisions are taken note of, it would be seen that previous regular service includes recruitment in accordance to any prescribed selection procedure as may be laid down. If the circulars issued by the State Government in this regard are taken note of i.e... the Circular dated 12.2.1992, it would be seen that these circulars have incorporated the provision which is contained in the circulars dated 27.11.1990 and 25.12.1998 issued by the UGC and the conditions to be fulfilled are those reproduced hereinabove as Clauses (a), (b), (c), (d) and (e). The five conditions to be fulfilled are that the post to which appointment is made is in an equivalent grade or scale of pay on the post of Lecturer, which is now Assistant Professor. This condition is fulfilled in the case of the petitioners, as the appointments are on the post of Lecturer/Assistant Professor as is notified in the Schedule to the Rules, with equivalent pay scale and grade. As far as clause (b) is concerned, the qualification is also the same as is prescribed by the UGC for the post of Assistant Professors and such a condition is already stipulated in Rule 13(5) and Rule 15. As far as clause (c) is concerned, the person concerned possessed the minimum qualification prescribed by the UGC and these are the conditions stipulated in Rule 13(5) and Rule 15 also. As far as clause (d) is concerned, the post is filled in accordance to a selection procedure as laid down by the State Government in the Recruitment Rules of 1967 and 1990. As far as clause (e) is concerned, the appointment is not on adhoc basis nor is on a leave vacancy for a period of less than one year. It is, therefore, clear that in the case of the present petitioners, all the conditions stipulated in the circulars issued by the UGC and the State Government for treating the petitioners as a regular appointment is fulfilled.

45. If the circulars issued by the State Government and the UGC are scanned, it would be seen that what is prohibited or what can be termed as an appointment which is not a regular appointment is actually an adhoc or stop gap arrangement undertaken dehors the Recruitment Rules or a process of appointment contrary to the mandate of Article 16 of the Constitution. All other appointments which do not fall in the category of adhoc or stop gap arrangement or which is not hit by the provisions of Article 16 of the Constitution would come within the purview of a regular appointment as is clear from the circulars issued in this regard. In the circular issued by the UGC on 25.12.1988, the position is clarified and the Commission has clearly stated that all services rendered in adhoc capacity should be counted for past service for placement in the senior scale/selection grade provided the three conditions mentioned herein are fulfilled. The conditions are (a) the adhoc service is for more than one year; (b) the incumbent was appointed on the recommendations of a duly constituted Selection Committee; and, (c) the incumbent was selected to the permanent post in continuation to the adhoc service without any break. If these three conditions are fulfilled the appointment and the service has to be counted for the purpose of placement in senior scale. In the case of all these petitioners even though their appointment is not an adhoc appointment, but their emergency appointment is in a better footing than an adhoc service and is for a period of more than one year duration. They were also appointed on the basis of recommendation of a duly constituted Selection Committee. They were selected to the permanent post as sanctioned in the Recruitment Rules and have continued without any break.

46. That being so, all the conditions stipulated in the circulars issued by the UGC and the State Government are fulfilled by the present petitioners and, therefore, there is no reason for denying the benefit to the petitioners. Infact the meaning of the word "regular appointment" is clarified by the UGC itself in its circulars dated 27.11.1990 and 25.12.1998 and as the petitioners fulfilled all the requirement of these circulars, the period of emergency appointment is to be counted for the purpose of their placement in the senior scale/selection grade. From the reasons already indicated hereinabove, even on a bare interpretation of the circulars issued by the UGC and adopted by the State Government, the petitioners are entitled to the benefit.

47. It was also argued by learned counsel for the petitioners that the provision for grant of senior pay scale and selection grade is not incorporated in the Rules by way of its insertion in the main Rule. It is only appended as a note to the main Rule i.e... as a Note to Schedule V. By inviting my attention to the principle for interpretation of a Note inserted to a statutory provision, the implication of the same as indicated by Hon'ble Justice G.P. Singh (as he then was) in his book on Interpretation of Statute, 13th Edition, Page 172 of the judgment rendered in the case of Rudra Kumar Sain (*supra*), it was argued that it is a well settled principle of law that a Note appended to a statutory provision or a subordinate legislation must be read in the context of the substantive provision and not in derogation thereof. It was stated that a Note is merely explanatory in nature and

the same will not dilute the rigour of the main provision. Referring to the provision of Rule 17 of the Rules of 1990, to which this Note is appended to, learned counsel points out that Rule 17 contemplates a provision prescribing the conditions of eligibility for promotion/transfer. The Rule reads as under:

17(1) Subject to the provisions of sub-rule (2) the Committee shall consider the cases of all persons who, on the 1st day of January of that year had completed such number of year of service (Whether officiating or substantive) in the posts from which promotion is to be made as specified in column (3) of Schedule IV and are within the zone of consideration in accordance with the provisions of sub-rule (2):

Learned counsel submits that to be eligible for promotion as per the provisions of this Rule to various posts indicated in Schedule IV, the number of year of service rendered can be either on officiating basis or substantive. If the service rendered in officiating capacity can be counted for grant of promotion under Rule 17, then grant of senior pay scale and selection grade, which is also a measure of granting promotion in a higher scale due to stagnation, cannot be changed or diluted by way of a Note incorporated in the provisions of the main Rule i.e.... Rule 17. It is argued that as an alternate submission that if Rule 17 permits the officiating period to be counted as service for grant of promotion, then the same rule will apply for grant of senior pay scale and selection grade and by incorporating the word "regular appointment" in the Note, the substantive provision of the Rule cannot be diluted. Accordingly, it is stated that even if the matter is analysed in this background, the contention of the respondents cannot be accepted.

48 As far as the this ground is concerned, it is seen that the provision for grant of senior pay scale and selection grade was incorporated in the scheme formulated by the UGC in the year 1988 only to grant benefit of career advancement and to remove the frustration due to stagnation. It is for this reason that the provision with regard to grant of senior pay scale and selection grade is incorporated in the Rules of 1990 in Schedule IV, to Rule 17. As already pointed out by learned counsel for the parties Rule 17 of the Rules of 1990 lays down the conditions of eligibility for promotion. It is clearly stipulated in this Rule that subject to the provision of sub-rule (2), the Committee constituted shall consider the case of all persons, who on the first day of January of that year have completed such number of years of service whether officiating or substantive in the post, from which promotion is to be made as specified in Column (3) to Schedule IV. It is, therefore, clear that in the substantive provision for promotion under Rule 17, the period of service rendered even on officiating capacity is counted for grant of promotion. If the substantive provision so contemplates, then by appending a Note to the said Rule the rigour of the Rule cannot be diluted by holding that for the purpose of promotion or grant of senior pay scale or selection grade, officiating or other service, cannot be counted, but an employee has to have 8 years of regular appointment. The words "regular appointment" used in the Note appended to this Rule cannot dilute the mandate

of the substantive provision of Rule 17, which contemplates that even an officiating period can be counted for the purpose of granting promotion.

49. That apart, during the course of hearing of this writ petition, learned counsel for the petitioners pointed out the benefit granted to many of the employees like Dr. J.B. Gautam, Shri S.C. Gaud etc. Respondents have not pointed out as to how the benefit is being denied to the petitioners, when it has been granted to various other employees. Respondents are trying to justify their action by simply contending that an error committed in the case of these employees cannot be treated as a precedent and there cannot be negative equity. This argument of the respondents is also unsustainable.

50. After close of hearing, a written note is submitted by the learned counsel for the State wherein the same grounds are re-iterated. However, in the written note the following judgments are referred to: State of Tamil Nadu and another etc. Vs. E. Paripoornam and others, Tejaswani Vs. State of MP 1998 MPLJ 790; A.P.N. Mayakutti Vs. Secretary (1997) 2 SCC 360; and, Dr. (Smt) Agnes Thakur and Others Vs. State of MP and Others Writ Petition No. 6931/2003(S). As far as these judgments are concerned, most of the judgments relate to appointment under Rule 10 of the Temporary Appointment Rules and they specifically provide for temporary appointment without conferring any benefit. The judgments relied upon by Shri Sanjay Dwivedi will not apply in the facts and circumstances of the present case.

51. Apart from the aforesaid, it has to be taken note of by this Court that for the purpose of granting senior pay scale if the claim of the petitioners is rejected, two different classes of employee may emerge. Both these classes originate from the same method of appointment i.e... the emergency appointment under Rule 13(5) or Rule 15, as the case may be, but in case of certain class of employees particularly those appointed prior to 1986 and in cases of some after 1986, apart from the fact that SLPs have been dismissed, the department itself has extended the benefit for reasons which remain unexplained. Petitioners have given the example of various employees in their additional rejoinder, which goes to show that many employees in the department have received the said benefit. If that be so, on the principle of "equality", the benefit has to be granted to the petitioners apart from the fact that under law also they are found to be entitled to the said benefit.

52. As far as the contention of the State Government that a Division Bench of this Court has held that seniority of the period cannot be granted in Writ Petition No. 6931/2003(S) [Dr. Smt. Agnes Thakur and Another Vs. State of MP and Others] is concerned, in that case the Division Bench was considering the interpretation to Rule 11 of the MP Regularization of Ad-hoc and Emergency Appointment Rules, 1990 and in that case the question of granting seniority to the appointments regularized under the adhoc emergency appointment rules was taken note of. In the said case the question as is canvassed in this writ petition was not under consideration. That being so, the said judgment will not apply in

the facts and circumstances of the present case.

53. Even though various grounds were raised with regard to the petitioner being members of the service and the interpretation of Rule 12 (4) of the General Conditions of Service Rules, now in the light of the findings as have been recorded hereinabove, I am of the considered view that it is not necessary to again deal with all these questions, as this Court for reasons indicated hereinabove is convinced that the petitioners are entitled to the relief claimed for.

54. Accordingly, for the grounds and reasons indicated hereinabove, all these petitions are allowed. Respondents are directed to consider the case of the petitioners for grant of senior scale/selection grade after treating the services rendered by the petitioners from the initial date of appointment as emergency appointee as "regular appointment" for the purpose of conferring the benefit of senior pay scale and selection grade. Matters be placed before the appropriate screening committee and based on the recommendations of the screening committee, the benefit be extended retrospectively with effect from the date of eligibility of each of the petitioners. Accordingly, all the writ petitions stand allowed and disposed of. No order as to costs.