
(1964) 04 AHC CK 0008
In the Allahabad High Court

Gur Prasad Satsangi

APPELLANT

Vs

State of Uttar Pardesh and Others

RESPONDENT

Date of Decision : 07-04-1964

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 163, 166, 226

Citation : (1966) 2 LLJ 374

Hon'ble Judges : D.D. Seth, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.D. Seth, J.—This is a petition under Article 226 of the Constitution.

2. The facts, as contained in the petition, are that in September 1947 the petitioner was appointed a Judicial Magistrate by the State Government under a scheme framed for the separation of Executive from Judiciary in this State and under which the State Government created a new cadre of Judicial Officers, The petitioner along with 59 other persons out of the cadre of Judicial Magistrates and Revenue Officers was confirmed in the new cadre of Judicial Officers on 1 April. 1951, In the year 1953-54 the State Government evolved a scheme for transferring some of the permanent members of the cadre of Judicial Officers to the Uttar Pradesh Civil Service (Judicial Branch) in public interest and in pursuance of that scheme the petitioner and Ors., who had been confirmed as Judicial Officers, were asked to appear before the Public Service Commission, Allahabad. After the interview the Governor transferred the petitioner to the post of a Munsif in Uttar Pradesh Civil Service (Judicial Branch) on 8 October 1954. The petitioner was transferred to the post of a Munsif without any request on his part and in public interest. As the petitioner had put in seven years' service already as Judicial Magistrate, Judicial Officer, he made a representation, on 25 May 1955, to the State Government and pleaded that the entire length of his service from the date of his appointment as Judicial Magistrate should be taken into account in determining his seniority. No reply was received from the State

Government and, therefore, the petitioner sent another representation on 18 February 1956 and specifically stated therein that in case the Government was unable to grant his request for being given seniority in the Provincial Civil Service (Judicial Branch) from the date of his appointment as Judicial Magistrate he may be reverted to his permanent post of a Judicial Officer. It seems the State Government wanted to be sure whether the petitioner would like to continue as Munsif or would like to revert to his substantive post of Judicial Officer and for that purpose the Assistant Registrar of this Court on 17 February 1956 wrote to the District Judge, Rae Bareilly, where the petitioner was posted as a Munsif, to enquire from the petitioner whether he would like to revert to his substantive post of Judicial Officer and if so, his firm decision in the matter may be obtained and communicate to this Court for being forwarded to the State Government. A copy of this letter was sent to the petitioner also. The petitioner made a reply on 2 March 1956 to the District Judge and submitted that in case the Government did not give him any seniority he would like to -revert at once to his substantive post of Judicial Officer but if the Government granted the petitioner's request regarding seniority in the Uttar Pradesh Civil Service (Judicial Branch) from the date of his appointment as Judicial Officer he would continue on the judicial side. He also wrote that if the Government wanted to give him seniority for a lesser period those terms upon which he would be required to serve on the judicial side may be communicated to him and he shall then give his firm decision on the question of reversion to his permanent post. The petitioner requested the District Judge to forward the letter to the Deputy Registrar of this Court. The reply of the petitioner was forwarded to the State Government by the Registrar of this Court. Thereafter the Under Secretary to the State Government sent a letter on 14 May 1956 to the Registrar of this Court conveying the orders of the State Government in the case of eleven officers including the petitioner and mentioned therein that

these officers have not yet given their firm decision in the matter on the ground that the question of seniority, which will be assigned to them in the Uttar Pradesh Civil Service (Judicial Branch) cadre, should be decided first and intimated to them. They would then give their final declaration. These officers may, therefore, be allowed to continue in their present appointments provisionally till the question of the seniority has been decided by Government.

Copies of this letter were forwarded to the District Judge, Rae Bareilly, and to the petitioner for information. By an order dated 3 November 1958, Sri P. C. Pandey, Up Sachiva to the State Government, informed the Registrar of this Court that the Governor has carefully considered the question of the assignment of seniority to the Judicial Officers appointed as temporary Munsifs during the years 1953 to 1955 in the gradation list of the Uttar Pradesh Civil Service (Judicial Branch) on their permanent absorption in that branch and having regard to the service rendered by those officers and in view of the fact that they did not apply for appointment as Munsifs of their own accord but were selected as such in public interest it has been decided that all the permanent Judicial Officers who have already been or may be absorbed permanently in the Uttar Pradesh Civil Service

(Judicial Branch) should be given seniority of one year for every two years or part thereof of service rendered as permanent Judicial. Officer and their assumed date of appointment to the Uttar Pradesh Civil Service (Judicial Branch) should be worked out by antedating the date of taking over charge as Munsif by the number of years the benefit of which accrues to them in accordance with the aforesaid decision. The order also mentioned that order the assumed date has been worked out each of the officers should be placed below the regular batch of the Uttar Pradesh Civil Service (Judicial Branch) officers who joined the service in the year immediately preceding the year of the assumed data of such officers. The seniority inter se and vis-a-vis the other officers of the Uttar Pradesh Civil Service (Judicial Branch) as worked out in accordance with the principles enunciated in the order dated 3 November 1958 was also mentioned in the order as follows:

Year of assignment of seniority in Name of the temporary Judicial Officer the gradation list who was selected as temporary of Uttar Pradesh Place Munsif Civil Service (Judicial Branch) 1 Sri Mohan Chand Joshi ... 1950 Below Sri Om Prakash of 1949 batch. 2 Sri Sajjan Lal Shah ... 1950 Below Sri M.C. Joshi. 3 Sri Prabhu Narain Rai ... 1951 Below Sri P.N. Dubey. 4 Sri Prem Shankar Shukla ... 1951 Below Sri P.N. Rai 5 Sri Gur Prasad Satsangi ... 1951 Below Sri P.S. Shukla. 6 Sri Ram Kishore Misra ... 1951 Below Sri G.P. Satsangi. 7 Sri Gyan Datta Chaturvedi ... 1952 Below Sri Ram Shakti Agarwal. 8 Sri Prem Ballabh Mashiwal ... 1952 Below Sri G.D. Chaturvedi 9 Sri Shri Krishna Prasad Joshi ... 1952 Below Sri P.B. Mashiwal. 10 Sri Rahas Bihari Lal ... 1953 Below Sri Om Prakash. 3. The Registrar of the Court was requested by the Up Sachiva to inform the officers concerned of the decision of the State Government and it was also said in the order that such of the officers who had not given a clear option for being absorbed permanently in the Uttar Pradesh Civil Service (Judicial Branch) pending a decision regarding the fixation of the seniority in that service may be asked to exercise their option "now" in writing and if they or any of them do not elect to be confirmed as Munsif, arrangements may be made to relieve them immediately under intimation to the Government so that their postings as Judicial Officers may be fixed up. Copies of the order dated 3 November 1958 were forwarded by the Assistant Registrar of this Court to the petitioner and the other officers concerned.

4. The petitioner contends that he took over as a Munsif on 8 October 1954 and had worked as a confirmed Judicial Officer with effect from 1 April 1951, i.e., for a period of three and a half years, and was, therefore, entitled to two years of seniority under the order of the State Government dated 3 November 1958 and under the formulae worked out by the Government his assumed date of appointment as Munsif worked out to 8 October 1952. The petitioner was, therefore, to be placed below the batch which had joined the service in the year immediately preceding-the year of assumed date, i.e., to be placed below those who had joined in the year 1951. He also contends that there was no competitive examination for appointment to the Uttar Pradesh Civil Service (Judicial Branch)

in the year 1950 and as such no one joined in the year 1951 and the last officer who had joined the Judicial Branch in 1950 was Sri Om Prakash and the petitioner and other officers were to be placed below him. While applying the formulae enunciated in the order dated 3 November 1958 and giving exact places in the gradation list of the Uttar Pradesh Civil Service (Judicial Branch) officers, a mistake was committed and the mistake was that the petitioner along with three other officers was placed below Sri P. N. Dubey who had joined in 1952 while they were to be placed below the candidates who had joined in 1951.

5. The petitioner was agreeable to the principles laid down in the order dated 3 November 1958, but as in actual working out those principles, a mistake had been committed, he did not give his consent outright. By a letter dated 12 March 1959 the Up Sachiva of the State Government informed the Registrar of this Court that the Government had taken a final decision in the matter and had arrived at the ad hoc formulae against which it had decided to have no representations. The Registrar was asked to make clear to all the Judicial Officers concerned and they be asked to give their final choice " now." In other words, the Government reiterated its decision to abide by the formulas contained in the order dated 3 November 1958. By an order dated 13 March 1959 addressed to the Registrar the mistake in the working out of the principles contained in the order of 3 November 1958 was rectified. The Assistant Registrar of this Court sent, copies of the order dated 13 March 1959 to the petitioner and other officers requiring them to give their final choice about being absorbed permanently in the Uttar Pradesh Civil Service (Judicial Branch) at an early date. On 13 April 1959 the petitioner wrote to the Assistant Registrar that he had decided to continue in the Uttar Pradesh Civil Service (Judicial Branch) and requested that he may be permanently absorbed in that cadre. Sri Mohan Chand Joshi, a Judicial Officer, who was appointed as Munsif, made a representation to the State Government about his own seniority and that of Sri Sajjan Lal Shah and while dealing with that representation, the State Government, by an order dated 30 September 1959 addressed to the Registrar of this Court, stated that the Government has reviewed the whole case and reiterated the principles of seniority contained in the order dated 3 November 1958. On 6 July 1963 the petitioner received copies of two orders of the State Government dated 31 December 1962 and 31 May 1963 from the Registrar of the Court. The order dated 31 December 1962 addressed to the Registrar of this Court mentioned that:

On a careful consideration, the Governor has agreed with the views of the High Court and has accordingly ordered that the seniority of the Judicial Officers appointed as Munsifs during the years 1953-55, in the gradation list of the Uttar Pradesh Civil Service (Judicial Branch), will be regulated by the principle contained in Government letter No. P-3186/II-A-40/1954, dated 1 September 1958, namely, that these officers holding permanent posts of Judicial Officers, will be given seniority of one year for every two years or part thereof of service as permanent Judicial Officer and will be placed below the regular recruits of the Uttar Pradesh Civil Service (Judicial Branch) examination of the previous year.

According to the petitioner, the order of the State Government dated 1 September 1958, a reference to which was made in the order of 31 December 1962 was never communicated to him. The order dated 31 May 1963 addressed to the Registrar was as follows:?

With reference to your letter No. 7180, dated 4 May 1963, and in supersession of the orders confined in G.O. No. P-3601/I-A-40/ 1954, dated 3 November 1958, on the above subject, I am directed to say that the Governor has been pleased to order that the seniority of the Judicial Officers appointed as Munsifs during 1953-55 in the gradation list of the Uttar Pradesh Civil Service (Judicial Branch), as proposed in Government letter No. P-5364/II-A-40/1964, dated 31 December 1962, shall be deemed as final.

6. The result of the orders of 31 December 1962 and 31 May 1963 was that the principles regarding seniority which had been finalized by the orders dated 3 November 1958 and 13 March 1959 were completely reversed and the officers concerned were placed below those who had appeared at the competitive examination of the previous year. In effect it worked out to reducing the seniority of the petitioner and those similarly placed by one batch consisting of 25 officers who are opposite parties 2 to 26 to this petition and who had appeared in the examination of 1951 while under the order dated 3 November 1958 the petitioner was placed above the opposite parties 2 to 23. The petitioner contends that had he known the contents of the order of the State Government dated 1 September 1958, he would never have given his consent for being permanently absorbed in the Uttar Pradesh Civil Service (Judicial Branch).

7. On 19 July 1983 the petitioner made a representation to the State Government through this Court against the principle laid down in orders dated 31 December 1962 and 31 May 1963. The petitioner hoped that his representation would be decided within a reasonable time but as no reply was received he sent a reminder to the Registrar of this Court and thereupon the petitioner's representation was forwarded to the State Government on 3 October 1963.

8. Aggrieved by the orders dated 31 December 1962 and 31 May 1983 the petitioner has come to this Court and has prayed that certiorari be issued and the orders be quashed. It has also been prayed that mandamus be issued commanding the State Government not to give effect to those two orders and to continue to abide by the seniority to the petitioner and Ors. by the orders dated 3 November 1959 and 13 March 1959.

9. A counter-affidavit has been filed on behalf of the State Government by the Deputy Secretary to the Government, Appointment Department. The opposite party 26 has also filed a counter-affidavit. The petitioner has filed his rejoinder-affidavits.

10. I have heard Sri S.M. Kacker, the learned Counsel for the petitioner, Sri Shanti Bhushan, the learned Senior Standing Counsel for the State, Sri K. L. Grover, the learned Counsel for opposite parties 18 and 19, and Sri R.K. Shukla,

the learned Counsel for opposite party 26, Sri K. N. Singh, the learned Counsel for opposite party 25, and Sri Anand Prakash Agarwal.

11. The learned Counsel for the petitioner urged that the petitioner having agreed to serve in the cadre of Uttar Pradesh Civil Service (Judicial Branch) after the position in regard to his seniority in the gradation list had been fully clarified by the orders of the State Government dated 3 November 1958 and 13 March 1959 and the Government having permanently absorbed him in the cadre of the Uttar Pradesh Civil Service (Judicial Branch) on that basis it had no authority, later on, to resile from the original position and to issue the orders dated 31 December 1953 and 31 May 1959 to the detriment of the petitioner and specially when he had completely Joint his lien in his original orders of Judicial Magistrates on being permanently absorbed in the cadre of like Uttar Pradesh Civil Service (Judicial Branch). In other words, the Government was estopped from altering the principles laid down in its order dated 3 November 1958. The learned Counsel contends that the petitioner was duly recruited to the Uttar Pradesh Civil Service (Judicial Branch) under the orders of the Government as contemplated by Rule 32 (2) of the Uttar Pradesh Civil Service (Judicial Branch) Rules, 1951 (hereinafter called the rules), and as such the petitioner was entitled to as much equal protection of the law as other officers recruited under Rule 6 of the rules. The learned Counsel further submitted that the orders dated 31 December 1962 and 31 May 1963 are illegal and are contrary to the proviso to Rule 32 (1) of the rules. The next submission is that the two impugned orders are arbitrary and are highly discriminatory and, therefore, they contravene Article 16 of the Constitution. The last submission was that the two impugned orders also contravene Article 311(2) of the Constitution.

12. Sri Shanti Bhushan, on the other hand, contended that, according to Rule 22 of the rules, the seniority of officers in the Uttar Pradesh Civil Service (Judicial Branch) is determined according to the year of the competitive examination by which they are recruited to the services. According to the learned Counsel, the word " year" in the sentence contained in the order dated 3 November 1958, that is

once the assumed date has been worked out, each of them should be placed below the regular batch of the Uttar Pradesh Civil Service (Judicial Branch) officers who joined the service in the year immediately preceding the year of the assumed date of such officer.

had reference to the year of competitive examination. Sri Shanti Bhushan submitted that the proposal contained in the letter of the State Government dated 1 September 1958 was accepted by this Court and came up for final consideration of the Government and was finally approved by the Minister of Justice on 3 October 1958 and the Deputy Secretary of the Appointment Department directed the office to put up a draft of a letter for being issued for implementing the decision of the Minister of Justice. A draft letter was put up by the office of the Secretariat and was approved by the Deputy Secretary who

directed the order dated 3 November 1953 to be issued but a mistake had crept in the draft prepared by the office by inadvertence and the mistake was that the year of joining-took the place of the year of competitive examination and, therefore, when this error was noticed in 1961 the Government again wrote to this Court for its views in the matter. By a letter dated 8 August 1962 the Registrar of this Court informed the State Government that this Court was unable to agree to any departure being made from the principle which had originally been agreed to by the Court in its letter dated 18 September 1958. It was pointed out that if the error which had crept in the order dated 3 November 1958 was not rectified, it would mean perpetuating a wrong which had crept in unintentionally. On the receipt of this letter the Government decided to accept the views of this Court and to rectify the error and it was for this reason that the orders dated 31 December 1962 and 31 May 1963 were issued. The learned Counsel, therefore, submitted that no alteration was made in the decision of the Government but only a mistake which had crept in the orders dated 3 November 1958 and 13 March 1959 was corrected. Sri Shanti Bhushan also contended that Rule 32 of the rules is in general terms and does not directly deal with seniority which is specifically dealt with by Rule 22. It was urged by the learned Counsel that the State Government always has the power to revise an order and to alter the terms and conditions of service of its servants and when a servant joins the service of the State Government, he joins it with that risk and, therefore, there can be no estoppel against the Government. According to Sri Shanti Bhushan, the two impugned orders do not hit Articles 16 and 311(2) of the Constitution.

13. The order dated 3 November 1958 is in the name of the Governor and was communicated to the petitioner. The order also shows that it was issued after the Governor had

carefully considered the question of the assignment of seniority to the Judicial Officers appointed as temporary Munsifs "during the years 1953 to 1955 in the gradation list of the Uttar Pradesh Civil Service (Judicial Branch) on their permanent absorption in that branch.

Two principles were laid down in this order. The first was that the seniority of one year for every two years or part thereof of service rendered as permanent Judicial Officer was to be given. The second was that the assumed date of appointment to the Uttar Pradesh Civil Service (Judicial Branch) was to be worked out by antedating the date of taking over charge as Munsif by the number of years, the benefit of which accrued to the petitioner and other similarly appointed officers in accordance with the first part and once the assumed date had been worked out each of them was to be placed below the regular batch of the Uttar Pradesh Civil Service (Judicial Branch) Officers who joined the service in the year immediately preceding the year of the assumed date of such officer. The petitioner had worked as permanent Judicial Officer from 1 April 1951 to 8 October 1954, i.e., for three and a half years. Therefore, according to the principles laid down in the order dated 3 November 1958 he was

entitled to seniority of two years and the assumed date of his appointment as Munsif was to be 8 October 1952. In working out the seniority of officers certain mistakes were made and they were corrected but it is clear from the letter of the Up Sachiva dated 12 March 1959 addressed to the Registrar of this Court that the principles were not touched and they remained final and binding and the Government had taken a final decision in the matter and had arrived at the ad hoc formulas against which it had decided to have no representations.

14. The State, however, relies on a document dated 1 September 1958 and according to it the principles of seniority were decided by that document. It is to be noted that the document dated 1 September 1958 is not an order at all as it was not issued in the name of the Governor and, admittedly, was not communicated to the petitioner. It is only a letter addressed by Sri P. C. Pandey, Up Sachiva to Government, to the Registrar of this Court, and as it is of some importance, it is quoted in full as follows:

With reference to the correspondence resting with letter No. 10431, dated 12 August 1958, regarding the fixation of the seniority of Judicial Officers appointed as temporary Munsifs, I am directed to say that after careful consideration of the individual cases, and in view of the fact that these officers did not apply for appointment as Munsifs but were selected as such in the public interest, Government are of the opinion that the officers holding the permanent posts of Judicial Officers be given seniority, in the cadre of the Uttar Pradesh Civil Service (Judicial Branch) of one year for every two years or part thereof of service as permanent Judicial Officers and should be placed at the bottom of the year prior to that which is thus arrived at. As Sri Perm Ballabh Mashiwal and Sri Krishna Prasad Joshi, who are amongst the temporary Judicial Officers who were appointed as temporary Munsifs, it is felt that they should be placed after the last candidate of the batch of Munsifs selected as a result of Munsif ship examination held in 1952. On the basis of the principles, enunciated above, the seniority of the Munsifs appointed from amongst Judicial Officers will work out as follows:

Name Confirmed - Appointed Munsif Seniority where to be placed
1 Sri Prabhu 1 April 1951 1 October 1954 1 October 1952 ... Below last candi- Narain Rai. date of 1951 examination.
2 Sri Prem Do. Do. Do. Do. Shanker Shukla.
3 Sri Gur Prasad Do. 8 October 1954 8 October 1952 ... Do. Satsangi.
4 Sri Ram Kishore Do. 1 October 1954 1 October 1952 ... Do. Misra.
5 Sri Mohan Do. 17 July 1953 17 July 1951 ... Below last candi- Chandra Joshi. date of 1950 examination.
6 Sri Sajjan Lal Do. 30 July 1953 30 July 1951 ... Do. Sah.
7 Sri Gyan Dutt 1 April 1951 15 February 1953 ... Below last candi- Chaturvedi. 1955. date of 1952 examination.
8 Sri Rahas Behari 8 June 1953 Do. 15 February 1954 ... Below last candi- Lal. date of 1953 examination.
9 Sri Prem ... 16 July 1953 Do. ... Below last candi- Ballabh Mashi- data of 1952 wal. examination.
10 Sri Shri Krishna ... 17 July 1953 Do. ... Do. Prasad Joshi.
2. I am to add that the above principles eliminate any possibility of any of these

candidates getting seniority over those with whom they could have appeared at the competitive examination for the Uttar Pradesh Civil Service (Judicial Branch).

3. I am to request that the views of the High Court in the matter may please be obtained and communicated to Government immediately to enable them to issue final orders without further delay.

15. This letter cannot be equated with an order issued in the name of the Governor. Till an order is issued in the name of the Governor and is communicated to the person concerned it cannot be final and binding and will only amount to an advice, or suggestion made by the State Government. The letter of the State Government, dated 31 December 1962, itself describes the document of 1 September 1958 as " Government letter " and not an order issued in the name of the Governor. I do not agree with, the learned Senior Standing Counsel that the order dated 3 November 1958 was issued by mistake. A perusal of that order clearly shows that the action of the State Government in issuing that order was deliberate. I also do not agree with the learned Senior Standing Counsel, that because this Court had given its consent to a change to be made in the principles laid down in the order, dated 3 November 1958, the order of 1 September 1958 was the final order. That order is only a letter addressed to the Registrar of this Court and is in the form of a recommendation. It cannot be equated with an order passed in the name of the Governor. The same Sri P. C. Pandey, Up Sachiva, who had signed the order dated 3 November 1958, also signed the letter dated 1 September 1958. It follows, therefore, that the Up Sachiva was not oblivious of the orders dated 1 and 18 September 1958, when he signed the order of 3 November 1958. It must be assumed that Sri P. C. Pandey was aware of the letters dated 1 and 18 September 1958.

16. The consultation made by the State Government with the Court was directory and had no binding effect. The case of the Government that the order dated 3 November 1958 was, in fact, not made by the Governor, is also untenable. The order of the Governor in the present case was made in the name of the Governor and was authenticated as prescribed by Article 166(2) of the Constitution and, therefore, the validity of the order cannot be called in question on the ground that it is not an order made or executed by the Governor. This Court, therefore, cannot go into this question in view of Article 166(2) of the Constitution which runs as follows:

Orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified in rules to be made by the Governor, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor.

17. In Para. 10 of the counter-affidavit filed by the Deputy Secretary to the Government, Appointment Department, it is stated that the proposal contained in the Government's letter dated 1 September 1958 then came up for final

consideration of the Government and was finally approved by the Minister of Justice on 3 October 1958. The fact that the Minister of Justice had given a concurrence to another counter-proposal is a matter which this Court is precluded from examining under Article 163(3) of the Constitution which says that the question whether any, if be what, advice was tendered by Ministers to the Governor shall not be enquired into in any Court. This Court, therefore, cannot go into the advice tendered by the Minister of Justice and is concerned only with the order issued in the name of the Governor and is communicated to the petitioner. Till an order is issued in the name of the Governor and is communicated to the person concerned it is not an order of the Governor but amounts only to an advice tendered.

18. The order dated 3 November 1958 was confirmed by the order of 13 March 1959. All this shows that the State Government had carefully considered and reconsidered the matter regarding seniority and it cannot be said that the order of 3 November 1958 was issued by a clerical mistake. The order of 13 March 1959 was also issued in the name of the Governor and was communicated to the petitioner which means that it was also a formal order.

19. In the orders dated 3 November 1958 and 13 March 1959 it was mentioned that once the assumed date has been worked out each of the officers should be placed below the regular batch of the Uttar Pradesh Civil Service (Judicial Branch) officers who joined the service in the year immediately preceding the year of the assumed date of such officer. The opposite parties 2 to 26 had not joined the Uttar Pradesh Civil Service (Judicial Branch) in the year 1951, but had appeared in the examination held in 1951. The word "joined" in the orders dated 3 November 1958 and 13 March 1959 was sought to be removed by the State Government and it was desired to replace it by the words "examination of the previous year." It was for this reason that the State Government asked for the concurrence of this Court in removing the word "joined" and replacing it by the words "examination of the previous year" by its letter dated 31 December 1962 addressed to the Registrar of this Court. Previous to the letter of the State Government dated 31 December 1962 two letters were addressed by the Joint Registrar of this Court to the State Government on 8 September 1958 and by the Registrar on 8 August 1962 in which it was said that this Court had no objection to the acceptance of the principles enunciated by the Government for fixing the seniority of the Judicial Officers appointed as temporary Munsifs and that this Court does not see any way to agree to any departure being made from the principles originally agreed to by this Court. vide letter dated 18 September 1958. Both these letters issued by this Court amounted to an advice tendered to the State Government and could have no effect on the firm decision taken by the State Government in the name of the Governor by the orders dated 3 November 1958 and 13 March 1959. It is always open to the Governor of the State not to accept the recommendation of the High Court and to pass an order not in conformity with the recommendation of this Court. In my opinion, the advice tendered by this Court was wrong as there was no clerical mistake at all in the

order of the State Government dated 3 November 1958. The order dated 31 May 1963 was also issued in the name of the Governor and was communicated to the petitioner. This order superseded the order of 3 November 1958, The question, therefore, is whether the order of 3 November 1958 could be superseded at all.

20. It was after the order of 3 November 1958 had been cornered by the order dated 13 March 1959 that the petitioner decided on 13 April 1959, to continue in the Uttar Pradesh Civil Service (Judicial Branch). By making his final decision on the basis of those two orders the petitioner lost his lien on the cadre of the Judicial Officers. It is also significant that the petitioner was not allowed to appear in the Uttar Pradesh Higher Judicial Service Examination, as is clear from Para. 15 of the petitioner's rejoinder-affidavit filed on 2 March 1954. The State Government was, therefore, estopped from taking a somersault after the petitioner had lost his lien on the cadre of Judicial Officers and had altered his position on the repeated assurances given to him by the Government. Having given those assurances, it was not open to the State Government to retract from them, and, in the circumstances, the principle of legal or equitable estoppel would apply to the case. It is now well-settled that the rule of estoppel applies to acts of and representations made by the Government. See *Smt. Vijey Kumari Thakur Vs. H.P. Administration and Others*, and *Dadoba Janardhan v. Collector of Bombay* (I.L.J. XXV Bom. 714). It was held in *Sales Tax Officer, Banaras and Others Vs. Kanhaiya Lal Mukundlal Saraf*, that:

No question of estoppel can ever arise where both the parties are laboring under the mistake of law and one party is not more to blame than the other. Estoppel arises only when the plaintiff by his acts or conduct makes a representation to the defendant of a certain state of facts which is acted upon by the defendant to his detriment; it is only then that the plaintiff is estopped from setting up a different state of facts.

21. Also see the decision of the Supreme Court in *Mrs. Hem Nolini Judah* (since deceased) and after her legal representative *Mrs. Hem Nolini Judah* (since deceased) and after her Legal Representative *Mr. Marlean Wilkinson Vs. Isolyne Sarojbhashini Bose and Others*, .

22. The case of the State Government regarding estoppel is that a mistake had been committed in the order of 3 November 1958 by inadvertence inasmuch as " the year of joining inadvertently took the place of the year of competitive examination " and that

the discrepancy between the actual Government decision in the matter of seniority and the language of the letter actually issued was not noticed, the order dated 13 March 1959 came to be made.

The contention therefore, is that no alteration was made in the decision of the Government but only a mistake which had crept in the orders dated 3 November 1958 and 13 March 1959 was corrected. As has already been observed above, it is not open to this Court to go into the question what advice was tendered to the

Governor by the Minister of Justice and also it is not permissible for this Court to enquire whether the order dated 3 November 1958 was, in fact, the Governor's order or not. The Minister of Justice has no authority to finally approve anything. He can only advise the Governor and the advice so tendered converts itself into an order when the order is issued in the name of the Governor and is communicated to the person concerned. Even if a mistake had been committed by the office in the Government Secretariat, while preparing the draft letter, the fact remains that it was ratified by the State Government when it issued the order of 3 November 1958 in the name of the Governor and communicated the same to the petitioner. It was held in *Collector of Masulipatam v. Cavalry Vencata Narrainapah Moore's Indian Appeals*, Vol. VIII, p. 529 that:

The acts of a Government officer bind the Government only when he is acting in the discharge of a certain duty within the limits of his authority, or if he exceed that authority, when the Government in fact, or In law, directly, or by implication, ratifies the excess.

23. The principle of ratification laid down in this ruling will also apply to the equitable principle of estoppel.

24. I do not agree with the contention of Sri Shanti Bhushan that no fetters can be placed on the power of the State Government in correcting a mistake and the plea of estoppel, in such circumstances, does not arise. It is true that a mistake committed by a Secretary or a Deputy Secretary to the Government can be subsequently corrected by the Government, hut the present case is not a case of any mistake. It has already been mentioned above that the orders dated 3 November 1958 and 13 March 1959 were deliberate acts of the State Government and they had been issued after full consideration and reconsideration of the point involved. Sri Shanti Bhushan urged that the opposite parties 2 to 26 were not responsible for the mistake and, therefore, there is no reason why they should be penalized and made to suffer. This contention overlooks the inconvenience caused to the petitioner who was also not responsible for the mistake, I see no reason why the petitioner should be penalized and be made to suffer by a mistake, if any, committed in issuing the order of 3 November 1958.

25. Sri Shanti Bhushan also urged that the conditions of service can be altered at the sweet will of the Government and an employee of the State, when he joins service, does so with that risk and, therefore, he cannot complain if conditions of service are altered from time to time. Sri Shanti Bhushan in this connexion relied upon the following decisions:

Ram Autar Pandey v. State of Uttar Pradesh 1962 L.L.J. 31;

Anil Nath De Vs. Collector of Central Excise, Calcutta and Another, ;

Raj Kishore Vs. State of Uttar Pradesh and Another, ;

and a decision by a Division Bench of this Court in *State of Uttar Pradesh v. R.N.*

Mathur (Special Appeal No. 68 of 1962) decided by the Lucknow Bench of this Court on 2 December 1963.

26. This proposition cannot be disputed but the authority of the Government to alter its decision is subject to certain restrictions and the restrictions are the proviso to Rule 32 (1) of the rules, the rule of estoppel and Articles 16 and 311 of the Constitution. The Government has the authority to change an order but it can be done only in accordance with law and if the alteration is not contrary to rules and to the Constitution and is not done in a discriminatory manner. The order dated 3 November 1958 has to be given the status of an order passed by the Governor. It could not be lightly superseded. Some solemnity must be attached to orders passed in the name of the Governor. It is now fairly well-settled that the question of seniority of a public servant is justiciable. See *Bala Subrahmanya Rajaram Vs. B.C. Patil and Others*, .

27. I am unable to agree with the contention of Sri Shanti Bhushan that all the servants are at the pleasure of the employer which is the State in this case and which is free to fix the seniority of its servants in any manner it wishes and can alter it in a manner prejudicial to their Interests without the sanction of law. Article 16 of the Constitution bars discrimination not only at the time of entering into service of the State by a person but also throughout the period of his service. See *General Manager, Southern Railway, and Anr. v. Rangachari* AIR 1962 SC 30 Article 14 of the Constitution also bars discrimination. Therefore, the claim of the State that it can alter the seniority of a person in its service at its will and thus discriminate among its servants cannot be upheld. The State, being a creature of the Constitution, can only act in accordance with constitutional provisions;

28. It was urged by Sri Shanti Bhushan that the petitioner had no right to entertain the belief that his seniority, once determined, could not be changed subsequently and that this was merely a mistake of law which cannot be the foundation for the principle of estoppel since every one is supposed to know the law and no amount of representation on the part of the Government could give the petitioner the right to raise the plea of estoppel which is not an absolute doctrine but is controlled by public policy. He, therefore, urged that the plea of estoppel cannot be raised against a statute. In support of his argument Sri Shanti Bhushan relied on the following decisions:

Mathra Prashad and Sons Vs. State of Punjab, ;

Maritime Electric Co. Ltd. v. General Dairies, Ltd. AIR 1937 PO 114; and

Corporation of Calcutta Vs. Sasi Bhusan Mukherjee, .

29. It was held in these cases that there can be no estoppel against a statute; but no question of estoppel against a statute arises in the instant case, in which we are concerned only with the orders passed by the State Government. The cases relied upon by the learned Senior Standing Counsel, are therefore,

distinguishable.

30. It must, therefore, be held that the State Government could not supersede the orders of 3 November 1958 and 13 March 1959 by the two impugned orders dated 31 December 1962 and 31 May 1963.

31. According to the petitioner he was recruited to the Uttar Pradesh Civil Service (Judicial Branch) under the orders of the Governor as contemplated by Rule 32 (2) of the rules and was, therefore, entitled to as much equal protection of the law as the others who were recruited under Rule 6 of the rules. The case of the State Government, on the other hand, is that the only method of recruitment to the Uttar Pradesh Civil Service (Judicial Branch) is by competitive examination and an ad hoc recruitment under Rule 32 is not a normal method of recruitment and therefore the petitioner having joined the Uttar Pradesh Civil Service (Judicial Branch) on 8 October 1954, could not be made senior to those who joined in 1951, 1952 and 1953. According to the learned Senior Standing Counsel, it is Rule 22 of the rules which is relevant in this case and according to Rule 22 the seniority of officers in the Uttar Pradesh Civil Service (Judicial Branch) is determined according to the year of the competitive examination by which they were recruited to the service. Sri Shanti Bhushan, therefore, urged that Rule 22 is the only rule which deals with seniority of officers and has not been superseded by any subsequent rule.

32. The rules were made by the Governor under the powers conferred on him by the proviso to Article 309 of the Constitution and came into force on 20 August 1952. They are, therefore, statutory rules. Rule 5 deals with the strength of the service and runs as follows:

(1) The strength of the service and of each kind of posts shall be determined by the Governor from time to time in consultation with the Court.

(2) The permanent strength of the service and each kind of posts therein shall, until orders varying the same have been passed under Sub-rule (1), be as specified in appendix A.

(3) The Governor may from time to time leave unfilled or hold in abeyance, any post or may increase the cadre by the creation of additional permanent or temporary posts, as may be found necessary.

33. Rule 6 deals with source of recruitment and provides that recruitment to the service shall be made on the result of a competitive examination conducted by the Uttar Pradesh Public Service Commission. Rule 19 provides that the Commission shall prepare a list of candidates who have taken the examination for recruitment to the service in order of their proficiency and shall make its recommendation. Rule 21 deals with appointments and says that

subject to the provisions of Rule 20, the Governor shall, on receipt of the list prepared by the Commission, consult the High Court and shall, after taking into consideration the views of the High Court, select candidates for appointment

from amongst those who stand highest in order of merit in such list, provided that he is satisfied that they are duly qualified in other respects.

It also provides that the Governor may make appointment in temporary or officiating vacancies from persons possessing necessary qualifications prescribed under the rules. Rule 22 deals with seniority and reads as follows:

Subject to the provisions of Rule 31, the seniority of candidates already in service at the time when these rules come into force would be determined according to the rules in force previously and for those appointed subsequently the seniority shall be determined by the year of competitive examination on the results of which a candidate recruited and the position in the list prepared under Rule 19.

34. The rules also provide for a contingency when the Governor may ask outsiders to join the cadre of Uttar Pradesh Civil Service (Judicial Branch). Rule 31 says that:

Notwithstanding anything contained in these rules, Judicial Officers, who were serving in any area which has merged in the State of Uttar Pradesh, after 15 August 1947, or may merge therein, hereinafter may be appointed to posts in the cadre on the merger of that area and be far as may be, shall on such appointment, be governed by Rules 26 to 28, 30 and 32 only and their seniority shall be as determined by the Governor in consultation with the Court.

Rule 32 is as follows:

(1) nothing in these rules shall be construed to limit or abridge the power of the Governor to deal, in consultation with the Court, with the case of any person governed by these rules in such manner as may appear to him to be just and equitable:

Provided that, where any of the foregoing rules is applicable to the case of any person, the case shall not be dealt with in a manner less favourable to him than that provided by that rule.

(2) When in his opinion it appears necessary to do so, the Governor may make any appointment to the service in relaxation of these rules and in case of any appointment which is not in strict accordance with the rules, the Governor shall be deemed to have made the appointment in relaxation of the rules.

35. Rule 22, in my view, is limited in its operation inasmuch as it applies only to those officers who came into service by competitive examination as provided for in Rule 6. Seniority, however, has to be determined in respect of every officer in the cadre whether he came into it by competitive examination or otherwise. When appointments are made by the Governor otherwise than as a result of a competitive examination, seniority has to be determined under Rule 32. Rule 32 (1) of the rules says that nothing shall limit the Governor's power to determine the seniority of officers governed by the rule. The proviso to Rule 32 (1) is

important. It takes away the arbitrariness of the Governor's power and provides that the case shall not be dealt with in a manner detrimental to an officer.

36. I do not agree with Sri Shanti Bhushan that Rule 32 does not deal with seniority and that under Rule 32 the State Government had the power to supersede its orders dated 3 November 1958 and 13 March 1959.

37. Rules 31 and 32 cannot be divested from the entire body of rules. These rules also deal with sources of appointment. Rule 6 is only an enabling rule providing for a method of recruitment to the service. This rule provides only one of the methods of appointment and does not bar the method of appointment to the service by the Governor otherwise than as a result of a competitive examination. Rule 31 talks of appointment to the service from amongst the Judicial Officers who were serving in any area which has merged in this State after 15 August 1947. Rule 32 (2) provides for another source of appointment by the Governor. It is, therefore, wrong to say that Rule 6 is the only source of entry into the service. Rule 4 (e) of rules defines " member of the service " as

a person appointed in a substantive capacity under the provisions of " these rules" or of the rules in force previous to the introduction of these rules to a post in the cadre of the service.

The words " these rules" include Rules 31 and 32 also. Rule 31 (2) also gives an indication that there can be an appointment to the service quite outside Rule 6. It is correct that if an officer is appointed to the service as a result of a competitive examination, the seniority, in that case, cannot be determined under Rule 22. Rule 22 is not applicable to appointments made under Rule 32 (2) under which the Governor has been given the authority to make appointments in relaxation of the rules whenever it appears to him necessary to do so. Rule 32 (1) of the rules makes it clear that nothing in the rules will be deemed to limit or abridge the powers of the Governor to deal, in consultation with the Court, with the case of any person covered by the rules. Thus the Governor had the requisite authority to determine the seniority of the entrants to the cadre of the Uttar Pradesh Civil Service (Judicial Branch) not only inter se but also qua those who had entered service through the source mentioned in Rule 6. In Para. 11 of the petition it is stated that:

the appointment of the petitioner and other Judicial Officers to the cadre of Provincial Civil Service (Judicial Branch), even though it was not through the normal source of recruitment mentioned in Rule 6 of the said rules, was fully governed by Rule 32 (2) of the rules mentioned above.

This statement has not been controverted in the counter-affidavit filed on behalf of the State. The letter of the Up Sachiva to the Government dated 30 September 1959 addressed to the Registrar of the Court also shows that the petitioner was appointed under Rule 32 of the rules.

38. It, therefore, follows that the petitioner was entitled to as much equal

protection of the law as other officers who had been recruited under Rule 6 of the rules and the petitioner's seniority, having been fixed by the orders dated 3 November 1958 and 13 March 1959, could not be altered to Mb detriment by subsequent orders dated 31 December 1962 and 31 May 1963.

39. The rules, as already discussed above, permit two kinds of recruitments to the cadre of Uttar Pradesh Civil Service (Judicial Branch):

(1) under Rule 6, and

(2) under Rule 32 (2).

Rule 6 is, therefore, not exhaustive. Once the cadre of the Uttar Pradesh Civil Service (Judicial Branch) is to be fed by two sources, i.e., by Rules 6 and 32(2), no preference can be given to one source over the other. Rule 22, which deals with seniority, can come into play only if recruitment is made by way of competitive examination. It does not apply to a case when recruitment is made under Rule 32 (2) of the rules. The petitioner having been recruited to the cadre under Rule 32 (2) and his seniority having been once fixed, it could not be altered by the State Government at its sweet will. The State Government has to act within constitutional limitations. The petitioner, having come into the cadre not by the normal method of recruitment but by a different channel under Rule 32 (2) of the rules, could not be discriminated against.

40. I do not agree with the learned Senior Standing Counsel that Judicial Officers recruited under Rule 32 are a class by themselves and those recruited under Rule 6 form another class. The Judicial Branch of the Uttar Pradesh Civil Service Is one service although recruitment to it may be made by two different sources. Rule 4 (e) defines " member of the service " as meaning;

a person appointed in a substantive capacity under the provisions of these Rules or of the rules in force previous to the introduction of these rules to a post in the cadre of the service.

Rule 4 (f) defines the service as "the Uttar Pradesh Civil Service (Judicial Branch)."

41. It is, therefore, clear that by whichever source of recruitment the petitioner was taken in the cadre, once he entered into that cadre he belonged to the same service as opposite parties 2 to 26, and he, along with the opposite parties 2 to 25, was governed by the same set of rules and he could not be discriminated against. It was held by the Supreme Court in *The General Manager, Southern Railway Vs. Rangachari*, that:

the matters relating to employment must include all matters In relation to employment both prior, and subsequent, to the employment which are Incidental to the employment and form part of the terms and conditions of such employment.

The impugned orders are, therefore, in contravention of Article 16 of the

Constitution as they are arbitrary and highly discriminatory.

42. The last point urged by the learned Counsel for the petitioner was that the impugned orders are also hit by Article 311(2) of the Constitution inasmuch as the petitioner's seniority in the substantive cadre was sought to be reduced by the order dated 31 May 1963 and that no reasonable opportunity was given to the petitioner to show cause against the reduction in rank. There is no force in this submission. In my opinion, Article 313(2) of the Constitution is not applicable to the facts of the present case since the impugned orders do not amount to reduction in rank by way of punishment on account of petitioner's reduction. It was held by the Supreme Court in *High Court, The High Court, Calcutta Vs. Amal Kumar Roy*, that:

the expression "rank" in Article 311(2) has reference to a person's classification and not his particular place in the same cadre in the hierarchy of the service to which he belongs. Hence in the context of the Judicial Service of West Bengal "reduction in rank" would imply that a person who is already holding the post of a Subordinate Judge has been reduced to the position of a Munsif, the rank of a Subordinate Judge being higher than that of a Munsif. But Subordinate Judges in the same cadre hold the same rank, though they have to be listed in order of seniority in the civil list. Therefore, losing some places in the seniority list in the same cadre, namely, of Subordinate Judges, does not amount to reduction in rank, within the meaning of Article 311(2).

43. It is clear, therefore, that the impugned orders are not hit by Article 311(2) of the Constitution.

44. Before parting with this case I would like to observe that the case was argued with great ability by the learned Counsel for the parties.

45. In view of my decision on the first three submissions of the learned Counsel for the petitioner, I allow this petition with costs and quash the orders dated 31 December 1962 and 31 May 1963. The opposite party 1 is directed not to give effect to those two orders and to continue to abide by the seniority awarded to the petitioner by orders dated 3 November 1958 and 13 March 1959.